

OFFICE OF
BOARD OF SUPERVISORS

810 COURT STREET * JACKSON, CA 95642 (209) 223-6470 * FAX (209) 257-0619



August XX, 2016

The Honorable J.S. Hermanson
Presiding Judge, Superior Court
County of Amador
500 Argonaut Lane
Jackson, California 95642

**Re: Response by the Amador County Board of Supervisors
2015-2016 Grand Jury Special Investigation – Health and Human Services Building Lease**

Dear Judge Hermanson:

Following is the response of the Amador County Board of Supervisors to the above-referenced Grand Jury Report.

As an initial matter, the Board of Supervisors expresses its complete dissatisfaction with not only the inaccurate and unsupported conclusions reached by the 2015-2016 Grand Jury, but also the apparent unobjective and targeted manner in which it conducted its investigation regarding the Health and Human Services Building Amended Lease. Throughout its Report, the Grand Jury has made serious and potentially damaging allegations regarding current and former County elected and appointed officials, and employees without sufficient supporting evidence. It has disregarded sufficient and credible evidence to the contrary and instead relied on its own unsupported, unreasonable conclusions. In doing so, the Grand Jury has done a disservice to not only the County and the identified individuals, but more importantly, the public. It has inexcusably violated the trust and authority afforded to the Grand Jury.

Rather than sticking with factual findings that it is willing to stand behind, this Report merely contains insinuations of improper conduct. These insinuations have unnecessarily and inappropriately created an atmosphere of mistrust among the public toward its elected officials, as is readily apparent by reviewing comments on social media. These unproven and unsubstantiated accusations are insulting and slanderous to the reputation of elected officials and staff. The Grand Jury should be held to stricter guidelines.

Finding #1: The Grand Jury did not find any compelling nor financially sound reasons in the March 4, 2008 HHS building lease to justify why the HHS Director, the County Counsel, the CAO and all County Supervisors decided to amend the October 17, 2006 HHS building lease. The March 4, 2008 HHS building lease significantly increased the value of the HHS building to the LLC (the original property owners.) The LLC sold the HHS building for \$3.3 million over the assessed value shortly after the renegotiated lease was approved.

Response: The Board of Supervisors partially disagrees with Finding #1.

Finding #1 actually includes three separate and distinct assertions (1) that the Grand Jury does not believe there were either compelling or financially sound reasons to enter the lease amendment, (2) that the lease amendment “significantly increased” the value of the HHS Building, and (3) that the LLC sold the building for \$3.3 million over the assessed value shortly after the lease amendment was approved. With respect to the first assertion, the Board of Supervisors wants to formally acknowledge what it understands most of the individual Supervisors have already stated individually, which is that given the benefit of hindsight, the County should have attempted to negotiate better terms, particularly with respect to the amount of rent that would be paid during the additional 5 years. Nevertheless, the Board of Supervisors disagrees with the Grand Jury’s contention that there were no valid reasons to enter into the lease. The County was facing significant budget shortfalls and hoped to avoid layoffs. The Amended Lease changed only two things of substance from what was contained in the original lease—it extended the original term an additional 5 years, and removed a conditional termination clause that, as will be discussed later in these responses, likely could not have been exercised by the County to terminate the lease even if it had remained. In exchange for those changes, the County received \$400,000 that was dedicated to the Realignment funds in return for the additional risk associated with the removal of the conditional termination clause, regardless of how unlikely it was that the clause could be successfully triggered, as well as for the extension of the lease for five years. In response to the 2013-2014 Grand Jury Report, the County acknowledged that these funds should have been identified in the lease and future agreements will follow that practice.

In a somewhat simplified analysis where one assumes a net rate of return of 3% over the remaining 15 years of the lease as of 2008, the value of the \$400,000 becomes \$623,187, which would be a rent reduction of \$124,637 per year over the five year extension. This is an 8.7% reduction in rent from what was being paid in 2008, which cannot be categorized as not “compelling or financially sound” simply because it was taken as a lump sum rather than in annual future payments. Staff at the time considered this to be sufficient compensation for the extension and recommended it as such to the Board. Current staff may disagree with that recommendation, but there was some financial reason to enter into the extension, and the Board of Supervisors accepted the recommendation of their professional staff at the time.

As to the second and third assertions, it appears that the Grand Jury is suggesting that the Amended Lease alone increased the “value” of the HHS Building by \$3.3 million. To the extent that is the intent of the finding, the Board of Supervisors disagrees. Although it is reasonable for the Grand Jury to conclude that the Amended Lease may have had some impact on what a buyer might be willing to pay for the building, there is no definitive evidence, and therefore no valid basis to conclude that the Lease Amendment caused a \$3.3 Million increase in the value of the HHS Building. It appears that the Grand Jury relies only on the fact that there were two different assessed values, which occurred at different times, for different reasons, and were based on different information.

The Grand Jury’s reliance on the different appraised values indicates that the Grand Jury lacks a clear understanding of how real property is assessed for tax purposes at different times, (i.e., following new construction versus following a sale—with the former being merely an estimate of value by the Assessor’s Office based on a variety of factors, and the latter generally being based on the

actual purchase price paid on the open market). As a result of the application of Proposition 13, assessed values rarely correlate directly with market values. It is not uncommon that such assessments are different, and the difference does not establish that the increase was the result of the Lease Amendment. **Rather than making further inquiry in order to determine whether other factors could explain or contribute to the change in assessed values, the Grand Jury, as it does throughout this report, jumps to an unreasonable inference apparently because it supports their preferred or predetermined conclusion that has no factual basis as demonstrated by its insignificant findings.**

Ultimately, however, there is no evidence whatsoever that any elected or appointed County official or employee was aware of the pending sale or benefitted in any way as a result. So, whether the amendment had any effect on the subsequent sales price, and to what extent, is irrelevant.

Finding #2: The HHS Director, the County Counsel, the CAO, and all the BOS' actions exposed the County to unnecessary financial risk. All of them agreed to eliminate the mandated early termination clause contingent on available State and Federal funding, and to increase the term of the HHS lease from 15 years to a guaranteed 20 years even though all of them knew that the contracts with the California Department of Mental Health and Department of Drug and Alcohol contracts had termination clauses contingent on available State and Federal funding.

Response: The Board of Supervisors wholly disagrees with Finding #2.

The Board of Supervisors disagrees with the assertion that the County was exposed to “unnecessary financial risk.” First, as already indicated above, there were valid reasons for entering into the Amended Lease. Further, while the County recognizes that the State could, theoretically, terminate certain contracts with the County at any time contingent on the availability of state and federal funds, there is an important difference between whether something is theoretically possible, and whether it is likely to occur. The Board contends that there was, and is no reasonably foreseeable risk that the State agreements, or the associated funding, would be terminated.

The conditional termination provision contained in the October 17, 2006 Original Lease provided for early termination by the County on or after July 1, 2015 only if “(i) there is a cancellation or reorganization of the programs housed in the Premises, or (ii) the funding, whether County, State or Federal for the program or agency for which the Premises were leased is materially reduced or withdrawn”. Therefore, even under the original lease, the County was prohibited under any circumstances from terminating the lease for the first 8 years and 9 months of the lease.

Although very critical of the fact that the Amended Lease removed the conditional termination clause, the Grand Jury apparently takes no issue whatsoever with the fact that even under the original lease, there was effectively no termination clause in effect for almost the first 9 years. The Grand Jury also fails to identify any specific facts that would support its conclusion that there is unnecessary financial risk. For example, there is no discussion whatsoever of whether, at any time on or after July 1, 2015, there have been any circumstances that would allow the County to justifiably and legally terminate the lease, or whether such events might be likely to occur in the future. Rather, it appears that the Grand Jury relies only on the mere fact that, on paper, such an event could occur, as opposed

to evaluating the realities of such funding being withdrawn or significantly reduced. The County contends that no event has occurred that would allow the County to validly terminate the lease, and that it is not reasonably likely that any will occur in the foreseeable future. As before, it appears that the Grand Jury has chosen to use a particular fact, here, the fact that the conditional termination clause was removed from the lease, to reach its desired conclusion, rather than conduct an objective and comprehensive review of the entire situation and to write the report accordingly.

The Board of Supervisors also disagrees with the portion of Finding #2 that suggests that current or former elected officials and staff “knew” at some unspecified time (presumably at the time of the approval of the Amended Lease), that the underlying funding agreements with the State of California had clauses that allowed for termination in the event that the state or federal funding went away. It is not reasonably possible for the Board of Supervisors to accurately respond to the allegation that specific individuals, many of whom are no longer with the County, did or did not have knowledge of a specific fact at some specific time approximately 8 to 10 years ago.

In addition, the Grand Jury has failed to provide sufficient evidence to establish actual knowledge by the identified individuals. There is a significant difference between whether a fact is objectively true, such as whether a particular provision is contained in a contract, versus whether any particular person has specific knowledge of that particular provision at one or more specific points in time. While the Grand Jury has established that certain provisions exist in various agreements, which the County has acknowledged, it would require much more evidence to establish that an individual had actual knowledge of something at a particular time, which the Grand Jury has completely failed to do.

The purpose of calling attention to the insufficiency of evidence regarding the allegations of actual knowledge is not to be overly technical in responding to Findings, but more importantly because, throughout its report, the Grand Jury consistently goes beyond merely making assertions that some action or decision was a violation of some particular agreement or policy, or even perhaps that someone “should have known” of some particular provision. Instead, the Grand Jury actually asserts, or more often actually only insinuates, that some improper conduct was intentionally done with knowledge, at that time, that the conduct was contrary to some agreement or policy. Throughout the County’s Response, the Board responds to all of the Grand Jury’s specific findings, but the Board also wants make it very clear that it emphatically disagrees with any assertion or insinuation that there was any intentional or knowing improper or illegal conduct on behalf of any current or former County employee or elected official, and that the Grand Jury report is completely lacking in any evidence sufficient to establish as such.

Finally, the Board of Supervisors also disagrees with the portion of Finding #2 that suggests that any early termination clause was required. It was not. The only basis for this assertion by the Grand Jury is its incorrect interpretation of County Policy 5-100. As discussed in more detail in response to Findings #9 and #12, Policy 5-100 simply does not apply to this or any other lease of real property, and even if, by some stretch of the imagination, Policy 5-100 was generally applicable to leases of real property, it would not have prohibited the Board of Supervisors from nevertheless agreeing to delete the termination clause because the Policy is not applicable to the Board of Supervisors.

Finding #3: Prior to March 4, 2008, the HHS Director, the CAO, the County Counsel and the BOS knew the California Department of Mental Health had restored funding to the County's Department Mental Health's Proposition 63 realignment funds and that the State could terminate its contracts with the County at any time contingent on the availability of State and Federal funds.

Response: The Board of Supervisors partially disagrees with Finding #3.

As previously indicated, the Board of Supervisors agrees that the State could, theoretically, terminate its contracts with the County at any time contingent on the availability of State and Federal funds. Those agreements with the State speak for themselves and would apply to the extent they are actually relevant. However, there is an important difference between whether something is theoretically possible, and whether it is likely to occur. The Board contends that there was, and is no reasonably foreseeable risk that the State agreements, or the associated funding, would be terminated. This distinction is apparently either not important to this Grand Jury or not convenient because it does not support its desired conclusion.

With respect to the portion of the finding that the California Department of Mental Health restored funds to the Proposition 63 Mental Health Services Act funds, those funds were then, as they are now, subject to annual allocation through the budget process based on the amount of revenue generated by the voter approved 1% tax on individuals with taxable income in excess of \$1,000,000. The likelihood that the State of California will suddenly discontinue those allocations one year without warning is quite absurd. The level of infrastructure and personnel that have been established and committed to providing these services throughout the State is astounding, and simply discontinuing those services one year would be catastrophic to every County in this State. It is extremely unlikely to occur, and quite possibly would be illegal for the Legislature to not comply with the Act.

Finally, as more thoroughly discussed in response to Finding #2, the Board disagrees with this finding to the extent it alleges that the identified individuals actually "knew" of the alleged facts prior to March 4, 2008. In addition, the Grand Jury has completely failed to include sufficient evidence to establish Finding #3.

Finding #4: Prior to the March 4, 2008, Board of Supervisors meeting, the CAO, the HHS Director, the County Counsel, and all the County Supervisors knew that the contract between the County and the California Department of Mental for MHS Proposition 63 funds prohibited any executive officer or employee of the County or an elected official in the County to solicit or accept money or any other consideration from a third person, for the performance of an act reimbursed in whole or in part by the County or State.

Response: The Board of Supervisors partially disagrees with finding #4.

Again, to the extent that this finding claims that certain County employees and elected officials actually "knew" of this particular contractual provision, the Board disagrees and contends that the Grand Jury report fails to provide sufficient evidence to support the allegation that all of the individuals had such actual knowledge. (See the response to Finding #2 for further discussion of this point).

The remainder of Finding #4 sets forth the substance of the first sentence of paragraph 3(b) of Exhibit B to the identified contract between the County and the State of California. The Board agrees that the referenced agreement contains that provision. However, it should be pointed out that after calling specific attention to this contractual provision, the Grand Jury fails to explain, either in another finding or in the body of its Report, why it thinks it is relevant, or what conclusions, if any, it reached with respect to this contractual provision.

It appears that perhaps the Grand Jury is attempting to incorrectly imply that the County's acceptance of the \$400,000 payment was somehow prohibited by that contractual provision. Nothing could be further from the truth, and the fact that the Grand Jury was unwilling to actually allege that it was a violation is clearly an admission by the Grand Jury that it is not a reasonable conclusion. That provision has absolutely no applicability to the payment received by the County in connection with the Amended Lease. In addition, all of \$400,000 that has been expended has been used properly and in connection with the various departments located within the HHS Building that receive Realignment funds. Once again, the Grand Jury relies on insinuation to imply wrongdoing rather than overtly calling out a particular violation – an inappropriate and misleading tactic for a group that so ironically claims that “the rules do matter”. Perhaps the next Grand Jury should investigate the conduct of the current Grand Jury and try to determine why and how it has reached such unsubstantiated conclusions.

Finding #5: But for accepting the \$400,000 cash payment and the \$500,000 in other consideration from the LLC to eliminate the County's termination clause based on available County, State, and Federal funding, the County would have been able to renegotiate or terminate the 2006 HHS building lease starting in July 2015 if the Proposition 63 realignment funds were inadequate to fund Department of Mental Health programs.

Response: The Board of Supervisors wholly disagrees with this finding.

As an initial matter, County disagrees with the assertion that there was \$500,000 in other consideration to the County based on the elimination of the liquidated damage in the event of a conditional termination. The County acknowledges that it agreed to delete the conditional early termination clause and extend the minimum lease term for 5 years in exchange for a one-time \$400,000 payment. Since the only reason the County was required to pay the liquidated damages was in the event there was an early termination, and because, as noted, the early termination provision was deleted in its entirety in exchange for \$400,000, there simply is no reason whatsoever for the liquidated damages provision to remain, and its removal would certainly not constitute consideration to the County.

Further, this finding inaccurately misquotes the conditional termination language, which nowhere uses the term “inadequate.” Whether the Grand Jury's failure to accurately characterize this provision as part of this Finding was simply the result of carelessness, or was done purposely in order to support its desired conclusion is unclear. However, either way, the failure to properly describe and evaluate the exact language is inappropriate and wrong. The exact language, as already discussed above in the response to Finding #1, allows an early termination only if “(i) there is a cancellation or reorganization of the programs housed in the Premises, or (ii) the funding, whether County, State or Federal for the program or agency for which the Premises were leased is materially reduced or

withdrawn.”

Finally, and most importantly, under that provision, very specific factual circumstances would have to occur in order for the County to successfully terminate the HHS Building Lease. At the time of entering the Amended Lease, it was staff’s opinion that it was not reasonably likely that those circumstances would occur, and it remains staff’s opinion that none of those limited circumstances have occurred from July 1, 2015 to the present, nor are they reasonably likely to occur in the foreseeable future.

The Grand Jury’s attempt to reach this conclusion without any actual discussion or analysis of the relevant factors is not only inaccurate, but also inappropriate and irresponsible. It suggests that the Grand Jury is more concerned with reaching its desired conclusions, rather than objectively evaluating and reporting on the actual circumstances.

Finding #6: The HHS Director, the County Counsel, the CAO and the BOS knew there were other options to address Health and Human Services Agency’s FY 2007-2008 \$400,000 deficit. These options included but are not limited to: (1) Transfer funds from the County’s legitimate County Reserve Fund to cover any short falls relating to the HHS building rent payments; (2) Pursuant to California Welfare and Institutions Code Section 17600.20(a) pertaining to the transfer of realignment funds from one trust fund to another trust fund, the BOS should have transferred excess funds from the Public Health Trust Fund or the Social Services Trust Fund to the Mental Health Trust Fund; (3) Not fill vacant non-HHS departments’ positions funded by the County’s General Fund and use the salary savings from the General Fund to cover the shortfall at HHS. Laying off HHS employees would have been counter-productive because the State funded most if not all of the HHS agency’s salaries and benefits; (4) Since, the DHS Director, the County Counsel, and the BOS knew the County would be occupying the HHS building in early December 2007, the County could have given a 6 month notice to the Lessors of the Jackson buildings that the County was going to vacate the building in July 1, 2007; and (5) Use any combination of the four options.

Response: The Board of Supervisors wholly disagrees with Finding #6.

As discussed in more detail in the Board’s response to Finding #2, it is not reasonably possible for the current Board to respond specifically to this finding. In addition, this finding completely lacks any discussion or description in the report that would sufficiently support it. Despite any actual evidence, the Grand Jury was somehow, inconceivably able to determine that eight different current and former employees or elected officials specifically “knew” of the very specific options described in this Finding (and apparently also any number of combinations of the options, along with other unknown and unspecified options) at some specific unspecified time (or times) during 2007 and 2008. This Finding borders on being ridiculous.

However, to the extent the Grand Jury’s intent of this this list was not to assert actual knowledge by individuals, but merely to point out that other options were *potentially* available to close the 2007-2008 Fiscal Year budget, instead of, or in addition to, amending the HHS Lease in exchange for a \$400,000 payment, the Board would concede that point. Other options for closing the budget shortfall would have been available. But trying to establish exactly what any individual knew at

some specific time is not reasonably possible nor has it been done. There were certainly other options to close the budget gaps, and they were certainly utilized, as the entire \$400,000 that was received at that time has yet to be fully utilized. Approximately \$32,000 sits in that fund as of today. Obviously, other methods were found to balance the budget that were preferred.

Finding #7: The \$400,000 one-time cash payment the LLC paid to the County for the March 4, 2008 HHS building lease and the elimination of the \$500,000 penalty for terminating the October 17, 2006 lease before July 1, 2015, were not gifts or donations but were payment and consideration to the County to ensure that the Board of Supervisors would approve a 20 year guaranteed HHS building lease without the mandatory early termination clause contingent on available County, State or Federal funding.

Response: The Board of Supervisors partially disagrees with Finding #7.

As already discussed in response to Finding #5, the Board of Supervisors disagrees that removal of the liquidated damages provision was somehow either consideration or a benefit to the County. It would be illogical to keep language in a lease related to the consequences of early termination when there was no longer any early termination. Also already noted and discussed as part of the responses to Finding #2 and #9, the County disagrees with the portion of this Finding that suggests any termination clause was mandatory; it was not.

The Board of Supervisors agrees, however, that the \$400,000 payment to the County was consideration paid to the County in connection with the Amended Lease and was not a gift or donation.

Finding #8: If the LLC did not give the County the \$400,000 cash payment prior to the March 4, 2008, Board of Supervisors meeting the CAO, the County Counsel and two County Supervisors would have pulled the matter concerning the “Amended and Restated Lease Agreement” between the County and the LLC from the March 4, 2008 agenda.

Response: The Board of Supervisors agrees with Finding #8.

Finding #9: Since at least January 1997 to present, Amador County has had written policies and procedures to direct employees, department heads, executive staff and elected officials, including the Board of Supervisors, in acquiring property either by lease or by purchase. However, the HHS Director, the County Counsel, the CAO, and the County Supervisors chose to ignore them by deliberately keeping the GSA Director and Auditor from reviewing the March 4, 2008 HHS Building lease before the BOS approved the lease.

Response: The Board wholly disagrees with Finding #9.

The County does not have any policy that addresses acquiring property either by lease or by purchase. Given the fact that there is no such applicable policy, none of the identified individuals could possibly have “chose to ignore” a non-existent policy.

As described in its own report, both the General Services Director and County Counsel

provided sworn testimony to the Grand Jury indicating that Policy 5-100 regarding “Purchasing” does not apply to the leasing of real property. Not only did two long-time, experienced senior County management employees who commonly deal with purchasing issues on a weekly, if not daily, basis state under oath that there is no such policy, the 2013-2014 Amador County Grand Jury also determined that no such policy existed. Following its own independent investigation into the HHS Building Lease, the 2013-2014 Grand Jury specifically determined, in Finding #2, that “there are no written policies and procedures in [sic] to direct staff in acquiring property either by lease or by purchase.” In response to that Grand Jury Report, both the responsible Department Head and the Board of Supervisors agreed with that finding.

Nevertheless, the current Grand Jury contends that they apparently discovered evidence suggesting that Finding #2 by the 2013-14 Grand Jury was based on “misinformation or the lack of information.” The County wholly disagrees with that assertion and again refers to the Grand Jury’s proclivity towards ignoring evidence that contradicts their preconceived conclusions.

In its attempt to get around the sworn opinions of at least two experienced County staff, the agreement of the Board of Supervisors, and the express finding of the 2013-14 Grand Jury, the current Grand Jury appears to rely solely on an ambiguous definition of the term “contract” contained in the middle of Policy 5-100, which broadly and generically defines a contract as being an agreement under which the County expends funds that is enforceable by a court. The Grand Jury then leaps to its desired conclusion that since a lease would fit within that broad definition, Policy 5-100 must necessarily apply leases, and specifically the HHS building lease. In doing so, the Grand Jury conveniently also ignores the fact that nowhere within the 16 pages comprising Policy 5-100 can either the term “lease” or the term “real property” be found. They also ignore the fact that the types of guidelines one would reasonably expect to find in any policy regarding the leasing of real property are similarly non-existent. (*See* Appendix E of the 2013-14 Grand Jury containing an example of the leasing policy it recommended the County consider adopting.)

It is simply not possible for anyone to objectively read Policy 5-100, regarding the purchasing of goods and services, and to conclude that its provisions are so clearly intended to apply to leases of real property so as to override the County’s own interpretation of its policy and the specific finding of the 2013-2014 Grand Jury. The current Grand Jury has disregarded sufficient and credible evidence to the contrary and instead relied on its own, unsupported, unreasonable, and out of context interpretation of Policy 5-100 to support a very serious and potentially professionally damaging allegation against the former HHS Director, the former County Counsel, the former CAO, and current and former County Supervisors. The only reasonable explanation is that the Grand Jury began its inquiry into the HHS Building Lease with a specific desired outcome and that it was determined to write a report supporting that conclusion, as clearly evidenced here, by whatever means necessary. Again, the Board of Supervisors wholly disagrees with Finding #9.

Finding #10: Between December 2007 and March 4, 2008, the HHS Director, the CAO, the County Counsel, and the Chairman of the Board of Supervisors prevented the County Auditor from executing the Auditor’s duties as identified in the County’s GSA Purchasing Policy 5-100, the County’s GSA Contract Policy 1-310.

Response: The Board of Supervisors wholly disagrees with Finding #10.

This purported finding appears to rely almost entirely upon the Grand Jury's erroneous and unsupported Finding #9. As has already been pointed out, there are no policies that address the leasing of real property.

In addition, the Grand Jury would be unable to support this conclusion even if these policies were somehow applicable because neither Policy 5-100, nor Policy 1-310, both of which are attached for reference, identify any actual "duties" that the Auditor is supposed to perform. As such, it is impossible to prevent anyone from performing required duties if there are not actually any duties required by the policies.

These two policies contain a variety of very specific guidelines for various County staff in relation to purchasing and the procedures for departments seeking new and renewed contracts or agreements. Again, nowhere does either policy describe any specific steps required of the Auditor or his or her staff. To be fair, however, Policy 5-100 does make references to the "Auditor's accounting system" on page 6 of 16, but that is as close as it gets in the body of the actual policies. The only other reference to the Auditor in these two policies, and therefore apparently what the Grand Jury relies on for its conclusion, is a simple listing of "Auditor-Controller," along with other departments and staff, at the bottom of each policy under heading "Responsible Departments." Since there are no actual responsibilities described anywhere in these policy for the Auditor, it is not apparent what, if anything the Auditor might be responsible for. Despite this ambiguity and uncertainty, the Grand Jury nevertheless relies on clearly insufficient evidence to support a finding that it, apparently, was determined to make no matter what.

Finally, the actions of senior staff and their testimony to the Grand Jury do not support the Grand Jury's finding that they had some additional duty that others prevented them from doing. While discussed in its report, the Grand Jury apparently disregards the fact that a senior staff person within the Auditor's Office had an opportunity, and presumably did, review the Amended Lease prior to its approval by the Board of Supervisors on March 4, 2008. In addition, if that senior staff member believed that their office was required under County policies to do more than they did, they could have, and presumably would have, pulled the item from the Board's agenda. In reality, according to the Grand Jury's own report, the senior staff member testified that it was not the responsibility of the Auditor's Office to evaluate the fiscal impacts of any agreement.

Again, it is evident that the Grand Jury is so determined to reach its pre-determined and desired conclusions that it will ignore reasonable and direct evidence to the contrary and instead reach unsupportable conclusion on incredibly weak evidence.

Finding #11: Between December 2007 and March 4, 2008, the CAO, the HHS Director, the County Counsel, and members of the Board of Supervisors deliberately excluded the GSA Director from the negotiations and a review of the March 4, 2008 HHS building lease and from executing the GSA Director's duties as identified in the County's GSA Purchasing Policy 5-100, the County's GSA Contract Policy 1-310.

Response: The Board of Supervisors partially disagrees with Finding #11.

It is accurate that the GSA Director was purposely not included among the County group evaluating and negotiating the amendment of the HHS Building Lease; however, the Board of Supervisors disagrees with Finding #11 to the extent it suggests that the decision to leave the GSA Director off the negotiation team violated any applicable policy.

First, as discussed more thoroughly above in response to Finding #9, Policy 5-100 simply does not apply to leases of real property and therefore does not require any involvement by the GSA Director in the negotiation of the lease amendment. Similarly, Policy 1-310's "guidelines" indicating that the GSA Director, Risk Manager, and County Counsel are to review "contracts and agreements" before they go before the Board of Supervisors are not expressly applicable to leases.

Additionally, the Board of Supervisors acted completely within its authority in directing only the County Counsel and the CAO to take the lead with respect to the lease amendment negotiations regarding the HHS Building Lease. Nothing in Policy 5-100 (even if it did apply), Policy 1-310, or within County Code 3.08 prevents the Board from directing County Counsel and CAO alone from negotiating any lease amendment and putting the negotiated lease amendment on the Board of Supervisor's agenda for consideration. What the Grand Jury fails to understand, or chooses to ignore, is the fact that the Board of Supervisors has at all times the inherent authority to discuss the amendment of any lease or other agreement to which it is a party. As an extension of that power possessed by the Board, it also has the power to authorize and direct any County employees to conduct any such negotiations on the Board's behalf, and the Board's authority to delegate anyone in a particular matter is not limited merely because the Board may have also delegated other officers or employees to be generally responsible for similar matters. That is clearly what occurred in this situation and it is not, and cannot be a violation of County policy.

Finding #12: Amador County's Board of Supervisors, the Board of Equalization, former County Supervisors and the County Counsel knew that the March 4, 2008 HHS building lease with the LLC presented no risk to the LLC, that it had the highest per square foot cost of any commercial building lease in the County and possibly the Central Valley, that the March 4, 2008 HHS building increased in value because the County extended the term five years to twenty years and the County eliminated the County policy mandated early termination clause contingent on available County, State and Federal funding for multi-year contracts.

Response: The Board of Supervisors wholly disagrees with Finding #12.

This convoluted finding is so intertwined with vague, misleading, and incorrect statements that the County wholly disagrees with it. First, rather than merely alleging that certain things may have been stated by or in the presence of the Board of Supervisors sitting as the Board of Equalization, which the Board could easily verify or deny, the Grand Jury again oddly contends that current and former elected officials and the former County Counsel specifically "knew" certain things at some unspecified time about the March 4, 2008 Lease Amendment, and apparently knew them to be true. As with all other similar allegations, the Grand Jury does not provide any explanation or evidence to support such a finding regarding such knowledge. Further, even assuming such statements were

actually made during the May 25, 2010 Board of Equalization hearing regarding the HHS Property, it is not clear how or why it would be relevant to the March 4, 2008 Lease Amendment, nor would it establish that these statements were actually true. As the Grand Jury's report recognizes, some assertions made during that hearing have been clearly shown to be incorrect.

Also, as has been stated in the responses to Finding #2, #7, and #9, Policy 5-100, which is the only source of the purported "mandated early termination clause," does not apply to this or any other lease of real property. And even if, by some stretch of the imagination, Policy 5-100 was generally applicable to leases of real property, it would not have prohibited the Board of Supervisors from nevertheless agreeing to delete the termination clause. By its express language, Policy 5-100 applies only to "employees" and therefore is not applicable to the Board of Supervisors as elected officials. By design, this procedural policy was drafted to not be applicable to the Board of Supervisors. It is not only clear by its express language, but also intuitively makes sense that the Board, which created the procedural guidelines in the first place, retains the authority to authorize and approve deviations from those same guidelines when warranted by the circumstances. It appears that the Grand Jury was only interested in developing and citing to evidence that supported its predetermined conclusions, regardless of how weak that evidence was, and without any apparent desire to inquire as to whether any contrary evidence existed. Had the Grand Jury simply asked, all of these explanations could have easily been provided during the two-year investigation.

Finding #13: There is a conflict in legal opinions between the former County Counsel and the present County Counsel's office regarding who is liable for paying the property taxes up to the first \$13.6 million. This issue should be resolved by a third party government attorney's office with the proper real estate tax law expertise.

Response: The Board wholly disagrees with Finding #13.

This purported "conflict" does not exist, and for some reason has been wholly manufactured by the Grand Jury. How or why a difference of opinion regarding a lease provision unrelated to the Lease Amendment is relevant or important is unclear, but the fact that the Grand Jury has decided to make this Finding provides a very clear example of how the Grand Jury has conducted its entire investigation in a biased and unreasonable manner. In order to justify its desired finding, the Grand Jury has relied on a clearly unreasonable interpretation of ambiguous evidence, while not only ignoring other, more persuasive evidence, but also choosing not to simply ask the types of questions that would provide direct answers.

At some point during the current investigation, the Grand Jury had become convinced that the County paid all, or at least a significant portion, of the property taxes for the HHS Building. Upon hearing of this incorrect conclusion, the current County Counsel informed the Grand Jury that based upon his interpretation of paragraph 6.5 of the Lease the County actually paid only the relatively small annual increases allowed by the California Constitution. The purported conflict identified by the Grand Jury is based on events that occurred during a hearing before the Board of Equalization involving the HHS Property. The new owner, after having purchased the HHS Property in June of 2008 for \$16.9 Million argued that the value of the property had dropped to \$12.8 Million approximately only 7 months later. During that hearing, the County Assessor incorrectly stated that

the County paid the taxes on the first \$13.1 million of assessed property value. Merely because the former County Counsel, who was present at the hearing as the legal advisor to the Board of Equalization, did not interrupt the proceedings in order correct the inaccurate comments made by the Assessor, the Grand Jury has concluded that former County Counsel shared the Assessor's incorrect opinion.

In reaching this completely unsupported conclusion, the Grand Jury not only failed to explain why the former County Counsel's only possible method for dealing with the inaccurate statement was to immediately interrupt the hearing, but also disregarded other, more reliable evidence to the contrary. For example, the Findings of Fact and Decision, which were initially drafted by counsel and subsequently adopted by the Board, specifically determined that the County only paid the increases in taxes during the lease. In addition, the Grand Jury ignores the fact that the County and property owner have always implemented the property tax provision of the lease in a manner consistent with how it is currently interpreted, which has included a significant period in time during which the former County Counsel worked for and represented the County. Both of these facts directly contradict the Grand Jury's conclusion.

Not only does the Grand Jury ignore contrary evidence that was readily available to it, the Grand Jury also apparently chose not to simply ask former County Counsel's actual opinion on this issue. It's not clear why the Grand Jury chose not to ask the direct question, but for the record, the former County Counsel's interpretation is the same as that of the current County Counsel. There is no conflict.

Finding #14: The HHS Director, the CAO, and BOS knew or should have known that by not publicly acknowledging the acceptance of the \$400,000 from the LLC and by depositing the \$400,000 in the County Reserve Fund under the guise of a HHS Reserve Fund, that it would be very difficult or nearly impossible for the general public, an independent auditor or a State or Federal government agency to determine the original source of the \$400,000 if funds were transferred to other accounts

Response: The Board of Supervisors wholly disagrees with Finding #14.

As already indicated in the response to Finding #1, as part of its responses to the 2013-2014 Grand Jury Report, the County acknowledged that the \$400,000 should have been specifically identified in the amended lease and future agreements will follow that practice. However, the Board of Supervisors asserts that none of the actions by County staff or elected officials with respect to either the drafting of the lease, or the acceptance or depositing of the \$400,000 was done for the purpose of hiding the original source of the \$400,000. The County also disagrees that any qualified independent auditor or state or federal government agency would have difficulty determining the original source of the \$400,000. Finally, while the budget procedures for any county can be complicated and difficult to understand for the general public, the County has never and would never fail to identify or explain the source of the \$400,000.

Finding #15: The HHS Director, the CAO, and members of BOS used deceptive methods to move over \$240,000 of \$400,000 LLC money to various HHS departments' trust accounts to hide the LLC money trail. About \$167,000 of the \$400,000 was traced back to paying the LLC for the HHS building

rent, \$45,000 was traced to the County's CMSP Medi-Cal program, and about \$28,800 went [to] general operating expenses funded by the Mental Health Trust Fund.

Response: The Board of Supervisors wholly disagrees with Finding #15.

In no uncertain terms, the Board of Supervisors adamantly denies and rejects the contention that there was anything deceptive about these transfers. All of the fund transfers were done in the regular course of County business. Further, as the County has never considered its use of these funds to be problematic, there was simply no reason for anyone to attempt to hide the source of the funds. None of these funds went to support the General Fund, despite the fact that the General Fund actually pays for a considerable portion of the rent for the HHS Building. All of the \$400,000 that has been spent to date has been spent in support of the various programs that utilize the HHS Building.

Importantly, it should be made very clear that there is no evidence described anywhere in the Grand Jury's Report that is adequate to support this Finding, and the Grand Jury's use of the term "deceptive" which, by definition, suggests that any transfers of funds were performed with the intent to hide its original source or to purposely make the funds appear to be something that they were not, is particularly inappropriate and completely irresponsible. **Throughout this Report, and particularly with this Finding, the Grand Jury has made serious and potentially damaging allegations regarding current and former County elected and appointed officials, and employees without sufficient supporting evidence. In doing so, the Grand Jury has done a disservice to not only the County and the identified individuals, but more importantly, the public. It has inexcusably violated the trust and authority afforded to the Grand Jury.**

Finding #16: The Grand Jury finds that the staff at County's Auditor's Office, the Tax Collector's Office, and the Health and Human Services Agency to have unquestionable integrity and character when the Grand Jury requested their assistance.

Response: The Board of Supervisors agrees with Finding #16.

Finding #17: The County had two methods to assess the property tax for the HHS building and property. The first property tax assessment method which was used for the LLC was based on the market value. The second property tax assessment method for the new owners was based on the value of the HHS building's guaranteed twenty year income from the lease. The two tiered system favored the LLC which had the same lease as the new owners, but they paid about 25% less property taxes. If the LLC did not sell the HHS building, the LLC would have paid approximately 25% less in property taxes each year.

Response: The Board of Supervisors partially disagrees with Finding #17.

The Board of Supervisors agrees only with the last sentence in that if the LLC did not sell the HHS building, the LLC would likely have paid less in taxes over time than the new owners because, as required by the California Constitution, the property would not have been reassessed in connection with a sale.

In making this Finding, it is again clear that, despite their two-year crusade, the Grand Jury still lacks even a basic understanding of when, why, and how properties are to be reassessed for tax purposes. For instance, the substantive requirements related to assessing property are established by the State and not by the County. Nor is there a “two-tiered” system as suggested by the Grand Jury. As set forth in the California Code of Regulations, Property Tax Rule 3 actually requires all assessors to use one or more, as may be appropriate, of five different methods for determining the value of a property, with the three most common being the comparable sales of similar property approach; replacement cost less depreciation; and the income approach, all of which were actually evaluated and discussed during the hearing by the County Assessor.

Most importantly, however, the Board of Supervisors disagrees with Finding #17 to the extent it seems to imply, but does not state directly, that there was something improper or unfair about the way in which the HHS Property was assessed, apparently based only on the fact that the two assessed values were different. Not only does that Grand Jury lack any valid basis to make such a suggestion, the Board of Supervisors asserts that the County Assessor fairly and appropriately assessed the HHS Property on different occasions, for different reasons, and based on different information.

Finding #18: On May 25, 2010, the County Counsel, the BOS acting as the BOE, and the County Assessor clearly believed that pursuant to Article 6.5 of the March 4, 2008 HHS building lease that the LLC and the new property owners of the HHS building did not pay the property taxes on the first \$13.6 million of assessed value but rather that these taxes were paid by the County. This is [sic] belief was one factor as to why the BOE believed the HHS building lease is “gold”.

Response: The Board of Supervisors partially disagrees with Finding #18.

The Board agrees that the Assessor likely believed that the County was responsible for the payment of property taxes on the first \$13.6 Million of assessed value on May 25, 2010 because he testified as such during the hearing. The Board of Supervisors disagrees with the remainder of Finding #18.

It cannot be reasonably inferred that County Counsel believed that to be true on May 25, 2010. As discussed above in response to Finding #13, the Grand Jury attempts to improperly base this conclusion solely on the silence of County Counsel at times when such statements were made during the hearing. Nothing, other than the Grand Jury’s own baseless opinion that County Counsel was somehow required to interrupt the hearing, provides support for that portion of this Finding. Nor can it be reasonably inferred that the full Board of Equalization believed what the Grand Jury alleges. The Board can make a determination or finding of fact (such as alleged) only upon the formal action supported by at least a majority of the Board Members. The mere fact that Board Members may have asked questions or made statements similar to what is alleged does not even clearly establish that those individuals actually “believed” it, let alone the entire Board of Equalization. There is clearly insufficient evidence to support this Finding.

To the contrary, other, more reliable evidence in possession of the Grand Jury establishes that the Board of Equalization and County Counsel had to have understood how the taxes were properly apportioned between the parties as provided in the Lease. The Findings of Fact and Decision

regarding the HHS Property, which were drafted by the former County Counsel and adopted by the Board of Equalization, clearly indicate that the County only pays the “increases in taxes.” That express finding, adopted unanimously by the Board of Equalization, directly conflicts with this unreasonable Finding.

Since the adopted Findings make it clear that the Board of Equalization ultimately did not believe that the County paid the property taxes on the first \$13.6 Million of assessed value, how could it conceivably matter that anyone may have believed otherwise on May 25, 2010. If it is important or relevant in some way, the Grand Jury has failed to explain how or why. The Grand Jury goes to great lengths to discuss the issue of payment of property taxes by the County as part of the lease. There is a consistent effort to imply that there is something improper about this arrangement, despite the fact that a “double-net” lease such as this is common in the industry. The Grand Jury also failed to notice that the lease for the old HHS complex on Broadway had a provision whereby the County paid 50% of the property taxes, regardless of the increment. The fact that the County pays the property tax increases from year to year is not improper or unusual, nor is it a new concept to County HHS leases.

Finding #19: While the new owners contradicted the county’s claim that the County was paying the taxes on the first \$13.6 million of assessed value, this conflict was not resolved by the BOE prior to their ruling against the new owner’s appraisal appeal. The Grand Jury has determined that new owners were correct in stating that they were paying the taxes on the first \$13.6 million of assessed value and consequently that the BOE based their decision in part on the BOE’s misunderstanding of property tax payments. Note that this misunderstanding was not simply a misinterpretation of the terms of the Article 6.5 of the lease but rather was a fact whose truth or falsehood could have been determined by an examination of the tax payment records by the BOE and County Assessor’s Office either prior to the BOE hearing or prior to the July 13, 2010 BOE finding to deny the reduction in assessed value of the HHS building.

Response: The Board of Supervisors agrees with Finding #19.

The Grand Jury appears to acknowledge that any perceived misunderstanding regarding the payment of property taxes was resolved correctly by The Board of Equalization in its Findings and Decision. Nevertheless, the Grand Jury feels obligated to assert that there were inconsistent statements made during the hearing and that other available evidence could have been gathered and offered at the hearing that would have avoided any temporary ambiguity.

Fortunately, the Board of Equalization carefully and objectively evaluated all of the evidence so as to have reached the accurate result. If only the Grand Jury would have attempted to do the same, it might have avoided making the illogical, unsupported, and factually incorrect allegations about current and former employees and elected officials as it has throughout this Report.

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Recommendation #1: Referral to a State or Federal Agency: Since the Grand Jury does not have the staff to conduct a full audit of the three HHS trust funds; the case should be referred to a State or Federal oversight agency that has oversight over Medi-Cal providers to conduct a full audit of all three trust funds.

Response: Recommendation #1 will not be implemented because it is not warranted or is not reasonable.

Following what was essentially a two-year long investigation, the Grand Jury failed to come up with anything more than vague and unsupported insinuations of some unspecified improper conduct. Having failed to actually identify any specific violations, the Grand Jury nevertheless recommends that some unspecified oversight agency perform an audit.

The Board of Supervisors adamantly disputes any contention by the Grand Jury that any current or former County staff or elected officials have engaged in any improper conduct related to either entering into the HHS Lease Amendment or in the use of the \$400,000. Although not entirely clear what the Grand Jury is recommending that the County should do, to the extent it recommends that the County request that a federal or state agency with oversight perform an audit is not warranted or reasonable and will not be implemented. Although rejecting this Recommendation, the County would cooperate to the fullest extent possible in the event any audit is performed. The Board of Supervisors is confident that nothing improper occurred.

Recommendation #2: Release Evidence to State or Federal Agency: The Grand Jury recommends that the evidence gathered during this investigation be turned over to the State or Federal oversight agency to assist them in determining whether a full audit of Amador County's Health and Human Services Agency is necessary.

Response: Recommendation #2 will not be implemented because it is not warranted or is not reasonable.

The provisions of State law relating to the Grand Jury and, more particularly the evidence it has gathered during any investigation, make it very clear that the Board of Supervisors has no authority whatsoever regarding whether such evidence could be released to some third-party state or federal agency. Only the Superior Court, under very limited circumstances, has the authority to authorize the release of the evidence as requested. The Board of Supervisors will not implement this recommendation because it has no authority to do so.

Recommendation #3: Void the Contract: Since the Board of Supervisors agreed to accept a \$400,000 onetime cash payment and \$500,000 in other considerations to eliminate the County mandated early termination clause based on available State and Federal funding and to extend the term of the HHS building lease five years, the Grand Jury recommends a third party State or Federal government Medi-Cal program oversight agency review the case to determine if the March 4, 2008 HHS building lease can be voided based on a violation of State or Federal regulations.

Response: Recommendation #3 will not be implemented because it is not warranted or is not reasonable.

This recommendation is not directed at the Board of Supervisors. It is a recommendation to some unspecified state or federal government oversight agency. More importantly, as discussed throughout this Response, this Recommendation is based on incorrect, vague, and unsubstantiated purported findings. The Board of Supervisors adamantly disputes any contention by the Grand Jury that any current or former County staff or elected officials have engaged in any inappropriate conduct related to either entering into the HHS Lease Amendment or in the use of the \$400,000.

Making this Recommendation that the Amended Lease be voided appears to have been the primary goal of this Grand Jury from the outset of its investigation, so much so that in order to reach this Recommendation, it has failed to comprehensively and objectively compile and evaluate evidence. Instead, the Grand Jury prepared a report that specifically advocates for its desired result, making unreasonable and unsupported inferences and conclusions based on ambiguous evidence, while at the same time apparently having blinders on to other, clearly contradictory evidence. In attempting to support its predetermined goal of voiding the 2008 Lease Amendment, the Grand Jury has incorrectly made serious and potentially damaging allegations regarding current and former County elected and appointed officials, and employees.

The Grand Jury never actually explains how or why the March 4, 2008 Amended Lease could be void, and merely recommends that some other entity should investigate whether it could be. The Board of Supervisors contends that there is no basis to void the Lease Amendment, and the Grand Jury failed to identify any specific basis. It is worth discussing here as part of the Response, since the Grand Jury failed to do so, what would actually change if the Lease Amendment either never occurred or was voided.

Most importantly, the parties would revert to the underlying original lease, under which virtually all of the substantive provisions would remain the same as under the Amended Lease. The amount of rent paid by the County and the proportional responsibility for property taxes would be identical. Further, as discussed in response to Finding #5, the County would be bound under the original lease until at least 2022. Even if the conditional early termination provision was an applicable lease provision, it would not have been triggered, nor would it reasonably likely be triggered in the future. The County would also, presumably, have to repay the \$400,000 it received as consideration as part of the Amended Lease.

So the only practical difference between the original and amended lease is the additional 5 years added to the term, from 2022 to 2027, with the only impact being the difference, if any, between the amount of rent paid under the lease for that additional 5 years and the unknown amount paid for a different suitable location (including the cost to move) or under a renegotiated lease at the current site. For the Grand Jury to suggest that 100% of the rent paid during that 5-year period is the impact to the County is another clear example of how the Grand Jury has written this report to advocate for, and to support its predetermined conclusion, rather than objectively describing the circumstances to the public. In reality, the County would also receive use of the building for those five additional years, a

benefit that would have to be obtained and paid for in another way absent the revised lease. The actual cost would be the difference between the cost of those five years and the costs associated with a new location, which are unknown at the time.

Incidentally, when computing the future rent on page 67, the Grand Jury failed to properly add \$2.1 million in rent to the \$12,200 in property tax reimbursement. The total of those two numbers would be \$2.112 million, not the \$2.21 million that the Grand Jury erroneously and incompetently derived. They then compounded this error by making the deceitful assumption that all five years of the extension would be paid at the same rate as the final year in a dishonest effort to skew the numbers.

By issuing this Report, the Grand Jury has done a disservice to not only the County and its current and former employees and elected officials, but more importantly, the public. It has violated the power and trust afforded to the Grand Jury and produced a report solely to support its predetermined conclusion.

Recommendation #4: Negotiate New Contract: The Grand Jury recommends the County take steps to negotiate a new contract with the current owners pursuant to County Ordinances and Policies.

Response: Recommendation #4 has already been implemented.

The County has already had various discussions with the current owners of the building regarding either the possibility of purchasing the HHS Building or renegotiation of the lease. New or changed agreements, obviously, cannot be achieved unilaterally. To date, no substantive progress has been made.

Recommendation #5: Investigate Brown Act Violations: The Grand Jury recommends that the District Attorney's office or the California Attorney General's office be referred the case to determine if any violations of the Brown Act occurred.

Response: Recommendation #5 will not be implemented because it is not warranted or is not reasonable.

This Recommendation is directed to the District Attorney and not the Board of Supervisors. The Board of Supervisors has no authority over the District Attorney in how he carries out his responsibilities.

Recommendation #6: Agenda Review Committee Procedures: The Grand Jury recommends the present informal County Agenda Review Committee become a formal committee whose membership includes the Chairman of the Board of Supervisors, the Clerk of the Board of Supervisors, County Counsel, the County Administrative Officer, and the General Services Administration Director, the Auditor-Controller, and the Administrative Division Risk Manager, or their designee. The formal Agenda Review Committee should be required to meet on a regular basis to review each submitted Agenda Transmittal Form and its supporting documents. There should be an agenda and minutes of the meetings.

Response: Recommendation #6 will not be implemented because it is not warranted or is not reasonable.

Upon initial consideration of this recommendation, it appears likely that the establishment of such a committee would create additional burdens on staff while providing little to no increased benefits over the existing process. The intent behind the policy establishing the Agenda Review Committee, together with and all of the other related policies, is simply to establish internal general guidelines for the processing of items that will appear on a future Board of Supervisors agenda. From the County's perspective, the current policies are adequate and appropriate for ensuring that items considered by the Board of Supervisors are adequately reviewed by relevant staff.

Further, any changes to the existing policies also would likely make expressly clear that such policies are intended to be guidelines only, and except where otherwise provided by law, any failure to strictly observe them would not prevent the Board from exercising its jurisdiction or invalidate any action otherwise in conformity with any applicable legal requirements. So, even if the policy itself became more formalized in some respects, it would similarly be made clear that any deviations from that policy could not invalidate an otherwise valid action by the Board of Supervisors. For example, Ventura County's Board of Supervisors procedures states that "[e]xcept as otherwise provided by law, these Rules, or any one of them, may be suspended by order of the Chair and will be deemed suspended by actions taken by or with the consent of the Chair or a majority of the Board members that are not in accordance with the Rules."

Agenda review in other jurisdictions is actually much more loosely organized than it is in Amador County. Most locations do not have a set time to meet, but each person in the review chain reviews each submittal electronically and indicates approval in the same manner. The number of people in the review process is typically smaller than Amador County utilizes. The CAO is investigating options to provide this electronic review and agenda posting to streamline the process.

Recommendation #7: Research County Owned Non-Profit: The Grand Jury recommends that the County explore creating a County owned non-profit corporation to own and operate buildings in which County departments and agencies operate. This would allow the County Departments and Agencies to receive State and Federal funding at their maximum rate, while allowing the County's non-profit corporation to own the building when the loan for the building is paid. This is done elsewhere in the state and the County Supervisors Association of California could provide assistance.

Response: Recommendation #7 will not be implemented because it is not warranted or is not reasonable.

Neither the recommendation nor the underlying Report provides any specific examples of where or how this recommendation has been "done elsewhere in the state" so as to assist the County in evaluating this Recommendation. **Nevertheless, in evaluating this Recommendation, staff has determined that the applicable federal rules would prohibit implementation of the Grand Jury's recommendation.**

As the Grand Jury should already know, the County receives state and federal funding for most of the departments and programs providing services out of the HHS Building. It should also know that the County is authorized to utilize these funds, often referred to generically as “realignment funds,” to pay the full cost of the rent for the covered departments and programs, and that in contrast, if the building was actually owned by the County, only a much lower amount (depreciation, maintenance, taxes and insurance) is allowable. Finally, the Grand Jury should know that, given the present demands on General Fund revenue, it is not viable for the County to pursue ownership because the County cannot afford to pay the payments out of the General Fund. Therefore, it is entirely unclear why the Grand Jury would make this Recommendation because in doing so, the County would be prohibited from utilizing realignment funds for the full payment of rent.

Pursuant to the federal rules described in the Office of Management and Budget Circular A-87, which are applicable to the County’s utilization of [all, most, some]] realignment funds, rental costs are generally allowable to the extent that the rates are reasonable. However, rent is specifically not allowable when the rental relationship occurs through “less-than-arms-length” leases. The specific example in the OMB Circular of a lease that would prohibit rent as an allowable cost is when a governmental entity creates “a separate corporation for the sole purpose of owning property and leasing it back to the governmental unit.” This expressly prohibited scenario appears to match exactly what has been recommended by the Grand Jury. The County does not intend to purposely violate federal rules and therefore will not be implementing the Grand Jury’s recommendation. The only way to avoid the prohibition under the recommendation would be for the County to pay all of the rent with General Fund dollars, which, as already explained, is not economically feasible. It is a nice idea, but “the rules do matter”.

Interestingly enough, if the County were to purchase a building, through a dummy finance corporation as suggested or not, there would be no exit clause in the event that funding was cut by the State other than to sell the building, which would be difficult in this market. The Grand Jury completely disregards that fact as they recommend a course of action that would take away the very clause that they, apparently, have been so concerned about and feel is so critical.

Recommendation #8: ATF Review: The Grand Jury recommends that before an item regarding a contract or lease for more than \$25,000 be placed on the Board of Supervisors agenda that all appropriate county employees and executive officers have reviewed the contract and supporting documents. The Grand Jury further recommends that all contracts for the purchase or lease of real property be placed on the Board of Supervisors agenda for public discussion on at least two dates two weeks apart unless an emergency necessitates more immediate action. Additionally, all ATFs specifically should state the full amount to be paid in any contract or lease over the full term, and the funding source for the contract or lease. In no case should such an item be placed on the consent agenda.

Response: Recommendation #8 actually contains four distinct recommendations. Portions of the first have already been implemented, while others will be implemented in the future. The second will not be implemented because it is not warranted or is not reasonable, the third and the fourth require further analysis.

The first recommendation is that all contracts and leases in excess of \$25,000 must be reviewed by all appropriate County employees and executive officers prior to being placed on the agenda for consideration by the Board of Supervisors. The County's existing policies already include such guidelines for contracts, and the current policies are deemed adequate. Further, County staff has already begun drafting similar policies and guidelines specifically applicable for leases. It is anticipated that the Board of Supervisors will consider the draft policy regarding leases within approximately 6 months from the date of this Response.

The second specific recommendation is that purchases and leases of real property be on agenda at least twice, two weeks apart, except in cases of an emergency. This specific recommendation will not be implemented because it is not warranted or is not reasonable. As noted above, staff is preparing policies specifically related to the leasing of real property. Including a requirement for a second meeting for all purchases or leases of real property, except in cases of emergency, would likely unnecessarily complicate and delay the process. Nor is there any evidence that by having a second meeting would have prevented the approval of the Amended Lease of that the Grand Jury is critical of.

The third specific recommendation is that all ATF's should state the full amount to be paid in any contract or lease over the full term and the funding source. The vast majority of contracts entered into by the County are annual agreements which correspond to the fiscal year and contain within the maximum amount payable under that agreement. Nevertheless, it may be appropriate and useful to include such information on agreements and also for leases. The CAO will investigate this issue and report to the Board of Supervisors regarding whether any changes or additions to County Policies are recommended within the next 6 to 12 months.

The final specific recommendation is that "[i]n no case should such an item be placed on the consent agenda." It is not entirely clear what such items the Grand Jury is referring to in that final sentence because each earlier recommendation applies to different transactions-- the first deals with leases and contract over \$25,000, the second deals only with leases and purchases of real property, while the third apparently applies to any contract or lease regardless of dollar amount. While the consent agenda serves a valuable purpose in allowing the County to conduct its required business in reasonable and streamlined fashion, it may be appropriate and desirable for the County to develop a policy that would clarify the circumstances under which an agreement or lease would be appropriate for the consent agenda. The CAO will similarly investigate this issue and report to the Board of Supervisors regarding whether any changes or additions to County Policies are recommended within the next 6 to 12 months.

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Recommendation #9: Property Tax Recovery: The internal conflict between the former County Counsel and the current County Counsel's office regarding the interpretation of Article 6.5 of the HHS building lease should be resolved by a third party government attorney with the proper real estate tax law expertise.

Response: Recommendation #9 will not be implemented because it is not warranted or is not reasonable.

As discussed in response to Finding #13, the County has explained that there is not any conflict between the former County Counsel and the current County Counsel. In order to support this Recommendation, the Grand Jury chose to rely on its own unsupported and unreasonable inference. In doing so, the Grand Jury apparently failed to consider or discuss more reliable and persuasive contrary evidence, and failed to simply ask the former County Counsel a direct question. Finally, the County understands that the Grand Jury's own independent attorney, who is a very experienced former employee of a neighboring county, interpreted Article 6.5 similarly to both the current and former County Counsel.

Thank you for allowing the Amador County Board of Supervisors the opportunity to respond to the 2015-2016 Grand Jury Report.

Sincerely,

John Plasse, Chairman
Amador County Board of Supervisors

c: Chuck Iley, County Administrative Officer
Greg Gillott, County Counsel
Tacy Oneto-Rouen, Auditor
Jim Rooney, Assessor
Todd Riebe, District Attorney
Jon Hopkins, General Services Administration Director
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Amador Community News
Hometown Radio
TSPN
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