

**Agenda Of The Regular Meeting – Oversight Board to the Successor Agency to the  
Redevelopment Agency of the City of National City  
Council Chambers  
Civic Center  
1243 National City Boulevard  
National City, California  
Wednesday – April 20, 2016 – 3:00 P.M.**

**Open To The Public**

**Please complete a request to speak form prior to the commencement of the meeting and submit it to the Oversight Board Secretary.**

It is the intention of your National City Oversight Board to be receptive to your concerns in this community. Your participation in local government will assure a responsible and efficient City of National City. We invite you to bring to the attention of the Board Chairman any matter that you desire the National City Oversight Board to consider. We thank you for your presence and wish you to know that we appreciate your involvement.

**ROLL CALL**

**Pledge of Allegiance to the Flag by Chairman Ron Morrison**

**Public Oral Communications (Three-Minute Time Limit)**

**NOTE: Pursuant to state law, items requiring National City Oversight Board action must be brought back on a subsequent National City Oversight Board Agenda unless they are of a demonstrated emergency or urgent nature.**

Upon request, this agenda can be made available in appropriate alternative formats to persons with a disability in compliance with the Americans with Disabilities Act. Please contact the City Clerk's Office at (619) 336-4228 to request a disability-related modification or accommodation. Notification 24-hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

**It Is Requested That All Cell Phones  
And Pagers Be Turned Off During The Meetings**

## OVERSIGHT BOARD ACTIONS

1. Approval of the Minutes of the Regular Meeting of the Oversight Board to the Successor Agency to the Community Development Commission as the National City Redevelopment Agency meeting held on March 16, 2016.
2. Resolution of the Oversight Board to the Successor Agency to the Community Development Commission as the National City Redevelopment Agency approving the Settlement Agreement and Release between the City of National City, the Successor Agency, and Morgan Square, Inc., in the matter of *The City of National City and Successor Agency v. Morgan Square, Inc.* (Successor Agency) (Reso 2016-03)

## REPORTS

3. Update on Redevelopment Issues

## ADJOURNMENT

Adjourn to the next Regular meeting of the Oversight Board to the Successor Agency to the Community Development Commission as the National City Redevelopment Agency scheduled on May 18, 2016 at 3:00 p.m. in Council Chambers, Civic Center.

**MINUTES OF THE REGULAR MEETING OF THE OVERSIGHT BOARD TO THE  
SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF  
THE CITY OF NATIONAL CITY**

**MARCH 16, 2016**

This Regular Meeting of the Oversight Board to the Successor Agency to the Community Development Commission as the National City Redevelopment Agency was called to order at 3:03 pm by Chairman Ron Morrison.

**ROLL CALL**

Board Members Present: Fellows, Desrochers, Morrison, Perri, McCarthy, Kerl  
Board Members Absent: Carson

**OTHER STAFF PRESENT:** Brad Raulston, Executive Director; Carlos Aguirre, Community Development Manager; Greg Rose, Property Agency; Janel Pehau, Accountant

**PLEDGE OF ALLEGIANCE** by Chairman Morrison

**PRESENTATIONS:** None

**OVERSIGHT BOARD ACTIONS**

1. **SUBJECT:** Approval of the Minutes of the Special Meeting of the Oversight Board to the Successor Agency to the Redevelopment Agency of the City of National City Meeting held on January 20, 2016.

**RECOMMENDATION:** Approve minutes as presented.

**ACTION:** Motion by Perri, seconded by Kerl to approve the minutes of the Regular Meeting of the Oversight Board meeting held January 20, 2016.

Motion carried by the following vote:

Ayes: Desrochers, McCarthy, Perri, Morrison, Kerl

Absent: Fellows, Carson

2. **SUBJECT:** Resolution of the Oversight Board to the Successor Agency to the Community Development Commission as the National City Redevelopment Agency approving an Administrative Budget for the ROPS 15-16B period January 1, 2016 through June 30, 2016. (Reso 2016-02)

Item presented by Brad Raulston, Executive Director and Janel Pehau, Successor Agency Accountant

**RECOMMENDATION:** Approve the Resolution (**Resolution 2016-02**).

**ACTION:** Motion by Desrochers, seconded by Perri to approve the Resolution (2016-02).

Motion carried by the following vote:

Ayes: Desrochers, McCarthy, Perri, Morrison, Kerl

Absent: Fellows, Carson

*Note: Member Fellows arrived at 3:06 pm*

## REPORTS

### 3. Update on Redevelopment Issues

Brad Raulston, Executive Director gave updates on status of the Compensation package for the Long Range Property Management Plan which will be presented at the April meeting.

## ADJOURNMENT

The regular meeting was adjourned to the next Regular Meeting of the Oversight Board to the Successor Agency to the Community Development Commission as the National City Redevelopment Agency to be held on April 20, 2016 at 3:00 p.m., Council Chambers – National City Civic Center, California.

The meeting adjourned at 3:13 p.m.

\_\_\_\_\_  
Clerk

\_\_\_\_\_  
Secretary

The foregoing minutes were approved at the Regular Meeting of April 20, 2016.

\_\_\_\_\_  
Oversight Board Chairman

**OVERSIGHT BOARD TO THE SUCCESSOR AGENCY TO  
THE COMMUNITY DEVELOPMENT COMMISSION  
AS THE NATIONAL CITY REDEVELOPMENT AGENCY  
AGENDA STATEMENT**

MEETING DATE: April 20, 2016

AGENDA ITEM NO.

**ITEM TITLE:** Resolution of the Oversight Board to the Successor Agency to the Community Development Commission as the National City Redevelopment Agency approving the Settlement Agreement and Release between the City of National City, the Successor Agency, and Morgan Square, Inc., in the matter of *The City of National City and Successor Agency v. Morgan Square, Inc.*

**PREPARED BY:** Claudia Silva

**DEPARTMENT:** City Attorney

**PHONE:** Ext. 4222

**APPROVED BY:** 

**EXPLANATION:**

Please see attached.

**FINANCIAL STATEMENT:**

**APPROVED:** \_\_\_\_\_ Finance

**ACCOUNT NO.**

**APPROVED:** \_\_\_\_\_ MIS

**ENVIRONMENTAL REVIEW:**

N/A

**ORDINANCE:**  **INTRODUCTION:**

**FINAL ADOPTION:**

**STAFF RECOMMENDATION:**

Approve Settlement Agreement and Release and adopt proposed resolution.

**BOARD / COMMISSION RECOMMENDATION:**

Approved by the City Council in closed session on December 15, 2015.

**ATTACHMENTS:**

Staff Report  
Settlement Agreement



Mayor  
Ron Morrison

Council Members  
Jerry Cano  
Alejandra Sotelo-Solis  
Mona Rios  
Albert Mendivi



City Attorney  
Claudia Gacitua Silva

Senior Assistant City Attorney  
Nicole Pedone

## STAFF REPORT

TO: Oversight Board

DATE: April 14, 2016

FROM: City Attorney

SUBJECT: Resolution of the Oversight Board to the Successor Agency to the Community Development Commission as the National City Redevelopment Agency approving the Settlement Agreement and Release between the City of National City, the Successor Agency, and Morgan Square, Inc., in the matter of *The City of National City and Successor Agency v. Morgan Square, Inc.*

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On August 3, 2004, pursuant to City Council Resolution No. 2004-148, the City established the Downtown National City Property and Business Improvement District, also known as Morgan Square (the "District") pursuant to the California Property and Business Improvement District Law of 1994 (Sts & Hwy Code, § 36600 et seq., "PBID Law").

The City delegated oversight of the District to the Community Development Commission of the City of National City ("CDC"). On March 8, 2005, the CDC and National City Morgan Square, Inc., entered into a written agreement for administration and operation of the District pursuant to the Management District Plan and PBID Law ("Agreement"). Even though the Agreement was entered into by "National City Morgan Square, Inc.", Morgan Square was and is the contractor providing services in the District.

The City transferred approximately \$1,163,000 collected from the levy of assessments in the District (the "District Funds") to Morgan Square. In return, Morgan Square was to utilize the District Funds as set forth in the Agreement for activities and services in the District. The District expired by its own terms in 2010, and in accordance with the PBID Law. No action was taken by any of the Parties to renew the District, and it has not been renewed.

The City and the Successor Agency filed suit against Morgan Square for breach of the Agreement and violation of the PBID Law based upon the following: (1) not providing certain accounting records and documentation to the City; and (2) upon expiration of the District, not taking steps to refund the remaining District Funds in Morgan Square's possession to the assessed property owners.

On June 25, 2013, City and Successor Agency filed a lawsuit against Morgan Square in the Superior Court for the County of San Diego, identified as Case No. 37-2013-00054606-CU-OR-

CTL (“Litigation”), arising out of obligations and covenants under PBID Law and the Agreement.

On or about September 16, 2013, on the City’s motion, the Court issued a Temporary Restraining Order (“TRO”) to restrict the use of funds within Morgan Square’s possession.

On or about November 19, 2013, an injunction was ordered by the Court prohibiting Morgan Square from using the District funds, other than for a specific use approved by the Court, that being payment for Court approved legal expenses incurred by Morgan Square.

The parties have now arrived at a settlement contingent upon the approval of the Oversight Board and Department of Finance. Under the terms of the Agreement:

1. Morgan Square shall prepare and submit a final audit to the City;
2. Morgan Square shall return the funds to the City;
3. The City will refund the funds in accordance with PBID Law; and
4. The Successor Agency and the City shall recover \$54,006.92 in attorney’s fees, payable from the funds.

The City Council and the Successor Agency have approved this Agreement. It is now before the Oversight Board for approval.



NICOLE PEDONE  
Senior Assistant City Attorney  
For: CLAUDIA GACITUA SILVA  
City Attorney



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4

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City Attorney  
CITY OF NATIONAL CITY  
6 1243 National City Boulevard  
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7 Tel: (619) 336-4220  
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8

9 Attorneys for Plaintiffs City of National City and The  
Successor Agency to the Community Development  
10 Commission of the City of National City  
11

12 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **IN AND FOR THE COUNTY OF SAN DIEGO**

14 **THE CITY OF NATIONAL CITY, a**  
15 **municipal corporation; THE SUCCESSOR**  
16 **AGENCY TO THE COMMUNITY**  
17 **DEVELOPMENT COMMISSION AS THE**  
18 **NATIONAL CITY REDEVELOPMENT**  
19 **AGENCY; and ROES 1 through 10,**

20 Plaintiffs,

21 v.

22 **MORGAN SQUARE INC., a California**  
23 **nonprofit corporation; NATIONAL CITY**  
24 **MORGAN SQUARE, INC., an entity of**  
25 **unknown origin; and DOES 1 through 25,**  
26 **inclusive,**

27 Defendants.  
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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

03/21/2016 at 08:34:00 AM

Clerk of the Superior Court  
By Jenitta Vrissimo, Deputy Clerk

[Fee Exempt, Gov. C. § 6103]

**CASE NO. 37-2013-00054606-CU-OR-CTL**

**STIPULATION FOR SETTLEMENT AND**  
**(PROPOSED) ORDER APPROVING**  
**GOOD FAITH SETTLEMENT**  
**BETWEEN CITY OF NATIONAL CITY**  
**[CITY] AND MORGAN SQUARE, INC.;**  
**ORDERING TURN OVER OF FUNDS TO**  
**THE CITY; ALLOWING**  
**REIMBURSEMENT OF CITY'S**  
**ATTORNEYS' FEES; DISSOLVING THE**  
**PRELIMINARY INJUNCTION ISSUED**  
**IN THIS CASE UPON PAYMENT OF**  
**THE FUNDS TO THE CITY;**  
**RETAINING JURISDICTION TO**  
**ENFORCE THE SETTLEMENT AND**  
**THE ORDERS OF THE COURT**

**IMAGED FILE**

Date: \_\_\_\_\_, 2016

Time:

Complaint Filed: June 25, 2013

Dept: 71

Judge: Hon. Gregory W. Pollack

Stipulation for Settlement and (Proposed) Order Approving Good Faith Settlement

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IT IS HEREBY STIPULATED AND AGREED by and between Plaintiffs, City of National City and The Successor Agency to the Community Development Commission as the National City Redevelopment Agency, and Defendants, Morgan Square Inc., a California non-profit corporation and National City Morgan Square, Inc., by and through their respective counsel of record, having reached a settlement of their dispute concerning the remaining funds in the Downtown National City Property Business Improvement District ("PBID"), the status of said funds being the central subject of the above-captioned lawsuit.

The Parties understand that each Party has the right to a trial of the matter, various appeal rights, rights to move for a new trial, to set aside the judgment, and other remedies directly and indirectly challenging the judgment. However, after a review of all the issues, the Parties agree that they, and each of them, do not elect to try the matter, and instead agree to the following stipulation for settlement of the issues that were raised or could have been raised in the above-captioned lawsuit. The parties request that the Court retain jurisdiction over them to enforce the settlement until performance in full of its terms.

The Parties stipulate as follows:

**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release ("Settlement Agreement") is made this \_\_\_\_\_ day of February 2016, by and between MORGAN SQUARE, INC. ("Morgan Square"), THE CITY OF NATIONAL CITY, a municipal corporation ("City"), and THE SUCCESSOR AGENCY TO THE COMMUNITY DEVELOPMENT COMMISSION AS THE NATIONAL CITY REDEVELOPMENT AGENCY ("Successor Agency"). Morgan Square, the City and the Successor Agency are collectively referred to herein as the "Parties".

**RECITALS**

A. On August 3, 2004, pursuant to City Council Resolution No. 2004-148, the City established the Downtown National City Property and Business Improvement District, also

1 known as Morgan Square (the "District") pursuant to the California Property and Business  
2 Improvement District Law of 1994 (found at Sts. & Hy. Code, § 36600 et seq., "PBID Law").

3 B. The City delegated oversight of the District to the Community Development  
4 Commission of the City of National City ("CDC"). On March 8, 2005, the CDC and National  
5 City Morgan Square Inc. entered into a written agreement for administration and operation of  
6 the District pursuant to the Management District Plan and PBID Law ("Agreement"). Even  
7 though the Agreement was entered into by "National City Morgan Square, Inc.", Morgan  
8 Square was and is the contractor providing services in the District.

9 C. The City transferred approximately \$1,163,000 collected from the levy of  
10 assessments in the District to the Contractor (the "District Funds"). In return, Contractor was to  
11 utilize the District Funds as set forth in the Agreement for activities and services in the District.  
12 The District expired by its own terms in 2010, and in accordance with the PBID Law, and no  
13 action was taken by any of the Parties to renew the District and it has not been renewed.

14 D. The Successor Agency was created by the City Council of the City of National  
15 City pursuant to Resolution No. 2012-15 and Part 1.85 of the Health and Safety Code to serve  
16 as the Successor Agency to the CDC (the Redevelopment Agency) upon its dissolution under  
17 Assembly Bill ABX1-26 (2011).

18 E. The City and the Successor Agency contend that Morgan Square is in breach of  
19 the Agreement and violation of the PBID Law by not providing certain accounting records and  
20 documentation to the City and by not taking steps to refund, upon expiration of the District, the  
21 remaining District Funds in Morgan Square's possession in accordance with PBID Law.  
22 Morgan Square disputes these contentions.

23 F. On June 25, 2013, City and Successor Agency filed a lawsuit against Morgan  
24 Square in the Superior Court for the County of San Diego, identified as Case No. 37-2013-  
25 00054606-CU-OR-CTL ("Litigation"), arising out of obligations and covenants under PBID  
26 Law and the Agreement, in order to preserve the status quo pending mediation. Mediation was  
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1 unsuccessful and the Parties proceeded to litigation and the City was compelled to undertake  
2 pre-trial law and motion and discovery activity.

3 G. On or about September 16, 2013, on the City's motion the Court issued a TRO  
4 and then on or about November 19, 2013, an injunction prohibiting Morgan Square from using  
5 the District funds other than for a specific use approved by the Court, that being payment for  
6 Court approved legal expenses incurred by Morgan Square.

7 H. Without admitting any liability or fault, each of the Parties to this Settlement  
8 Agreement now desires to resolve all aspects of the Litigation among themselves.

9 **AGREEMENT**

10 NOW THEREFORE, in consideration of the foregoing and for good and valuable  
11 consideration the parties hereby agree as follows:

12 **1. Settlement.**

13 (a) Morgan Square hereby acknowledges and agrees that this Settlement Agreement  
14 is subject to approval by the Successor Agency and the City, the Oversight Board of the City of  
15 National City ("Oversight Board"), and review and approval of the State of California  
16 Department of Finance ("Department of Finance"). In the event the Successor Agency and the  
17 City, the Oversight Board, and/or of the Department of Finance, or any of them, do not approve  
18 this Settlement Agreement, then the Settlement Agreement shall become null and void.

19 (b) Morgan Square agrees to cooperate in all necessary steps to prepare a final audit  
20 report for the period from January 1, 2008 through and including June 30, 2015. This audit  
21 report is intended to be submitted to the City on or before April 1, 2016, for presentation,  
22 review, and approval at a public meeting. This will result in a separate analysis for any  
23 disbursements made by Morgan Square since the last audit by the Sonnenberg CPA firm, if any  
24 have been made. If none have been made the prior audit will satisfy this condition.

25 (c) Within five (5) days of the final approval of the settlement by the Successor  
26 Agency and the City, the Oversight Board of the City of National City, and the Department of  
27 Finance, to the extent necessary, Morgan Square shall pay all District Funds in the custody,  
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1 possession, or control of Morgan Square, over to the City to be distributed as refunds pursuant  
2 to the PBID Law, specifically Streets and Highways Code section 36671.

3 (d) Morgan Square shall deliver all remaining District Funds to the City to be  
4 distributed as refunds in accordance with the PBID Law and Streets and Highways Code section  
5 36671. Except as otherwise expressly provided in this Agreement and that the City Of National  
6 City may be refunded assessments on properties owned by it for which it paid assessments, as  
7 provided by the Property and Business Improvement District Law of 1994, the City Of National  
8 City will not retain, obtain, charge, or in any way keep or collect any amount whatsoever from  
9 the District Funds to be refunded to the Morgan Square District members pursuant to this  
10 Agreement. Nothing in this Agreement is intended to alter the outcome under State law for  
11 return of the District Funds. Any breach by the City Of National City of this provision shall be  
12 considered a material breach of the Agreement and shall release the Morgan Square District  
13 from its obligations herein under.

14 (e) Execution of this Settlement Agreement shall not constitute a ratification of the  
15 acts of any of the Parties in connection with the District.

16 2. Dismissal of the Litigation. On June 25, 2013, the Successor Agency and the City were  
17 compelled to file the Litigation against Morgan Square after the latter failed to follow through  
18 on a negotiated settlement, and the City obtained an injunction to preserve the District Funds.  
19 The Parties hereby agree the Litigation shall be dismissed upon the Effective Date of the  
20 Release, defined below, or on a date determined by the Court within its discretion.

21 3. Release of Claims.

22 (a) Scope of Releases. The Parties and each of them, by and for itself hereby  
23 acknowledge and agrees that the scope of the mutual release and discharge of claims recited in  
24 Sections 3(b) and (c) below shall be interpreted to the broadest extent permissible under law.

25 (b) ~~Effective Date of Release. The releases contained in this Settlement~~  
26 Agreement shall be contingent upon and shall not be effective until the "Effective Date of  
27 Release" which shall be when both of the following occur: (i) the City and the Successor  
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1 Agency approve the final audit and any related reports at a public hearing; and (ii) the  
2 expiration of all applicable times, with no claims having been filed, to challenge the  
3 administration of the District and to challenge distributions or refunds under the PBID  
4 Law and/or to seek and initiate refund claims. Upon the occurrence of the Effective Date of  
5 Release and provided that the Department of Finance does not thereafter disapprove of the  
6 Settlement Agreement, the Parties shall mutually release one another from all obligations and  
7 liabilities with respect to the matters that were raised within the Litigation only.

8 (c) **Mutual Release and Discharge of Claims.** Effective only upon the Effective  
9 Date of Release, defined above, and provided that the Department of Finance does not thereafter  
10 disapprove of the settlement, and except for the obligations of the Parties under the terms of this  
11 Settlement Agreement, the Parties separately by and for itself, each freely and without coercion,  
12 fully and forever releases, acquits and discharges each other party hereto and their attorneys,  
13 sureties, agents, servants, representatives, employees, members, Council Members, officers,  
14 trustees, subsidiaries, affiliates, partners, predecessors, successors-in-interest, heirs, executors  
15 and assigns, and all persons acting by, through, under or in concert with them, of and from any  
16 and all past, present, or future claims, demands, obligations, actions, causes of action, damages,  
17 costs, attorney's fees, losses of service, expenses, liabilities, suits, and compensation of any  
18 kind or nature whatsoever, whether based on tort, contract, or other theory of recovery, claimed  
19 by any of them which arise from or relate to facts or events occurring on or before the date of  
20 this Settlement Agreement with respect to the Litigation only. The Parties expressly  
21 acknowledge and agree that this release shall extend to any and all claims, whether judicial,  
22 administrative or otherwise, including, without limitation, claims made with any court,  
23 commission, tribunal, board or administrative body with jurisdiction to consider such claims  
24 related to the Litigation. This release expressly extends to and bars any and all complaints,  
25 actions and/or proceedings, whether judicial or administrative, actually instituted by the Parties,  
26 or which could be instituted by any of the Parties, with respect to the Litigation. Nothing in this

1 Settlement Agreement shall be construed to mean that any of the Parties is or are waiving any  
2 rights to enforce this Settlement Agreement.

3 (d) Waiver of California Civil Code Section 1542.

4 (i) Effective only upon the Effective Date of Release, defined above, and  
5 provided that the Department of Finance does not thereafter disapprove of the Settlement  
6 Agreement, the release and discharge specified in Section 2(c), above, shall be effective to bar  
7 all claims, damages, claims for disability benefits, personal injuries, claims for compensation,  
8 controversies, actions, causes of action, obligations, liabilities, costs, expenses, attorneys' fees  
9 and damages of any character, nature and kind, whether known or unknown, suspected or  
10 unsuspected. In furtherance of this intention, the Parties and each of them expressly waives and  
11 relinquishes any and all rights and benefits conferred on them by the provisions of Section 1542  
12 of the California Civil Code.

13 (ii) The Parties understand that California Civil Code Section 1542 provides  
14 as follows:

15 A general release does not extend to claims which a creditor does not know or  
16 suspect to exist in his or her favor at the time of executing the release, which if  
17 known by him or her must have materially affected his or her settlement with the  
debtor.

18 (iii) It is expressly understood and agreed by the Parties that the possibility of  
19 unknown claims exists and has been explicitly taken into account in determining the  
20 consideration to be given for this Settlement Agreement and that a portion of the consideration,  
21 having been bargained for with full knowledge of the possibility of such unknown claims, was  
22 given in exchange for the release and discharge of the matters, claims and/or rights covered by  
23 this Settlement Agreement.

24 (iv) The Parties agree that if either or any of them hereafter commences, joins  
25 in, or in any manner seeks relief through any suit arising out of, based upon, or relating to any  
26 of the settled claims released hereunder, then he/she/it shall pay to the other parties, in addition  
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1 to any other damages caused to the other parties thereby, all attorneys' fees incurred by the  
2 other parties in defending or otherwise responding to said suit of settled claims.

3 (v) This release shall not operate to release any claims the Parties may later  
4 have for the enforcement of the obligations created by this Settlement Agreement.

5 (vi) The Court approving this settlement shall retain jurisdiction to enforce  
6 and interpret the terms of the settlement as necessary, as requested by either of the parties on an  
7 ex parte basis.

8 **4. Representations and Warranties.**

9 (a) **Representation of Comprehension.** By entering into this Settlement  
10 Agreement, each party represents to the other that (i) each of them fully understands and accepts  
11 the terms of this Settlement Agreement; (ii) each of them has relied upon the legal advice of  
12 their attorneys or that they have freely and independently chosen not seek the advice of an  
13 attorney; (iii) each of them has had a full and ample opportunity to consult with any other  
14 professionals of their choice in connection with the rights and liabilities created by this  
15 Settlement Agreement; (iv) none of them has any questions with regard to the legal import of  
16 any term, word, phrase, or portion of this Settlement Agreement, or this Settlement Agreement  
17 in its entirety; and (v) each of them accepts the terms of this Settlement Agreement as written.

18 (b) **Representation of Approvals.**

19 (i) By the Successor Agency and the City. Except for the pending approval  
20 of the Settlement Agreement by the Successor Agency, Oversight Board, and Department of  
21 Finance, by entering into this Settlement Agreement, the Successor Agency and the City and the  
22 persons signing below on behalf of the Successor Agency and the City, each represents to  
23 Morgan Square that: (1) the persons signing below on behalf of the Successor Agency and the  
24 City are authorized to execute this Settlement Agreement on behalf of the Successor Agency  
25 and the City; and (2) this Settlement Agreement is binding on the Successor Agency and the  
26 City.



1 (ii) By Morgan Square. By entering into this Settlement Agreement, Morgan  
2 Square, and the person signing below on behalf of Morgan Square, each represents to the  
3 Successor Agency and City that: (1) this Settlement Agreement has been duly approved by all  
4 necessary board or member actions and no further or additional approvals are needed; (2) the  
5 person signing below on behalf of Morgan Square is authorized to execute this Settlement  
6 Agreement on behalf of Morgan Square; and (3) this Settlement Agreement is binding on  
7 Morgan Square.

8 **5. Compromise.**

9 This Settlement Agreement is the result of a compromise and shall never at any time or  
10 for any purpose be considered an admission of liability or responsibility on the part of any party  
11 hereto, nor shall the payment of any sum of money in consideration for the execution of this  
12 Settlement Agreement constitute or be construed as an admission of any liability whatsoever by  
13 any of the Parties hereto.

14 **6. General Provisions.**

15 (a) **Attorneys' Fees.** The Parties hereto acknowledge and agree that the Successor  
16 Agency and the City shall recover their reasonable attorneys' fees and costs in the reduced  
17 amount of \$54,006.92, incurred from having to bring the Litigation resulting in this Settlement  
18 Agreement, including without limitation, the negotiation, drafting, and execution of this  
19 Settlement Agreement, and all matters connected therewith. The City shall be allowed to pay  
20 itself these fees from the funds turned over to it by Morgan Square, upon approval of the audit  
21 on or before June 30, 2016. In the event any action or proceeding is brought to enforce this  
22 Settlement Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and  
23 costs against the non-prevailing parties, in addition to all other relief to which that party or those  
24 parties may be entitled. The "prevailing party" shall be that party who obtains substantially the  
25 result sought, whether by further settlement, dismissal, or judgment.

26 (b) **Construction of Settlement Agreement.** This Settlement Agreement is the  
27 product of negotiation and preparation by and among each party hereto and their respective  
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1 attorneys. Accordingly, all Parties hereto acknowledge and agree that this Settlement  
2 Agreement shall not be deemed prepared or drafted by one party or another, or the attorneys for  
3 one party or another, and this Settlement Agreement shall be construed accordingly.

4 (c) **Binding Effect.** This Settlement Agreement shall be binding upon and inure to  
5 the benefit of the Parties hereto, and their respective heirs, executors, administrators, trustees,  
6 trustees, beneficiaries, predecessors, successors, assigns, partners, partnerships, parents,  
7 subsidiaries, affiliated and related entities, officers, directors, principals, agents, servants,  
8 employees, representatives, and all persons, firms, plaintiffs, defendants and/or persons or  
9 entities connected with each of them, including, without limitation, their insurers, sureties,  
10 attorneys, consultants and experts.

11 (d) **Severability.** If any provision or any part of any provision of this Settlement  
12 Agreement shall for any reason be held to be invalid, unenforceable or contrary to public policy  
13 or any law, then the remainder of this Settlement Agreement shall not be affected thereby and  
14 shall remain in full force and effect.

15 (e) **Entire Agreement.** This Settlement Agreement contains the entire  
16 understanding among the Parties to this Settlement Agreement with regard to the Litigation.  
17 District and/or the District Funds, and is intended to be and is a final integration thereof. There  
18 are no representations, warranties, agreements, arrangements, undertakings, oral or written,  
19 between or among the Parties hereto relating to the terms and conditions of this Settlement  
20 Agreement that are not fully expressed herein.

21 (f) **Incorporation of Recitals.** The Recitals to this Settlement Agreement are  
22 hereby incorporated into this Settlement Agreement by this reference.

23 (g) **Facsimile Signatures.** Facsimile or electronically transmitted copies of  
24 signatures shall be acceptable and treated as original signatures.

25 (h) **Counterparts.** This Settlement Agreement may be executed in counterparts and  
26 each executed counterpart shall be as effective as the original.

1           **(i) Further Assurances.** All Parties agree to cooperate fully and execute any and  
2 all supplementary documents and take all additional actions which may be necessary or  
3 appropriate to give full force and effect to the basic terms and intent of this Settlement  
4 Agreement.

5           **(j) Time of the Essence.** Time is of the essence for the full execution of this  
6 Settlement Agreement and implementation of each and every provision hereof.

7           **(k) Signatories' Representations and Warranties.** Each signatory to this  
8 Settlement Agreement on behalf of any party does hereby personally represent and warrant that  
9 he or she has the authority to execute this Settlement Agreement on behalf of, and fully bind,  
10 each party whom such individual represents or purports to represent.

11           **(l) Waiver of Right to Collaterally Attack or Set Aside Settlement Agreement.**  
12 The Parties hereby waive all rights of appeal, motions for new trial, motions for judgments  
13 notwithstanding the verdict, motions to set aside a judgment of dismissal, if any, and any and all  
14 other direct and/or collateral attacks on this Settlement Agreement. This Settlement Agreement  
15 is and shall be a full adjudication, settlement and resolution of all claims and defenses in the  
16 Litigation as of the date of this Settlement Agreement; and, except for the covenants expressly  
17 provided in this Settlement Agreement, this Settlement Agreement discharges all claims and  
18 defenses presented by the Litigation. This Agreement shall bind successors, heirs and assigns  
19 of all of the Parties.

20           **(m) Covenant Not to Sue.** The Parties covenant and agree never to commence, aid,  
21 or in any way or in any manner prosecute against each other any legal action or proceeding  
22 based upon the matters released and settled in this Settlement Agreement and/or to commence  
23 any legal action or proceeding based upon any other claim, demand, cause of action,  
24 obligations, damage or liability arising out of or related to the matters settled, released and  
25 compromised in this Settlement Agreement. This covenant does not extend to any legal action  
26 or proceeding brought for the purpose of enforcing this Settlement Agreement.

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1 7. The Parties agree that this settlement is entered into in good faith and request the court  
2 to issue an order finding the settlement to have been in good faith and barring any action by any  
3 third parties concerning this good faith settlement and the matters that were raised or that could  
4 have been raised in this litigation under the provisions of Code of Civil Procedure section 577.6.

5 IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to  
6 be executed as of the date first written above.

7 **CITY:**

8 The City of National City, a municipal corporation

9 By: 

10 Print Name: Ron Morrison

11 Its: Mayor

12 Dated: March 9, 2016

13  
14 **SUCCESSOR AGENCY:**

15 The Successor Agency to the Community Development Commission as the National City  
16 Redevelopment Agency

17 By: 

18 Print Name: Ron Morrison

19 Its: Chairman

20 Dated: March 9, 2016

21  
22 **MORGAN SQUARE:**

23 Morgan Square Inc., a California nonprofit corporation

24 By: 

25 Print Name: Patti E. Finnegan, President


26 Dated: March 8, 2016

27


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1 **APPROVED AS TO FORM AND CONTENT**


2  
3 Dated: 3/8, 2016

HASKINS & ASSOCIATES, APC  
By:   
Steve Haskins, Esq.  
Attorney for Defendants Morgan Square Inc., a  
California non-profit corporation and National  
City Morgan Square, Inc.

4  
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7 Dated: 3/17, 2016

CITY ATTORNEY  
By:   
Claudia G. Silva, Esq.  
Attorney for Plaintiffs City of National City  
and the Successor Agency to the Community  
Development Commission as the National City  
Redevelopment Agency

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12 Dated: 3/18, 2016

CHRISTENSEN & SPATH LLP  
By:   
Charles B. Christensen, Esq.  
Joel B. Mason, Esq.  
Attorneys for Plaintiffs City of National City  
and the Successor Agency to the Community  
Development Commission as the National City  
Redevelopment Agency

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18 **ORDER**

19 Based upon the foregoing stipulation for settlement and good cause appearing therefore,  
20 the Court hereby APPROVES the Parties Stipulation for Settlement and Good Faith Settlement  
21 Agreement;

22 **IT IS ORDERED THAT:**

- 23 1. ALL FUNDS IN THE POSSESSION OF DEFENDANTS [IN THE AMOUNT OF  
24 \$256,589.00 ] BE TURNED OVER TO THE CITY UPON THE APPROVAL OF  
25 THE SETTLEMENT BY THE DEPARTMENT OF FINANCE;  
26 2. THE CITY BE ALLOWED TO REIMBURSE ITSELF FOR THE PAYMENT OF  
27 ITS ATTORNEY'S FEES IN THE AMOUNT OF \$54,006.92;

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3. UPON THE PAYMENT OF ALL FUNDS TO THE CITY THAT THE PRELIMINARY INJUNCTION ISSUED IN THIS CASE BE AND IS HEREBY DISSOLVED; AND
4. THE COURT HEREBY RETAINS JURISDICTION TO ENFORCE THE SETTLEMENT AND THE ORDERS OF THE COURT;
5. EACH OF THE PARTIES ARE HEREBY ORDERED TO PERFORM ALL ACTS AGREED TO BY THE RESPECTIVE PARTIES WITHIN THE TIME CONSTRAINTS REFERRED TO IN THE SETTLEMENT.

IT IS SO ORDERED.

Dated: 3/25/16



Hon. Gregory W. Pollack  
JUDGE OF THE SUPERIOR COURT

RESOLUTION NO. 2016 – 03

RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY  
TO THE COMMUNITY DEVELOPMENT COMMISSION AS THE NATIONAL CITY  
REDEVELOPMENT AGENCY APPROVING THE SETTLEMENT  
AGREEMENT AND RELEASE BETWEEN THE CITY OF NATIONAL CITY,  
THE SUCCESSOR AGENCY, AND MORGAN SQUARE, INC.,  
IN THE MATTER OF *THE CITY OF NATIONAL CITY AND  
SUCCESSOR AGENCY V. MORGAN SQUARE, INC.*

WHEREAS, on August 3, 2004, pursuant to City Council Resolution No. 2004-148, the the City of National City established the Downtown National City Property and Business Improvement District, also known as Morgan Square (the "District") pursuant to the California Property and Business Improvement District Law of 1994 (Sts & Hwy Code Section 36600 et seq., "PBID Law"); and

WHEREAS, the City delegated oversight of the District to the Community Development Commission of the City of National City ("CDC"); and

WHEREAS, on March 8, 2005, the CDC and National City Morgan Square, Inc., entered into a written agreement for administration and operation of the District pursuant to the Management District Plan and PBID Law ("Agreement"). Even though the Agreement was entered into by "National City Morgan Square, Inc.", Morgan Square was and is the contractor providing services in the District; and

WHEREAS, the City transferred approximately \$1,163,000 collected from the levy of assessments in the District (the "District Funds") to Morgan Square. In return, Morgan Square was to utilize the District Funds as set forth in the Agreement for activities and services in the District; and

WHEREAS, the District expired by its own terms in 2010, and in accordance with the PBID Law. No action was taken by any of the Parties to renew the District, and it has not been renewed; and

WHEREAS, the City and the Successor Agency filed suit against Morgan Square for breach of the Agreement and violation of the PBID Law based upon the following: (1) not providing certain accounting records and documentation to the City; and (2) upon expiration of the District, not taking steps to refund the remaining District Funds in Morgan Square's possession to the assessed property owners; and

WHEREAS, on June 25, 2013, City and Successor Agency filed a lawsuit against Morgan Square in the Superior Court for the County of San Diego, identified as Case No. 37-2013-00054606-CU-OR-CTL ("Litigation"), arising out of obligations and covenants under PBID Law and the Agreement; and

WHEREAS, on or about September 16, 2013, on the City's motion, the Court issued a Temporary Restraining Order ("TRO") to restrict the use of funds within Morgan Square's possession; and

WHEREAS, on or about November 19, 2013, an injunction was ordered by the Court prohibiting Morgan Square from using the District funds, other than for a specific use approved by the Court, that being payment for Court approved legal expenses incurred by Morgan Square; and

WHEREAS, the parties have now arrived at a settlement contingent upon the approval of the Settlement Agreement and Release by the Oversight Board and Department of Finance. Under the terms of the Settlement Agreement and Release:

1. Morgan Square shall prepare and submit a final audit to the City;
2. Morgan Square shall return the funds to the City;
3. The City will refund the funds in accordance with PBID Law;
4. The Successor Agency and the City shall recover \$54,006.92 in attorney's fees, payable from the funds; and

WHEREAS, the City Council and the Successor Agency have approved this Agreement. It is now before the Oversight Board for approval.

NOW, THEREFORE, BE IT RESOLVED that the Oversight Board of the Successor Agency to the Community Development Commission as the National City Redevelopment Agency ("Oversight Board") as follows:

**Section 1.** The foregoing recitals are true and correct, and are a substantive part of this Resolution.

**Section 2.** The Oversight Board hereby approves the Settlement Agreement and Release between the City of National City, the Successor Agency, and Morgan Square, Inc., in the matter of *The City of National City and Successor Agency v. Morgan Square, Inc.*, a copy of which shall be maintained by the City Clerk as a public record, contingent upon State Department of Finance approval;

**Section 3.** The Executive Director of the Successor Agency, or designee, is hereby authorized and directed to take such other actions and execute such other documents as are necessary to effectuate the intent of this Resolution on behalf of the Oversight Board;

**Section 4.** The Oversight Board concurs with the Successor Agency's determination that approval of this Resolution does not represent a "project" for purposes of CEQA, as that term is defined by Guidelines section 15378, because this Resolution is an organizational or administrative activity that will not result in a direct or indirect physical change in the environment, per section 15378(b)(5) of the Guidelines.

**Section 5.** The Oversight Board Secretary and/or Successor Agency Secretary shall certify to the adoption of this Resolution.

**Section 6.** Pursuant to California Health and Safety Code Section 34179(h), the State of California Department of Finance may review Oversight Board action; therefore, this Resolution shall be effective on the date five (5) business days after its adoption, absent and pending any request for review by the State of California Department of Finance.



Resolution No. 2016 – 03  
April 20, 2016  
Page Three

NOW, THEREFORE, BE IT RESOLVED that the foregoing resolution was duly and regularly adopted at a regular meeting of the Oversight Board for the Successor Agency to the Community Development Commission as the National City Redevelopment Agency held on the 20<sup>th</sup> day of April, 2016, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

\_\_\_\_\_  
Ron Morrison, Chairman

ATTEST:

\_\_\_\_\_  
Brad Raulston, Executive Director  
Secretary to the Oversight Board

APPROVED AS TO FORM:

\_\_\_\_\_  
Oversight Board Counsel  
Edward Z. Kotkin, Esq.  
Law Offices of Edward Z. Kotkin

