

REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO	CERTIFICATE NUMBER (FOR COMPTROLLER'S USE ONLY) -
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TO: CITY COUNCIL	FROM (ORIGINATING DEPARTMENT): Real Estate Assets	DATE: 04/05/2013
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SUBJECT: Purchase of a 1.02-acre parcel at 5515 Kearny Villa Road, San Diego, CA 92123.

PRIMARY CONTACT (NAME, PHONE): John Casey, 619-236-6733	SECONDARY CONTACT (NAME, PHONE): Jim Barwick, 619-236-6144
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COMPLETE FOR ACCOUNTING PURPOSES

FUND	700000	700011			
DEPT / FUNCTIONAL AREA					
ORG / COST CENTER	2000130001	2000130001			
OBJECT / GENERAL LEDGER ACCT	512204	512204			
JOB / WBS OR INTERNAL ORDER					
C.I.P./CAPITAL PROJECT No.					
AMOUNT	\$812,500.00	\$812,500.00	0.00	0.00	0.00

FUND					
DEPT / FUNCTIONAL AREA					
ORG / COST CENTER					
OBJECT / GENERAL LEDGER ACCT					
JOB / WBS OR INTERNAL ORDER					
C.I.P./CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00

COST SUMMARY (IF APPLICABLE): \$812,500 from the Municipal Sewer Revenue Fund 700000 and \$812,500 from the Water Utility Operating Fund 700011 for property acquisition and related expenses.

ROUTING AND APPROVALS

CONTRIBUTORS/REVIEWERS:	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
Financial Management	ORIG DEPT.	Barwick, James	4/8/2013
Liaison Office	CFO		
Environmental Analysis	DEPUTY CHIEF		
Public Utilities - Water	COO		
	CITY ATTORNEY	Fonseca, Jeremy	
	COUNCIL PRESIDENTS OFFICE		

PREPARATION OF: RESOLUTIONS ORDINANCE(S) AGREEMENT(S) DEED(S)

1. Authorize the Mayor or his designee to execute and deliver all documents deemed by the Mayor or his designee as necessary and in the City's best interests to effect the purchase of the real property located at 5515 Kearny Villa Road (APN 369-020-12) for a purchase price of \$1,600,000 and related costs not to exceed \$25,000.

2. Authorize the Chief Financial Officer to appropriate and expend funds not to exceed \$812,500 from the Municipal Sewer Revenue Fund 700000 and \$812,500 from the Water Utility Operating Fund 700011 for property acquisition and related expenses.

3. Determine that the purchase is exempt from CEQA in accordance with State CEQA Guidelines.

STAFF RECOMMENDATIONS:

Approve the Resolution.

SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION)

COUNCIL DISTRICT(S): District 7

COMMUNITY AREA(S): Kearny Mesa Community Plan

ENVIRONMENTAL IMPACT: This activity is not subject to CEQA pursuant to CEQA Guidelines Section 15060(c)(3).

CITY CLERK INSTRUCTIONS: DO NOT RECORD – please deliver documents to Real Estate Assets Department, Attn: John Casey, MS 51-A for further handling.

COUNCIL ACTION
EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE: 04/05/2013

ORIGINATING DEPARTMENT: Real Estate Assets

SUBJECT: Purchase of a 1.02-acre parcel at 5515 Kearny Villa Road, San Diego, CA 92123.

COUNCIL DISTRICT(S): District 7

CONTACT/PHONE NUMBER: John Casey/619-236-6733

DESCRIPTIVE SUMMARY OF ITEM:

Authorize the purchase of an approximately 1.02-acre parcel of real property with an existing paved, fenced and lighted parking lot at 5515 Kearny Villa Road, San Diego, CA 92123, needed to accommodate parking for the City's Public Utilities Department.

STAFF RECOMMENDATION:

Approve the Resolution.

EXECUTIVE SUMMARY OF ITEM BACKGROUND: The Public Utilities Department (PUD) requires an additional parking area to accommodate approximately 122 vehicles (both City-owned and customer-service employees') caused by the planned relocation of departmental operations from office trailers at the Miramar Landfill to MOC II (9192 Topaz Way). There is currently no room to accommodate these vehicles at the MOC site.

To provide the necessary parking, the City entered into a purchase and sale agreement (subject to the City Council approval) to purchase property adjacent to MOC II consisting of an approximately 1.02-acre parcel of real property with an existing paved, fenced, lighted and landscaped parking lot at 5515 Kearny Villa Road, San Diego, CA 92123.

The agreed upon sale price is \$1,600,000 plus closing costs. The price was arrived at through negotiations with the current owner. The City received an opinion of value for the property from an appraiser of \$1,380,000. However, the value expressed in the appraisal was based on the assumption that the property was available for sale. This was not the case in this transaction. The property was not on the market and the current owner had expressed no interest in selling until approached by the City.

Although the negotiated price is above the value indicated in the appraisal, purchase of this property is still the most cost effective way to meet PUD's parking requirement. According to a cost estimate by the City's Engineering and Capital Projects Department (E&CP), the existing site improvements (paving, lighting, fencing and landscaping) would cost over \$800,000 for the City to replicate. When added to the land value of \$1,110,000 (\$25 per square foot), a replacement value of \$1,910,000 is indicated.

The other alternative would be construction of a 44,000 square foot parking deck over an existing parking lot at MOC. E&CP's cost estimate for a parking deck of that size is \$4,320,000; well over twice the cost of the property being proposed for purchase.

FISCAL CONSIDERATIONS: An amount not to exceed \$812,500 will be appropriated and expended from the Municipal Sewer Revenue Fund 700000 and an amount not to exceed \$812,500 will be appropriated and expended from the Water Utility Operating Fund 700011.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE): N/A - EOCP Memo of 11/14/11.

PREVIOUS COUNCIL and/or COMMITTEE ACTION (describe any changes made to the item from what was presented at committee): This item will be heard at an upcoming Land Use & Housing Committee meeting.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: N/A

KEY STAKEHOLDERS AND PROJECTED IMPACTS: The key stakeholder would be the City of San Diego.

Barwick, James
Originating Department

Deputy Chief/Chief Operating Officer

OFFER TO PURCHASE REAL ESTATE

1. Pursuant to this OFFER TO PURCHASE REAL ESTATE ("Agreement"), the undersigned, THE CITY OF SAN DIEGO, a California Municipal corporation ("Purchaser"), offers and agrees to purchase from MIC LIMITED, a Michigan corporation ("Seller"), fee title to the land situated in the City of San Diego, San Diego County, California, commonly known as 5515 Kearny Villa Road, San Diego, California, more particularly described on Exhibit A hereto (the "Premises"), and to pay therefor the sum of One Million Six Hundred Thousand Dollars (\$1,600,000.00), subject to existing building and use restrictions, easements and restrictions of record, and zoning ordinances and such other matters as are reflected in the Title Report, which are not objected to by Purchaser (the "Permitted Exceptions"), upon the following conditions: (a) Payment of the sum of \$1,600,000 (including the \$100,000 Deposit) in cash or by certified check at the consummation of the sale of the Premises, and (b) the execution and delivery of a Grant Deed of fee title for the Premises (the "Grant Deed").

2. Purchaser will obtain a title report ("Title Report") within ten (10) days after this Offer is accepted by Seller for title insurance issued by Chicago Title Insurance Company ("Title Company") in the amount of the purchase price, dated after the date this Offer is accepted by Seller. Purchaser shall have a period of fifteen (15) days after receipt of the Title Report to advise Seller of any objections to title to the Premises. If Purchaser notifies Seller of any objections to title to the Premises, then Seller shall have fifteen (15) days from the date of Purchaser's notice of such objections to title to cure such objections. If Seller fails to cure such objections to title within fifteen (15) days after Purchaser notifies Seller of such objections, then Purchaser shall have the option to either: (a) consummate the sale of the Premises subject to the objections which cannot be cured by Seller, or (b) terminate this Agreement and receive a refund of the Deposit. At the closing of the transaction contemplated by this Agreement ("Closing"), Seller shall provide Purchaser with an order to issue title policy insurance pursuant to the Title Report and a Grant Deed conveying marketable title to Purchaser, subject to the building and use restrictions, easements and restrictions of record, and zoning ordinances and other Permitted Exceptions as are reflected in the Title Report. At the closing, Seller shall provide Title Company with an Owner's Affidavit relating to work performed at the Premises, rights of parties in possession, and unrecorded easements. The cost of the title policy shall be paid by Purchaser. If Seller is unable to convey title or obtain title insurance as set forth in the Title Report after using Seller's reasonable efforts to do so, then Purchaser and Seller shall be relieved of any liability hereunder and Purchaser's good faith Deposit (in the amount of \$100,000) shall be refunded to Purchaser in full termination of this Agreement.

3. If this Agreement is accepted by Seller and Purchaser does not terminate this Agreement during the Inspection Period and title can be conveyed as required hereunder, Purchaser agrees to complete the sale within fifteen (15) days after the Inspection Period, subject to the remaining provisions of this Paragraph 3. The Closing shall be in escrow with Title Company at the Title Company's office in San Diego, California. Seller shall deliver, and Purchaser shall accept, possession of the Premises

on the Closing date. Purchaser shall have a period of ninety (90) days ("Inspection Period") for the purposes of inspecting the Premises and obtaining authorization from the San Diego City Council for the purchase of the Premises pursuant to this Agreement commencing with the date this Agreement is accepted by Seller. During the Inspection Period, Purchaser shall have access to all reports and studies in Seller's possession or control concerning the Premises. Access to all reports and studies shall be at Seller's offices (or the offices of the party in possession of the information) during normal business hours after reasonable notice that Purchaser desires to inspect the reports and studies. Purchaser shall not conduct or allow any physical intrusive testing of, on or under the Premises, without first obtaining Seller's written consent as to the timing and scope of work to be performed and entering into an access agreement reasonably acceptable to Seller. Seller's consent as to the timing and scope of work to be performed relating to intrusive testing shall not be unreasonably withheld or delayed. Purchaser will not reveal to any third party not approved by Seller the results of Purchaser's inspections and will restore the Premises to its original condition prior to any physical inspections. Purchaser shall provide Seller with a copy of any inspection report. Purchaser agrees (which agreement shall survive closing or termination of this Agreement) to defend, indemnify and hold Seller harmless from any loss, injury, damage, claim or expense, including reasonable attorney's fees arising out of a breach of the foregoing agreements by Purchaser in connection with the inspection of the Premises, or otherwise from the exercise by Purchaser or Purchaser's agents or representatives of the right of access to the Premises hereunder. Any inspection shall be at Purchaser's sole cost and expense. Unless Seller specifically and expressly otherwise agrees in writing, Purchaser agrees that all information regarding the Premises of whatsoever nature made available by Seller or Seller's agents or representatives or discovered by Purchaser in connection with Purchaser's inspections of the Premises ("Proprietary Information") is confidential and shall not be disclosed to any person except those assisting Purchaser with the purchase of the Premises, or Purchaser's lender, if any, and then only upon Purchaser making such persons aware of the confidentiality restrictions and procuring such persons' agreement to be bound thereby. In the event the purchase and sale contemplated hereby fails to close for any reason whatsoever, Purchaser agrees to return to Seller, or cause to be returned to Seller, all Proprietary Information. Purchaser agrees not to use or allow to be used any Proprietary Information for any purpose other than to determine whether to proceed with the purchase of the Premises, or if the purchase hereunder is consummated, in connection with the operation of the Premises after Closing. The provisions of this Paragraph shall survive closing or termination of this Agreement. If Purchaser is not satisfied with the condition of the Premises or if the San Diego City Council does not authorize purchase of the Premises pursuant to this Agreement, Purchaser shall have the right, by giving written notice to Seller within the Inspection Period, to notify Seller that Purchaser is terminating this Agreement because Purchaser is not satisfied with the condition of the Premises or because the San Diego City Council does not authorize the purchase of the Premises pursuant to this Agreement and the Deposit shall be returned to Purchaser, provided Purchaser has no indemnity obligations under this Paragraph. Proprietary Information does not include: (i) information already known to Purchaser or Purchaser's representatives or agents prior to its disclosure by Seller; and

(ii) information which is or becomes available to the public or any governmental or administrative unit, authority or agency without the fault of Purchaser or Purchaser's agents or representatives. Notwithstanding any of the foregoing and anything to the contrary in this Agreement, and regardless of whether or not Purchaser acquires the Premises, Purchaser may disclose Proprietary Information if disclosure is required by applicable law (and only to the extent Purchaser is required to disclose the Proprietary Information by applicable law).

4. Contemporaneously with the execution of this Agreement, Purchaser is depositing with Title Company the sum of \$100,000 ("Deposit"), which will be held in escrow by Title Company in accordance with Title Company's Escrow Instructions. Except as otherwise provided in this Agreement, the Deposit will be applied to the purchase price at closing.

5. In the event of a default by Seller hereunder, Purchaser may, at Purchaser's option, elect to either receive a refund of the Deposit from the Title Company or enforce the terms hereof. In the event of a default by Purchaser hereunder, Seller may, at Seller's option, either elect to enforce the terms hereof or receive the Deposit from Title Company as liquidated damages.

6. All real estate taxes and assessments shall be paid and adjusted in accordance with local custom in San Diego County, California. Any rents will be prorated as of the date of closing. All costs and expenses of closing, including, but not limited to, transfer tax, title insurance, and escrow fees, shall be paid by Purchaser. It is the intent that Seller receives the \$1,600,000 purchase price net of any and all costs and expenses.

7. IF PURCHASER PURCHASES THE PREMISES, THEN PURCHASER SHALL ACCEPT THE PREMISES IN AN "AS IS" CONDITION "WITH ALL FAULTS." No representations or warranties have been made or are made and no responsibility has been or is assumed by Seller or by any member, manager, officer, director, person, firm, agent or representative acting or purporting to act on behalf of Seller as to the condition or repair of the Premises or the value, expense of operation, or income potential thereof or as to any other fact or condition which has or might affect the Premises or the condition, repair, value, expense of operation or income potential of the Premises or any portion thereof. The parties agree that all understandings and agreements heretofore made between them or their respective agents or representatives are merged in this Agreement and the Exhibits hereto annexed, which alone fully and completely express their agreement, and that this Agreement has been entered into after full investigation, or with the parties satisfied with the opportunity afforded for investigation, neither party relying upon any statement or representation by the other unless such statement or representation is specifically embodied in this Agreement or the Exhibits annexed hereto. Seller makes no representations or warranties as to whether the Premises contains harmful or toxic substances or pertaining to the extent, location or nature of same. To the extent that Seller has provided to Purchaser information from any inspection, engineering or environmental reports concerning harmful or toxic substances, Seller makes no representations or

12. Time is of the essence of this Agreement.

13. This Agreement constitutes the entire agreement between the parties hereto with respect to the transactions herein contemplated and all prior negotiations and agreements are deemed merged into this Agreement. Any modification or amendment to this Agreement shall be effective only if in writing and executed by each of the parties hereto.

14. Wherever the words "includes" or "including" are used in this Agreement, such words shall not be construed to restrict or limit any of the language, terms or definitions used in association therewith. Any reference in this Agreement to any person or entity shall include and shall be deemed to be a reference to any person or entity that is a legal successor to such entity. Whenever herein the singular number is used, the same shall include the plural, and the neuter gender shall include the feminine and male genders, and vice-versa. The terms "hereof," "herein," "hereby," "hereto," and "hereunder" and similar terms mean this Agreement, and the term "heretofore" means before, and the term "hereafter" means after, the date of this Agreement. Seller and Purchaser have participated in the drafting, preparation and negotiation of this Agreement, and acknowledge such participation, preparation and negotiation to avoid the application of any rule construing contractual language against the drafter of this Agreement and agree that the provisions contained in this Agreement shall be construed without prejudice to the party that actually memorialized this Agreement in final form, and this Agreement shall be considered to be drafted by Seller and Purchaser. Except as otherwise specifically provided herein, all references to days in this Agreement shall mean calendar days. As used in this Agreement, "business day" means any day which is not a Saturday, Sunday or legal holiday on which banking institutions in the State of California are authorized to close. If the last day for the performance of any provision of this Agreement is not a business day (a "non-business day"), then the last day for the performance of such provision shall be extended to the first business day following such non-business day.

15. The Exhibit to this Agreement is incorporated into this Agreement by reference.

16. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California.

17. The failure of either party hereto to insist upon or enforce any of such party's rights shall not constitute a waiver thereof. Either party may waive the benefit of any provision or condition for its benefit which is contained in this Agreement.

18. Seller represents to Purchaser that there is no brokerage commission or other fee or similar charge payable to any person or party in connection with the sale of the Premises from Seller to Purchaser for which Seller has contracted or Seller agreed to. Seller shall defend, indemnify and hold harmless Purchaser against and in respect of any claim for any brokerage commission or other fee or similar charge relating to the sale of the Premises from Seller to Purchaser for which Seller has contracted or Seller

agreed to. Purchaser represents to Seller that there is no brokerage commission or other fee or similar charge payable to any person or party in connection with the sale of the Premises from Seller to Purchaser for which Purchaser has contracted or Purchaser agreed to. Purchaser shall defend, indemnify and hold harmless Seller against and in respect of any claim for any brokerage commission or other fee or similar charge relating to the sale of the Property from Seller to Purchaser for which Purchaser has contracted or Purchaser agreed to.

19. Purchaser shall cooperate with Seller to accomplish an "exchange of like kind property" or a "deferred exchange of like kind property" or a "reverse exchange of like kind property" as provided in the Code and applicable Treasury Regulations and Revenue Procedures, including, by way of illustration and not limitation, the use of "qualified escrow accounts" and "qualified trusts" and "qualified intermediaries" and "exchange accommodation titleholders" and the transfer of Seller's rights under this Agreement in accordance with applicable Treasury Regulations and Revenue Procedures, provided that Purchaser does not incur any costs or potential liability in connection with the "exchange of like kind property" or "deferred exchange of like kind property" or "reverse exchange of like kind property" which Purchaser would not incur if there were no exchange of like kind property; and Purchaser shall not be required to take title in Purchaser's name to or convey any property other than the Premises.

Dated effective as of the 27th day of February, 2013.

THE CITY OF SAN DIEGO,
a California Municipal corporation

By: Bob Filner
Its: 3/18/13

Purchaser

APPROVED AS TO FORM AND LEGALITY:

JAN I. GOLDSMITH, City Attorney

By: Jeremy Fonseca

Name: Jeremy Fonseca
Title: Deputy City Attorney

ACCEPTANCE OF AGREEMENT

The foregoing Agreement is accepted in accordance with the terms stated. By this acceptance, Seller agrees to the terms and conditions stated in the Agreement.

Dated effective as of the 27th day of February, 2013.

MIC LIMITED,
a Michigan corporation

By: 

George Couch
Its President

Seller

EXHIBIT A

DESCRIPTION OF REAL ESTATE

LAND SITUATED IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL A:

LOT 6 OF MEYER INVESTMENT PROPERTIES, INC., SUBDIVISION, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 9479, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DECEMBER 3, 1979.

PARCEL B:

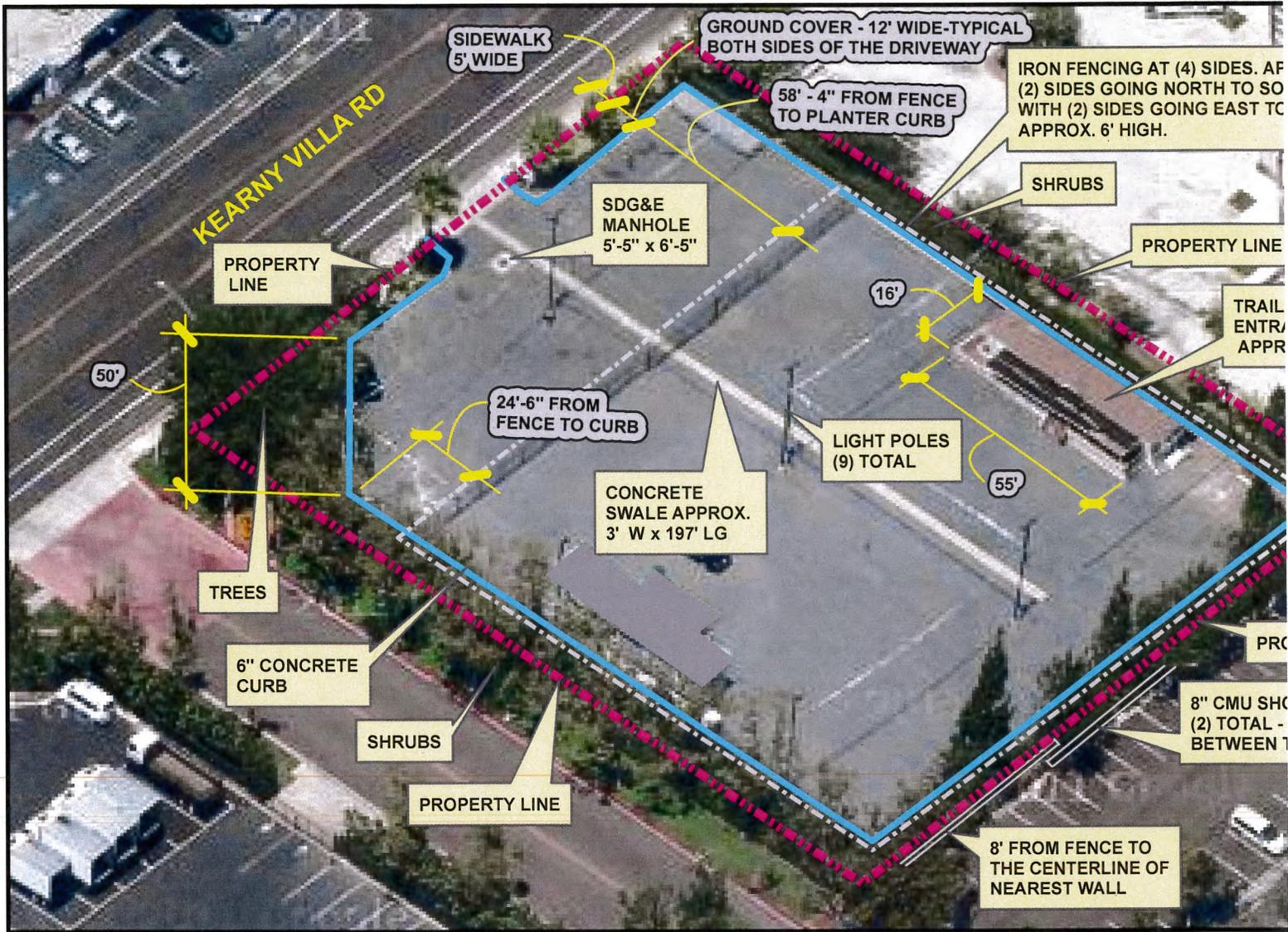
EASEMENT AND RIGHT OF WAY FOR SEWER PURPOSES BEING A 10 FOOT WIDE STRIP ACROSS A PORTION OF LOT 2 OF SAID MEYER INVESTMENT PROPERTIES, INC., SUBDIVISION, THE CENTER LINE OF SAID STRIP BEING DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHEASTERLY LINE OF LOT 4 OF SAID MAP DISTANT SOUTH 25°58'10" EAST 48.86 FEET FROM THE MOST NORTHERLY CORNER OF LOT 4, SAID NORTHEASTERLY LINE ALSO BEING THE WESTERLY LINE OF SAID LOT 2; THENCE SOUTH 88°56'30" EAST 34.71 FEET MORE OR LESS TO THE CENTER LINE OF THAT EASEMENT GRANTED TO THE CITY OF SAN DIEGO FOR SEWER PURPOSES, RECORDED JANUARY 6, 1953 IN BOOK 4706, PAGE 126 OF OFFICIAL RECORDS.

PARCEL C:

A NONEXCLUSIVE EASEMENT FOR PURPOSES OF VEHICULAR AND PEDESTRIAN INGRESS, EGRESS AND ACCESS PURPOSES OVER ALL THAT PORTION OF LOT 2 OF MEYER INVESTMENT PROPERTIES, INC., SUBDIVISION, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 9479, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DECEMBER 3, 1979, WHICH LIES NORTHWESTERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT THE MOST SOUTHERLY CORNER OF LOT 6 OF SAID MEYER INVESTMENT PROPERTIES, INC., SUBDIVISION, BEING ALSO AN ANGLE POINT IN THE BOUNDARY OF SAID LOT 2; THENCE SOUTH 43°14'32" WEST 75.00 FEET TO THE MOST EASTERLY CORNER OF PARCEL 2 OF PARCEL MAP NO. 10895, ACCORDING TO MAP THEREOF FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JANUARY 16, 1981, BEING ALSO AN ANGLE POINT IN THE BOUNDARY OF SAID LOT 2.



PLAN VIEW

NO SCALE



Project Implementation and Technical Services (PITS)
CIP Preliminary Engineering and Program Coordination



S:\PITS\PITS-CIP-Preliminary-Engineering-and-Program-Coordination\Drafting\Non-Asset Type Projects\5515 K