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**DOC # 2010-0371757**

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Page 1 of 9

Recorded in Official Records  
County of Riverside

Larry W. Ward

Assessor, County Clerk & Recorder



This instrument is for the benefit  
of the City of Riverside and is  
exempt from recording fees  
(Government Code § 27383<sup>1</sup>)

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**PARTIAL JUDGMENT AND FINAL ORDER OF CONDEMNATION  
RE DEFENDANT KMART CORPORATION  
CASE NO. RIC501654**



**D - 16488**

<sup>1</sup> Government Code § 27383. "No fee shall be charged by the recorder for services rendered to the State, to any municipality, county in the State or other political subdivision thereof, except for making a copy of a paper or record."

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**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

JUL 28 2010

  
ICAB

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5 ediaz@riversideca.gov

6 Attorneys for Plaintiff, City of Riverside

(Fee Exempt Gov't Code § 6103)

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R

8 SUPERIOR COURT OF CALIFORNIA  
9 COUNTY OF RIVERSIDE

10 CITY OF RIVERSIDE, a California charter city and )  
11 municipal corporation, )  
12 Plaintiff, )

13 vs. )

14 EXXONMOBIL OIL CORPORATION AS )  
15 SUCCESSOR IN INTEREST TO MOBIL OIL )  
CORPORATION, a New York corporation; et al. )  
16 Defendant(s). )  
17

Case No. RIC501654  
Assigned for all purposes to the Honorable  
Commissioner Paulette Durand-Barkley  
Department 2

**PARTIAL JUDGMENT AND FINAL  
ORDER OF CONDEMNATION RE  
DEFENDANT KMART CORPORATION**  
Complaint Filed: June 17, 2008

18 This Partial Judgment and Final Order of Condemnation is hereby made following  
19 disposition, through the court proceedings described below, of all parties and property interests  
20 alleged in the Complaint in Eminent Domain.  
21

22 IT IS HEREBY FOUND AND DETERMINED:

23 1. Pursuant to its Charter of the City of Riverside, California Government Code  
24 sections 37350.5, 39792, 40401, and 40404, the Eminent Domain Law commencing with  
25 California Code of Civil Procedure section 1235.010, and Article I, section 19, of the  
26 Constitution of the State of California, plaintiff the City of Riverside ("City") is authorized to  
27 acquire real property or interests therein for public uses and purposes, to wit: to widen and  
28 improve Van Buren Boulevard from Jackson Street to the Santa Ana River ("Project").



1           2.       After a duly noticed public hearing and an opportunity to be heard in compliance  
2 with Code of Civil Procedure section 1245.235, on June 3, 2008, the City adopted Resolution  
3 Number 21647 authorizing plaintiff to acquire the property described in the complaint on file  
4 herein, including Riverside County Assessor's Parcel Number 191-020-005, by eminent domain.  
5 In compliance with sections 1245.220 and 1245.230 of the Code of Civil Procedure, the City  
6 found and determined that: (a) the public interest and necessity require the proposed project, (b)  
7 the proposed project is planned and located in the manner that will be the most compatible with  
8 the greatest public good and least private injury, (c) the acquisition and taking of permanent  
9 easements and lesser interests in the property sought to be acquired are necessary for the Project,  
10 and (d) the offer required by section 7267.2 of the Government Code has been made to the  
11 owners of record of the subject property interests.

12           3.       Plaintiff commenced this eminent domain action to condemn the following  
13 property interest: public street and highway easement and temporary construction easement in  
14 and to Assessor's Parcel Number 191-020-005.

15           4.       Kmart Corporation ("Kmart") filed an answer to the complaint in eminent domain  
16 on July 18, 2008.

17           5.       Concurrently with this Partial Judgment and Final Order of Condemnation, a  
18 Stipulation re Settlement and For Entry of Partial Judgment and Final Order of Condemnation  
19 ("Stipulation") is made and entered as to defendant Kmart. Pursuant to said Stipulation, Kmart is  
20 to be paid the sum of Seventy-two Thousand Dollars (\$72,000.00) outside of these court  
21 proceedings.

22           6.       The interest of Kmart in the real property designated in the complaint as  
23 Assessor's Parcel Number 191-020-005 to be condemned herein is a leasehold estate.

24           7.       By execution of the Stipulation herein, Kmart waives the right to jury trial,  
25 Statement of Decision, Notice of Entry of Judgment in Condemnation, Notice of Entry of Final  
26 Order of Condemnation as to Assessor's Parcel Number 191-020-005, and the right to and time  
27 for appeal.  
28



1           8. Pursuant to said Stipulation, Kmart expressly waives the right to challenge the  
2 City's right to acquire the property by eminent domain, the right to further and greater  
3 compensation, and the right to an award of interest, attorney fees and costs, to the extent they  
4 may be allowable by law.

5           9. Pursuant to said Stipulation, Kmart makes a knowing waiver of any and all rights  
6 created by California Civil Code section 1542.

7           10. Pursuant to said Stipulation, the total amount of just compensation to be paid by  
8 plaintiff to Kmart is Seventy-two Thousand Dollars (\$72,000.00). Said amount is inclusive of  
9 fair market value and interest thereon, attorney fees, and all costs of suit, including those costs  
10 defined in California Code of Civil Procedure section 1268.70, and litigation expenses  
11 including, but not limited to, those defined California Code of Civil Procedure section 1235.140.

12           11. An Order of Prejudgment Possession ("OPP") became effective as to the interests  
13 of Kmart in and to Assessor's Parcel Number 191-020-005 on November 14, 2008. Pursuant to  
14 the OPP, plaintiff exercised its rights and has commenced work on the project.

15           12. The use for which an interest in and to Assessor's Parcel Number 191-020-005 is  
16 being acquired is a use authorized by law and the acquisition of said interest is necessary to said  
17 use.

18           WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

19           1. The total compensation, award, and damages to be paid as a result of the  
20 condemnation of the interests of defendant Kmart Corporation is the total amount of Seventy-  
21 two Thousand Dollars (\$72,000.00).

22           2. Payment hereunder shall be deemed to expressly include all costs of suit pursuant  
23 to California Code of Civil Procedure section 1268.710 and all litigation expenses including, but  
24 not limited to, those defined in California Code of Civil Procedure section 1235.140. Payment  
25 hereunder shall further be deemed to be the total just compensation and damages, if any, to  
26 which defendant Kmart Corporation shall be entitled by reason of the condemnation of  
27 Assessor's Parcel Number 191-020-005.  
28



1           3.       Real property taxes assessed to that portion of Assessor's Parcel Number 191-  
2 020-005 acquired by the City under this judgment are hereby cancelled as of the effective date  
3 of possession herein, November 14, 2008.

4           4.       Payment to defendant Kmart Corporation of the amount herein above specified  
5 shall constitute payment in full for the taking of a leasehold interest in Assessor Parcel Number  
6 191-020-005 and for all damages of any kind and nature whatsoever suffered by said defendants  
7 by reason of such taking.

8           WHEREFORE THE COURT NOW MAKES THE FOLLOWING ORDER OF  
9 CONDEMNATION:

10           The interest of defendant Kmart Corporation in and to Assessor's Parcel Number 191-  
11 020-005 is hereby condemned for the public use and purpose described in the complaint herein,  
12 to wit, to widen and improve Van Buren Boulevard from Jackson Street to the Santa Ana River,  
13 plaintiff to take title to the interest(s) of Kmart in said real property together with all  
14 improvements thereon in which said defendant has an interest, free and clear of any and all liens,  
15 encumbrances, easements, and leaseholds of whatever kind or nature. The easement interests  
16 condemned to the City of Riverside in and to Assessor's Parcel Number 191-020-005 are legally  
17 described in Exhibit 1 hereto.

18  
19  
20 DATED: 7/27/10

  
JUDGE OF THE SUPERIOR COURT

21  
22  
23 O:\Cycom\WPDocs\D004\P007\00010836.DOC  
L08-0085.1



**EXHIBIT "A"**

**PUBLIC STREET AND HIGHWAY EASEMENT**

APN: 191-020-005

THAT PORTION OF PARCEL 2 OF PARCEL MAP IN THE CITY OF RIVERSIDE, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN ON MAP FILED IN BOOK 7, PAGE 22, OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID PARCEL 2;

THENCE SOUTH 89°49'47" EAST, ALONG THE NORTHERLY LINE OF SAID PARCEL 2, A DISTANCE OF 14.00 FEET TO A LINE THAT IS PARALLEL WITH AND DISTANT 84.00 FEET EASTERLY AS MEASURED AT RIGHT ANGLES, FROM THE CENTERLINE OF VAN BUREN BOULEVARD AS SHOWN BY SAID PARCEL MAP;

THENCE SOUTH 00°57'25" WEST, A DISTANCE OF 67.58 FEET, ALONG SAID PARALLEL LINE, TO THE BEGINNING OF A CURVE, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 365.00 FEET;

THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 06°25'08" AN ARC DISTANCE OF 40.89 FEET;

THENCE SOUTH 07°22'32" WEST, A DISTANCE OF 49.36 FEET TO THE BEGINNING OF A CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 350.00 FEET;

THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 06°25'08" AN ARC DISTANCE OF 39.21 FEET TO A LINE THAT IS PARALLEL WITH AND DISTANT 74.00 FEET EASTERLY, AS MEASURED AT RIGHT ANGLES FROM SAID CENTERLINE OF VAN BUREN BOULEVARD;

THENCE SOUTH 00°57'25" WEST, A DISTANCE OF 73.13 FEET ALONG SAID LAST MENTIONED PARALLEL LINE, TO A POINT ON THE NORTHERLY LINE OF PARCEL 1 OF PARCEL MAP NO. 21833, AS SHOWN BY MAP ON FILE IN PARCEL MAP BOOK 145, PAGES 31 AND 32, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;

THENCE NORTH 89°02'35" WEST, ALONG SAID NORTHERLY LINE, A DISTANCE OF 4.00 FEET TO THE NORTHWEST CORNER OF SAID PARCEL 1;

THENCE NORTH 00°57'25" EAST, ALONG THE WESTERLY LINE OF SAID PARCEL 2, A DISTANCE OF 269.51 FEET TO THE POINT OF BEGINNING.

CONTAINING 2,402 SQUARE FEET (0.055 ACRES), MORE OR LESS.

This legal description has been prepared by me or under my direction:

David A. Moritz 2-5-07  
David A. Moritz, P.L.S. 7388 Date  
License Expires 12/31/07



X-LG\_191-020-005 PE.doc

DESCRIPTION APPROVAL:  
Mark S. Brown 1/22/08  
MARK S. BROWN DATE  
CITY SURVEYOR



2818-8371757  
08/09/2010 08:00R  
6 of 9

16988

EXHIBIT "A"

TEMPORARY CONSTRUCTION EASEMENT

APN: 191-020-005

THAT PORTION OF PARCEL 2 IN THE CITY OF RIVERSIDE, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN ON MAP FILED IN BOOK 7, PAGE 22, OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID PARCEL 2;

THENCE ALONG THE NORTH LINE OF SAID PARCEL 2 SOUTH 89°49'47" EAST 14.00 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID NORTHERLY LINE SOUTH 89°49'47" EAST 20.00 FEET TO A LINE THAT IS PARALLEL WITH, AND 104.00 FEET EASTERLY OF, THE CENTERLINE OF VAN BUREN BOULEVARD;

THENCE ALONG SAID PARALLEL LINE SOUTH 00°57'25" WEST 269.98 FEET TO THE NORTHERLY LINE OF PARCEL 1 OF PARCEL MAP NO. 21833, AS SHOWN ON MAP FILED IN BOOK 145, PAGES 31 AND 32 OF PARCEL MAPS, RECORDS OF SAID COUNTY;

THENCE ALONG SAID NORTHERLY LINE NORTH 89°02'35" WEST 30.00 FEET TO A LINE THAT IS PARALLEL WITH, AND 74.00 FEET EASTERLY OF, SAID CENTERLINE OF VAN BUREN BOULEVARD;

THENCE ALONG SAID PARALLEL LINE NORTH 00°57'25" EAST 73.13 FEET TO THE BEGINNING OF A CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 350.00 FEET;

THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 06°25'08" AN ARC DISTANCE OF 39.21 FEET;

THENCE NORTH 07°22'32" EAST 49.36 FEET TO THE BEGINNING OF A CURVE, CONCAVE WESTERLY, HAVING A RADIUS OF 365.00 FEET;

THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 06°25'08" AN ARC DISTANCE OF 40.89 FEET TO A LINE THAT IS PARALLEL WITH, AND 84.00 FEET EASTERLY OF, SAID CENTERLINE;

THENCE ALONG SAID PARALLEL LINE NORTH 00°57'25" EAST 67.58 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 6,769 SQUARE FEET.

THIS LEGAL DESCRIPTION HAS BEEN PREPARED BY ME OR UNDER MY DIRECTION:

*Peter Fitzpatrick*

PETER J. FITZPATRICK, P.L.S. 6777

LICENSE EXPIRES 09/30/08

*Jan. 16, 2008*

DATE

DESCRIPTION APPROVAL:

*MSB* *1/23/08*

MARK S. BROWN  
CITY SURVEYOR

DATE



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2010-0371757  
08/08/2010 08:08A  
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16488

**PROOF OF SERVICE**

*STATE OF CALIFORNIA, COUNTY OF RIVERSIDE*

I am a resident of the county aforesaid; I am over the age of 18 years and not a party to the within above-entitled action; my business address is 3900 Main Street, Riverside, California 92522.

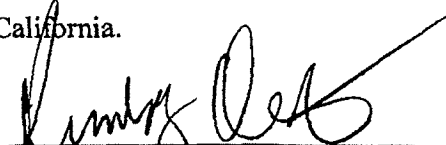
On July 21, 2010, I served the within PARTIAL JUDGMENT AN FINAL ORDER OF CONDEMNATION AS TO DEFENDANT KMART CORPORATION on the interested parties in said action addressed as follows:

SEE MAILING LIST ON FOLLOWING PAGE

- (XX) **VIA MAIL** - In accordance with the regular mail collection and processing practices of this business office, with which I am familiar, by means of which mail is deposited with the United States Postal Service at Riverside, California, that same day in the ordinary course of business, I deposited such sealed envelope for collection and mailing on this same date following ordinary business practices.
- ( ) **PERSONAL** - I caused such envelope to be delivered by hand to the above-listed addressee pursuant to C.C.P. § 1011.
- ( ) **VIA OVERNIGHT DELIVERY** - I caused such envelope to be delivered by hand to the office of the addressee via overnight delivery pursuant to C.C.P. § 1013(c). Said document was deposited at the box regularly maintained by said express service carrier on the date set forth above.
- ( ) **VIA FACSIMILE** - I caused such document to be delivered to the office of the addressee via facsimile machine pursuant to C.C.P. § 1013(e). Said document was transmitted from the office of City Attorney in Riverside, California, on the date set forth above.

I declare under penalty of perjury, under the laws of the State of California that the foregoing is true and correct.

Executed on July 21, 2010, at Riverside, California.

  
\_\_\_\_\_  
Kimberly Oehlert



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08/09/2010 08 00A  
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Mailing List  
City of Riverside v. ExxonMobil  
RIC501654

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Kmart Corporation

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San Diego CA 92101  
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619-238-9915 fax

Attorneys for defendant:  
Pacific Bell Telephone Company

8 pages

This must be in red to be a  
"CERTIFIED COPY"

Each document to which this certificate is attached  
is certified to be a full, true and correct copy of the  
original on file and of record in my office.

Superior Court of California  
County of Riverside

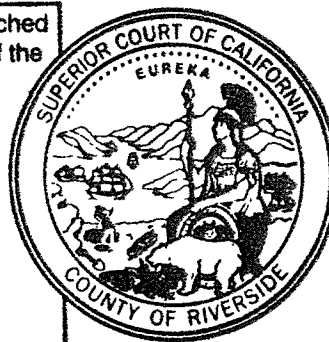
By

*K. Deaton*

DEPUTY

Dated:

8/2/2010

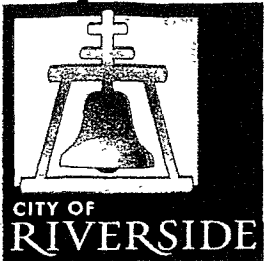


Certification must be in red to be a  
"CERTIFIED COPY"



2010-0371757  
08/03/2010 08 00A  
9 of 9

16488



MEMORANDUM  
CITY ATTORNEY'S OFFICE

RECEIVED

AUG 19 2010

City of Riverside  
City Clerk's Office

**TO:** City Clerk  
**FROM:** Kimberly Oehlert  
**DATE:** August 18, 2010  
**RE:** CITY V EXXONMOBIL (VAN BURN – JACKSON TO SANTA ANA RIVER); CA L08-0085.1,  
RIVERSIDE SUPERIOR COURT CASE NO RIC501654

Enclosed are the original recorded:

(√1)  
2)

Partial Judgment and Final Order of Condemnation re Kmart Corporation; **D-16488**  
Interlocutory Judgment in Condemnation as to Defendant Pacific Bell **D-16487**  
Telephone Company.

Please retain these documents as the City's official record.

If you have any questions regarding the foregoing, please do not hesitate to call me.

Kimberly Oehlert  
Legal Assistant  
Ext. 5768

16488