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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 § 27383¹)

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**PARTIAL JUDGMENT AND FINAL ORDER OF CONDEMNATION AS TO
DEFENDANT ARAKELIAN ENTERPRISES, INC., DBA ATHENS SERVICES
CASE NO. RIC10022417**

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¹ 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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Riverside Superior Court
Date Received ~~JUL 01 2012~~
11

1 GREGORY P. PRIAMOS, City Attorney, SBN 136766
2 KRISTI J. SMITH, Supv. Deputy City Attorney, SBN 120218
3 BRANDON S. MERCER, Deputy City Attorney, SBN 244413
4 CITY OF RIVERSIDE
5 City Hall, 3900 Main Street
6 Riverside, California 92522
7 Telephone (951) 826-5567
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9 bmercer@riversideca.gov

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

AUG 01 2012

S. Hopkins-Bright

Attorneys for Plaintiff, City of Riverside

(Fee Exempt Gov't Code § 6103)

GLV
AUG 01 2012
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SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

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

Plaintiff,

vs.

14 ARAKELIAN ENTERPRISES, INC., etc.; et al,

Defendants.

) Case No. RIC10022417
) Assigned to the Honorable Craig G.
) Riemer
) Dept. 5

) **PARTIAL JUDGMENT AND FINAL**
) **ORDER OF CONDEMNATION AS TO**
) **DEFENDANT ARAKELIAN**
) **ENTERPRISES, INC., DBA**
) **ATHENS SERVICES**

APN: 247-130-017

[Stipulation re Settlement and for Entry of
Partial Judgment and Final Order Of
Condemnation submitted concurrently
herewith.]

Complaint Filed: 11/18/2010
MSC: 07/09/2012
Trial: 08/03/2012

22 Pursuant to a written stipulation by and between plaintiff City of Riverside ("City"), by
23 and through Brandon S. Mercer, Deputy City Attorney, and defendant Arakelian Enterprises,
24 Inc., dba Athens Services ("Defendant"), by and through their attorneys, Archer Norris, that a
25 Partial Judgment and Final Order of Condemnation as to Assessor's Parcel Number 247-130-
26 017 may be made and entered herein in accordance with the terms and conditions hereof without
27 further notice to said defendants,

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IT IS HEREBY FOUND AND DETERMINED:

1. The interest of defendant Arakelian Enterprises, Inc., dba Athens Services in and to the real property designated in the complaint as Assessor's Parcel Number 247-130-017 is fee simple absolute. The interest being acquired by the City through this eminent domain action is a temporary construction easement, as more particularly described in Exhibit 'A' hereto.

2. By execution of the Stipulation re Settlement and for Entry of Partial Judgment and Final Order of Condemnation herein ("Stipulation"), Defendant waives the right to jury trial, Statement of Decision, Notice of Entry of Judgment in Condemnation, Notice of Entry of Final Order of Condemnation as to Assessor's Parcel Number 247-130-017, and the right and time for appeal.

3. By execution of the Stipulation, Defendant expressly waives the right to challenge the City's right to acquire the property by eminent domain, the right to further and greater compensation and damages of whatever kind or nature, and the right to an award of interest, attorneys fees and costs, to the extent that they may be allowable by law.

4. By execution of the Stipulation, the total compensation is in complete settlement of any and all claims for compensation arising from the taking of the real property described in Exhibit 'A' hereto ("Subject Property"), including costs, statutory interest, severance damages, fixtures, equipment, or inventory, loss of business goodwill, relocation assistance, loss of or damage to improvements pertaining to the realty, damages for precondemnation or inverse condemnation, attorney's fees, all costs and litigation expenses of Defendant against the City by reason of taking of the Subject Property.

5. Pursuant to the Stipulation, Defendant makes a knowing waiver of any and all rights created by California Civil Code section 1542.

6. Pursuant to the Stipulation, the total amount of just compensation to be paid by plaintiff to Defendant is the sum of One Hundred Forty-seven Thousand Dollars (\$147,000.00) ("Award").

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1 7. Pursuant to the Stipulation, the City and Defendant agree to the following specific
2 terms:

- 3 a) The City shall construct a new driveway entrance approximately thirty-six
4 (36) feet in width onto Defendant's property from Citrus Avenue;
- 5 b) The City will remove approximately thirty (30) feet of an existing wall
6 from Defendant's property and will replace the area of wall that is
7 removed with a new automatic gate;
- 8 c) Defendant will execute a right-of-entry agreement to allow the City to
9 enter its property to perform the work outlined in paragraphs 5(a) and
10 5(b);
- 11 d) The City shall indemnify and hold harmless Defendant insofar as it is
12 legally able to do so from any liability to any third party arising out of the
13 City's construction of the project;
- 14 e) The City shall require all of its contractors and subcontractors working on
15 the subject property to name Defendant as an additional insured and
16 indemnitees on their insurance policies;
- 17 f) The City shall use its best efforts to have the work outlined in paragraph 5
18 herein completed within one hundred twenty (120) days from the time the
19 City's contractor gives notice to Defendant; and
- 20 g) During the work outlined in paragraph 5 herein, the City shall allow
21 Defendant full access to and from the subject property, specifically
22 through the Citrus Avenue driveway and toward the east side of the
23 property through the existing gate.

24 8. On November 17, 2010, the City deposited the sum of Seven Thousand Four
25 Hundred Dollars (\$7,400.00) ("Deposit") with the Treasurer of the State of California,
26 Condemnation Fund, as the probable just compensation for Assessor's Parcel Number ("APN")
27 247-130-017.

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1 9. No funds have been withdrawn from the Deposit and \$7,400.00 remains on
2 deposit with the State Treasurer condemnation fund.

3 10. City represents that payment of the Award will be made within thirty (30) days
4 after entry of this Partial Judgment and Final Order of Condemnation.

5 11. An Order of Prejudgment Possession became effective as to the interest of
6 Defendants in and to Assessor's Parcel Number 247-130-017 on April 23, 2011.

7 12. The use for which an interest in and to Assessor's Parcel Number 247-130-017 is
8 being acquired is a use authorized by law and the acquisition of said interest is necessary to said
9 use.

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

11 1. The total compensation, award, and damages to be paid as a result of the
12 condemnation of the interests of defendant Arakelian Enterprises, Inc., dba Athens Services
13 ("Defendant") in and to Assessor's Parcel Number 247-130-017 is the total sum of One Hundred
14 Forty-seven Thousand Dollars (\$147,000.00) ("Award").

15 2. Payment of the Award hereunder shall be deemed to expressly include all costs of
16 suit pursuant to California Code of Civil Procedure section 1268.710 and all litigation expenses
17 including, but not limited to, those defined in California Code of Civil Procedure section
18 1235.140. Payment hereunder shall further be deemed to be the total just compensation and
19 damages, if any, to which Defendants shall be entitled by reason of the condemnation of and
20 construction activities by plaintiff on Assessor's Parcel Number 247-130-017.

21 3. The Award shall be paid by plaintiff outside these court proceedings to Defendant
22 as follows: the draft shall be made payable to "Arakelian Enterprises, Inc." and forwarded to:

23 Jocelyn M. Soriano, Esq.
24 ARCHER NORRIS
25 2033 N. Main Street, Suite 800
26 Walnut Creek CA 94596-3759

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1 4. Payment to Defendant of the total Award shall constitute payment in full for the
2 real property taken and for all damages of any kind and nature whatsoever suffered by said
3 defendant by reason of such taking.

4 5. An Order of Prejudgment Possession became effective as to the interest of
5 Defendants in and to Assessor's Parcel Number 247-130-017 on April 23, 2011.

6 6. The State Treasurer is authorized and directed to disburse to the City of Riverside
7 the sum of Seven Thousand Four Hundred Dollars (\$7,400.00) ("Deposit") from those funds on
8 deposit in the Condemnation Fund in connection with the above-entitled matter. Payment of said
9 funds shall be made payable to "City of Riverside" and forwarded as follows:

10 Attn: Brandon S. Mercer, Deputy City Attorney
11 City Hall, Office of the City Attorney
12 3900 Main Street
13 Riverside CA 92522

14 WHEREFORE THE COURT NOW MAKES THE FOLLOWING ORDER OF
15 CONDEMNATION:

16 The interest of defendant Arakelian Enterprises, Inc., dba Athens Services ("Defendant")
17 in the real property described in Exhibit "A" as to Assessor's Parcel Number 247-130-017 is
18 hereby condemned for the public use and purposes described in the Complaint as construction of
19 a grade separation across the existing Burlington Northern Santa Fe railroad tracks at Iowa
20 Avenue, between Palmyrita Avenue and Spring Street. Plaintiff City of Riverside to take title to
21 the interests of Defendant in said real property, together with all improvements thereon in which
22 said defendants have an interest, free and clear of any and all liens, encumbrances, easements,
23 and leaseholds, of whatever kind or nature.

24 DATED: July 26, 2012


25 Judge of the Superior Court

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EXHIBIT A



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IOWA AVENUE OVERPASS
POR. APN: 247-130-017
TEMPORARY CONSTRUCTION EASEMENT

That certain real property in the City of Riverside, County of Riverside, State of California described as follows:

That portion of Parcel 2 of Parcel Map 13281 on file in Book 64 of Parcel Maps, at Pages 52 through 53 thereof, Records of Riverside County, California, described as follows:

Beginning at the Northeast corner of said Parcel 2;

Thence N.89°07'39"W. along the Northerly line of said Parcel 2, a distance of 225.57 feet;

Thence S.00°19'19"W., a distance of 33.72 feet;

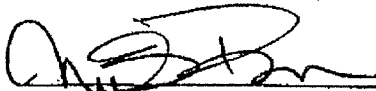
Thence S.89°40'41"E., a distance of 225.89 feet to the Easterly line of said Parcel 2;

Thence N.00°17'01"W. along said Easterly line, a distance of 31.56 feet to the point of beginning.

The above described parcel of land contains 7,367 square feet, more or less.

This temporary easement and right-of-way shall terminate 16 months after issuance of the notice to proceed or upon completion of the public improvements and acceptance by City as demonstrated by recordation of a notice of completion, whichever occurs first.

This description was prepared by me or under my direction in conformance with the requirements of the Land Surveyors Act.


Mark S. Brown, L.S. 5655 10/5/2010 Date Prep. E.V.
License Expires 9/30/11



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 11, 2012, I served the within PARTIAL JUDGMENT AND FINAL ORDER OF CONDEMNATION AS TO DEFENDANT ARAKELIAN ENTERPRISES, INC., DBA ATHENS SERVICES on the interested parties in said action addressed as follows:

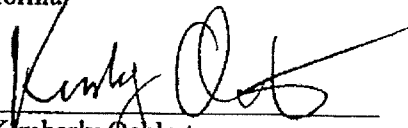
Richard E. Norris, Esq.
Jocelyn M. Soriano, Esq.
ARCHER NORRIS
2033 N. Main Street, Suite 800
Walnut Creek CA 94596-3759
Tel: 925-930-6600
Fax: 925-930-6620

Attorneys for defendant:
Arakelian Enterprises, Inc., dba
Athens Services

- 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 11, 2012, at Riverside, California



Kimberly Oehlert



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