

AGREEMENT BETWEEN THE ORANGE COUNTY SANITATION DISTRICT AND FOREST LAWN MEMORIAL-PARK ASSOCIATION FOR CONSTRUCTION ACCESS AND STAGING, SEWER INSTALLATION, AND PAVEMENT REHABILITATION

THIS AGREEMENT FOR CONSTRUCTION ACCESS AND STAGING, SEWER INSTALLATION, AND PAVEMENT REHABILITATION (“Agreement”), is made and entered into on this _____ day of _____, 2024 by and between the ORANGE COUNTY SANITATION DISTRICT, a County Sanitation District and public entity (“OCSAN”), and FOREST LAWN MEMORIAL-PARK ASSOCIATION, a California nonprofit mutual benefit corporation (“FOREST LAWN”). OCSAN and FOREST LAWN are sometimes hereinafter individually referred to as “Party” and hereinafter collectively referred to as “Parties.”

RECITALS

WHEREAS, OCSAN is a duly organized County Sanitation District existing pursuant to the County Sanitation District Act, California Health and Safety Code section 4700, *et seq.*, providing for the ownership, operation, and maintenance of wastewater collection, treatment, and disposal facilities within Orange County, California; and

WHEREAS, FOREST LAWN is a California nonprofit mutual benefit corporation; and

WHEREAS, OCSAN, as part of its Project 3-64C, is rehabilitating the Los Alamitos Sub-Trunk and Westside Relief Interceptor (the “Project”), which will necessitate some excavation and rehabilitation of roadways passing through FOREST LAWN property; and

WHEREAS, FOREST LAWN has agreed to provide OCSAN with access to its property for the duration of Project activities, including granting a temporary construction easement and providing a construction staging area as described and depicted in **Exhibit 1**; and

WHEREAS, FOREST LAWN has further agreed to relocate certain utility lines on its property in order to facilitate Project activities; and

WHEREAS, OCSAN has agreed to perform pavement rehabilitation work on portions of Cypress Drive and Guardian Drive on FOREST LAWN property that are not affected by Project activities (“Pavement Rehabilitation”), such work to include the construction of a two-inch grind and cap pavement section, an area of approximately 36,000 square feet, as described and depicted in **Exhibits 2, 2A, 2B & 2C**; and

WHEREAS, the Parties agree that the contractor OCSAN selects to perform the Project shall also perform the Pavement Rehabilitation; and

WHEREAS, OCSAN agrees to contract and manage the Pavement Rehabilitation as part of the Project provided FOREST LAWN reimburses OCSAN for additional contract costs and eight percent staff labor costs associated with the Pavement Rehabilitation subject to the terms and conditions included herein; and

WHEREAS, OCSAN has further agreed to make additional improvements to FOREST LAWN property in and around the Project area, including tree removal and relocation of asbestos cement water lines.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the Parties hereto agree as follows:

Section 1: Recitals. The Recitals above are deemed true and correct, are hereby incorporated into this Agreement by this reference, as though fully set forth herein, and each Party to this Agreement acknowledges and agrees that it is bound by the same.

Section 2: OCSAN's Obligations.

- A. OCSAN shall be responsible for advertising, awarding, and administering a contract for the Project, in conformance with all applicable laws governing construction of public works by OCSAN. In connection with the foregoing, OCSAN will include in its bid package the Pavement Rehabilitation work required by FOREST LAWN, and will administer and enter into a construction contract to perform this work.
- B. OCSAN will remove eight large pine trees within the temporary construction easement area obstructing the Project construction work area. OCSAN will purchase eight 48-gallon box trees to replace the removed pines. These replacement trees will be delivered to FOREST LAWN at the conclusion of construction activities for the Project.
- C. OCSAN will relocate two 8-inch irrigation asbestos cement water lines that obstruct the Project construction area. During construction activities, OCSAN will coordinate with FOREST LAWN for a two-day shut down, at each location, of the irrigation main to facilitate tie-ins.
- D. OCSAN will comply, and will cause its agents and contractors to comply, with all applicable laws, regulations, and ordinances in connection with the work to be performed under this Agreement.
- E. All of OCSAN's construction work will be performed between either the period of May 15, 2025 and November 15, 2025 or May 15, 2026 and November 15, 2026. If the construction work requires additional time outside the periods stated above, OCSAN will provide a revised schedule to FOREST LAWN, which shall be subject to FOREST LAWNS's approval in its reasonable discretion.
- F. All work shall be performed at night starting at 6:00 pm and ending at 6:00 am each night, except for fusing of pipes. All open construction trenches will be plated or backfilled by the end of each night's work, all traffic control will be removed and open to allow traffic to use the roadways

within the Project work areas. This will be repeated for each night's work. The contractor will be allowed to work during the day for two consecutive days when fusing pipes starting at 6:00 am and ending at 6:00 pm each day, for each time a pipe is installed via pipe bursting.

- G. OCSAN shall by written agreement with the contractor(s) engaged by OCSAN to perform the work require that such contractor(s) carry out all work in a manner which will avoid interference with the business and services of Forest Lawn and require that all contractor(s) and subcontractor(s) performing any of the work shall (1) comply with the Forest Lawn construction rules and regulations included in the contract documents; (2) comply with reasonable rules requiring cessation of work (including cessation of delivery or removal of materials) to avoid interference with nearby funerals or processions; (3) ensure that if the vehicles of the contractor(s) and subcontractor(s) encounter a funeral procession or graveside service on Forest Lawn Memorial-Park roads, the vehicles must take an alternate route to avoid the service or procession or pull over to the curb and stop until the procession has passed or the service has concluded; (4) maintain at all times a dignified, proper and courteous attitude toward members of the public, contact with whom shall be avoided to the extent practicable; (5) follow instructions given by Forest Lawn's authorized personnel with respect to conduct at the property; (6) observe a nonoffensive dress code which requires wearing shirts at all times and forbids wearing short pants; (7) utilize at Forest Lawn's request, an assigned gate or entrance to the site, which gate or entrance may be changed from time to time at Forest Lawn's discretion; and (8) cooperate with union and nonunion personnel of other contractors, subcontractors or suppliers of Forest Lawn. OCSAN shall require by written agreement and take all steps necessary to ensure that none of the personnel of OCSAN or contractor(s) or subcontractor(s) (a) smokes anywhere on the property or (b) harasses, insults, intimidates, or bothers anyone on the property, including but not limited to Forest Lawn's employees. OCSAN shall require by written agreement that the contractor(s) engaged by OCSAN to perform the work incorporate the provision of this paragraph in their agreements with subcontractor(s) performing any portion of the work.
- H. OCSAN shall by written agreement with the contractor(s) engaged by OCSAN to perform the work require such contractor(s) to provide, in connection with any payments to such contractor, including as a condition precedent to payment in connection with the Pavement Rehabilitation work, (i) unconditional waivers and releases of mechanics liens, stop payment notices, bond claims and other claims from such contractor(s) and all subcontractors and suppliers for whom payment was made in the prior period for which payment was requested, in a form which substantially conforms to Section 8134 of the California Civil Code, acknowledging payment for all labor, services, equipment and materials supplied to the project before the end of the period for which application for payment is

made, and (ii) conditional waivers and releases from such contractor(s) and all subcontractors and suppliers for whom payment is sought, in a form which substantially conforms to Section 8132 of the California Civil Code, acknowledging their agreement to waive mechanics liens, stop payment notices, bond claims and other claims upon payment for materials furnished in the period for which application for payment is made. OCSAN such provide copies of such lien waivers and releases to FOREST LAWN upon receipt.

Section 3: FOREST LAWN's Obligations.

- A. FOREST LAWN hereby grants OCSAN, at no cost, a temporary construction easement and staging area as described and depicted in **Exhibit 1**, for the duration of Project construction until all work within FOREST LAWN property is completed.

- B. OCSAN does not permit sewer lateral connections to its regional sewer facilities. OCSAN will install two sewer stub-outs on its Project rehabilitated sewer facilities at the locations described in **Exhibit 2B & 2C** to permit the connection of City of Cypress sewer mains to serve FOREST LAWN in the future. FOREST LAWN will submit an application to OCSAN for a sewer connection permit prior to construction and connection of any sewer serving FOREST LAWN that connects to OCSAN sewer facilities at the stub-outs. FOREST LAWN will work with the City of Cypress to sign the application as the applicant and submit to OCSAN for approval.

- C. Following OCSAN's removal of the two 8-inch irrigation asbestos cement water mains (as referenced in Section 2 of this Agreement), FOREST LAWN will sign the manifest as the owner of the hazardous material once the conflicting segment of pipe is removed and ready for disposal.

- D. Following OCSAN's delivery of the eight 48-gallon box trees (as referenced in Section 2 of this Agreement), FOREST LAWN will, at its sole expense, replant these trees outside OCSAN's easement area.

Section 4: Payment for Work. Within forty-five (45) days of FOREST LAWN accepting the Pavement Rehabilitation work as complete, and provided that FOREST LAWN receives an invoice for the work from OCSAN, FOREST LAWN will remit payment to OCSAN for the actual, final costs for the Pavement Rehabilitation work, including (1) any change order(s) associated with this work, provided such change orders are approved by Forest Lawn in writing in advance of performance of such changed work and (2) OCSAN staff time required to manage the Pavement Rehabilitation work (collectively, "Costs"), provided that Costs which may be invoiced by OCSAN for payment by FOREST LAWN and which are eligible for payment by FOREST LAWN shall be limited to (1) and (2) above and the following:

1. Wages of construction workers directly employed by the Contractor(s) engaged to perform the Pavement Rehabilitation work only.
2. Wages or salaries of the supervisory and administrative personnel of the Contractor(s) engaged to perform the Pavement Rehabilitation work when stationed at the site for performance of the Pavement Rehabilitation work only.
3. Payments made by the Contractor(s) engaged to perform the Pavement Rehabilitation work only in accordance with the requirements of subcontracts or purchase orders on account of the Pavement Rehabilitation work only.
4. Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the Pavement Rehabilitation work only (excluding the cost of owner-procured equipment).
5. Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor(s) at the site and fully consumed in the performance of the Pavement Rehabilitation work only.
6. Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor(s) at the site for performance of the Pavement Rehabilitation work only. The total rental cost of any Contractor-owned item may not exceed the purchase price of any comparable item.
7. Costs of removal of debris arising from the Pavement Rehabilitation work only from the site of the Pavement Rehabilitation work and its proper and legal disposal.
8. Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office to the extent incurred for performance of the Pavement Rehabilitation work only.
9. Costs of materials and equipment suitably stored off the site at a mutually acceptable location for performance of the Pavement Rehabilitation work only.
10. Costs of temporary utilities (water, gas, electricity, sewer, etc.) necessary for the performance of the Pavement Rehabilitation work only.
11. Costs of the premiums for all insurance and bonds that the Contractor(s) are required to procure in the amount attributable to the Pavement Rehabilitation work only.
12. Fees and assessments for permits not obtained by FOREST LAWN and for inspections which the Contractor(s) are required to procure, and fees of laboratories for any tests required for the Pavement Rehabilitation work only, except those related to defective or nonconforming Pavement Rehabilitation work.

13. Reasonable costs incurred by the Contractor(s) in taking action to prevent threatened damage, injury, or loss in case of an emergency affecting the safety of persons and property in connection with the Pavement Rehabilitation work only.

No costs of the Pavement Rehabilitation work except those specified above shall be invoiced by OCSAN or paid by FOREST LAWN.

Prior to performance of any Pavement Rehabilitation work, OCSAN shall provide to FOREST LAWN the contracted price with the Contractor(s) engaged to perform the Pavement Rehabilitation work and an estimate of the costs of OCSAN staff time, 4 percent (4%) required to manage the Pavement Rehabilitation work. In the event that the total of such costs exceeds the amount of \$813,000 (the "Pavement Rehabilitation Work Estimate"), in addition to and not in limitation of any rights it may have under this Agreement or applicable law FOREST LAWN shall have the option, within 10 days of being provided with the Pavement Rehabilitation Work Estimate, to terminate this Agreement in part with respect to the Pavement Rehabilitation work by written notice to OCSAN. In the event of such termination, FOREST LAWN shall have no further obligation of any kind, including with respect to payment, in connection with the Pavement Rehabilitation work.

Section 5: Insurance. FOREST LAWN and OCSAN, and each of their officials, officers, employees, and agents, shall be named as additional insureds in all construction contract, commercial general liability, and automobile liability insurance policies relating to the Project. OCSAN shall by written agreement require the contractor(s) engaged by OCSAN to perform the work, and shall require such contractor(s) to include in contracts with subcontractor(s), provisions requiring such contractor(s) and subcontractors to maintain throughout the performance of the work at least the following insurance in the following limits:

1. Commercial General Liability, including Operations, Contractual, Contractor's Protective Liability, and Completed Operations coverages- occurrence basis with not less than \$2,000,000 combined single limit for bodily injury and property damage;
2. Comprehensive Automobile Liability covering Contractor's owned, non-owned and hired vehicles used in the performance of the work with limits not less than \$1,000,000 bodily injury and \$500,000 property damage; and
3. Workers compensation at statutory limits and employers liability insurance in an amount not less than \$1,000,000 each accident, \$1,000,000 each disease, policy limit \$1,000,000 each disease/each employee.

Section 6: Indemnification.

- A. OCSAN hereby agrees to release, indemnify, protect, defend and hold FOREST LAWN, its officers and employees harmless from and against any and all claims, loss, demands, expenses, damages, or liabilities whatsoever for injuries to or death of persons or damage to property in any manner arising out of the exercise or enjoyment by OCSAN (and/or contractors and/or subcontractors performing the Work) of any right or permission

herein given or by reason of any failure on the part of OCSAN to keep or perform any of the terms or conditions of this Agreement. OCSAN shall by written agreement include in contracts with contractor(s) engaged by OCSAN to perform the work, and require such contractor(s) to include in contracts with subcontractor(s) engaged in to perform the work, provisions requiring such contractor(s) and subcontractor(s) to defend, indemnify and hold harmless FOREST LAWN and its officers and employees from and against any and all claims, loss, demands, expenses, damages, or liabilities whatsoever for injuries to or death of persons or damages to property in any manner arising out of the negligent acts or omissions of such contractor(s) and/or subcontractor(s) in connection with, arising from, or in any manner relating to the work.

- B. FOREST LAWN hereby agrees to release, indemnify, protect, defend and hold OCSAN, its officers, agents, contractors and employees harmless from and against any and all claims, loss, demands, expenses, damages, or liabilities whatsoever for injuries to or death of persons or damage to property in any manner arising out of the exercise by FOREST LAWN of any obligation or failure on the part of FOREST LAWN to keep or perform any of the terms or conditions of this Agreement.

Section 7. Term. This Agreement will be in full force and effect until the specified obligations of both Parties have been fulfilled or until the Parties mutually agree to terminate this Agreement in writing.

Section 8: Agents. Any contractor or subcontractor performing or providing services in connection with the work described herein on behalf of either Party will be conclusively deemed to be the servant and agent only of the Party that employed or contracted with said contractor or subcontractor.

Section 9: Notices. All notices or other communications required or permitted hereunder will be in writing and will be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, delivered or sent by electronic transmission, and will be deemed received upon the earlier of: (i) the date of delivery to the address of the person to receive such notice if delivered personally or by messenger or overnight courier; (ii) three (3) business days after the date of posting by the United States Post Office if by mail; or (iii) when sent if given by electronic transmission with confirmation of receipt. Any notice, request, demand, direction, or other communication sent by electronic transmission must be confirmed within forty-eight (48) hours by letter mailed or delivered. Notices or other communications will be addressed as follows:

To OCSAN:	Orange County Sanitation District 10844 Ellis Avenue Fountain Valley, CA 92708 Attention: Hardat Khublall, Project Manager Phone: 714-593-7377 E-mail: hkhublall@ocsan.gov
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To FOREST LAWN: FOREST LAWN Memorial Park Association
1712 S. Glendale Ave.
Glendale, CA 91205
Attention: William Hahn
VP Architecture & Engineering
Phone: 323-551-5035
E-mail: whahn@forestlawn.com

Section 10: Jurisdiction. In the event of a dispute regarding performance or interpretation of this Agreement, the venue for any action to enforce or interpret this Agreement will lie in the Superior Court of California for Orange County.

Section 11: Cooperation. The Parties shall cooperate with each other to achieve the purpose of this Agreement and shall execute such other and further documents and take such other and further actions as may be necessary or convenient to fulfill their obligations described herein. The Parties further agree to use all reasonable efforts to cause the fulfillment of the conditions to the Parties' obligations hereunder and to obtain as promptly as possible all approvals from each and every third party, whether private or governmental, required in connection with the work contemplated by this Agreement.

Section 12: No Third Party Beneficiaries. This Agreement is entered into by and for FOREST LAWN and OCSAN, and nothing herein is intended to establish rights or interests in individuals or entities not a party hereto.

Section 13: Force Majeure. Except for the payment of money, neither Party will be liable for any delays or other non-performance resulting from circumstances or causes beyond its reasonable control, including without limitation, fire or other casualty, act of God, strike or labor dispute, war or other violence, acts of third parties, or any law, order, or requirement of any governmental agency or authority.

Section 14: Governing Law. This Agreement will be governed by the laws of the State of California.

Section 15: Entire Agreement. This Agreement constitutes the entire understanding and agreement between the Parties and supersedes all previous negotiations and agreements between the Parties pertaining to the subject matter hereof.

Section 16: Waiver. A waiver of a breach of the covenants, conditions, or obligations under this Agreement by either Party will not be construed as a waiver of any succeeding breach of the same or other covenants, conditions, or obligations of this Agreement.

Section 17: Modification. Alteration, change, or modification of this Agreement will be in the form of a written amendment, which will be signed by both Parties.

Section 18: Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement will continue in full force and effect.

Section 18: Agreement Execution and Authorization. Each of the undersigned represents and warrants that he or she is duly authorized to execute and deliver this Agreement and that such execution is binding upon the entity on whose behalf he or she is executing this Agreement.

Section 20: Counterparts Deemed Original: This Agreement may be executed in one or more counterparts (including by e-mail, other electronic transmission, and/or facsimile), all parties need not be signatories to the same documents, and all counterpart signed documents shall be deemed to be one and the same original instrument.

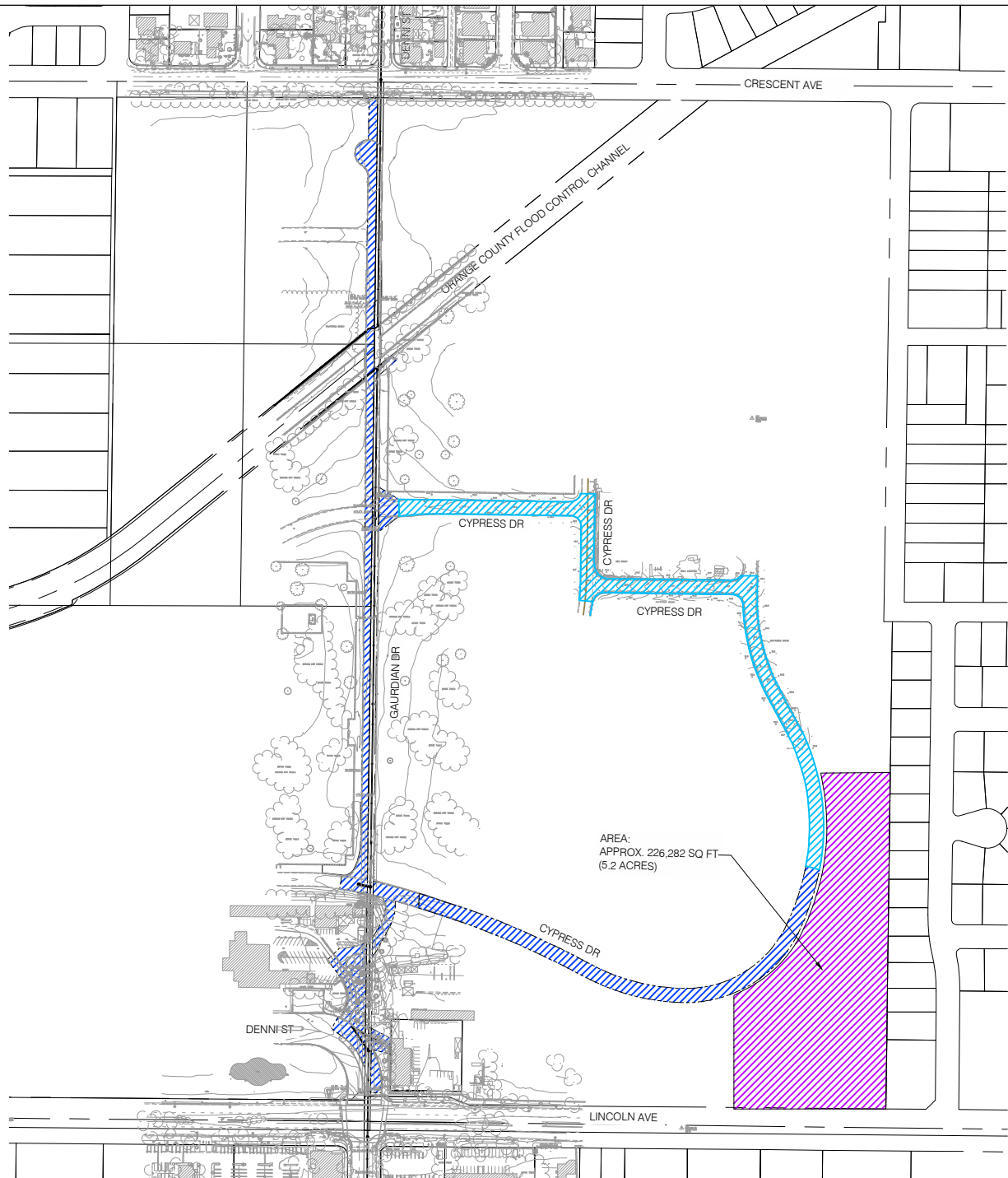
[SIGNATURES ON THE NEXT PAGE]

EXHIBIT “1”


Staging and Temporary Construction Easement Area

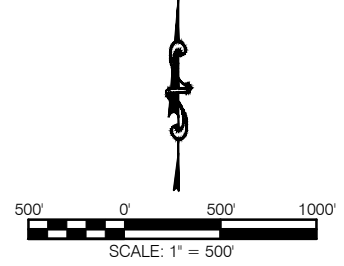
(See attached.)

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 XREFS: G:\BIB\K111 - 3-64C-V-SUB02 - 3-64C-HALNOI-RCH2 - CPT 20220202\Forest Lawn Supp topo 152844_21236_22_206-1 - 22-3496_topo_SUPP_TPO_20220504 - 22-3496_DTM_FL_SUPP_TPO_20220504 - 22-3496_topo_SUPP_TPO_20220504 - 22-3496_topo_SUPP_TPO_20220504 - 3-64C-V-TOP001 IMAGES



LEGEND:

-  TEMPORARY CONSTRUCTION EASEMENT
-  ALTERNATE TEMPORARY CONSTRUCTION EASEMENT
-  CONSTRUCTION STAGING / LAY-DOWN AREA



AECOM

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**LOS ALAMITOS SUB-TRUNK AND WESTSIDE
 RELIEF INTERCEPTOR REHABILITATION**

FOREST LAWN STAGING AREA AND TCE

OC SAN
PROJECT NO.

3-64C

FIGURE

1

EXHIBIT “2, 2A, 2B & 2C”

Forest Lawn Pavement Rehabilitation Area

EXHIBITS “2B & 2C”

Location of Sewer Stubs

(See Attached)

