CITY OF ANAHEIM
OFFICE OF THE CITY MANAGER

August 23, 2022

The Honorable Erick L. Larsh
Presiding Judge of the Superior Court
700 Civic Center Drive West
Santa Ana, CA 92701

Subject: Response to the Orange County Grand Jury Report, "The Big A Lack of Transparency"

Dear Judge Larsh:

As the City Manager of the City of Anaheim, I am pleased to respond on behalf of the City to the Orange County Grand Jury Report, "The Big A Lack of Transparency" (the "Report"), released on June 27, 2022. The City values the opportunity to respond to the Report. The responses contained in this letter were approved by the Anaheim City Council during regular session on August 23, 2022. The City's responses address the Report's findings and recommendations in accordance with California Penal Code Sections 933 and 933.05.

SUMMARY:

The City is fully aware of the allegations surrounding the FBI investigation of former Anaheim mayor Harry Sidhu. Further, the City has taken several steps to ensure that any potential sale of Angel Stadium of Anaheim would not be tainted by these allegations, most significantly by declaring void the deal originally struck with SRB Management LLC.

The City recognizes that the Orange County Grand Jury ("OCGJ") conducted its own independent investigations and that it explicitly excluded the allegations made by the FBI, most notably in the affidavit of FBI Special Agent Brian Adkins in support of the search warrant of former mayor Sidhu.[1] Accordingly, the City will respond to the facts alleged and the findings made by the OCGJ and will only reference the FBI investigation where needed for context.

The City agrees with some of the Report's findings and recommendations, and certainly understands the well-meaning intent behind OCGJ's efforts. However, the City also disagrees with some aspects of the Report's findings and many of the alleged facts supporting the findings and recommendations. In expressing these disagreements and noting factual errors, the City is not intending to diminish the seriousness of the separate FBI investigation, which is not part of the OCGJ report. Rather, the City is simply correcting the record so that any actions it takes in response to this OCGJ report will have proper context.

[1] As stated in the report, "the OCGJ investigated aspects of the Stadium Property transactions that are not the focus of the FBI investigation." (Report at p. 1.)

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CITY'S RESPONSE TO OCGJ'S "INVESTIGATION AND ANALYSIS"

A. Response to OCGJ's "Lack of Transparency" Findings

OCGJ's study of the Angel Stadium transaction stemmed from its observations that the "City had drawn heavy public scrutiny" for its lack of transparency in its handling of the sale of the Stadium Property..."[2] According to the Report, "[l]ocal news media and members of the public accused the City of failing to provide adequate notice of public hearings and withholding information about the sale from the public and certain Councilmembers."[3]

Although the Report does not conclude that the City violated the Brown Act (the state's primary transparency statute) — and, in fact, Orange County Superior Court Judge David Hoffer specifically found that there were no violations of the Brown Act after a full trial on the issue — the Report nevertheless concludes that the City violated the "spirit of the Brown Act." In so concluding, the Report relies on the "following details" (repeated in the subheadings below) which OCGJ claims reveal a "sequence of events illustrating the City's persistent avoidance of transparency on this important matter."

1. City Council Meeting to Discuss Memorandums of Understanding (MOUs), 2013

OCGJ references a City Council meeting that took place more than nine years ago in which the Council at that time voted to extend by 2.5 years the Angels' unilateral right to terminate the lease of the stadium property. The meeting was a regularly scheduled Council meeting as part of a Council-approved meeting calendar, at which then-Mayor Tom Tait voted "no" due, in part, to his desire for greater advance notice of the meeting because of the Labor Day holiday the Monday immediately before the meeting and his desire for additional time for public input.

The preceding holiday aside, the City met all Brown Act requirements for the regularly scheduled 2013 meeting. The City today as a practice does not schedule meetings around major holidays. The City agrees that complying with the Brown Act's notice requirements is essential to keeping the public informed about important City business. The City, however, disagrees with the inference that the procedural actions of an entirely different City Council and administrative staff nearly a decade ago have any bearing on the City's most recent agreements with the Angels regarding the disposition of Angel Stadium, or that they evidence a pattern of conduct today.

2. Council Appoints Mayor Sidhu Sole Negotiating Team Representative, July 16, 2019

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[2] See Report at p. 3.
[3] Id.

The Report refers to the Council's action on July 16, 2019, appointing then-Mayor Sidhu as the Council's exclusive representative to work in conjunction with City staff for negotiations with Angels Baseball. According to the Report, because of this action, "some Councilmembers found it very challenging to obtain expected detailed and factual negotiating updates from Mayor Sidhu or City Staff."[4]

The Council voted 5-2 to select one of its own members to participate in negotiations, with Council Members Moreno and Barnes dissenting. In retrospect, considering the information so far revealed in the FBI investigation, it appears that the former mayor abused his involvement in negotiations for potential political gain.

Regardless, from a legal standpoint, having an elected official participate in negotiations with a third party is not unprecedented. In fact, the Brown Act expressly anticipates that members of a legislative body can and will partake in real estate negotiations on behalf of the local agency that they represent. According to the Brown Act section dealing with real property negotiations, "negotiators may be members of the legislative body of the local agency."[5]

The Report suggests that, in the future, "the City should appoint more than one Council representative to any negotiating committee, short of a quorum." The City finds this suggestion unusual, in light of the concern expressed by OCGJ that Council Members may be unduly influenced by politics during negotiations, including by political contributions they may have received. Given that concern by OCGJ, it would seem that a group of negotiators that includes two elected officials would be doubly politicized as a group that includes just one.

Nonetheless, the City agrees that the participation of elected officials in direct negotiations with third parties could potentially infuse politics into business arrangements to the detriment of the City. On the other hand, there could potentially be valid reasons for a Councilmember to participate in negotiations. For example, an elected official might be in a better position than City staff to advise on how certain deal terms will be received by constituents. Moreover, a City Council might conclude that one or more of its members has unique professional experience and expertise that would be valuable in negotiations. Although it is the policy body's discretion and prerogative to appoint members of the Council to negotiate potential deals, the City also believes that the typical option is to allow negotiations to be handled at the staff level, with periodic briefings for more complex or high-profile matters to members of the Council as needed.

Anaheim is a City Manager form of government. Under the City Charter, the City Manager is deemed "the chief administrative officer and head of the administrative branch of the City Government" and is "responsible to the City Council for the proper administration of all affairs of the City."[6] Furthermore, "neither the Council nor any of its members shall interfere with the execution by the City Manager of his or her powers and

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[4] See Report at p. 9.
[5] Cal. Gov't Code § 54956.8
[6] Anaheim City Charter Section 604.

duties."[7] As such, given the Anaheim City Charter, the City Manager should retain primary authority in negotiations.

The City acknowledges that some Council Members have raised a concern that the number of updates regarding the course of negotiations were sparse. The City agrees that more briefings with Council would have provided more awareness by the Council of some of the details and progress of the negotiations.

That said, the Council did receive four closed session briefings, between August and December 2019, to discuss the appraised value of the stadium property and the "price and terms of payment" of any proposed deal.[8] In addition, almost three months prior to the first negotiation session held by the City and Angels Baseball on November 15, 2019, the Council discussed at a public meeting held on August 27, 2019, various alternatives that Council Members would like to see in a final deal with the Angels. The item was agendized as "Discussion of potential negotiating considerations that could be a part of a future agreement with Angels Baseball regarding the Angel Stadium of Anaheim property."[9] Surprisingly, the Report makes no reference to this August 27, 2019, agenda item and discussion.

Approximately 16 members of the public provided input regarding the stadium item during the public comment portion of the August 27, 2019, meeting. The Council itself also discussed the item among themselves for about an hour. The considerations raised by the Council included keeping the Angels in Anaheim with a deal that benefits the City, receiving fair market value either in a sale or pursuant to a lease, community benefits (such as parks and open space), and affordable housing.[10]

The Council Members did not agree on every aspect of "negotiating considerations." For example, there was debate on when the confidential appraisal should be publicly released[11] and whether the fair market value should be based on encumbered or unencumbered land.[12] At the same meeting, staff confirmed that the City had yet to receive a proposal from the Angels,[13] and then-City Manager Chris Zapata advised that he would disclose any negotiation information in future City Manager updates.[14]

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[7] Anaheim City Charter Section 607.
[8] See City Council Agendas dated August 13, 2019 (Item 4); September 24, 2019 (Item 5); November 19, 2019 (Item 1); and December 3, 2019 (Item 3).
[9] City Council Aug. 27, 2019, Agenda, Item 33.
[10] City Council Aug. 27, 2019, Minutes at p. 19-20.
[11] A real estate appraisal in an ongoing sales negotiation is not considered a public record under the California Public Records Act. Cal. Gov Code §6254(h).
[12] City Council Aug. 27, 2019, Minutes at p. 19-20.
[13] Id. at p. 20.
[14] Id. at p. 19.

To that end, City Manager Zapata publicly announced during his "City Manager's Report" at the November 5, 2019, City Council meeting that a negotiation with the Angels and City would take place November 15, 2019.[15]

Indeed, on November 18, 2019, the first workday after the initial negotiation session with the Angels, the City Attorney provided to the entire Council a detailed list of key deal points raised by the Angels at that initial session. The very next day at the November 19, 2019, City Council meeting, the Council discussed in closed session the "price and terms of payment" for the proposed transaction, pursuant to the Brown Act.[16]

Over the next several weeks, the City's negotiators attempted to reach a deal with the Angels, and subsequently with SRB Management, a special purpose entity controlled by the ownership of the Angels. Finally, the proposed purchase and sale agreement ("PSA") with SRB was scheduled as the only agendized item at a special Council meeting on December 20, 2019. The meeting lasted more than eight and a half hours,[17] and is discussed below.

3. Anaheim City Council Special Meeting of December 20, 2019

Under the Brown Act, special Council meetings require only 24 hours' notice while a regular meeting of the Council requires at least 72 hours' notice. Far exceeding such minimum notice requirements, however, the City provided two weeks' notice of the Council's special meeting to consider the PSA for the City's proposed sale of the Stadium Property to SRB. In conjunction with publishing notice of the special meeting in the Orange County Register on two consecutive weeks (December 6, 2019, and December 13, 2019),[18] the City also made the draft PSA available for public review beginning on December 6, 2019.

The Report acknowledges that, "[w]hile the City may have complied with the letter of the Brown Act by posting the meeting notice well in advance of the meeting date, it failed to proactively promote public participation by not conducting community workshops or other educational opportunities that would have engaged the community on such a significant issue."[19]

The City disagrees that the City did nothing to go beyond the requirements of the Brown Act in preparation for the December 20, 2019, special meeting. For example, the City conducted two informational meetings between December 6 and December 20 to explain aspects of the proposed sale to the public. Such informational meetings are not required by the Brown Act. At each meeting, between 20 and 30 members of the public participated and City staff were present to answer any questions.

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[15] City Council Nov. 5, 2019, Minutes at p. 5.
[16] City Council Nov. 19, 2019, Agenda, Item 1.
[17] City Council Dec. 20, 2019, Minutes.
[18] The notice of two weeks was in compliance with Government Code Section 52201, allowing for economic opportunity sales of government land.
[19] Report at p. 10.

Even with these additional facts regarding the City's efforts to provide the public with information beyond the requirements of the Brown Act, OCGJ may still have concluded that more could have been done, and the City acknowledges that more can always be done. But exceeding Brown Act requirements would seem to buttress a perspective that the City has taken seriously its commitment to keeping the public informed about the City's business.

It should also be noted that the Council's action taken on December 20, 2019, to approve the proposed purchase and sale agreement remained contingent on the outcome of still more negotiations with SRB. As then-City Manager Zapata stated at that meeting, if the Council directed staff to proceed, "staff would begin a multistep process for continued negotiations."[20] As acknowledged at the December 20, 2019, meeting, the transaction was contingent on the City and SRB reaching agreement on a disposition and development agreement, a lease assignment, and an Angels commitment agreement, all of which were months away from being finalized.[21] To the extent either Council Members or members of the public opposed the prospective sale, the long duration and significant scope of ongoing negotiations provided abundant future opportunities and time to express concerns and present arguments for why the Council should not move forward with the transaction, and such concerns and arguments were given significant airing over the course of several Council meetings, many of which were several hours in duration.

4. People's Homeless Task Force Orange County Versus City of Anaheim and SRB Management Company, LLC

The Report notes that the People's Homeless Task Force Orange County (PHTFOC) filed a lawsuit on February 28, 2020, against the City alleging various Brown Act violations. In reviewing the assertions made by PHTFOC, OCGJ states that it only reviewed the papers submitted by PHTFOC.[22] OCGJ apparently did not review the papers submitted by the City in defense of its Brown Act compliance, nor did it review the Order from the Orange County Superior Court ruling in favor of the City on all claims. Indeed, this whole section of the Report relies upon allegations (including quotes from PHTFOC attorney Kelly Aviles) that were disproven in a proper trial before Orange County Superior Court Judge David Hoffer. By failing to consider either the City's responsive evidence, or the Court's actual findings in which the allegations of PHTFOC were rejected, the City is concerned that OCGJ's findings and recommendations are not based on the best evidence concerning the propriety of the City's actions.

It seems OCGJ is casting doubt on Judge Hoffer's comprehensive decision for two reasons. First, the Report states that the Judge's ruling "rel[ied] in part on the testimony of then-mayor Sidhu." This is false. There was no sworn testimony submitted by the former mayor, and there is nothing in Judge Hoffer's opinion indicating that he relied on any such testimony. The citation for this alleged fact by OCGJ is a Voice of OC

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[20] Minutes of December 20, 2019, Meeting, at p. 1.
[21] Id. at p. 4.
[22] Report at p. 4.

article, dated January 28, 2022, entitled "*Anaheim Fights Back Against Lawsuit Alleging Officials Secretly Conspired to Sell Angel Stadium.*" Yet nothing in this article indicated that the Judge's ruling was based in part on then-Mayor Sidhu's testimony, nor could there be for the article preceded the Judge's ruling by two months.

Second, the Report notes that PHTFOC filed an appeal of Judge Hoffer's decision. Specifically, the Reports states, "Given the recent media attention to the FBI's investigation into Mayor Sidhu's alleged witness tampering and negotiating irregularities, and the City Council's subsequent decision to void the sales agreement with SRB, the PHTFOC filed an appeal to this ruling in May 2022 which remains pending at the time of this report."[23] Although the City acknowledges that an appeal was filed, that fact is immaterial, as any litigant displeased with a trial court judgment has the right to do so, irrespective of the merits of such appeal. To that end, it bears noting that although PHTFOC was given an opportunity to submit objections to the Court's detailed written decision, it did not do so.

In reviewing Judge Hoffer's decision, the appellate court will be bound by strict standards of appellate review, irrespective of whether it agrees with Judge Hoffer's decision. Consistent with those rules limiting the scope of appellate review, the record on appeal will be limited to documents and testimony the parties presented to the trial court. As distasteful as the facts alleged in the FBI investigation may be, they were not before the trial court and will not be considered by the appellate court.

Moreover, even if the new allegations raised pursuant to the FBI investigation could be considered by the appellate court, they nevertheless would not impact the claims PHTFOC made in its litigation filings. PHTFOC never asserted that conflicts of interest or disclosures by the mayor either occurred or constituted violations the Brown Act, and in fact, the Brown Act does not address these types of issues.

Regardless, in the interest of transparency, the City is currently seeking an independent firm to investigate the issues raised by the FBI investigation, including whether members of the Council engaged in any illegal serial meetings.

5. Disposition and Development Agreement, 2020

The Report refers to the public hearing on the proposed development and disposition agreement ("DDA") between SRB and the City that was conducted at the City Council meeting on September 29, 2020. OCGJ's main concern about that meeting was the former mayor's verbal response to the concerns of then-Council Member Barnes to the effect that "the City Council decides what happens in the City and not the voters," which OCGJ says "contradicts the very intent of the Brown Act, as described by its preamble." While that may be true, what then-Mayor Sidhu said in this single exchange had no relation to the City's compliance with the Brown Act or its efforts to disseminate information needed to understand the transaction.

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[23] Report at p. 11.

6. Councilmembers Not Informed of the HCD Notice of Surplus Land Act Violations, June 2021

On May 3, 2021, the City received a "preliminary determination" letter by the California Department of Housing and Community Development ("HCD") opining that the City may have taken action in violation of the Surplus Land Act ("SLA"). OCGJ points out that only two members of the Council, Mayor Sidhu and Council Member Avelino Valencia, were aware of the preliminary determination prior to June 24, 2021, when the Los Angeles Times reported on it.[24] OCGJ found it "concerning that certain Council Members were uninformed about the SLA letter and the negotiations taking place between HCD and the City until seven weeks after the fact."[25]

The City is well aware of this concern, as City staff was questioned openly and extensively at a public meeting on July 20, 2021, regarding the facts and procedures surrounding the preliminary determination letter.[26] Explanations of the staff's actions are provided in great detail in the meeting minutes, and were based on the perspective that HCD's determination was preliminary and part of an administrative process over which the City Manager has authority, and that robust Council briefings would be called for were HCD to make a future final determination of a violation.[27]

Nonetheless, the City agrees that the issue of properly keeping Council Members informed of meaningful developments is a valid concern raised by OCGJ.

7. Weaponizing City Council Policy 1.6

OCGJ criticizes two Council policies, neither of which is in place any longer, regarding agendizing items. As background, every public agency has some method for items to be placed on a future agenda. At some agencies, members of the legislative body can easily place their policy items on an agenda. Other agencies put in place a more elaborate vetting process to ensure that agendas are not overly burdened with policy matters lacking public or legislative support, but that nonetheless require hours or days of staff time to prepare. For example, in the City of Irvine, agenda items must either be jointly initiated by two councilmembers or by a councilmember and the mayor, and must be presented in a memorandum to the city manager, with a copy to the mayor and city council, either one or two weeks prior to the next scheduled council meeting, depending on whether a staff report is required.[28]

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[24] Because the preliminary determination letter was part of an ongoing administrative review by HCD, it was not a public record at the time that the LA Times published it. The California Attorney General's Office agreed with this position and did not make the preliminary determination letter publicly available at that time.

[25] Report at p. 13.

[26] Minutes of July 20, 2021, City Council Meeting at pp. 34-40.

[27] Under the Surplus Land Act, agencies have 60 days after receiving a *final* Notice of Violation to respond to it. HCD Guidelines §500(c)(2). The City did not receive a final NOV until December 8, 2021.

[28] Irvine City Council Policy and Procedures Manual at p. 6.

The Report references action taken by the Council in 2013 in which the mayor was stripped of the power to agendize matters independently outside of a public meeting. That policy was revoked by the Council in 2016 and the mayor has had that independent agendizing authority since then. It may be the case that whether one agrees with this policy or not may depend on whether one supports the mayor in office at any given time.

The Report further criticizes the policy as it existed from 2020 to just recently pursuant to which a Council Member required the support of at least two other Councilmembers to agendize an item. As of June 21, 2022, that policy has been revoked and now Council Members may independently agendize future agenda items without the need for support from other Councilmembers.[29]

B. Response to OCGJ's Discussions Regarding the Surplus Land Act

The Report spends several pages raising the prior allegations against the City regarding the Surplus Land Act. It is unclear how the rehashing of these arguments relates to the overall theme of "transparency." Nonetheless, the City will address the issues raised in the Report regarding the SLA, will clarify the record, and will respond to the policy recommendations that OCGJ makes regarding affordable housing.

In general, the Report's discussion of the SLA relies on subjective, untested legal allegations, without giving any credence to the City's legal response to HCD's claims or the underlying facts. The Report seems to assume that because HCD, a state department, made findings of SLA violations, then the allegations must be correct. The truth is that HCD and the City had a dispute as to whether the SLA was violated or not. And rather than fight that battle in court, HCD and the City were able to reach a compromised settlement.

In this regard, the City advises OCGJ to consider that while HCD is tasked with enforcing State housing laws, including the SLA, HCD is not the final arbiter for legal disputes regarding the interpretation of the SLA and/or state housing laws. Rather, the courts are the final arbiter of the law. (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1 ["The ultimate interpretation of a statute is an exercise of the judicial power ... conferred upon the courts by the Constitution and, in the absence of a constitutional provision, cannot be exercised by any other body".] Indeed, just recently in *Reznitskiy v. County of Marin* (2022) 79 Cal.App.5th 1016, the Court, in rendering its legal opinion, gave "little weight" to HCD's interpretation of the Housing Accountability Act which, just like the SLA, is within HCD's charge.

The City acknowledges that the issues surrounding the SLA and its application to stadium transaction are novel and complex. However, the discussion in the Report simply repeats HCD's unproven allegation without regard to a single argument (out of

[29] The exception is when the Councilmember wants to re-agendize items that have already been disposed of at a Council meeting within the prior six months. In that situation, the Councilmember would need the support of at least two other Councilmembers to re-agendize that item. (See City Council June 21, 2022, Special and Regular Agenda, Item 15.)

multiple arguments) raised by the City in defense of its compliance with state law: that is, that the City and the Angels were in a constructive exclusive negotiation arrangement prior to September 2019, and therefore the amended SLA with its 30% penalty provision did not apply to the transaction.

With respect to this particular argument, OCGJ's analysis is not sufficiently comprehensive. The Report repeats HCD's argument "that no substantial evidence of any exclusive negotiating agreement (ENA) with SRB Management, LLC existed prior to September 30, 2019" and points to the failed motion to enter into a formal ENA on January 15, 2019 as well as a representation made by the City in November 2020 that an ENA did not exist prior to September 2019.[30] But it is part of the public record that the reason for the City's delay in raising the defense of a "constructive" ENA argument is because HCD, in its multiple discussions with the City, failed to ever inform to the City that HCD recognizes "constructive" ENAs — not just formal written ENAs — when parties had raised this defense. Rather, the City on its own discovered an HCD opinion dated March 24, 2020, wherein HCD recognized the existence of a constructive ENA between the City of Santa Monica and a developer. The facts of the Santa Monica case were arguably far less persuasive than the facts of the Angel Stadium transaction about whether the parties were part of a constructive ENA, and a trial court might have so found had the parties decided to litigate the matter instead of entering into a settlement agreement.

Although the City certainly does not expect OCGJ to analyze every argument raised by the City in response to HCD's allegations, it would have been more comprehensive had the Report acknowledged at least one of the City's main arguments: that the City sold the stadium property, not under the auspices of the SLA, but rather under the authority granted by Government Code Section 52201, which allows public agencies to dispose of real property if the sale were to create an "economic opportunity" as defined under state law. As stated in Section 52201, the economic opportunity statute provisions, which require the finding of an economic opportunity after a fully noticed public hearing, are "an alternative to any other authority granted by law to cities to dispose of city-owned property." HCD completely disregarded this legal alternative to disposing of City land, and, unfortunately, OCGJ similarly overlooked this rationale.

OCGJ also seems to misunderstand the intricacies of the settlement that HCD agreed to with the City. First, regarding timing, OCGJ's characterization that the City's settlement with HCD was done "over the weekend" is misleading, suggesting that the settlement was negotiated over the course of two days. It is part of the public record that the City's settlement with HCD was negotiated over several months, and that the City Council was briefed on four separate instances in closed sessions from December 2021 through April 2022.[31] The City believes that the Council was well-informed on the status of settlement discussions throughout the entire several months-long process; the settlement was not simply cooked up over a weekend.

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[30] Report at p. 6.

[31] April 26, 2022, Staff Report for Special Meeting at p. 3.

While it is true the settlement was agendized as a special meeting "add-on" to the regular April 26, 2022, Council meeting, this procedure for approving the settlement was specifically advocated by the State Attorney General's Office, which was concerned about leaks that could overly politicize the settlement process.

Although some may take issue with the calling of a special meeting, the fact that the settlement was approved in a public meeting demonstrates a level of transparency far beyond Brown Act requirements. The Council would have been well within its rights under the Brown Act to approve the HCD settlement in closed session, but chose to approve it in open session instead.[32] In fact, the Attorney General's Office was initially surprised that the City planned to approve the settlement in open session,[33] having been used to public agencies approving such settlements in closed session as "anticipated litigation."

With respect to the substance of the settlement, the Report cites a member of the public's reference to the settlement agreement as a "shell game," and OCGJ credits this individual's characterization to "a series of confusing transactions." The Staff Report for the April 26, 2022, Council meeting clearly explains how the settlement was structured:

> The total amount of the investment in affordable housing through this settlement is reflective of the $123,677,843 amount that was originally credited to SRB in the Stadium sales transaction for onsite affordable housing. The intent of the parties is that Stadium deal will be restructured such that approximately $96M of the $123M credit will instead fund the housing trust, while the balance of the credit will be used to fund affordable housing on the Stadium site.[34]

So, while it is true that under the settlement, the City's investment in affordable housing remained the same as what was negotiated with SRB, the investment was divided between an onsite affordable housing component of approximately $47 million and a $96 million investment in a separate housing trust. The benefit to the City under this deal is that it kept the financial terms previously negotiated with SRB basically the same — in other words, the City would have no financial commitment greater than what had previously been negotiated with SRB. HCD's interest in settling on these terms was that it ensured that $96 million would go into a housing trust controlled by the City's Housing Authority, which would be committed to invest the dollars within five years into affordable housing throughout Anaheim, while being able to leverage the set-aside for even greater state and federal funding.

Moreover, the Report suggests the City should have done more to create affordable housing. But the Report fails to address the fact that the stadium property is encumbered by a lease to the Angels that gives the Angels exclusive control over the

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[32] Cal. Gov. Code §54954.9; *Trancas Property Owners Ass'n v. City of Malibu* (2006) 138 Cal.App.4th 172, 184.

[33] Minutes of April 26, 2022, Special Meeting at p. 7.

[34] April 26, 2022, Staff Report for Special Meeting, at p. 3.

property until as late as 2038 — the City could not (and still cannot) build housing on that land unless and until the Angels consent to it. In addition, the Report did not acknowledge that the deal negotiated with SRB (and later the settlement with HCD) would have resulted in development of the stadium property to include a significant amount of affordable housing (development that could not occur under the lease). In fact, the City sought and required from the start of negotiations that a minimum of 15% of the first 3,105 homes built on the stadium site be affordable apartments for very low, low and moderate (workforce) income households. The City's minimum requirement of 466 affordable units onsite and further encouragement of as much as 777 would have in either case been the largest one-time expansion of affordable housing in the City's history. We share the Report's focus on affordable housing and would have welcomed explanation of why the City's effort to secure affordable housing as part of a proposed stadium site sale was deemed insufficient.

FINDINGS:

Finding 1: *The City of Anaheim demonstrated persistent lack of transparency and rushed decision-making in its handling of the Stadium Property transactions, exacerbating distrust by the public, State and local government officials, and even some members of its own City Council.*

Response: The City agrees that the timeframe between the Angels' initial offer to buy the property and the Council's decision to approve the initial PSA was an accelerated timeline. The City also agrees that it was consistently accused of being less than transparent by some members of the public and by some members of the Council. However, the City disagrees that it demonstrated a "persistent" lack of transparency based on the evidence discussed in this report. Independent of the former mayor's actions not subject to the Report, the City believes it did the best under the circumstances to provide transparency beyond the requirements of the Brown Act, fully realizing that there is always an argument that more could have been done. (See Sections A.2, A.3, A.4 and A.6, above) As such, the City partially disagrees with this finding.

Finding 2: *The City's failure to timely disseminate and/or develop critical documents and information related to the Stadium Property transactions resulted in uninformed decision- making by the City Council.*

Response: The City agrees that the timeframe between the Angels' initial offer to buy the property and the Council's decision to approve the initial PSA was an accelerated timeline. However, the City disagrees that critical documents were not timely developed or disseminated or that the Council's decision was uninformed based on the evidence discussed in this report. (See Sections A.2, A.3, A.4 and A.6, above.) As such, the City partially disagrees with this finding.

Finding 3: *In conjunction with its alleged violations of the Surplus Land Act, the City limited creative affordable housing strategies with the Stadium Property transactions.*

Response: Had the City sent notices of availability of the property pursuant to the SLA (even though the City's position is that it was not legally required to do so), it is remotely possible the City would have received some proposals from affordable housing developers who were willing to buy the stadium property, assume all of the City's obligations with respect to owning and maintaining Angel Stadium (including contributing millions of dollars toward capital improvements), and then potentially wait up to 18 years to develop the site, once the Angels no longer had a property interest in the land.[35] However, it is more likely that no proposals would have been received in light of the Angels' right to control the property until 2038. Further, the original stadium transaction would have included a 15% set aside of affordable apartments for very low, low and moderate (workforce) income households onsite with a minimum requirement of 466 affordable apartments and potentially as many as 777. This commitment to affordable housing on the stadium property was a priority from the beginning of negotiations and would have represented the largest one-time expansion of affordable housing in the City's history. (See Section B, above.) As such, the City partially disagrees with this finding.

Finding 4: *On multiple occasions, the City Council majority blocked the Council minority from adding items to its agenda relating to the disposition of the Stadium Property, stifling public discussion about the pros and cons of such a significant land transaction.*

Response: The City partially agrees with this finding. The City agrees that there were multiple occasions when some Councilmembers attempted to add items to the agenda relating the Stadium transaction, and that they failed to receive the support of at least two other Council Members thus resulting in the items not being agendized. However, there were multiple opportunities for public discussion about the pros and cons of the stadium transaction. (See Sections A.2, A.3, A.4 and A.6 above.) Some can rightfully argue that there could have been even more although countless hours were devoted to public hearings and discussion of various aspects of the proposed transaction and development project.

RECOMMENDATIONS:

Recommendation 1: *Any future agreement regarding the City's disposition of the Stadium Property should allocate low and very low-income affordable housing units for the local workforce including individuals who work in the entertainment, leisure, hospitality, and health services industries. (F3)*

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[35] See Los Angeles Times, "To Bid or Not to Bid? With Angel Stadium sale in limbo, Anaheim is on the clock," by Bill Shaikin, Dec. 20, 2021.

Response: As a policy matter, the City intends to require that affordable housing remain a component of any future redevelopment of the stadium property, in accordance with state affordable housing guidelines and requirements. Additionally, as previously mentioned, the original stadium transaction included a 15% set-aside of affordable housing units for very low, low and moderate (workforce) income households to be built on the stadium property. Under the law, the City likely cannot mandate preferential job categories for occupants of such housing, but anticipates that many workers in the categories listed would be eligible for such affordable housing units. Before moving forward with any such preferences, the City would be sure to do a more thorough analysis of the benefits and impacts of such a policy preference.

Recommendation 2: *By December 31, 2022, the City Council should develop and implement guidelines to ensure a minimum 30-day period of public analysis and Council discussion of any public property sale and/or lease transactions. (F1, F2, F4)*

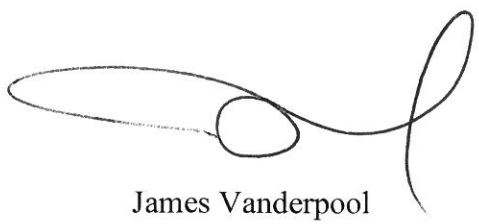
Response: As a practical matter, public property sales and/or leases of significance typically involve multiple Council and Planning Commission meetings, extended over the course of one or more months; indeed, private sector participants typically express a desire for public entities such as the City to move more quickly than is customary in such matters. Nonetheless, the City must retain the flexibility to conduct City business on a variety of timeframes, so long as it remains committed to complying with Brown Act and other legal requirements; wherever feasible, a review and analysis period of at least 30 days can be implemented. As to the stadium property itself, and in light of the facts that have been recently exposed, the City will commit to ensure that any future transaction regarding the Stadium will be made public at least 30 days before Council action.

Recommendation 3: *By October 4, 2022, the Anaheim City Council should revise Policy 1.6 so that any member of the City Council may place an item on its regular meeting agenda.*

Response: This recommendation was implemented on June 21, 2022, (prior to receipt of the Report) via the Council's passage by unanimous vote of a resolution amending Council Policy 1.6 to allow any member of the City Council to request that an item be placed on a future City Council regular meeting agenda during the Council Agenda Setting portion of a City Council meeting.

I would like to express my appreciation for the effort of the Orange County Grand Jury and appreciate the opportunity to submit these comments.

Sincerely,



James Vanderpool
Anaheim City Manager