



# staff report

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TO: Honorable Mayor and Members of the City Council

ATTENTION: Jeffrey L. Stewart, City Manager

FROM: Len Gorecki, Director of Public Works

SUBJECT: Consideration and possible action to authorize the City Manager to execute Agreement File No. XXX (Loss of Rents Agreement), in a form approved by the City Attorney, with Victory Associates, LP, for payment of substitute rent for vacant residences at 9757 Artesia Boulevard, as it relates to the Bellflower Boulevard Widening Project between Artesia Boulevard and SR-91.

DATE: September 26, 2016

## **EXECUTIVE SUMMARY**

As part of the Bellflower Boulevard Widening Project, the City of Bellflower seeks to acquire a portion of property at 9757 Artesia Boulevard, which is owned by Victory Associates, LP. Partial acquisition requires displacing seven residential tenants and one commercial tenant in the Victory Home Medical Supplies building that is located on the property. Three residential tenants have already vacated in anticipation of acquisition. To minimize the loss of rents that Victory Associates, LP, will experience from these vacancies, the City wishes to execute this Agreement to provide substitute rent until the partial acquisition is complete.

## **RECOMMENDATION TO CITY COUNCIL**

- 1) Authorize the City Manager to execute Agreement File No. XXX, in a form approved by the City Attorney; or
- 2) Alternatively, discuss and take other action related to this item.

## **FISCAL IMPACT**

Under this Agreement, the City must pay \$4,415 to Victory Associates, LP, for the sum of lost rents for three residential units that became vacant during June 30, 2016 through September 30, 2016.

Beginning October 1, 2016, the City will also pay continued loss of rent for the three vacant residential units, amounting to no less than \$1,970 per month. Rent for additional units that become vacant will be added to the monthly payment. Furthermore, this payment is subject to an annual 5% cost of living increase for calendar year 2018 and for each calendar year thereafter. A listing of monthly rents for all units is available in Exhibit A to this Agreement.

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Payment for loss of rents will be charged to the Bellflower Boulevard Widening Project utilizing Measure R Highway Program grant funds in Account No. 030-47654-9000.

**DISCUSSION**

To initiate the Bellflower Boulevard Widening Project, the City must acquire 1,333 square feet of a 9,099 square foot property located at 9757 Artesia Boulevard (Assessor’s Parcel Number 7161-003-031). The property is owned by Victory Associates, LP, and is the site of the Victory Home Medical Supplies building, which houses seven residential units and one commercial tenant. Following the partial take of the property, the City must demolish the building to adequately widen Bellflower Boulevard, thereby displacing the tenants. Three residential tenants have already vacated their units in anticipation of the partial acquisition, which has resulted in a loss of rents to the building owner, Victory Associates, LP. The remaining tenants continue to reside in the building.

The City proposes this Agreement to provide substitute rent for these vacated units and future ones to minimize any financial losses the owner may experience during the property acquisition process. This Agreement also prohibits the owner from leasing the vacated units to new tenants, in order to prevent additional displacements in the future. Under this Agreement, the City will pay a total of \$4,415 for the sum of lost rents owed for the three units that became vacant during the period of June 30, 2016 through September 30, 2016. Beginning October 1, 2016, the City will continue to pay rent for the three vacancies, amounting to no less than \$1,970 per month. Any loss of rent resulting from additional vacated units will be added to the monthly payment. This Agreement will expire once the City acquires the property needed to complete the Bellflower Boulevard Widening Project.

**ATTACHMENT**

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**AGREEMENT FILE NO. XXX  
BETWEEN  
THE CITY OF BELLFLOWER  
AND  
VICTORY ASSOCIATES, LP  
LOSS OF RENT AGREEMENT  
SUBSTITUTE RENT FOR VACANT RESIDENCES AT 9757 ARTESIA BOULEVARD  
AS IT RELATES TO THE BELLFLOWER BOULEVARD WIDENING PROJECT  
BETWEEN ARTESIA BOULEVARD AND SR-91**

This Loss of Rent Agreement ("Agreement") is made and entered into this 25th day of August, 2016, by and between Victory Associates, LP (hereafter called "Owner"), and the City of Bellflower (hereafter called the "CITY"). (Owner and the CITY are collectively referred to as the "Parties".)

**Whereas**, the CITY is in the process of seeking to acquire certain portions of real property, owned by Owner, in the City of Bellflower, County of Los Angeles, State of California, and commonly described as 17325 Bellflower Blvd. and 9757 Artesia Blvd. and designated as Assessor's Parcel Number 7161-003-031 (hereafter referred to as the "Property") for the project in the City of Bellflower that is known as Bellflower Boulevard Widening Project #14/15-09 (the "Project") and which involves widening Bellflower Boulevard between Artesia Boulevard and the SR-91 Freeway.

**Whereas**, the occupants listed in the Rent Roll attached hereto as Exhibit A were or are currently tenants of Owner ("Tenants") who leased or are currently leasing portions of the Property pursuant to leases as more fully described in said exhibit (collectively referred to as the "Leases").

**Whereas**, it is the desire and objective of the CITY to minimize potential damages related to its acquisition of the Property; and

**Whereas**, Owner is agreeable to the accomplishment of this objective by agreeing to accept substitute rent from the CITY during the term of this Agreement, as more particularly described below.

**NOW THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:**

1. The term of this Agreement (the "Term") shall be for a period commencing as of August 1, 2016 (the "Commencement Date"), and shall expire upon the earlier of (a) or (b) as described below, unless earlier terminated pursuant to Section 11 or 18 hereof: (a) the effective date of an Order for Prejudgment Possession of the Property whether stipulated or by motion, or (b) the date CITY acquires legal title to the Property.

2. The Parties agree that as of the date of this Agreement, three tenants (Units 1, 4 & 5) have vacated the Property, and the current sum of lost rents owed under the Leases for the vacated units through September 30, 2016 is \$4,415.00. CITY shall pay said amount to Owner within 10 days of full execution of the Agreement. Commencing on October 1, 2016 and each month during the Term of this Agreement, in consideration for Owner's performance specified in Section 4 below, the CITY will pay to Owner an amount equal to \$1,970.00 per month ("Substitute Rent") for the three vacant units. Subject to the occurrence of either event as set forth below, the CITY will increase the Substitute Rent for any units at the Property that are vacated in the future, as more fully described below pursuant to Sections 6 to 8 herein, and any such additional units that are vacated must be identified in writing as set forth in Section 7 below. In the event the Agreement has not expired or been terminated by December 31, 2017, the Substitute Rent payable shall be increased by 5% for the calendar year 2018 and for each year thereafter to account for a cost of living expense.
3. Substitute Rent shall be paid by the CITY to Owner on a monthly basis until the Term expires as stated in Section 1. Substitute Rent payable for any period of time less than one month shall be determined by prorating the monthly rental rate by the actual number of days in the month. Substitute Rent for each month is due at the beginning of each month and shall be paid and delivered to owner no later than the 10<sup>th</sup> day of that month. Substitute Rent not delivered to owner by the 10<sup>th</sup> day of the month in which it is due shall incur a \$50.00 late payment penalty per rental Unit for the applicable month.
4. In consideration and exchange for Substitute Rent, Owner acknowledges that it has, without penalty, (i) released the Tenants who have vacated the units of any and all obligations under their existing leases, except any delinquent or past due rent, and any delinquent or past due unpaid monetary obligations owed by Tenants to Owner prior to the effective date of this Agreement, which Owner may seek from Tenants; (ii) shall not enter into a lease or tenancy agreement covering the unit(s) for which CITY is paying Substitute Rent or allow occupancy or possession by any persons or entities of said unit(s) by any persons or entities; and (iii) perform Owner's other obligations under this Agreement. The CITY shall have no obligation or responsibility for any delinquent or past due rent or unpaid monetary obligations owing from Tenants to Owner.
5. The CITY shall not be responsible for the loss of or damage to any personal property in the Property, or any remaining personal property belonging to Owner or Tenants at the Property after the Commencement Date. The CITY shall have no obligation to perform as a tenant under the Leases, except timely payment of Substitute Rent as set forth herein. As of the date CITY receives notice of a vacant unit as set forth in Section 7 below, all risk of loss, damages or claims for vacant units, or to any persons related to the vacancy of said vacant units, shall be borne by CITY. Nothing set forth herein shall be deemed or construed to limit the liability of the CITY for losses or damages to the Property that solely and directly relate to or arise out of the CITY's negligent acts or omissions. Expiration or termination of the Agreement by either party shall not affect the CITY's responsibility hereunder.

6. Concurrent with its delivery of this executed Agreement to the CITY, Owner shall provide to the CITY a current, accurate and complete list of all tenants, including names and addresses, length of tenancy, rental amounts, rental terms, together with copies of any and all rental or lease documents which will be used as the basis for computation of the Substitute Rent under this Agreement.
7. Upon any Tenants vacating of any unit at the Property after the Commencement Date ("Newly Vacated Units"), Owner will notify the City, in writing, within 7 calendar days, by mail as designated below, or email at Lgorecki@bellflower.org, of Tenants who have vacated unit(s) and returned possession to Owner. The notice to the CITY as specified herein shall include the rental rates of each of the Newly Vacated Units at the time the unit was vacated by Tenant.
8. The CITY agrees to pay Owner for Substitute Rent, which amount shall not include utility cost, furniture rental, or other services that are not applicable to a vacant unit. For Newly Vacated Units, the CITY'S obligation to pay Substitute Rent shall commence immediately upon the tenant vacating the unit, subject to the CITY receiving written notification from Owner of the Newly Vacated Units as specified in Section 7 above.
9. Any Substitute Rent payment made hereunder for any period of time less than one (1) month shall be determined by prorating the monthly rental rate herein specified for the actual number of days in the month which the unit was actually vacant.
10. Owner hereby authorizes the CITY to contact existing Tenants regarding their relocation benefits. In the event that any existing Tenants are relocated prior to the CITY'S acquisition of the Property, the CITY agrees to count said units as vacant units and Substitute Rent will be paid to Owner as set forth herein.
11. The CITY shall have the right to terminate this Agreement upon sixty (60) days' prior written notice to Owner if either one of the following conditions occur: (a) Owner's failure to perform its obligations under this Agreement or any subsequent agreement for the sale of the Property other than to CITY, or (b) the CITY'S abandonment of the Project. Owner shall have the right to terminate this Agreement upon sixty (60) days prior written notice to CITY, but in no event shall the exercise of such right to terminate occur sooner than one (1) year from the date of this Agreement.
12. In consideration for the CITY'S payments to be made under this Agreement, Owner will not re-rent or allow and provide consent for any occupancy of any vacated unit by any person or persons.
13. Should Owner, in violation of Section 12, herein, re-rent or provide consent for any occupancy of the vacated units at the Property, Owner shall be liable to the CITY and hold the CITY harmless for any and all costs, including reasonable attorneys' fees incurred by the CITY in enforcing the terms of this Agreement, or in otherwise causing the removal and relocation of the occupants thereof.

14. The CITY shall have the right to inspect Owner's books and records to ascertain the vacancy date and rental rates for all units on which Substitute Rent is being paid by the CITY under this Agreement. Owner shall permit the CITY to conduct an inspection of OWNER'S books and records related to the vacancy and rental rates for said units within fourteen (14) days from date of the execution of this Agreement.
15. The CITY shall not require Owner to make any improvements to the Property, but Owner hereby specifically covenants and agrees to keep the Property in good order and condition at Owner's sole cost and expense.
16. City reserves the right upon reasonable advance notice to the Owner to enter, inspect the Property, and make any necessary repairs to the Property.
17. All notices required herein, or which may otherwise be given by either party to the other, shall be deemed to have been fully given when made in writing and deposited in the United States mail certified and postage prepaid, and addressed and emailed to all parties and their representatives as follows:

To the Owner at: [morgan@victoryhms.com](mailto:morgan@victoryhms.com)

Morgan Jones  
Victory Associates, LP  
17325 Bellflower Blvd.,  
Bellflower, CA 90706

Victory Associates, LP  
c/o Artin N. Shaverdian, Esq.  
Nossaman LLP  
777 S. Figueroa Street, 34<sup>th</sup> Floor  
Los Angeles, CA 90017

To the City at:

Len Gorecki  
Director of Public Works  
City of Bellflower  
16600 Civic Center Drive  
Bellflower, CA 90706

18. Notwithstanding any other provision contained herein, this Agreement shall automatically terminate upon the occurrence of any of the following events: (a) the date the CITY acquires legal title to the Property through the close of escrow, or (b) the date the CITY acquires possession of the Property by means of a court order of pre-judgment possession in an eminent domain proceeding, or (c) voluntary transfer of possession of the Property by stipulation or agreement of the Parties.

19. In the event that any rentable portion of the Property or any essential part thereof is destroyed by fire or other casualty, this Agreement shall terminate; in the case of partial destruction or partial damage of the rentable portion of the Property, Substitute Rent payment as provided for herein shall be reduced by the number of vacant units that are partially or completely destroyed.
20. During the term of this Agreement, the CITY shall not occupy, or permit others to occupy, the vacant units for any residential, commercial or any other purpose. During the Term of this Agreement, the CITY shall cooperate with Owner concerning the maintenance and operation of utilities at the Property, including, but not limited to, allowing Owner to turn off electricity to any vacant units, at Owner's sole cost and expense.
21. No alterations or variations of the terms of this Agreement shall be valid unless made in writing and signed by the Parties, and no oral understanding or agreement not incorporated herein, shall be binding on either of the Parties.
22. Each person executing this Agreement represents and warrants that he, she, or it has the authority to execute this Agreement, and that they have read, understood and agree to its contents.
23. This Agreement shall in all respects be interpreted, enforced, and governed by and under the laws of the State of California.
24. The terms and conditions of this Agreement shall be binding upon the heirs, assigns, successors and personal representatives of the parties hereto.
25. If any term, covenant or condition of this Agreement shall be held by a court of competent jurisdiction to be invalid or unenforceable, then the remainder of this Agreement shall not be affected and each remaining term, covenant and condition shall be valid and enforceable to the fullest extent permitted by law unless any of the stated purposes of this Agreement would be defeated.
26. No waiver of any breach of any term, covenant or condition of this Agreement shall be deemed a waiver of any preceding or succeeding breach of that same of any other term, covenant or condition.
27. Nothing in this Agreement is intended to confer on any person or entity who is not a party to this Agreement any rights or remedies.

28. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

**IN WITNESS WHEREOF**, this Agreement has been executed by the parties hereto on the date specified at the outset of this Agreement.

**CITY OF BELLFLOWER:**

**VICTORY ASSOCIATES, LP:**

\_\_\_\_\_  
**Jeffrey L. Stewart, City Manager**

\_\_\_\_\_  
**Morgan Jones, Owner**

**AFN XXX**  
**Exhibit A**  
**Victory Associates, LP - Rent Roll**

<b>Unit #</b>	<b>Current Term</b>	<b>Current Monthly Rent</b>	<b>Date of Vacancy</b>
1	month to month	\$475.00	8/31/2016
2	month to month	\$500.00	
3	month to month	\$645.00	
4	month to month	\$545.00	7/31/2016
5	month to month	\$950.00	6/30/2016
6	month to month	\$650.00	
7	month to month	\$625.00	
Victory Home Medical	-	\$4,770.00	