

THIRD AMENDED AGREEMENT
WATER SUPPLY AND SERVICE
SEWER AND RECLAIMED WATER
SUPPLY AND SERVICE
NATURAL TREATMENT SYSTEM SERVICE

THIS THIRD AMENDED AGREEMENT (“**Agreement**”) is made as of the day of October 13, 2021, by and between the CITY OF ORANGE, a California municipal corporation (“**ORANGE**”), and the IRVINE RANCH WATER DISTRICT, a California water district formed and existing pursuant to Section 34000 et seq. of the California Water Code (“**IRWD**”).

A. ORANGE and IRWD entered into an agreement dated November 5, 1984, entitled “Water Supply and Service Agreement,” for the purpose of creating a joint water supply arrangement for that certain real property (the “**Property**”) located in Orange County, California, consisting of approximately 9,300 acres, as depicted on Exhibit “A” attached hereto. The November 5, 1984 agreement was amended and superseded in its entirety by the November 21, 1994 agreement between the Parties entitled “First Amended Water Supply and Service Agreement and Sewer and Reclaimed Water Supply and Service Agreement,” which provided for a modified joint water supply arrangement and also incorporated arrangements concerning sewer and nonpotable water service to the Property. The First Amended Agreement was amended and superseded in its entirety by the August 28, 2006 “Second Amended Agreement [regarding] Water Supply and Service, Sewer and Reclaimed Water Supply and Service[, and] Natural Treatment System Service” (“**Second Amended Agreement.**”)

B. It continues to be the Parties’ intent to provide for separate service and supply arrangements to apply to the areas depicted on Exhibit “B” as “**Santiago Hills I**” (comprising the portion of the Property referred to in the First Amended Agreement as the “Developed Area”) and in Exhibit “C” as “**Santiago Hills II**,” “**East Orange Area I**,” and “**East Orange Area II**.”

C. It is acknowledged that Santiago Hills I essentially comprises the portions of the Property which are within ORANGE’s 736 foot elevation zone (such 736 Zone is equivalent to IRWD’s Zone 5), for water service purposes, and the portions of the Property which are within the Consolidated Revenue Area of the Orange County Sanitation District (“**OCS**D”) (successor to the County Sanitation Districts of Orange County), for sewer service purposes. Similarly, it is acknowledged that Santiago Hills II, East Orange Area I and East Orange Area II are within elevation zones higher than the ORANGE 736 Zone (IRWD’s Zone 5) for water service purposes and are within (or subject to IRWD-SCWD consolidation, will be within) Revenue Area 14 of OCS D for sewer service purposes. The definitions of “Property,” “Santiago Hills I,” “Santiago Hills II,” “East Orange Area I,” “East Orange Area II,” “Future Development Area” and “SHII/East Orange Area” and Exhibits B and C notwithstanding, it is intended that the Joint Engineering and Management Committee described herein may make minor adjustments between the respective areas where appropriate to achieve efficiency in service arrangements.

D. Existing subarea service master planning for the Future Development Area has proceeded and reflects various changes to development and service plans that have occurred since the date of the Second Amended Agreement. In response to these changes, as well as the need to

modify the Second Amended Agreement to address areas adjacent to the Future Development Area that have become included in IRWD through consolidation, the Parties desire to implement the modified joint water, sewer and nonpotable water supply and service arrangements and natural treatment system service arrangements set forth herein, in order to maintain the most effective use of the Parties' sources of supply, facilities, financing and service and payment structure in the provision of services to the ultimate consumer.

E. The Parties, together with Orange County Water District ("OCWD"), have mutual interests relating to remediating per- and poly-fluoroalkyl substances ("PFAS") contamination in the Orange County Groundwater Basin, including coordinating and supporting the environmental review of the Parties' proposed well and PFAS treatment projects.

F. Each Party has near-term plans to construct wells or increase groundwater pumping and install PFAS treatment in areas that are hydrogeologically interconnected and impacted by PFAS contamination, as follows:

- IRWD plans to increase pumping at its Well OPA-1 from 900 acre feet per year ("AFY") to approximately 3,200 AFY for use in IRWD's service area, and to add wellhead PFAS treatment at this well ("**IRWD Project**").
- ORANGE plans to construct two additional wells in its service area ("**City Project**") to facilitate increased pumping at which the City will add PFAS treatment.
- Together the IRWD Project and the City Project are the "**Well Projects**".

G. OCWD has modeled the well drawdown impacts of the proposed increased pumping under the IRWD Project demonstrating that the groundwater drawdown resulting from the IRWD Project will have a less-than-significant impact on the City's existing wells. The Parties anticipate that the proposed City Project will have a less-than-significant impact on the IRWD Project.

H. The Parties intend by this Third Amended Agreement to facilitate the Parties' mutual interests in effectively pumping and treating groundwater under the Well Projects and thereby the Second Amended Agreement is superseded in its entirety.

NOW, THEREFORE, in consideration of the foregoing recitals and of the following mutual covenants and conditions, IRWD and ORANGE agree as follows:

1. Design Criteria. The Parties acknowledge that design criteria for developing and implementing the provision of water, sewer, nonpotable water and natural treatment system service to the "SHII/East Orange Area" will be as established by IRWD through its subarea master planning. The "SHII/East Orange Area" is depicted on Exhibit "C".

2. Potable Water, Sewer, Nonpotable Water and Natural Treatment System Service for SHII/East Orange Area.

a. Potable Water: IRWD will provide all retail and wholesale potable water service to the SHII/East Orange Area.

b. Nonpotable Water: IRWD will provide all nonpotable water service to the SHII/East Orange Area, to the extent the provision of such service to the SHII/East Orange Area is determined to be feasible by IRWD. Portions of the on-site water systems in the SHII/East Orange Area may be designed with dual-system capability so that it will be possible in the future to provide potable or nonpotable water for irrigation of parks, greenbelts, golf courses and such other uses as may be approved from time to time under applicable laws and regulations.

c. Sewage Collection, Treatment, and Disposal: The SHII/East Orange Area is tributary to and will receive service from IRWD by means of IRWD's Harvard Avenue Trunk Sewer ("HATS"). The collection systems within the SHII/East Orange Area shall be designed to deliver sewage to HATS. The SHII/East Orange Area is within Revenue Area 14 of OCSD, such that the SHII/East Orange Area may be served by the facilities of OCSD in addition to those of IRWD. Agreements among IRWD and OCSD provide that IRWD shall be the local sewerage agency within Revenue Area 14.

d. Natural Treatment System ("NTS"): IRWD will own, operate and maintain six NTS water quality basin facilities on four sites in Santiago Hills II and East Orange Area I. In addition, IRWD will conduct periodic inspections, and may perform maintenance and repairs subject to reimbursement by the homeowners' association in the event the association fails to perform the same, on up to 20 water quality basin facilities to be owned by homeowners' associations in Santiago Hills II and East Orange Area.

e. General: Subject to Section 8(b), IRWD will provide the retail services described in this Section under its rules and regulations applicable to each respective class of customers.

f. Re-Opener: In the event IRWD fails to provide adequate water, sewer, and non-potable water service to the SHII/East Orange Area consistent with applicable regulations, laws and industry standards, ORANGE shall notify IRWD in writing of the inadequacy. IRWD agrees to correct the inadequacy within 180 days of such notice or explain why the service level is consistent with applicable regulations, laws and industry standards. If IRWD fails to make the correction or provide such explanation, ORANGE may initiate negotiations to amend this Agreement such that ORANGE would become the service provider for the SHII/East Orange Area.

3. Potable Water, Sewer, and Nonpotable Water Service to Santiago Hills I.

a. Potable Water, Sewer, and Nonpotable Water Service: ORANGE will provide all retail and wholesale potable water and sewer service and all retail nonpotable water service to Santiago Hills I.

b. Nonpotable Water Supply: IRWD will provide all wholesale nonpotable water service to Santiago Hills I, to the extent the provision of such service to Santiago Hills I is determined to be feasible by IRWD.

c. General: ORANGE will provide the retail services described in this Section under its rules and regulations applicable to each respective class of customers.

4. Services to Other Areas.

a. Irvine Regional Park: The property owned by the County of Orange and known as "Irvine Regional Park" shall not be deemed included in Santiago Hills I or the Property for purposes of this Agreement. Potable water service to Irvine Regional Park shall be provided by ORANGE, and sewer service and nonpotable water service to Irvine Regional Park shall be provided by IRWD.

b. Nonpotable Water Service to Other Areas of ORANGE: IRWD agrees to cooperate with ORANGE to develop a source of nonpotable water (reclaimed or untreated water) for retail distribution within areas of ORANGE not addressed in Sections 2, 3 or 4(a) hereof.

5. Mutual Consent for Service. Each of the Parties hereby consents to service by the other within the consenting Party's territory in accordance with this agreement.

6. Customer Service. Notwithstanding the above-described service structure or the provisions of Section 7, the Parties agree that the service structure is not intended to delay or encumber response to customer matters involving the Parties' systems. Accordingly, the Party first contacted by a customer concerning, or otherwise learning of, a repair or other facilities situation needing attention will determine as soon as reasonably possible which Party is the responsible Party for the service requested and, if such contacted Party is not the responsible Party, will immediately inform the responsible Party. If the Party contacted deems the service request to be of such an emergency nature that the time taken in determining who is the responsible Party and/or informing that Party may be detrimental to the public's health, safety or welfare, then the contacted Party may perform the necessary work or otherwise respond. If the responding Party is not the Party responsible under the service structure or Section 7, the responding Party will seek reimbursement of the costs incurred in responding, and the responsible Party shall promptly reimburse such amount within 30 days of receipt of an invoice from the responsible Party. Any disagreement regarding the amount of or entitlement to such reimbursement shall be resolved by the Parties pursuant to Section 10.

7. Financing, Construction and Ownership of Facilities.

a. SHII/East Orange Area: IRWD will finance and construct (or cause to be donated by the developer or property owner), and will own, operate and maintain, all facilities (other than regional water wholesaler or OCSD facilities) for provision of potable water, sewage collection, treatment and disposal, and nonpotable water service to the SHII/East Orange Area. IRWD's financing will be provided through its Improvement District Nos. 105 and 250, and Nos. 153 and 253, as applicable.

(i) Santiago Hills I: ORANGE will own, operate and maintain all facilities (other than regional water wholesaler or OCSD facilities) for provision of potable water and sewage collection, treatment and disposal service to Santiago Hills I; IRWD has financed and constructed (or caused to be donated by the developer) a portion of such water facilities through its Improvement District No. 105. IRWD will finance and construct (or cause to be donated by the developer or property owner), and will own, operate and maintain the wholesale and retail nonpotable water facilities to supply nonpotable water to Santiago Hills I. IRWD's financing of

such nonpotable water facilities will be provided through its Improvement District No. 252. IRWD will use the existing tax receipts (ad valorem assessments levied for debt service on bonds of Improvement District No. 250) collected within Improvement District No. 252 to construct nonpotable water facilities or capacity therein serving only Santiago Hills I. IRWD will preserve and maintain its existing authority to collect ad valorem debt service taxes within Improvement District 252; provided no future taxes will be levied or collected by IRWD for Improvement District No. 252 without the explicit written consent of ORANGE. The subject non-potable facilities shall be constructed prior to issuance of the first Certificate of Occupancy issued by ORANGE in the Santiago Hills II development. If IRWD fails to construct the subject nonpotable facilities by the date of the first Certificate of Occupancy, then IRWD will refund the existing tax receipts.

b. Irrespective of facility ownership, all reasonable interconnections between ORANGE and IRWD facilities for operational efficiency and/or emergency purposes shall be allowed as determined by the Joint Engineering and Management Committee.

c. Design of all developer-donated facilities for potable water, sewage collection, non-potable water and natural treatment system service shall be in accordance with applicable design criteria of IRWD, and prior to construction thereof, ORANGE will require the developer to obtain IRWD's approval of the design. Following completion and prior to use of developer-donated facilities, ORANGE will require the developer to obtain IRWD's approval of the facilities.

8. Fees and Charges.

a. Connection Charges; Standby Charges; Taxes: IRWD will be entitled to collect all of its customary water and sewer connection charges from developers of the SHII/East Orange Area. Prior to issuance of certificates of occupancy, ORANGE will require the receipt from IRWD of an occupancy release letter in the form attached as Exhibit "D", as evidence of the payment of such connection charges to IRWD. In addition, IRWD will be entitled to collect taxes (ad valorem assessments for debt service on bonds) from property owners within Improvement District Nos. 105, 250, 252, 153 and 253, as applicable, and also will be entitled to collect potable and nonpotable water and sewer standby charges from property owners within the SHII/East Orange Area. No general tax rate (except for such assessments for debt service and IRWD's share of the general 1% property tax levy) is to be imposed by IRWD on the ultimate water or sewer service consumer.

b. User Rates: The rates collected by IRWD for water (including natural treatment system), sewer and non-potable water service in the SHII/East Orange Area shall be set in a manner consistent with the principles used in setting rates generally applicable in IRWD under its rules and regulations applicable to all classes of customers. (For this purpose, "rates generally applicable in IRWD" shall mean rates that IRWD sets generally, plus applicable pumping surcharges based on actual cost of pumping, but shall not mean the rates determined under special rate agreements governing all or portions of former service areas of water agencies that have become part of IRWD through reorganization). The foregoing notwithstanding, the cumulative total of IRWD water charges in the SHII/East Orange area, including fixed and water commodity charges but not including any pumping surcharges, sewer, natural treatment system, or non-potable

water charges, for an average residential customer using the IRWD median amount of water (“**Cumulative IRWD Charges**”) shall not exceed the cumulative total charges that would have been paid by an identical customer under the prevailing ORANGE water rate structure (“**Cumulative Cap**”). For purposes of making the foregoing comparison between the Cumulative IRWD Charges and the Cumulative Cap, the water charges for such average SHII/East Orange Area residential customer shall be aggregated for the most recently concluded IRWD billing period and all prior IRWD billing periods since the date of this Third Amended Agreement, using the applicable IRWD and ORANGE rate structures that were in effect during each such billing period. The ORANGE and IRWD water rates will be reviewed by the Joint Engineering and Management Committee as requested by ORANGE, but no more frequently than once per year. If the Committee finds that the Cumulative IRWD Charges have exceeded the Cumulative Cap, then prospective adjustments to the fixed and/or commodity water rates in the SHII/East Orange area will be applied by IRWD at the time of its next annual budget approval. Adjustments applied by IRWD to future fixed and/or commodity water charges shall be the sole method of bringing such charges back into conformance with the Cumulative Cap, and no retroactive adjustments or refunds for any period prior to adjustment will be required hereunder.

c. ORANGE Rates and Charges: ORANGE will not impose any connection charges or other rates and charges with respect to potable or nonpotable water service or sewer service to the SHII/East Orange Area.

d. OCSD Fees: IRWD shall be responsible for collecting and remitting any OCSD fees in the SHII/East Orange Area and shall defend and indemnify ORANGE against any claims by OCSD made after the date hereof that fees due OCSD from the SHII/East Orange Area have not been paid.

e. Collection of Rates and Charges: IRWD may, as permitted by law and upon taking proceedings as appropriate, collect sewer rates and charges within the SHII/East Orange Area by means of property tax bills. IRWD agrees to coordinate with ORANGE to include ORANGE’s fees for municipal services such as paramedic billing, trash collection and tree trimming, in IRWD’s retail water service bills for the SHII/East Orange Area.

9. Annexations.

a. ORANGE agrees not to oppose, or support any proposal inconsistent with, the annexation to OCWD of that portion of the SHII/East Orange area not currently within OCWD, for the purpose of supplying groundwater to the residents thereof.

b. If the Local Agency Formation Commission proposes a reorganization of the East Orange County Water District (“**EOCWD**”) and ORANGE seeks to retain the portion of the EOCWD service area that is currently within ORANGE’s city limits, IRWD agrees not to oppose ORANGE’s request or support any request inconsistent with ORANGE’s request.

10. Joint Engineering and Management Committee. The Parties shall continue in existence the Joint Engineering and Management Committee (the “**Joint Committee**”), and shall each continue to appoint one representative and one alternate representative to the Joint Committee. The primary purpose of the Joint Committee shall be to facilitate communication

between the Parties and aid in the administration of this Agreement. The Parties shall give full consideration to all recommendations of the Joint Committee. The Joint Committee shall meet periodically, but at least once a year, to perform such tasks as may be assigned to it by the Parties from time to time, including, but not limited to, the following:

- a. Make minor adjustments between Santiago Hills I and the SHII/East Orange Area as may be necessary or appropriate from time to time to achieve the most efficient service arrangements based on facilities, system looping, continuity of neighborhoods, gravity flow and similar factors. Any such adjustments shall be depicted in addenda to Exhibits B and C or new exhibits which shall, upon approval by the Parties, supersede such exhibits;
- b. Review the effect of the groundwater pumping by IRWD's OPA Well 1 and ORANGE Well 23 on groundwater levels, and suggest mitigation measures as necessary to provide for the continued pumping and treatment of PFAS at the Well Projects.
- c. Resolve disagreements pursuant to Section 6 this Agreement;
- d. Perform such other tasks as may be assigned by the Parties hereto.

11. CEQA. Each Party has determined that the other Party's Well Project and pumping as described above will have a less-than-significant impact on that Party's own project(s) and pumping identified above. Each Party will comply with the California Environmental Quality Act ("CEQA") in connection with its own project(s), including responding to all comments submitted by the other Party on CEQA documentation. The Parties acknowledge that each of their projects will proceed on different timelines, and in an effort to ensure both Parties' compliance with this provision and in order to discourage breach, the Parties hereby agree to toll the statute of limitations in connection with challenging any of the projects under CEQA until 36 days following the last Notice of Exemption or Notice of Determination filed for any of the projects.

12. Cooperation. ORANGE and IRWD will review and evaluate cooperative groundwater production opportunities. ORANGE hereby consents to and authorizes IRWD to serve additional water produced as part of the IRWD Project, to customers inside the IRWD service area but outside of the Sphere of Influence of ORANGE, subject to the following limitations:

- a. Well OPA-1. The authorization is applicable to water produced from Well OPA-1 only.
- b. Production Capacity. The authorization is for pumping approximately 3,200 AFY from Well OPA1, or such other substantially greater amount (i) approved by the Joint Committee or (ii) determined under a technical study or CEQA document that demonstrates no significant impacts on ORANGE Well 23.
- c. Feasibility Study/Design. In order to facilitate both Parties' continued pumping and PFAS treatment, IRWD shall prepare a feasibility study of lowering the pump bowls in the Orange Well 23 without replacing the well. IRWD shall complete the feasibility study within one year of the Effective Date, using a consultant approved by the Joint Committee. IRWD shall provide the draft feasibility study to ORANGE, which will provide comments on the draft within 30 calendar days after receipt.

d. If Feasible: Design & Cost Estimate. If the Joint Committee determines that lowering the pump bowls is feasible, then IRWD shall prepare a 30% design and develop an engineer's estimate for finalizing design and construction for lowering the pump bowls in ORANGE Well 23. The Joint Committee shall review and approve the 30% design and engineer's estimate (which approval shall not be unreasonably withheld by the Joint Committee or either Party's members of the committee). Within 90 days of that approval, IRWD shall pay ORANGE the amount of the engineer's estimate of the costs to design and construct the improvements to lower the pump bowls of ORANGE Well 23 to facilitate ORANGE's continued extraction and treatment of groundwater when the pumping level is below 320 feet, as described in the feasibility study.

(i) If the bids received by ORANGE are more than one hundred ten percent (110%) of the engineer's estimate, ORANGE has the right to immediately confer with IRWD regarding additional contribution from IRWD for those costs exceeding one hundred ten percent (110%) of the engineer's estimate. If the Parties cannot reach mutual agreement on payment for those additional costs, ORANGE has the unilateral right to reject all bids and refund the amount paid by IRWD. In this event, the Parties will adhere to the provisions of Subsection e, below.

(ii) If the bids received, and amounts paid for completion of the project, are less than the engineer's estimate, ORANGE shall refund the difference to IRWD.

(iii) Lowering the pump bowls in ORANGE Well 23 is not intended to guarantee a flow rate at which the well will operate.

e. If Infeasible: Cooperative Pumping Reduction. If the Joint Committee determines that lowering the pump bowls is infeasible, then when the pumping water level in ORANGE Well 23 reaches 320 feet below ground surface, both Parties shall incrementally reduce pumping at the same rate to ensure that both PFAS systems may remain operational. Incrementally reduce means, for example, that both Parties would reduce pumping by 100 gallons per minute, or such other equal measurement as agreed to by the Parties that would ensure continued PFAS treatment but minimize adverse impacts to the Parties' facilities. The determination of incrementally reduced pumping rates will be determined by the Joint Committee.

f. Staff Costs. Each Party will pay all costs associated with its own staff time in connection with the Joint Committee, the feasibility study, or other actions contemplated in this Section 12.

g. Other Limitations. The Parties each acknowledge that their groundwater well pumping is subject to OCWD's Basin Production Limitation, Basin Production Percentage, any assessment and surcharge validly imposed by OCWD and other contractual obligations.

13. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

14. Modifications. This Agreement cannot be changed, amended, modified or supplemented except in writing signed by the Parties hereto.

15. Entire Agreement. This Agreement and its exhibits constitute the entire agreement between the Parties hereto pertaining to the subject matter hereof, and the final, complete and exclusive expression of the terms and conditions thereof. All prior agreements, representations, negotiations and understandings of the Parties hereto, oral or written, express or implied, including specifically the Second Amended Agreement, are hereby superseded and merged herein.

16. Notices. All notices and other communications given hereunder shall be in writing and shall be delivered or mailed by registered or certified mail, return receipt requested, and postage prepaid, addressed as follows:

If to IRWD: IRVINE RANCH WATER DISTRICT
 ATTENTION: GENERAL MANAGER
 P.O. Box 57000
 15600 Sand Canyon Avenue
 Irvine, California 92619-7000

If to ORANGE: CITY OF ORANGE
 ATTENTION: WATER MANAGER
 189 South Water
 Orange, California 92666

17. Term of Agreement. This Agreement shall continue in effect until terminated by mutual agreement of the Parties.

18. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

19. Attorneys' Fees. In the event any declaratory or other legal or equitable action is instituted between ORANGE and IRWD in connection with this Agreement, then the prevailing Party shall be entitled to recover from the losing Party all of its costs and expenses, including court costs and reasonable attorneys' fees.

20. Exhibits. The following exhibits are incorporated into this Agreement by this reference:

Exhibit "A" - Property
Exhibit "B" - Santiago Hills I
Exhibit "C" - SHII/East Orange Area
Exhibit "D" - Form of Occupancy Release [Section 8a]

[Signatures appear on following page.]

The Parties hereto cause this Agreement to be executed on the day and year first above written.

CITY OF ORANGE

Mark A. Murphy, Mayor

ATTEST

Pamela A. Coleman, City Clerk

APPROVED AS TO FORM:

Mary E. Binning, Sr. Asst. City Attorney

IRVINE RANCH WATER DISTRICT

Paul A. Cook, General Manager

ATTEST

Secretary

APPROVED AS TO FORM:
HANSON BRIDGETT LLP

District Counsel

EXHIBITS

- A: Property
- B: Santiago Hills I
- C: SHII/East Orange Area
- D: Form of Occupancy Release

EXHIBIT "A"

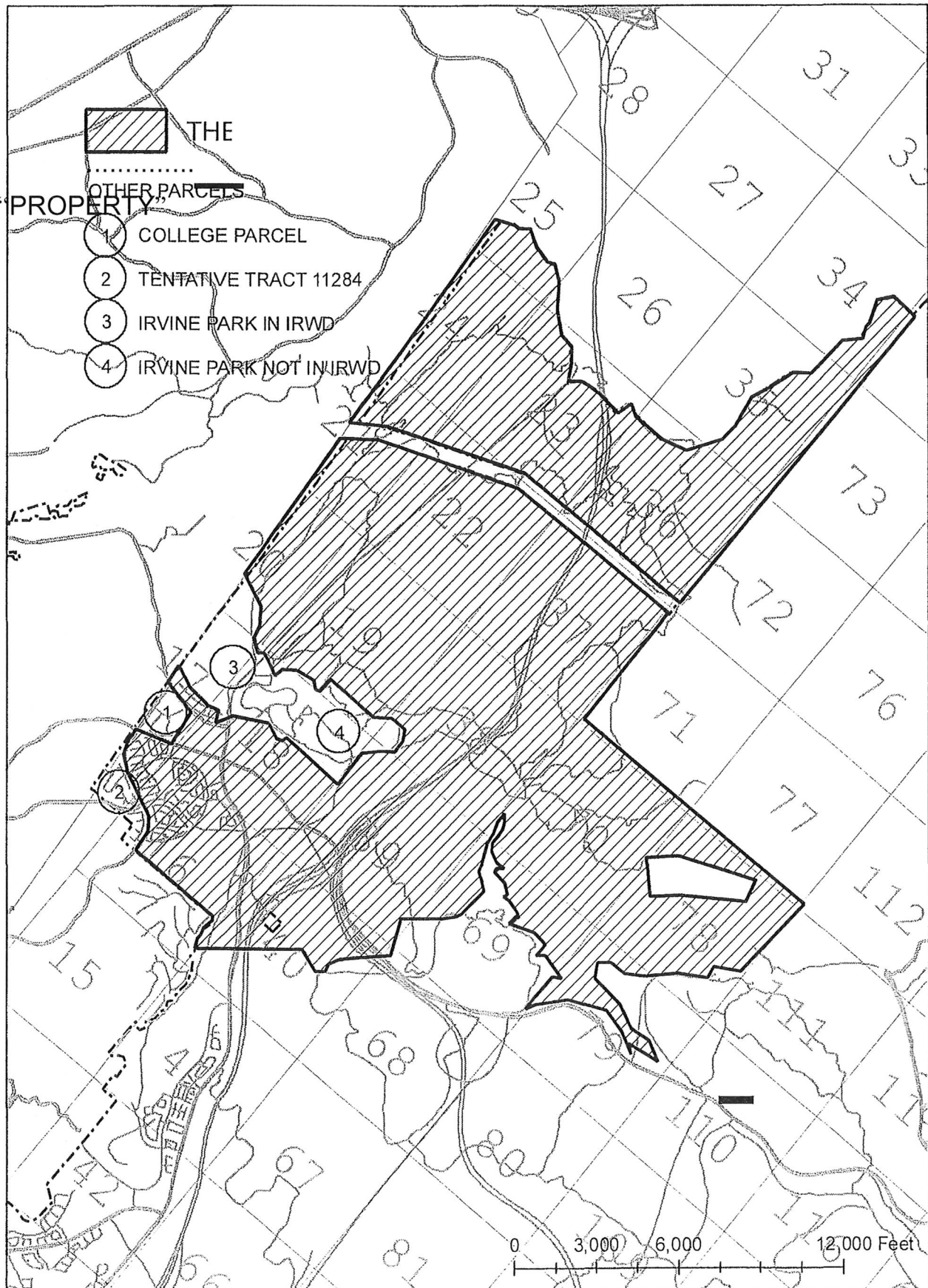


EXHIBIT "B"

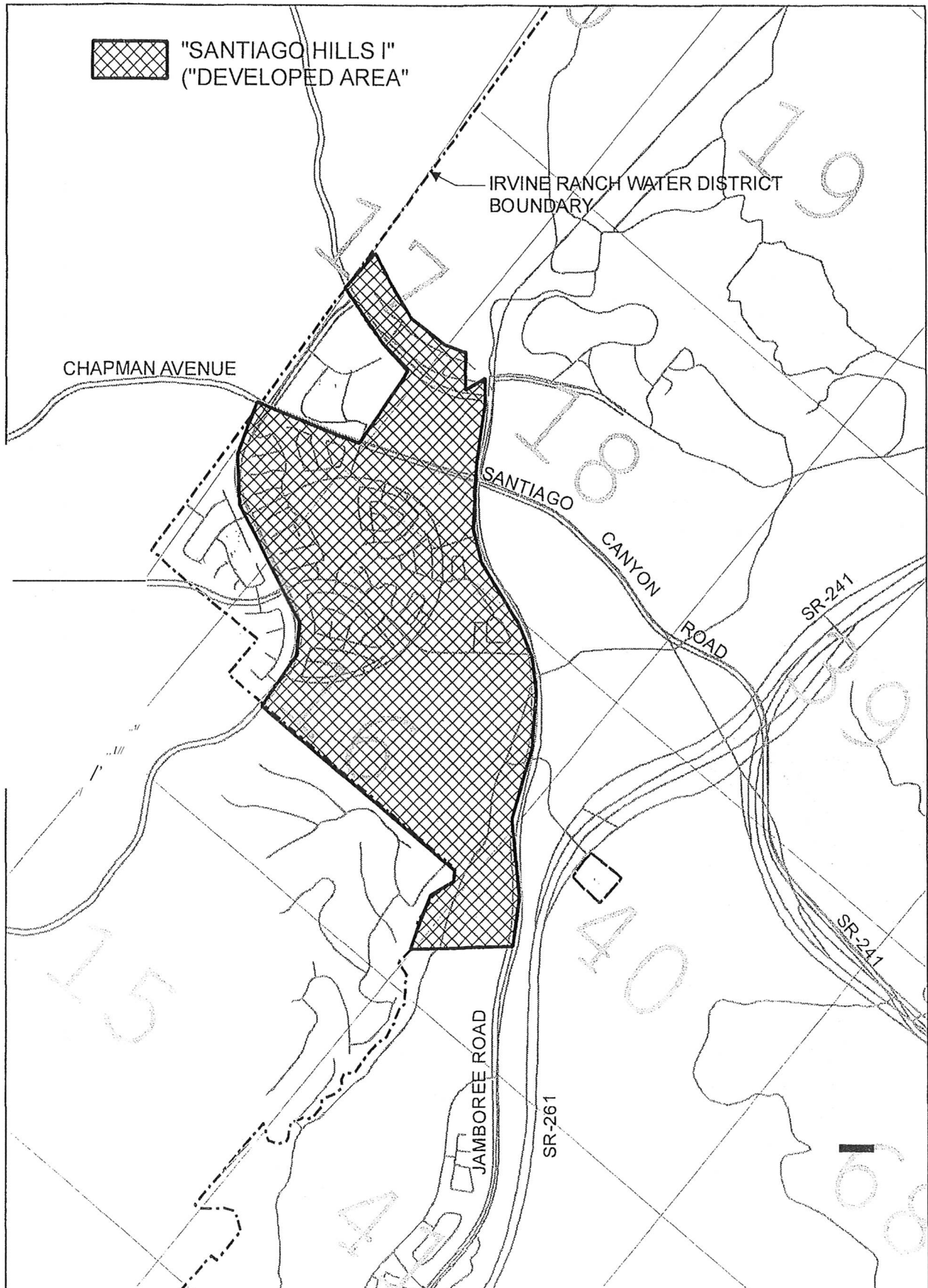


EXHIBIT "C"

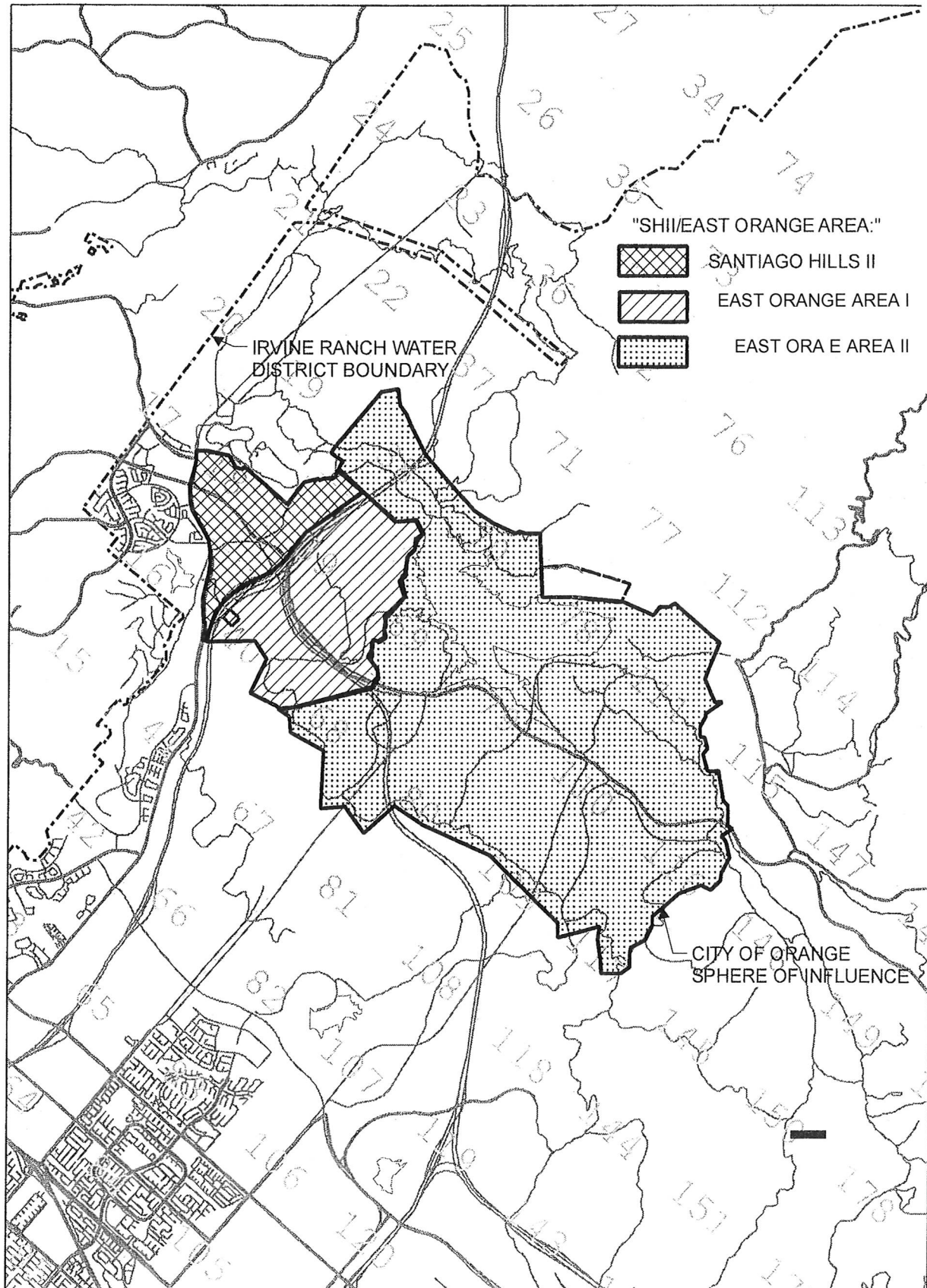


EXHIBIT D

FORM OF OCCUPANCY RELEASE



IRVINE RANCH WATER DISTRICT 15600 Sand Canyon Ave., P.O. Box 57000, Irvine,
CA 92619-7000 (949) 453-5300

Name
Building Official
City of Orange
300 East Chapman Avenue
Orange, CA 92866

Subject: Release for Residential Use

Dear Mr. Nguyen:

Irvine Ranch Water District hereby releases Lot Nos. _____ of Tract No. _____ for the following:

RELEASE FOR OCCUPANCY - Sewage can be accepted in sewer system. Water meter has been installed by developer.

Yours truly,

Mike Jack
Construction Inspection Manager

MJ/

cc: Developer -
IRWD Inspector -
IRWD Developmental Services
IRWD Customer Service (2)
IRWD Greg Springman FAX# 949-476-2854
Chron