

2015-2016

Amador County Civil Grand Jury

Special Investigation



**The Health and Human Services Building Lease
Rules Do Matter**

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

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**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

Table of Contents

LETTERS	7
CHAPTER 1 - INTRODUCTION	11
October 17, 2006 Board of Supervisors Meeting	11
Fiscal Year 2007-2008 Budget	12
Start of March 4, 2008 Lease Negotiations	12
March 4, 2008 Mental Health Services Act Contract	14
March 4, 2008 HHS Build Lease and Property Taxes.....	14
Sale of HHS Building	15
April 1, 2008 California Drug and Alcohol Program Contract.....	15
HHS Property Re-assessment Request	16
HHS Fund Transfers	16
Early Retirement Incentive Program	17
Mental Health Trust Fund FY 2007/2008 Budget Surplus	17
June 3, 2008 Subordination Agreement.....	18
Cost to County	18
Responsible Parties	19
Justification/Jurisdiction.....	19
CHAPTER 2- METHOD OF EVALUATION	23
CHAPTER 3 - 2014-2015 GRAND JURY INVESTIGATION - SUMMARY.....	25
Board of Supervisor’s Response to Findings	25
CHAPTER 4 - ORDINANCES, POLICY AND PROCEDURES, AND AGREEMENTS	29
Ordinance 1440, Ch. 3.08 Et Seq., (Purchasing-County Purchasing Agent)	29
Amador County Contract and Lease Policies and Procedures	31
GSA Director’s Statement Regarding GSA 5-100.....	32
County Supervisors’ Statements Regarding GSA 5-100	32
County Counsel’s Statements Regarding GSA 5-100.....	33

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

HHS Building - RFP 06-01 Sample Contract Termination Clause 34

The October 17, 2006 HHS Building Contract and Lease Termination Clause 34

Previous HHS Building Contracts with Early Termination Clauses 35

First Amendment to Lease 1001 Broadway – February 2, 1999 35

Estoppel Certificate and Resolution 00-251 - 1001 Broadway – June 6, 2000..... 35

Request for Proposal 06-01 Sample Contract Termination Clause 35

CHAPTER 5 - GSA POLICY AND PROCEDURE 1-310 (CONTRACTS)..... 37

 Agenda Transmittal Form Process..... 38

 County’s Agenda Review Committee (ARC) 38

 ATF Responsible Parties..... 39

 County Supervisors’ Agenda Package..... 39

 March 4, 2008 Consent Agenda 40

CHAPTER 6- CALIFORNIA DEPARTMENT OF MENTAL HEALTH DEPARTMENT AGREEMENTS..... 41

 Health and Human Services Agency Funding Sources 41

 October 17, 2006 Short/Doyle Medi-Cal Program Agreement - Resolution No. 06-301 42

 Mental Health Services Standard Agreement - Termination Clause..... 44

 October 17, 2006 Board of Supervisor’s Approval of Mental Health Services Agreement 44

 October 17, 2006 HHS Building Contract and Lease Process 45

 March 4, 2008 Mental Health Service Act Agreement..... 46

 MHSA Agreement Funding Detail Report..... 46

 MHSA Agreement Exhibit B Soliciting and Accepting Funds Prohibited 46

 April 1, 2008 California Drug and Alcohol Contract 47

CHAPTER 7 – TRACING THE MONEY 49

 Preamble 49

 HHS Reserve Trust Fund 49

 Property Taxes for Parcel 044-010-122-000, Amador Central Business Park 52

 Resolutions 7-145 and 7-146 County Partnership Agreement with the Property Owner to Obtain
 Highway Encroachment Permits 53

 Why A \$400,000 HHS Building Trust Fund?..... 53

 HHS Building Rent Payments – Pay Back To the HHS Building Owner 54

 1003 Broadway HHS Building Settlement 59

 County Early Retirement Incentive Program..... 59

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

Resolution to Transfer of 2007-2008 FY Mental Health Trust Funds.....	61
Resolution to Transfer FY 2009-2010 Mental Health Trust Funds	62
CHAPTER 8 - AMADOR COUNTY HHS BUILDING PROPERTY TAXES.....	63
1001 Broadway – Jackson.....	63
10877 Conductor Boulevard – Sutter Creek.....	63
New Owners Property Tax Assessment.....	65
County Assessor’s Office Retraction of Board of Equalization Testimony and Evidence.....	69
Review of Property Tax Payments.....	69
April 16, 2008 HHS Building Property Tax Appraisal	70
HHS Building Subordination Agreement - June 3, 2008.....	70
Cost to Amador County Taxpayers	70
CHAPTER 9 – COUNTY EMPLOYEES, EXECUTIVES, AND ELECTED OFFICIALS	73
HHS Director	73
County Administration Officer (CAO)	76
County Counsel.....	78
General Services Administration Director	81
Auditor.....	83
Senior Staff at Auditor-Controller’s Office	84
Supervisor 1.....	85
Supervisor 2 - Chairman Board of Supervisors.....	85
Supervisor 3.....	86
Supervisor 4.....	86
Supervisor 5.....	87
CHAPTER 10 - FINDINGS AND RECOMMENDATIONS	89
Findings.....	89
Recommendations.....	92
Request for Responses	94

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

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**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

LETTERS

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**



**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF AMADOR**

500 ARGONAUT LANE • JACKSON, CA 95642
(209) 257-2600

ROB KLOTZ, COURT EXECUTIVE OFFICER

June 8, 2016

Robert Stimpson, Foreperson
Amador County Grand Jury
PO Box 249
Jackson, CA 95642

Re: Amador Grand Jury 2015-2016

Dear Foreperson Robert Stimpson, Gary Reeder, Lynne Campbell, Donna Conrad, Zach Talbert, Martha Gamble, Doyle Grosz, Gary Baker, Terry Hale, Ralph Jarboe, Amy Hess, Kenneth Perano, Paul Keeton, Douglas Gunselman, David Upton, Raymond Mumolo, Wayne Tucker, Arthur Weatherford, and Alexis Wisser:

I wish to thank each of you for the hard work and dedication shown during the past year on the Amador 2015-2016 Grand Jury. You have taken your duties seriously and spent time away from family, friends and other responsibilities in order to produce an insightful, professional report.

Mr. Stimpson, your excellent leadership as foreperson is well noted, and the other members' efforts in assisting are apparent. On behalf of the residents of Amador County, thank you for the generous donation of your time and commitment to the Grand Jury. Your work will ensure improvement and confidence in our local government.

Wishing each of you a well earned retirement from your yearlong duties.

Sincerely,

A handwritten signature in black ink, appearing to read "J.S.H.", followed by a long horizontal line.

Judge J.S. Hermanson

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**



AMADOR COUNTY GRAND JURY

MAIL: P.O. Box 249, Jackson, CA 95642 – Phone: (209) 223-2574

Email: grandjury@amadorgov.org

June 20, 2016

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

Dear Judge Hermanson:

I am proud to present the 2015/2016 Amador County Civil Grand Jury's Special Investigative Report covering the controversial March 4, 2008 Health and Human Services Agency (HHS) building lease. Our investigation was a cumulative effort of three successive grand juries. The results of this investigation could potentially affect the citizens of Amador County for many years.

The Grand Jury's goal was put to rest the rumors and innuendo of the events that preceded and followed the Board of Supervisors approval of the March 4, 2008 HHS building lease with the original contractor and property owner. Our investigation covered a six year period from January 2006 to February 2012; however we discovered relevant documents going back as far as 1997.

The Grand Jury has fulfilled our responsibilities to investigate Amador County's mandated policies for multi-year contracts and leases of real property.

The Grand Jury extends our appreciation to all the staff of county entities who provided assistance and Ed Knapp, our outside legal counsel, for his legal analysis in this matter.

In closing, I would especially like to thank each member of the 2013/2014, 2014/2015 and the 2015/2016 Grand Juries for their dedication, their countless hours of work, and their unwavering sense of duty to serve the citizens of Amador County. Their cooperation, candid conversations, and their extensive efforts helped produce what I believe is a thorough and well documented special investigative report.

Respectfully,

A handwritten signature in black ink, appearing to read "Robert L. Stimpson", is written over a light blue horizontal line.

Robert L. Stimpson
Foreperson
Amador County Civil Grand Jury 2015/2016

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

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AMADOR COUNTY CIVIL GRAND JURY 2015-2016 SPECIAL INVESTIGATIVE REPORT

CHAPTER 1 - INTRODUCTION

This 2015-2016 Amador County Civil Grand Jury report is regarding the investigation of the Amador County March 4, 2008 contract for the lease of the Health and Human Services building located at 10877 Conductor Boulevard, Sutter Creek, California. This report is the culmination of three continuous Grand Jury investigations. These investigations determined that members of the Amador County Board of Supervisors (BOS) and other appointed government officials disregarded longstanding County ordinances, policies, procedures, and State and Federal health care laws. Additionally, contracts and agreements between Amador County and the State of California were also disregarded. Those contracts and agreements were executed to protect the fiscal integrity of Amador County and the State mental health care programs. The following are the findings and discoveries of this investigation:

For over a two year period (February 2006 through June 2008), the Amador County ordinances, codes, policies and procedures regarding contracts (leases of real property and multi-year contracts) were followed. It would appear as though the involved parties/personnel (Board of Supervisors, Chief Administrative Officer (CAO), County Counsel, General Services Administration (GSA) Director, Human and Health Services (HHS) Director, etc.) were aware of the policies and were in compliance with them. There was one exception to this – the “amended and restated lease” for the HHS building which took place on March 4, 2008.

October 17, 2006 Board of Supervisors Meeting

On October 17, 2006, the Board of Supervisors approved the following items:

1. An agreement (#06-761-7-000) between the County of Amador and the State of California Mental Health Department (CDMH) to provide mental health services funded by Short-Doyle Medi-Cal program¹ funds, to the citizens of Amador County. The

¹ Title 42 USCS § 1320a-7(h) defines State health care program as:

For purposes of this section and sections 1320a-7a and 1320a-7b of this title, the term “State health care program” means—

- (1) a State plan approved under subchapter XIX of this chapter,
- (2) any program receiving funds under subchapter V of this chapter or from an allotment to a State under such subchapter,
- (3) any program receiving funds under division A of subchapter XX of this chapter or from an allotment to a State under such division, or
- (4) a State child health plan approved under subchapter XXI of this chapter.

AMADOR COUNTY CIVIL GRAND JURY 2015-2016 SPECIAL INVESTIGATIVE REPORT

agreement states that the contract can be voided if funding for the mental health program(s) are not appropriated by Congress or budgeted by the State of California.

2. A contract to build and lease the HHS building now located at 10877 Conductor Boulevard, Sutter Creek, California. This lease was set to terminate on December 10, 2022, if the first of three 5 year optional terms was not executed. The lease had included an early termination clause contingent on available State and Federal funding. Amador County agreed to pay a \$500,000 penalty if the County terminated the HHS building lease on July 1, 2015. The contractor that was awarded the contract was a partnership of the property owner of Amador County Parcel number 044-540-010-000, Lot 43, and a major construction and land development company, hereby known as the LLC.

Pursuant to the October 17, 2006 HHS building construction contract and lease, the HHS building had to be completed so the County would occupy the HHS by early December 2007. This meant that the County HHS Agency would move its entire staff from its buildings in Jackson, California to the HHS building in Sutter Creek, CA, in December 2007 and January 2008. Additionally, the County would still have to pay rent at the Jackson locations in addition to the rent at the new HHS building.

Fiscal Year 2007-2008 Budget

Prior to approving the Amador County FY 2007-2008 budget, the BOS (which included four of the five County Supervisors who approved the March 4, 2008 HHS building lease), the DHS Director, and the CAO knew that the Department of Mental Health (DMH), the Department of Alcohol and Drug Programs (ADP), and the Department of Public Health (DPH) would have budget deficits in FY 2007-2008. They knew that the County would be paying rent at the HHS buildings in Jackson as well as the new HHS Building in Sutter Creek, CA.

The three departments' "Building Rental and Lease" accounts were deliberately underfunded by about \$210,000 for FY 2007-2008. The ADP building lease budget was under funded by about \$30,000 and the DPH lease budget was under funded by about \$32,000. More importantly, the DMH was budgeted zero dollars (\$0) for building rent payments for FY 2007-2008 even though its rent payments for the HHS building were projected to be about \$150,000 for FY 2007-2008. The DMH rent payments from December 2007 to June 30, 2008, for the HHS building were paid by the Department of Social Services.

Start of March 4, 2008 Lease Negotiations

In early December 2007, the GSA Director inspected the construction of the building and did not find any issues that would amount to a breach of the October 17, 2006 contract. Following the inspection, on December 10, 2007, Amador County took possession of the building and began the lease. At that time, there were no plans to terminate or renegotiate the lease. The County paid

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

the LLC its first month's prorated rent and subsequently paid the full monthly rent of \$119,070 to the LLC.

Shortly after Amador County moved into the HHS building, plans were made to renegotiate the lease. Contact was made between an executive officer for the LLC which owned and leased the building and the Health and Human Services Agency (HHS) Director and negotiations took place regarding the termination of the October 17, 2006 lease. Amador County's CAO and the County Counsel participated in these negotiations and a deal was struck to terminate the October 17, 2006 lease and negotiate a new HHS building lease. The County Counsel and the CAO informed the Board of Supervisors (BOS) of their plans to terminate and renegotiate the October 17, 2006 lease and were given approval to proceed.

During the negotiation process of the new HHS building lease, it became apparent that the HHS Director, CAO, County Counsel, Chairman of the Board of Supervisors (Chairman) and members of the BOS disregarded the longstanding County policies and procedures regarding leases and multi-year contracts. The General Service Administration (GSA) Director and the County Auditor were deliberately excluded from any part of the "new" negotiations which culminated in a guaranteed 20 year lease. Prior to these negotiations, the GSA Director and County Auditor were included in the negotiation processes and reviews of legal documents pertaining to the HHS building lease.

During the negotiation process for the new HHS lease at least three of the five County Supervisors, the HHS Director, the County Counsel's office, the County Auditor and GSA Director office knew that the County had a contract with the California Department of Mental Health which could be voided at any time if State or Federal funding was not being appropriated or budgeted. However, the BOS authorized the CAO and the County Counsel to eliminate a County mandated termination clause contingent on the available State and Federal funding.

The "new" lease negotiations by the CAO, the BOS, and the County Counsel resulted in a one-time cash payment of \$400,000 to the County from the LLC. Additionally, the LLC agreed to eliminate the \$500,000 early termination penalty fee thereby binding the County to the full duration of the 20 year lease. In return, the BOS and CAO promised the original HHS building owners a guaranteed 20 year contract with two 5 year and one 4 year optional contract years.

On or about February 22, 2008, the CAO sent a letter to a LLC executive officer to confirm the terms of the negotiations for the new HHS lease. If the LLC agreed with terms, the CAO advised the LLC executive that she would place the new HHS building lease on the March 4, 2008 BOS Meeting agenda for approval. Three days later the LLC agreed to the new terms.

On February 26, 2008, the LLC cut a \$400,000 check to be delivered to the CAO on March 4, 2008.

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

The BOS, the CAO, and the County Counsel also deliberately excluded the GSA Director and the County Auditor from the negotiations and review of the new multi-year lease between the County and the original owners of the HHS building prior to the BOS voting on the lease on March 4, 2008.

On or about February 27, 2008, the Chairman, with the recommendation and support of the CAO and County Counsel, placed the matter of the new HHS building lease on the March 4, 2008 BOS meeting consent agenda, thereby eliminating public discussion of this costly decision. County records indicate that the new HHS building lease was reviewed by members of the County's Agenda Review Committee. However, again, the GSA Director and the County Auditor did not review the new HHS building lease, but the Assistant Auditor reviewed it.

March 4, 2008 Mental Health Services Act Contract

At about the same time the CAO placed the new HHS building lease on the BOS' March 4, 2008 meeting agenda, the HHS Director placed Resolution 08-031 (agreement, #07-77303-000, between Amador County and the State of California Department of Mental Health regarding Mental Health Services Act (MHSA) funds for the term of July 1, 2004, through June, 30 2008) on the March 4, 2008 BOS meeting agenda. The County was informed that in this agreement that employees, executives and elected officials of the County, "will not solicit or accept money or any other consideration from a third person, for the performance of an act reimbursed in whole or part by the County or the State." County records indicate that between February 20, 2008 and March 4, 2008, the resolution was reviewed by members of the County's Agenda Review Committee which included the Chairman, County Counsel, the County Auditor and the GSA Director.

The Mental Health Service Act agreement which was provided to the County Supervisors 72 hours prior to the March 4, 2008 BOS meeting included a Funding Detail Chart. The State of California approved \$1,023,387 out of the \$2,764,464 budgeted. The breakdown of the State payments to Amador County revealed that the county did not receive any funds for the FY 2006-2007.

The County had estimated that it needed \$765,570 for the fiscal year of 2006-2007 but the State denied the entire amount. However, in FY 2005-2006 the County had been reimbursed \$476,219 and in FY 2007-2008 the County had been reimbursed \$465,674 by the State.

March 4, 2008 HHS Build Lease and Property Taxes

On March 4, 2008, the BOS voted unanimously to approve the HHS building lease after executives of the LLC hand delivered a \$400,000 check to the CAO. The BOS also unanimously voted to approve the contract with the California Department of Mental Health for MHSA funds.

AMADOR COUNTY CIVIL GRAND JURY 2015-2016 SPECIAL INVESTIGATIVE REPORT

On March 5, 2008, the \$400,000 was deposited in a County Reserve Fund as a reserve fund for the Health and Human Services (HHS) Agency. Subsequently, over the next twelve weeks over \$240,000 was transferred from the County's reserve fund to pay for the HHS building lease, employees' salaries, and accounts for professional services.

Additionally, at that time, four of the five County Supervisors, the County Counsel and the County Assessor believed that the LLC did not have to pay any property taxes on the first \$13.6 million of the HHS building's initial assessed property value nor did the LLC have to pay the property tax as the result of inflationary increases of the property value. Their belief that the LLC did not have to pay property taxes for the first \$13.6 million of the assessed value of the HHS building was revealed at a May 25, 2010, Amador County Board of Equalization (BOE) property tax re-assessment appeal hearing. During this BOE hearing, the BOS acting as BOE hearing officers and the Assessor said that the County paid the property taxes.

During this meeting the County Counsel was present and was acting as the BOE legal counsel. The County Counsel did not dispute the Assessor's statements at the BOE hearing.

However, in late May 2016, the Grand Jury learned that the County Assessor's testimony at the May 25, 2010 BOE hearing regarding who pays property taxes for the first \$13.6 million of the assessed value of the HHS building was incorrect and, in fact, the original and current owners have paid these taxes.

Sale of HHS Building

On March 21, 2008, the owners of the HHS Building sold the building and lease to a third party for about \$16.9 million dollars which was \$4.5 million over the HHS building's original assessment. The LLC's executive officers wanted to sell the HHS building because of the down fall in the national economy and the company wanted to make a profit. The \$400,000 cash payment and \$500,000 consideration that the LLC gave to the County was to ensure that the County Board of Supervisors would approve the 20 year guaranteed contract and to eliminate the County mandated early termination clause contingent on available County, State and Federal funding for multi-year contracts. The LLC's executive officers knew that the value of the building was significantly enhanced by the extended 20 year term of the lease and the elimination of the termination clause.

April 1, 2008 California Drug and Alcohol Program Contract

On April 1, 2008, the County BOS unanimously approved another State and federally funded contract, Agreement 07-NNA03, with the California Drug and Alcohol Program (CDAP) for drug treatment services. The term for Agreement 07-NNA03 was July 1, 2007, through June 30, 2010. This contract approval followed the County's policy and procedures regarding the approval process for contracts.

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

The CDAP contract had a termination clause that required a 30 day termination notice and “was enforceable subject to sufficient funds being made available to the State by the United States Government and subject to authorization and appropriation of sufficient funds pursuant to the States budget Act.”

HHS Property Re-assessment Request

At the end of the business day on April 14, 2008 (a Monday), a representative from the LLC sent an email/letter to the County Assessor’s Office with a “reminder” that the HHS building was in escrow as they were selling the HHS building and lease. The LLC was aware that in August 2007, the Assessor’s office reassessed the land when the original property owner sold the land to the LLC during the construction of the HHS building and assessed the building on December 31, 2007 after the County occupied the building. The LLC representative’s letter indicated that they were aware that the initial combined building/land assessment was going to take more time to complete (approximately two weeks) and that the LLC would appreciate it if the County Assessor’s Office could complete the first combined tax assessment sooner rather than later.

The first combined tax assessment on the HHS building (valuing the building and land at \$13.6 million) was completed and recorded with the County on April 18, 2008 (the following Friday). Contrary to the Assessors original belief, and the BOE’s belief that the LLC did not pay property taxes, the Grand Jury confirmed that LLC and the subsequent owners of the HHS Building did in fact pay the property taxes for the HHS building, except for some small reimbursement by the County for inflationary increases.

HHS Fund Transfers

On April 15, 2008, the Department of Public Health requested \$32,000 to be transferred to its Building Rental account (4000-52600) because of a deficit in that account.

In April 2008, the Department of Alcohol and Drug Programs (ADP) requested \$75,000 from the \$400,000 that LLC gave to the County to be transferred in ADP’s building rent account (4003-53600) to pay for rent at the HHS building. The BOS approved the transfer of the \$75,000 and the funds were transferred to account 4003-53600. The Grand Jury traced about \$30,000 back to the LLC for payment for rent.

The Grand Jury discovered that over \$45,000 of the \$75,000 of LLC money was transferred from ADP rental account in June 2008. The \$45,000 was traced to the Department of Public Health’s State County Services Medical Program (CMSP) account, but only after it was transferred and comingled with two other accounts. CSMP is funded by the California Health and Human Services Agency Medi-Cal Assistance Program. CSMP are eligible to receive Medi-Cal benefits.

In late April 2008, the HHS Director requested and the BOS approved the transfer of \$165,000 from the \$400,000 that the LLC gave the County, to be transferred Department of Mental Health

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

(DMH). The \$165,000 was to pay for operational expenses that the County and State normally paid. The Grand Jury confirmed that the \$165,000 was transferred to the County Department of Mental Health operational budget. The County's DMH was receiving Short-Doyle Medi-Cal Mental Managed Care Program funds at this time.

The Grand Jury also conducted a review of the Department of Mental Health Services Fiscal Services records to determine revenue sources for FY 2007-2008. All the DMH programs' funding sources were accounted for except \$168,000 in a "miscellaneous funds". Amador County HHS senior accounting employees did not know the source of \$168,000 and could not locate the funding source for the \$168,000. However, the Grand Jury traced \$165,000 directly back to the \$400,000 that the LLC gave to the County.

Additionally, the current County Auditor believed that the \$165,000 was transferred to the DMH budget from the "County Reserve Fund" to pay for operational expenses because revenues were not coming in as fast as expenses were being paid.

Early Retirement Incentive Program

The County BOS, the CAO and HHS Director knew that the FY 2008-2009 budget would have a deficit due to the failing economy. Tax revenues were not coming in as fast as the County was spending its budget. On June 17, 2008, the County BOS approved an Early Retirement Incentive Program (ERIP) as a cost saving measure.

Between July 1, 2008, and December 31, 2008, Amador County paid eligible county employees over \$406,000 in tax free retirement benefits. The Mental Health Department paid over \$31,000 into this ERIP fund. When the HHS Director retired on July 31, 2008, she received a tax free benefit of over \$21,000. The brother of a Supervisor whose job was being eliminated also benefited from this program when he received over \$30,000 in tax free benefits.

Mental Health Trust Fund FY 2007/2008 Budget Surplus

Four of the five Supervisors and the CAO knew that the DMH had a budget deficit in FY 2007-2008. However, the Grand Jury discovered that the Mental Health Trust Fund that was the funding source for the DMH actually had a budget surplus partially due to salary savings and the \$165,000 that was transferred into the DMH operating account that came from the \$400,000 the LLC gave the County.

In February 2011, a new HHS Director submitted Resolution 11-011 to the BOS requesting the transfer of 10% of the Fiscal Year's 2007-2008 and 2008-2009 Mental Health Trust Funds to the Fiscal Year 2010-2011 Social Services Fund. The transfer of up to 10% of a health care trust fund to another health care trust fund is permissible per state law. The BOS voted unanimously to approve that resolution. That transfer is summarized:

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

1. \$92,254 was transferred from the FY 2007-2008 and \$84,235 was transferred from the FY 2008-2009 Mental Health Trust Fund to the FY 2010-2011 Social Services Trust Fund.

June 3, 2008 Subordination Agreement

On June 3, 2008, the Board of Supervisors unanimously voted to approve a subordination, non-disturbance order, and estoppel agreement with a bank that holds the deed for the HHS building. This agreement guarantees to the bank that the County will continue to make the monthly lease payments² directly to the bank for the duration of the 20 year term of the contract if the owners of the HHS building default on the bank loan. This agreement included the March 4, 2008 HHS building lease.

On June 3, 2008, all the members of the BOS, the HHS Director, the CAO, the County Counsel, the GSA Director, and the County Auditor knew that the HHS building lease was funded by State and Federal health care funds and that all the Department of Mental Health contracts with California had early termination clauses contingent on available State and Federal funds. Not one employee, executive officer or elected official opposed the approval of the subordination agreement with the bank even though the subordination agreement was largely based on the March 4, 2008 HHS building lease.

Cost to County

The renegotiated new lease will cost the County between \$30 to \$50 million dollars over the term of the lease. The current rent is over \$132,000 a month, up from \$119,070 in 2008 and will increase by about two percent on July 1, 2016. The rent increases annually per the Consumer Price Index (CPI), and the amount of rent the County pays for the lease will never go down under any circumstances.

The County's long term fiscal wellbeing as well the County's health care, mental health care, and social service programs were put and are still at risk. The Grand Jury believes that it was unacceptable for the BOS to accept the \$400,000 to "compensate for the increased risk" that the BOS took to eliminate the County mandated early termination clause contingent on available funding from County, State and Federal funds, and by increasing the term of the HHS building to a 20 year guaranteed lease. The BOS, the CAO, the County Counsel and the HHS Director knew that the contracts between the County and the CDMH and the CDAP, now the California Department of Health Care Services Short-Doyle Medi-Cal Program, can be voided at any time due to the lack of State and Federal funds without notice.

The only winner in this lease is the LLC. As one of the County Supervisors stated at the BOE hearing, the (March 4, 2008) HHS building lease is "gold", the owners have very little risk, the

² The HHS Building Lease payment includes the payment for the principle, interest, and operating costs.

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

contract is a guaranteed 20 year, the County guarantees increased rent payment, and the payment of increased payments in the property taxes.

Responsible Parties

The Amador County Board of Supervisors - 2007/2011
810 Court Street
Jackson, CA 95642

Amador County Administrative Office
Former County Administrative Officer - 2007-2011
810 Court Street
Jackson, CA 95642

Amador County - County Counsel's Office
Former County Counsel 2007-2010
810 Court Street
Jackson, CA 95642

Amador County Health and Human Services Agency
Former Director - 2007-2008
10888 Conductor Boulevard
Sutter Creek, CA

General Services Administration
Director's Office
12220 "B" Airport Road
Jackson, CA 95642

Justification/Jurisdiction

California Penal Code §925: The grand jury shall investigate and report on the operations, accounts, and records of the officers, departments, or functions of the county including those operations, accounts, and records of any special legislative district or other district in the county created pursuant to state law for which the officers of the county are serving in their ex officio capacity as officers of the districts. The investigations may be conducted on some selective basis each year, but the grand jury shall not duplicate any examination of financial statements which has been performed by or for the board of supervisors pursuant to Section 25250 of the Government Code; this provision shall not be construed to limit the power of the grand jury to investigate and report on the operations, accounts, and records of the officers, departments, or functions of the county. The grand jury may enter into a joint contract with the board of supervisors to employ the services of an expert as provided for in Section 926.

AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT

California Penal Code §933.5: A grand jury may at any time examine the books and records of any special-purpose assessing or taxing district located wholly or partly in the county or the local agency formation commission in the county, and, in addition to any other investigatory powers granted by this chapter, may investigate and report upon the method or system of performing the duties of such district or commission.

California Penal Code §933 (a): Each grand jury shall submit to the presiding judge of the superior court a final report of its findings and recommendations that pertain to county government matters during the fiscal or calendar year. Final reports on any appropriate subject may be submitted to the presiding judge of the superior court at any time during the term of service of a grand jury. A final report may be submitted for comment to responsible officers, agencies, or departments, including the county board of supervisors, when applicable, upon finding of the presiding judge that the report is in compliance with this title. For 45 days after the end of the term, the foreperson and his or her designees shall, upon reasonable notice, be available to clarify the recommendations of the report.

California Penal Code §933 (b): One copy of each final report, together with the responses thereto, found to be in compliance with this title shall be placed on file with the clerk of the court and remain on file in the office of the clerk. The clerk shall immediately forward a true copy of the report and the responses to the State Archivist who shall retain that report and all responses in perpetuity.

California Penal Code §933 (c): No later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body, and every elected county officer or agency head for which the grand jury has responsibility pursuant to Section 914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head and any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the findings and recommendations. All of these comments and reports shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury. A copy of all responses to grand jury reports shall be placed on file with the clerk of the public agency and the office of the county clerk, or the mayor when applicable, and shall remain on file in those offices. One copy shall be placed on file with the applicable grand jury final report by, and in the control of the currently impaneled grand jury, where it shall be maintained for a minimum of five years.

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

California Penal Code §933 (d): As used in this section "agency" includes a department.

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

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**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

CHAPTER 2- METHOD OF EVALUATION

The 2015-2016 Grand Jury investigation into the March 4, 2008 County lease for the HHS building located at 10877 Conductor Boulevard, Sutter Creek, California, included the following document reviews:

- 2013-2014 Grand Jury final report and associated documents
- 2014-2015 Grand Jury reports and associated documents
- Amador County Ordinance, Chapter 3.08 et seq, related to the County's "purchasing agent"
- Amador County General Services Administration Policy and Procedures 5-100 regarding the County's purchasing agent
- Amador County General Services Administration Policy and Procedures 1-310
- Amador County Board of Supervisors' Meeting Agenda Transmittal Forms
- Amador County Board of Supervisors' Meeting agenda and minutes
- The October 17, 2006 HHS building lease and related documents
- The October 17, 2006 Contract between Amador County and California Department of Mental Health
- The March 4, 2008 HHS building lease and related documents
- The March 4, 2008 Contract between Amador County and California Department of Mental Health
- The April 1, 2008 Contract between Amador County and California Department of Alcohol and Drug Programs
- Email from original building owner to the County Assessor's Office regarding the property 10877 Conductor Boulevard (HHS Building), Sutter Creek, California, being in Escrow, dated April 16, 2008
- Amador County Board of Supervisors Agenda Transmittal Forms between October 1, 2006, and February 10, 2011 for items related to the HHS Building lease and contract
- Board of Equalization July 13, 2010 Findings and Recommendation regarding the Appeal for the reassessment of Property taxes for the HHS Building and Property
- The HHS Agency financial records related to the building lease
- Amador County Auditor records
- Amador County Assessor's records
- Amador County Treasurer's Office records
- Amador County Board of Supervisors meeting agendas and minutes
- Amador County Resolutions
- Title 42 USC §§ 1320 et seq
- California Welfare and Institutions Code §§ 14100 et seq

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

The Grand Jury interviewed the following (sworn statements obtained under oath):

- Several former and present (if applicable) Amador County elected officials
- Amador County executive staff and employees
- Executive officers of the original building owner company

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

CHAPTER 3 - 2014-2015 GRAND JURY INVESTIGATION - SUMMARY

The 2014-2015 Grand Jury was tasked with the follow up of the 2013-2014 Grand Jury's "Findings and "Recommendations" for the HHS building investigation. The 2014-2015 Grand Jury reviewed the 2013-2014 Grand Jury's HHS Building Final Report titled "WE DID THE MATH" and confirmed the 2013-2014 Grand Jury's facts.

During the review and follow-up process of the 2013-2014 HHS building investigation the 2014-2015 Grand Jury obtained Amador County documents that were not previously reviewed and statements from additional individuals that shed a different light on the events regarding the March 4, 2008 HHS Building lease.

During the 2014-2015 Grand Jury investigation, the Grand Jury discovered documents and obtained other evidence that suggested that the following 2013-2014 Grand Jury's findings were based on misinformation or the lack of information regarding the County's usual and customary business practices and the County's policies and procedures regarding leasing of real property and contracts:

- *"F2. There were no written policies and procedures in (sic) to direct staff in acquiring property either by lease or by purchase."*
- *"F3. A set of procedures in place could have overridden the lack of experience of the negotiating."*
- *"F5. The lease costs of \$7,144,200 (over 5 years) were traded for \$400,000 (immediate) in cash."*
- *"F6. No County official, auditor, or controller has the official assignment to review fiscal commitments of the County prior to adoption and/or approval by the BOS."*
- *"F9. There is no policy or procedures that address monies received from an individual or company as a gift, donation, grant or "valuable consideration" by the County."*

Board of Supervisor's Response to Findings

The Board of Supervisors responded to the 2013-2014 Grand Jury's findings. The following are the Board of Supervisors' responses.

- Finding #2 – Agree with the response by the Department Head.

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

- Finding #3 – Partially Agree. The County had sufficiently experienced staff, but were not properly utilized.
- Finding #5 – Partially Agree. *“This is an over simplification, as it was not simply a trade of one for the other. Along with the 7.1 M in cost, the County also received the right to occupy the building for additional five years. There is value to the five years that has not been properly accounted for in this statement.”*
- Finding #6 – Agree. *“The responsibility lies with the CAO, who should make a formal recommendation and did.”*
- Finding #9 – Agree. *“The Board agrees with the response from the department head.”*

The 2014-2015 Grand Jury’s additional review included but was not limited to a historical review of past and present Amador County ordinances and codes, review longstanding General Service Administration (GSA) policies and procedures regarding multi-year contracts, purchases, and leases for real property; review HHS documents that confirmed that the primary purpose of the HHS agency was to provide mental health care, drug and alcohol program, social services. In addition, the Grand Jury reviewed health care services programs that were funded by State and Federal funds, including Medi-Cal program funds. They also reviewed Amador County Human Resources Department job descriptions; documents for a Fiscal Year 2008-2009 Early Retirement Incentive Program (ERIP); reviewed Amador County’s Assessor’s, Treasurer’s, Controller-Auditor’s and General Services Administration records; re-interviewed and interviewed current and former County executive officers, County Supervisors, and other elected County officials.

The 2014-2015 Grand Jury confirmed that HHS Agency’s departments, the Department of Social Services (DSS), the Department of Public Health (DPH), the Department of Mental Health (DMH), and the County’s Alcohol and Drug Program (ADP)³, were entirely funded by State and Federal health, mental health care and social services funds. The Grand Jury also confirmed that the HHS agency was a California Medi-Cal provider.

The 2014-2015 Grand Jury focused on the process that the BOS, the County CAO, the County Counsel and the HHS Director followed when the BOS voted to terminate the original October 17, 2006 HHS Building contract and lease, and then unanimously approved the March 4, 2008 HHS building lease.

During the 2014-2015 investigation the Grand Jury learned that the County executive staff and the BOS followed the County’s policies and procedures for multi-year contracts over \$25,000 and for negotiating leases for real property when the matter concerned the October 17, 2006

³ The Department of Mental Health (DMH), and the County’s Alcohol and Drug Program (ADP) now are part of the Department of Behavioral Health Services (BHS). However, in 2007-2008 ADP was part of DPH even though it was funded by DMH grants.

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

HHS building lease, with one exception. The one exception was when the CAO, the County Counsel and the HHS Director, at the direction of the then BOS, negotiated with executive officers of the LLC to terminate the original October 17, 2006 lease for a new guaranteed 20 year lease for the HHS building.

Between December 10, 2007, and March 4, 2008, the County's executive officers and the BOS continued to follow the County's policies and procedures for contracts and leases for all other business related to the HHS building lease that were not directly related to the negotiations and approval of what is now known as the March 4, 2008 HHS building lease. The HHS Director was the County executive officer who initiated the process to negotiate a new HHS building lease with the LLC. The HHS Director did not tell the GSA Director that the LLC or the County BOS wanted to renegotiate the HHS building lease, but she only told the CAO and the County Counsel. The CAO and the County Counsel with the BOS' approval deliberately excluded the GSA Director from any negotiations regarding the HHS building lease and secretly negotiated the termination of the October 17, 2006 HHS building lease as well as negotiated the March 4, 2008 lease directly with the LLC's executive officers and their attorney.

This 2014-2015 Grand Jury investigation confirmed that on or about February 22, 2008, the CAO sent a letter to the LLC's Vice President of Marketing and HHS Building Lease administrator, detailing the new negotiated terms and conditions of the proposed March 4, 2008 lease of the HHS building, and that the LLC agreed to the new terms.

The 2014-2015 investigation confirmed that the GSA Director was aware that the CAO and the County Counsel with the BOS' approval was or had negotiated directly with the original HHS building owners executive officers and attorney to terminate the October 17, 2006 lease. However, the GSA Director did not know any of the details because the CAO and the County Counsel excluded the GSA Director from the negotiations and did not provide any information regarding the negotiations for the new HHS building lease to the GSA Director.

The 2014-2015 Grand Jury discovered documents that indicated that Amador County's County Counsel negotiated directly with the original HHS building owners staff regarding the March 4, 2008 HHS building lease and with the bank that financed the loan on the property by the original HHS building owners before the County approved a subordination agreement with the bank, the LLC, and the County.

During the 2014-2015 investigation, the Grand Jury learned that the HHS Director, the CAO, the County Counsel, and former Supervisor 1, Supervisor 2, Supervisor 4, and Supervisor 5, knew that HHS had lost mental health realignment grant funds the previous year; that the County's Fiscal Year (FY) 2007-2008 budget had a deficit; and the County needed money to balance the County's budget. However, late in the 2014-2015 investigation, the Grand Jury learned that the County paid out over \$400,000 in "tax free" Early Retirement Incentive Program (ERIP) health care benefits. In FY 2008/2009 over \$219,000.00 was paid to HHS employees.

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

The 2014-2015 Grand Jury investigation discovered that the HHS Director, who was instrumental in starting the process to terminate the October 17, 2006 HHS building lease in exchange for the one-time \$400,000.00 cash payment, received over \$21,600 in tax free payments when she retired at the end of July 2008. It should be noted that the HHS had planned to retire at the end of December 2008. However, she was forced to retire early by the BOS and the CAO. Senior county administrators and members of the BOS confirmed the HHS Director's forced retirement.

Additionally, the 2014-2015 Grand Jury learned that the brother of a former supervisor, who voted for the ERIP, received \$30,000.00 in tax free benefits when he retired in August 2008. The investigation learned that the services that the former Supervisor's brother's work group provided were being eliminated for cost savings and that the brother's position was being terminated.

Due to the complexity of the investigation and late investigative developments, the 2014-2015 Grand Jury investigation was not completed. To continue the 2014-2015 Grand Jury investigation, the jurors opted to continue HHS building investigation into the 2015-2016 Grand Jury's term. The 2015-2016 Grand Jury elected to continue the HHS building lease investigation.

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

CHAPTER 4 - ORDINANCES, POLICY AND PROCEDURES, AND AGREEMENTS

Amador County records reveal that from at least 1997 to the present the County has had ordinances, written policies, and procedures that direct staff in acquiring real property to lease for the County. These policies and procedures can be found in Amador County Ordinance 1440, Chapter 3.08 et seq, (County Purchasing Agent), and General Services Administration (GSA) policies and procedures 5-100 (Contracts and Purchases); and GSA Policy 1-310 (Contracts and Agreements).

In addition, Amador County has signed agreements with the California Department of Mental Health (CDMH), now the California Department of Health Care Services (DHCS), to receive reimbursement for mental health services provided to Medi-Cal eligible individuals by the Short/Doyle Medi-Cal programs Medi-Cal Mental Health Managed Care program, and for services provided by the California Mental Health Services Act (MHSA). These agreements include terms and conditions, including early termination clauses contingent of available State and Federal funding that clearly provide the foundation for the previously identified GSA policies and procedures 5-100 and 1-310.

Ordinance 1440, Ch. 3.08 Et Seq., (Purchasing-County Purchasing Agent)

Amador County Ordinance 1440, Chapter 3.08 et seq., (Purchasing-County Purchasing Agent), identifies the duties of the County's purchasing agent and designates the County's Director of General Services Administration as the County's "purchasing agent" and negotiator for "leases of real property". Amador County historical records reveal that this ordinance has been in effect since at least 1997. This ordinance and chapter as well as the "current" Amador County online version created the position for the County's purchasing agent. One component of the purchasing agent's duties is to "negotiate and execute for the county as lessee, rental of real property, which the county may require". The County's ordinance does not designate a dollar limit or value limit for the lease of real property.

In 1997 sections of Ordinance 1440, Chapter 3.08 et seq, regarding the duties of the County's purchasing agent were adopted by the BOS. The current Amador County ordinance mirrors the 1997 ordinance regarding the duties of the county's "purchasing agent."

One current County Supervisor, Supervisor 4, and former Supervisor 1, both of whom voted to approve the October 17, 2006, and March 4, 2008 HHS building leases, also voted to adopt Ordinance 1440, Chapter 3.08 et seq, in 1997. However, neither could recall that the County had such an ordinance regarding the County's purchasing agent.

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

Ordinance 1440 Chapter 3.08.020 (Purchasing Agent Office Established):

“Pursuant to the provisions of Section 25500 of the Government Code of the State, the office of purchasing agent of the county is established. (Ord. 420 §200, 1969).”

Ordinance 1440 Chapter 3.08.040 (Duties of Purchasing Agent):

“The purchasing agent shall:

- A. Have the duties and powers prescribed by laws or the state relating to county purchasing agents, this chapter and the resolutions of the board of supervisors;
- B. Be the head of the purchasing department;
- .
. .
. .
- G. Negotiate and execute for the county as lessee, rentals of real property which the county may require;

Board of Supervisors Actions

After the HHS Building request for proposal (RFP) was published and the developers submitted their bids and presentations. The HHS Agency awarded the bid to a major contractor (Contractor), a for profit construction corporation that had built several major commercial complexes between Ridge Road, Highway 49 and Highway 88. However, the HHS Director, the RFP selection committee, and the BOS knew that the Contractor and a Corporation that owned the land now known as 10877 Conductor Boulevard, Sutter Creek, California, had formed a limited liability corporation (LLC), that would eventually own and operate the HHS building. Prior to signing the October 17, 2006 contract to construct and to lease the HHS building, the County Counsel, the HHS Director, other County executive officers, and the BOS knew that the LLC would be the actual owners of the original HHS building construction and lease contract.

The March 28, 2006 BOS meeting minutes reveal that the BOS knew about the existence of Amador County Ordinance 1440 Chapter 3.08.040 G. After being informed that the HHS building RFP was awarded to the Contractor (later to be known as the LLC), the BOS, in a unanimous vote, created a Negotiation Team for the HHS building construction and lease project.

The BOS appointed the 2006 GSA Director, the 2006 CAO and the HHS Director to the Negotiation Team. When the 2006 GSA Director and the 2006 CAO left employment of Amador County, the current GSA Director, who was the Assistant GSA Director at the time, and the then Assistant CAO became the CAO, were appointed to the “Negotiation Team” along with the HHS Director.

Former Supervisor 1, Supervisor 2, and Supervisor 4 voted to approve the HHS Building project Negotiation Team in March 2006.

AMADOR COUNTY CIVIL GRAND JURY 2015-2016 SPECIAL INVESTIGATIVE REPORT

The County Counsel knew that the GSA Director and the then CAO were on the Negotiating Team. The County Counsel knew the CAO and GSA Director met in a closed session on May 22, 2007, to discuss a matter involving financing of the HHS building.

The May 22, 2007 BOS meeting minutes reveal that former Supervisor 1, Supervisor 2, and Supervisor 4, had a closed session meeting to discuss a matter involving financing of the HHS building with the CAO and the GSA Director. However, the discussion is confidential.

The Grand Jury also discovered that between December 1, 2007, and March 4, 2008, that the CAO and the GSA Director met at least five times in closed sessions with Board of Supervisors to discuss County real estate matters. However, these closed session meetings did not include the March 4, 2008 HHS building lease.

Amador County Contract and Lease Policies and Procedures

GSA Policy and Procedure 5-100 (Purchasing Policy) - August 13, 2002

GSA Policy and Procedure 5-100 (GSA 5-100), is Amador County's purchasing policy as enacted by Ordinance 1440, Chapter 3.08 et seq. GSA 5-100 identifies the GSA Director as the County's "purchasing agent" as the purchasing department is in GSA; mandates that all multi-year contracts have an early termination clause based on available funding; and provides the County's definition for "contracts" and "agreements".

On August 13, 2002, former Supervisor 1, Supervisor 2 and Supervisor 4, who approved the October 17, 2006, and the March 4, 2008 HHS building lease voted to approve Resolution 2-370 which revised GSA 5-100 which was the County's purchasing and contract policy at the time.

GSA Policy 5-100, pursuant to County Ordinance 1440, Chapter 3.08.020, designates the GSA Director to be "the purchasing agent" for the County because the Amador County purchasing department is under the management of the GSA Director.

GSA 5-100 Definition of a "Contract"

GSA Policy 5-100 established the County's definition of a "contract". The County's GSA accepted definition of a "contract" reads:

"A. "County Contract" is an agreement through which the County, a County Department, or a County officer/employee (a) agrees to expend or receive County funds or to establish or eliminate a County obligation, (b) in exchange for something of value, (c) which agreement is enforceable by a court."

GSA 5-100 Definition of an Agreement

The County's GSA accepted definition of an "agreement" reads as follows:

"Agreement which is not a contract is an agreement which does not involve the County's and a non-County party's commitments to exchange things of value."

AMADOR COUNTY CIVIL GRAND JURY 2015-2016 SPECIAL INVESTIGATIVE REPORT

Examples of non-contractual agreements are agreements involving social obligations, County communications to a non-County part of the County's mere intention to do something not requiring the non-County to gear up to respond to the County's stated intention, and the County's communication to a non-County part of a statement of County policy."

Mandated Early Termination Clause Contingent on Funding

GSA Policy 5-100 states the following regarding multiple year contracts:

"Multiple year agreements/contracts must include provisions for early termination and must be contingent on available funding."

GSA 5-100 Sample contract with an Early Termination Clause

The County has posted an online version of GSA 5-100 on its website. The GSA Policy has a sample contract with a termination clause. The sample termination clause reads as follows:

"9. Term of Contract: This contract shall become effective when executed by all parties, and shall continue until _____, 20_____, subject to earlier termination by any party giving not less than ten (10) days' written notice of termination to the other parties."

GSA Director's Statement Regarding GSA 5-100

The GSA Director was aware that the County had a purchasing policy but did not recall the exact policy. However, on June, 10, 2010, and June 14, 2014, the GSA Director proposed revisions of GSA 5-100 to the Board of Supervisors. Each revision had a section that had a termination clause based on available funding, and the definitions of "contract" and "agreement". The Board of Supervisors approved each revision.

The GSA Director did not believe the March 4, 2008 "amended (sic) and Restated Lease Agreement" was neither an agreement nor contract because it was a lease for the HHS building. However, the GSA Director knew that the HHS building lease was enforceable by the court if either party did not honor the terms and conditions of the lease.

County Supervisors' Statements Regarding GSA 5-100

Former Supervisor 1, Supervisor 2 and Supervisor 4, all of whom voted to approve Resolution 2-370 and to adopt GSA 5-100 on August 13, 2002, were aware that the County had a purchasing policy but did not recall the exact policy. All the supervisors who voted for the March 4, 2008 HHS building lease were not aware or could not recall if the early termination clause contingent on available funding as written in GSA 5-100 was the County's policy at the time they voted to approve the March 4, 2008 HHS Building lease.

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

Prior to the March 4, 2008 vote to approve the HHS lease, Supervisor 5 met with members of the BOS and the CAO and requested that the early termination clause contingent on available not be eliminated from the contract. Supervisor 5 was assured in the unagendized meetings with his fellow supervisors and the CAO that the termination clause would remain in the contract. However, he was focusing his attention on the March 4, 2008 BOS meeting agenda matter concerning the Buena Vista Rancheria and he did not read the final version of the March 4, 2008 contract before he voted to approve the contract. Supervisor 5 believed this was a “mistake” on his part.

A senior County employee was aware that after the March 4, 2008 HHS building lease was approved that Supervisor 5 began reading every document in the Supervisor’s meeting packages and that Supervisor 5 always asked questions regarding agenda matters and their related documents.

Supervisor 3 was absent from the March 4, 2008 BOS meeting and did not vote for the March 4, 2008 HHS building lease. However, he was aware that the HHS building lease was on the March 4, 2008 Board of Supervisors agenda. He was more concerned about the Buena Vista Rancheria matter. He made a telephone call to the March 4, 2008 BOS meeting only to listen to the Buena Vista Rancheria issue.

Supervisor 3 was aware the county had some policies regarding contracts and had concerns regarding the \$400,000 payment to the County but did not voice them to fellow County Supervisors. He did not ask the Board of Supervisors to table the HHS building lease until he returned from vacation.

On June 3, 2008, Supervisor 3 and Supervisor 5 voted to approve a subordination agreement between the bank that financed the loan for the new owners of the HHS building and the County. However, neither made any comments regarding their concerns regarding the March 4, 2008 HHS building lease. It should be noted that Supervisor 3 was the Chairman of the BOS and placed the matter on the consent agenda.

County Counsel’s Statements Regarding GSA 5-100

The County Counsel knew that the County had a purchasing policy but did not recall the exact policy. The County Counsel did not believe the termination clause contingent on available funding applied to the March 4, 2008 HHS building lease because it was a “lease” and not a contract. She did not recall other leases that the County entered into having early termination clauses⁴. However, she knew that the March 4, 2008 “amended (sic) and Restated Lease Agreement” was enforceable by a court thus a contract.

⁴ See Section below regarding 1001 Broadway HHS Building Lease. This lease had a termination clause and the County Counsel worked on this Lease.

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

The County Counsel did not know how the County would pay the lease if State and Federal funds were terminated.

HHS Building - RFP 06-01 Sample Contract Termination Clause

The HHS building construction and lease request for proposal, RFP 06-01, had to be approved by the County Counsel and the Board of Supervisors prior to being published in January 2006. The County notified the developers in RFP 06-01 that it was the “County’s intent that the contractual relationship between the Developer and the County shall be substantially as set forth in the attached sample *Lease Agreement*.” RFP 06-01, Attachment 7 is a sample contract with a termination clause in Section 3.5.2. The RFP’s termination clause reads as follows:

*“3.5.2 Termination by County. County may terminate this lease, at its sole option, upon ninety (90) days prior notice to the Lessor, in the event (i) County’s Board of Supervisors fail to appropriate sufficient funds for the rental of the premises, (ii) County’s Board of Supervisors fails to provide in its budget for hiring of the Premises from Lessor contemplated in this Lease, or (iii) the funding, whether County, State or Federal for the program or agency or which the Premises were leased is reduced or withdrawn. County may also terminate this lease for any reason at any time after January 1, _____. *If County terminates the Lease pursuant to this section, 3.5.2, County shall pay a Lease termination Fee calculated with Exhibit “D” attached hereto.”*

The October 17, 2006 HHS Building Contract and Lease Termination Clause

The October 17, 2006 HHS building’s lease termination clause is in Section 3.5.2. The termination clause reads as follows:

“3.5.2 Termination by County. On or after July 1, 2015, County may terminate this lease, at its sole option, upon notice to the Lessor on or about January 1 of the year in which the termination is to take effect, in the event (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 or which the Premises were leased is materially reduced or withdrawn. If County terminates the Lease pursuant to this section, 3.5.2, County shall pay a Lease Termination Fee calculated with Exhibit “D” attached hereto. In Addition, on or after July 1, 2015, County may terminate a portion of this lease in the event of a loss of funding for any program or department housed in the Premises, provided that in no event shall partial termination be for less than 5,000 square feet. County shall pay any Lease Termination fee due to Lessor under section 3.5.2 in no later than thirty (30) days following the effective date of termination.”

AMADOR COUNTY CIVIL GRAND JURY 2015-2016 SPECIAL INVESTIGATIVE REPORT

Former Supervisor 1, Supervisor 2 and Supervisor 4, all of whom voted to approve Resolution 2-370 and to adopt GSA 5-100 on August 13, 2002, also voted to approve the October 17, 2006 contract between the County and the LLC of the HHS building and lease.

Previous HHS Building Contracts with Early Termination Clauses

The Grand Jury reviewed the previous leases that the County had with the owners of the previous HHS building located at 1001 Broadway, Jackson, California.

HHS Building Lease – 1001 Broadway, Jackson California

Previous to the October 17, 2006, and the March 4, 2008 HHS Building leases with the LLC, the County included an early termination clause contingent on available funding in the lease for the previous HHS Building at 1001 Broadway, Jackson, California. The original lease was approved in October 1997. The termination clause in Section 3.1 reads as follows:

“Tenant’s Right to Terminate for Budgetary Reasons. *Notwithstanding any other provisions in this lease to the contrary, Tenant shall have the right to terminate this Lease in the event that rent for this Lease is not budgeted by the County of Amador for any succeeding fiscal year (July 1 – June 30) during the term of the Lease. In the event of such occurrence, the County may terminate this Lease by giving the Landlord not less than six (6) month’ notice in writing of the occurrence of the terminating event and tenant’s intent to terminate.”*

First Amendment to Lease 1001 Broadway – February 2, 1999

In February 1999, the 1001 Broadway building and lease were sold by the original owners. As the then Chairman of the Board of Supervisors, Supervisor 4, signed the First Amendment to Lease and Acknowledgment of the Commencement Date of February 2, 1999, for the lease with the new owners of the 1001 Broadway.

Estoppel Certificate and Resolution 00-251 - 1001 Broadway – June 6, 2000

On or about May 30, 2000, the then GSA Director submitted an Agenda Transmittal Form to the BOS for a “resolution approving an Estoppel Certificate for 1001 Broadway”. The documents to support the resolution, 00-251, included a copy of the October 7, 1997 lease for 1001 Broadway.

On June 6, 2000, the then BOS approved Resolution 00-251. Former Supervisor 1 and Supervisor 4 voted to approve the resolution.

Request for Proposal 06-01 Sample Contract Termination Clause

The County included an early termination clause in its sample contract provided in the published Request for Proposal (RFP 06-01) for the HHS building and lease and its sample contract on the

AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT

online version of GSA 5-100. The 2006 BOS reviewed and approved RFP 06-01 before it was published for bids.

As addressed earlier, the County also included an early termination clause contingent on available funding in the October 17, 2006 contract for the HHS building construction and lease. This contract was reviewed by the HHS Director, the GSA Director, the County Auditor, and the County Counsel. Additionally, the October 17, 2006 HHS building contract was approved by former Supervisor 1, Supervisor 2, and Supervisor 4. These three supervisors also voted to approve the March 4, 2008 HHS Building lease that eliminated the early termination clause contingent on available funding.

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

CHAPTER 5 - GSA POLICY AND PROCEDURE 1-310 (CONTRACTS)

GSA Policy and Procedure 1-310 (GSA 1-310) is the County's "contract and agreement" policy. GSA 1-310 identifies the procedures that county department heads or other County officials shall follow when a contract is submitted for approval by the BOS. GSA Policy 1-310 identifies the role and tasks that the GSA Director, the County Counsel, the County's Risk Manager "shall" follow when contracts are presented to the BOS. GSA Policy 1-310 also identified the County Auditor as a responsible party for reviewing contracts.

On December 21, 2004, Former Supervisor 1, Supervisor 2 and Supervisor 4, who approved the October 17, 2006 HHS building contract and lease, and the March 4, 2008 HHS building lease voted to adopt GSA 1-310.

GSA 1-310 states that the GSA Director, the Risk Manager and the County Counsel *shall* review all contract or agreement renewals prior to approval. GSA 1-310 also identifies the "Responsible Departments" for contracts as the Administration, which includes the County Administrative Officer, the Clerk of the Board, and the Risk Manager, the County Counsel, the County's Auditor Controller, and the GSA Director.

GSA 1-310 reads in part "all contracts renewals, that exceed \$25,000 in compensation, shall be scheduled on the Board of Supervisors' agenda for approval, must include an "Agenda Transmittal Form" (ATF); "if required, a proposed resolution for the Chairman of the Board of Supervisors to sign"; and the contract or agreement shall be submitted in triplicate and signed in advance by all parties.

Former Supervisor 1, Supervisor 2 and Supervisor 4, were not specifically aware of GSA 1-310 at the time they voted to approve the March 4, 2008 HHS Building lease, but they knew the procedures that the County followed when an item was placed on a BOS meeting agenda.

Three County Supervisors who voted for the March 4, 2008 HHS building lease and the Clerk of the BOS knew the Chairman of the BOS had the final say regarding how an item is placed on a BOS meeting agenda and that the Clerk of the BOS types and publishes the final BOS meeting agenda.

Supervisor 4 believed the Clerk of the BOS, and not the Chairman of the BOS, was responsible for determining where an item is placed on a BOS meeting agenda and that the Clerk of the BOS prepared and had the final say regarding the published BOS' meeting agenda. Supervisor 4's

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

understanding of this procedure is incorrect and misleading as he has held the Chairman of the Board of Supervisor' position in the past.

Supervisor 5 voted to approve the March 4, 2008 HHS building lease. However, he was a new supervisor in March 2008 and he was not familiar with GSA 1-310. Supervisor 5 relied on the County BOS, the CAO, the County Counsel and GSA Director, for their expertise and their professional opinions regarding items, including contracts that were and are brought before the BOS for approval. However, Supervisor 5 did not seek the GSA Director's advice for the March 4, 2008 HHS Building lease.

Supervisor 5 now relies on the County staff for their professional and legal opinions regardless of what they are.

Former Supervisor 3, did not vote on the March 4, 2008 HHS building contract as he was out of town on vacation. However, he was aware that the HHS Building lease was on the March 4, 2008 BOS meeting agenda and had discussed the lease with his fellow County Supervisors before leaving on vacation. Former Supervisor 3 did not oppose the March 4, 2008 HHS building lease even though he had concerns about the \$400,000 payment.

Agenda Transmittal Form Process

Pursuant to GSA 1-310, all multi-year contracts over \$25,000.00 must be submitted on an ATF to the Clerk of the BOS five days, the Thursday, prior to a BOS meeting, by the department head of the responsible department, a County Supervisor, or a responsible party that would like the BOS to hear a matter. Once the documents are submitted, the Clerk of the BOS then gives the Chairman of the BOS the ATF for the matter and supporting documents for their review.

If the Chairman approves the matter submitted on an ATF for a BOS meeting, the Chairman assigns the matter to the BOS meeting agenda, consent agenda or closed session agenda. The Clerk of the BOS then prepares a draft agenda with the ATFs and their supporting documents on a proposed BOS meeting agenda.

County's Agenda Review Committee (ARC)

The BOS meeting documents are provided to the County's Agenda Review Committee (ARC) for review and approval five days prior to the BOS meeting. The ARC is an "informal" committee and does not have mandated scheduled meetings to review ATFs and their supporting documents. The ARC generally meets the Thursday before the next BOS meeting held on the following Tuesday. However, not all ARC members attend the meetings to review the items that are proposed for the next BOS meeting. The ARC members include the Clerk of the BOS, the Chairman of the BOS, the GSA Director, the County Counsel, the Auditor, and Risk Management Director, or their designated alternates if the regular members cannot attend the meetings, to review the ATFs and supporting documents.

AMADOR COUNTY CIVIL GRAND JURY 2015-2016 SPECIAL INVESTIGATIVE REPORT

During the ARC review process all or most ARC members or their designated alternate review the ATFs and associated documents. Any ARC member can request that an item be moved from the consent agenda to the public agenda or to the closed session agenda for a confidential closed door discussion. The ARC members can make general comments on the ATF regarding the submitted items. ARC members are not required to review every ATF because it is common for an item not to be related to their department.

ATF Responsible Parties

According to the ATF, the department head submitting the ATF is the responsible party to notify all other department heads that may be responsible to review the matter. County executive staff, such as the GSA Director or Auditor who are key members of the ARC, are routinely notified if they are required to review a contract prior to its approval by the BOS. However, as mentioned earlier neither was notified that the BOS, the CAO and the County Counsel had negotiated and agreed to a new guaranteed 20 year lease for the HHS building.

After the ARC Committee's review, the BOS meeting agenda is finalized by the Chairman, and the Clerk publishes the final BOS meeting agenda 72 hours before the next BOS meeting. The public is allowed access to review all the associated documents for the agenda and consent agenda, either on the County BOS website or in person at the BOS Clerk's office. Copies of the Agenda and supporting documents are provided to all the County Supervisors for review in a BOS package.

During this 72 hour review period a private citizen can request that an agenda item be moved from the consent agenda to the public agenda for discussion. But, again, the Chairman has the discretion to move a proposed item or not move a proposed item before the meeting.

The GSA Director, the CAO, the County Counsel, and all the County Supervisors, except Supervisor 4, could not cite any exemptions to the County Ordinance and GSA policies 1-310 and 5-100. Supervisor 4 was not sure if there were any exemptions.

County Supervisors' Agenda Package

The Clerk of the BOS also provides an agenda package for the County Supervisors 72 hours prior to their next BOS meeting. The agenda package includes the BOS Meeting agenda, consent agenda, closed session agenda, and ATFs with their supporting documents. Any County Supervisor can request that an item be moved from the consent agenda to the public agenda or to the closed session meeting agenda for a confidential discussion prior to the adoption of an agenda. A Supervisor can also request that an item be taken off calendar for further review prior to the adoption of an agenda. However, the Chairman of the BOS has final say if an item will be moved from the consent agenda to the public agenda, or to the closed session agenda, or tabled for further review.

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

March 4, 2008 Consent Agenda

The matters concerning the new HHS building lease and a California Department of Mental Health Mental Health Services Act Proposition 63⁵ contract were placed on the March 4, 2008 BOS meeting consent agenda. Items that are placed on the BOS meeting consent agenda are considered routine in nature and are voted on as one item. There is no public discussion regarding any item of the consent agenda.

The BOS voted unanimously to approve the March 4, 2008 consent agenda. Former Supervisor 1 moved to approve the consent agenda and Supervisor 5, seconded the motion. The BOS then voted unanimously (4-0) to approve the HHS building lease and Mental Health Services Act contract.

⁵ The Proposition 63 Contract is discussed in detail later in the report.

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

CHAPTER 6- CALIFORNIA DEPARTMENT OF MENTAL HEALTH DEPARTMENT AGREEMENTS

The services provided by the HHS agency are funded by California State and Federal grants. In the past, the California Department of Mental Health (CDMH) and the Department of Drug and Alcohol Programs (CDAP) provided 100% funding for HHS' mental health services, and drug and alcohol program services programs. However, in 2012 CDMH Medi-Cal Mental Health Managed Care program and Mental Health Services Act (MHSA) programs and CDAP funding were incorporated into the California Department of Health Care Services (DHCS). Currently, DHCS and the California Department of Social Services (CDSS) provide nearly 100% of the HHS funding. Since Amador County's population is under 100,000 people, Amador County does not have to provide matching funds for the health care and mental health care contracts with the State.

Presently, the County signs agreements to obtain State and Federal funding with CDHCS and CDSS to obtain their programs' funding, but in 2006 and 2008 the County signed agreements with CDMH to provide mental health services to qualified individuals. The agreements with CDMH and DHCS have termination clauses based on available funding or the lack of funding.

If CDMH or DHCS funding sources for County HHS programs are eliminated or reduced Amador County's GSA 5-100 would allow the County to terminate multi-year contracts, including multi-year leases of real property. *However, on March 4, 2008, the BOS, the CAO and the County Counsel chose to eliminate the County's right to terminate the HHS lease contingent on available funding. The County would have to pay the owners of the HHS building using County's General Fund for the some or all of the rent (currently over \$1,500,000 per year) if the State and Federal health care funds were reduced or contracts with the State were terminated.*

Health and Human Services Agency Funding Sources

The Amador County Health and Human Services Agency programs and HHS building lease are funded primarily from three trust funds: the Mental Health Trust Fund, the Social Services Trust Fund, and the Public Health Trust Fund. These trust funds receive their funds from State and Federal programs which are made available through the California Department Health Care Services (CDHCS), California Department of Social Services (CDSS), and from 2006 through 2013 from California Department Mental Health (CDMH). In the past the County's alcohol and

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

drug treatment program, which is now part of the County's Behavioral Health Services, was funded from Federal grants that were part of CDMH funding.

The budget for the three trust funds can vary from year to year which means if the State reduces the amount of Mental Health Services Act (MHSA) funds to Amador County; the County has to make up the difference to pay the rent for the HHS building lease that would normally be paid by the Mental Health Trust Fund. Additionally, if DHCS reduces Short/Doyle Medi-Cal funds for drug treatment programs, foster care services and counseling, or any Public Health Department funding, the County general fund would have to make up the difference to pay the rent for the HHS building lease even if the County did not provide the services.

The County's HHS financial records reveal that in 2014-2015 the DHCS and CDSS grant funds paid about 80% of the rent and about 5% of the property taxes for the HHS building lease and 100% of the HHS employees' salaries and benefits. Amador County general fund and other local government agencies paid about 20% of the remaining HHS building lease and property tax payments due to inflationary increases of the property. The 20% County share of the rent will increase if State and Federal funds decrease for any of the Amador County HHS programs.

October 17, 2006 Short/Doyle Medi-Cal Program Agreement - Resolution No. 06-301

The County Counsel, the HHS Director, the CAO and the BOS knew that the Amador County Health and Human Services Agency was receiving State and Federal funds to provide health benefits to individuals prior to approving the March 4, 2008 HHS building lease. A federal health care program is defined in 42 USCS § 1320a-7b as

“(f) "Federal health care program" defined. For purposes of this section, the term "Federal health care program" means-- (1) any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded directly, in whole or in part, by the United States Government (other than the health insurance program under chapter 89 of title 5, United States Code [5 USCS §§ 8901 et seq.]);

or (2) any State health care program, as defined in section 1128(h) [42 USCS § 1320a-7(h)]”

Title 42 USCS § 1320a-7(h) defines State health care program as:

For purposes of this section and sections 1320a-7a and 1320a-7b of this title, the term “State health care program” means—

(1) a State plan approved under subchapter XIX of this chapter,

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

- (2) any program receiving funds under subchapter V of this chapter or from an allotment to a State under such subchapter,
- (3) any program receiving funds under division A of subchapter XX of this chapter or from an allotment to a State under such division, or
- (4) a State child health plan approved under subchapter XXI of this chapter.

On or about September 29, 2006, the HHS Director, in accordance with GSA Policy 5-100 and GSA Policy 1-310, submitted Resolution #06-301 and California Mental Health Care Agreement #06-76107-000 for approval by the BOS. The BOS Chairman scheduled the matter on the consent agenda for the BOS' meeting on October 17, 2006.

According to the ATF for this matter, dated September 29, 2006, prior to the October 17, 2006 BOS meeting, the 2006 Chairman of the BOS, the 2006 County Auditor, the 2006 CAO, the 2006 County Counsel, the 2006 Risk Management Director, and the GSA Director, reviewed the Mental Health Care Agreement between Amador County and the CDMH. The County's executive and administrative officials' initials appear next to their job titles.

Agreement #06-76107-000 between the County and the CDMH mandated that the "County Mental Health Department comply with all State and Federal Performance Standards as mandated by Section 5602 of the Welfare and Institutions Code to provide community mental health services to the entire county". The County agreed to provide services that were funded by the California Short-Doyle Medi-Cal Program, Mental Health Services Act (MHSA), and Federal PATH⁶ and/or the Community Health Services Grant (SAMHSA⁷) funds.

According to the ATF, one copy of the agreement was distributed to the "Auditor" and one "copy to the GSA".

The County agreed to abide by California Code of Regulations Title 9 and Title 22, and Federal Title 42 U.S.C. 300x-1 et seq. Part B of the Public Health Service Act.

According to October 17, 2006 Mental Health Contract:

"Federal law does not permit the use of SAMHSA funds for any of the following purposes:

- *To provide inpatient services*
- *To make cash payments to intended recipients of health services*

⁶ Title V, Part C, §521 of the Public Health Service Act

⁷ Title 42 U.S.C. 300x-1 et seq. Part B of the Public Health Services Act Community Mental Health Services Block Grant funds.

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

- *To purchase or improve land, purchase, construct, or permanently improve (other than minor remodeling) any building or facility, or purchase major medical equipment*
- *To satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of federal funds*
- *To provide financial assistance to any entity other than a public or nonprofit private entity”⁸*

The term of this Contract was originally July 1, 2006, to June 30, 2007. However, this agreement/contract has been renewed for each of the subsequent fiscal years.

Mental Health Services Standard Agreement - Termination Clause

In Article III – General Provisions, Section B, the Mental Health Services Standard Agreement clearly informs the County BOS that the “Contract” could be immediately voided or amended to reflect any reduction of funds if the State and or Federal governments did not appropriate funds. In addition, if the State did not appropriate sufficient funds for the program, the State considered the Contract “void” and the State would “not have any further liability to pay any funds to the County”, and the County would “not be obligated to any provisions” of the Contract. In short, the State could immediately terminate the “Contract” if the State or Federal governments reduced or stopped funding the mental health care programs. Subsequent to the termination of the contract, if the County continued to provide the services, the County would be liable for all the costs related to the services.

October 17, 2006 Board of Supervisor’s Approval of Mental Health Services Agreement

The BOS Chairman scheduled the matter on the consent agenda for the BOS meeting on October 17, 2006, the very same consent agenda as the October 17, 2006 HHS Building lease matter. The ATF and documentation, including the draft resolution, for this matter was in the same Supervisor’s meeting package as the HHS building lease.

The County BOS that approved the HHS Building contract and lease between the County and original HHS Building owner, also approved Agreement #06-76107-000 between the County and the California Department of Mental Health. Former Supervisor 1, Supervisor 2 and Supervisor 4 voted to approve Resolution No. 06-301 and Agreement #06-76107-000. These same County Supervisors also voted to eliminate the County mandated early termination clause contingent on available funding from the March 4, 2008 HHS building lease after the County accepted the \$400,000 one-time payment from HHS building's original building owner.

⁸ Agreement #06-76107-000, between the Amador County and CDMH, Community Health Services Grant funds, Article 1, Part A, Section 1, page 12.

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

October 17, 2006 HHS Building Contract and Lease Process

The Grand Jury reviewed the contract evaluation and approval process that the County followed for the October 17, 2006 HHS building contract and lease to determine if the process was consistent with County GSA policies 5-100 and 1-310.

On or about September 22, 2006, the HHS Director notified the BOS via a memorandum and a completed Agenda Transmittal Form that the County was ready to sign a contract for the construction of the HHS building and its lease. The BOS Chairman scheduled the matter on the consent agenda for the BOS meeting on October 17, 2006.

According to the Agenda Transmittal Form, dated September 22, 2006, the ATF and the contract between the County and the LLC that won the contract, was reviewed by the 2006 Chairman of the BOS, the County Auditor, the 2006 CAO, the 2006 County Counsel, the 2006 Risk Management Director, and the GSA Director, prior to the October 17, 2006 BOS meeting. The County officials' initials appear next to their job titles. This process and review by the designated County executive and administrative officials was consistent with GSA policies 5-100 and GSA 1-310.

The next significant BOS' event regarding the HHS building construction and lease project was on October 17, 2006, when the BOS unanimously voted to approve the contract to build and to lease the HHS Building on the consent agent. *The Grand Jury could not find any documents that showed that the BOS or the public had any discussion regarding the October 17, 2006 HHS Building contract.*

According to the October 17, 2006 HHS building contract and lease, the GSA Director was designated the HHS building "lease administrator". All County individuals agreed that the GSA Director was not assigned to oversee the construction of the HHS building by the BOS because the GSA Director was busy with two other major County construction projects at that time. However, the GSA Director was notified regarding virtually all contract matters involving the lease and sub-leases for space at the HHS building between March 2006 and June 3, 2008, *except for any matter regarding the March 4, 2008 lease.*

Pursuant to the terms of the October 16, 2006 HHS building contract and lease, the construction of HHS building was completed and inspected by the GSA Director during the first week of December 2007.

On December 4, 2007, the County BOS authorized the GSA Director, the County's designated HHS Building lease administrator, to issue a "Letter of Acceptance" for the HHS building.

On or about December 10, 2007, the GSA Director, the County's designated lease administrator, declared the HHS Building as ready for occupancy by County and the took possession of the building.

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

March 4, 2008 Mental Health Service Act Agreement

On or about February 20, 2008, the HHS Director, in accordance with GSA Policy 5-100 and GSA Policy 1-310, submitted Resolution #08-031 and California Department of Mental Health Care Agreement #07-77303-000 for approval by the BOS. The BOS Chairman scheduled the matter on the consent agenda for the BOS meeting on March 4, 2008.

On March 4, 2008, the BOS unanimously approved a Mental Health Services Act Agreement #07-77303-000 between Amador County's Department of Mental Health and the CDMH. The agreement was signed by the then Chairman of the BOS, Supervisor 2. Former Supervisor 1, Supervisor 4, and Supervisor 5 also voted to approve the Agreement.

On May 20, 2008, the BOS, including Supervisor 3, unanimously passed a resolution approving Mental Health Care Agreement #07-77303-000 with CDMH.

The term of the agreement was July 1, 2004, to June 30, 2008. The agreement was renewable every three years after June 30, 2008.

MHSA Agreement Funding Detail Report

According to the MHSA agreement's Funding Detail Chart (Exhibit A), the County's original planned estimated cost for the MHSA programs was \$2,764,464. However, the State only approved \$1,023,387.00 to be distributed to the County in the following amounts: SFY⁹-2004-2005 - \$81,494.00; SFY 2005 -2006 - \$476,219.00; SFY 2006-2007 **\$0 (zero)**; and in SFY 2007-2008 - \$465,674.00. The County had estimated that it needed \$756,570.00 for FY 2006-2007, but the entire amount was rejected and not paid.

The County agreed that the State would not have to reimburse Amador County more than \$1,023,387.00 over the term of the Agreement.

The purpose of the agreement was to incorporate and add MHSA funds as follows:

1. Community Program Planning for FY 2004/2005; and Community Services and Supports for FY 2005/2006 through FY 2007/2008.

MHSA Agreement Exhibit B Soliciting and Accepting Funds Prohibited

More importantly, MHSA Agreement Exhibit B. Standards of Conduct 3 (b) states in part that the following applies to all Counties:

An executive officer or employee of the County or an elected official in the County, will not solicit or accept money or any other consideration from a third

⁹ The State's FY is from July 1 to June 30.

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

person, for the performance of an act reimbursed in whole or in part by the County or State. Supplies, materials, equipment or services purchased with agreement funds will be solely for the purposes allowed under this Agreement.

MHSA Agreement Exhibit B Section 18 Signatures states the following:

This Agreement is of no force and effect until signed by both of the parties hereto. The County will not commence performance prior to the beginning of this agreement or upon final approval

The DMH Procurement and Contracts Officer approved and signed the contract on March 27, 2008.

April 1, 2008 California Drug and Alcohol Contract

On April 1, 2008, the County Board of Supervisors unanimously approved contract Agreement 07-NNA03 with the California Drug and Alcohol Program (CDAP) for drug treatment services.

The term of the Agreement 07-NNA03 was July 1, 2007, through June 30, 2010. Funding was provided by the State and Federal grants. The maximum amount of the agreement was \$1,557,218 in Negotiated Net Amount (NNA) funds. (Please note that the County's Fiscal Summary Reports for FY 2007-08 NNA/Drug Medi-Cal Budget was dated January 10, 2008.) This contract has been renewed in subsequent years.

The CDAP contract had a termination clause that required a 30 day notice and *“was enforceable subject to sufficient funds being made available to the State by the United States Government and subject to authorization and appropriation of sufficient funds pursuant to the States budget Act.”*

The Chairman of the Board of Supervisors, Supervisor 2, signed the contract on April 2, 2008, but the contract was retro-active to July 1, 2007.

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

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**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

CHAPTER 7 – TRACING THE MONEY

Preamble

As noted in previous chapters, the LLC gave the \$400,000 to the County to ensure that the County Board of Supervisors would approve the amended contract, which extended the lease and eliminated the early termination clause contingent on available State and Federal funding.

A search for the \$400,000, from deposit to usage, resulted in a number of discoveries by the Grand Jury regarding financial transactions: *These discoveries ranged from discontinuity of movement between accounts to co-mingling and disbursements forbidden by the March 4, 2008 MHSA Contract, and included transfers to accounts that would help fund an early retirement program for HHS employees.*

HHS Reserve Trust Fund

The Grand Jury only found three documents that mentioned the one-time payment of \$400,000 that the LLC agreed to pay the County for the March 4, 2008 HHS building lease. The first is the February 27, 2008 CAO letter; the second is the LLC memorandum which the CAO signed when the LLC executive officers hand delivered the \$400,000 on March 4, 2008 to the CAO; and the third is the March 5, 2008 memorandum from the CAO to the Auditor when she hand-delivered the \$400,000 check and a copy of the approved March 4, 2008 HHS building lease and Memorandum of Lease (MOL) to the Auditor. However, with the exception of the March 4, 2008 lease and MOL, the Grand Jury did not find copies of the February 27, 2008 and March 4, 2008 letters and March 5, 2008 CAO memorandum copied to any other County Administrative or Executive Officer, County Counsel, or member of the BOS member, or the County Recorder's office.

The Grand Jury could not find any resolutions or any BOS approved documents that directed the Auditor's office to deposit the \$400,000 into the County Reserve Fund known as a Health Care Special Reserve, a HHS Building Trust Fund, or a HHS Reserve Fund. Nor did the investigation uncover any documents that directed County employees to use the \$400,000 to supplement the Mental Health Trust Fund, the Public Health Trust Fund or the Social Services Trust Fund, or any HHS program. The Grand Jury could not find any BOS meeting minutes that mentioned the one-time \$400,000 cash payment to the County nor did the Grand Jury find any meeting minutes or BOS meeting documents that show that the Board of Supervisors acknowledging the acceptance of the \$400,000 cash from the LLC on March 4, 2008. Nor, did the Grand Jury find

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

any County resolutions or contractual documents that reported that the County accepted the \$400,000 one-time cash on March 4, 2008.

Delivery of the LLC's \$400,000 Check to the CAO

On March 4, 2008, just prior to the BOS meeting, LLC executive officers hand delivered a \$400,000 check drawn from an LLC checking account to the CAO. The CAO took possession of the \$400,000 check and signed a receipt that she accepted the LLC check.

In addition, the LLC delivered three signed copies of the MOL to the County Counsel at the same time. The LLC's notarized signature was dated March 3, 2008. The County BOS' Chairman's MOL signature was dated January 17, 2008.

The CAO, Supervisor 2, and Supervisor 4 would have pulled the matter for the new HHS building lease from the BOS calendar if the LLC did not deliver the \$400,000 to the County prior to the March 4, 2008 BOS meeting. However, later the CAO believed it would have been the Chairman's decision to pull the matter off the BOS meeting calendar if the LLC did not deliver the \$400,000 check prior to the March 4, 2008 BOS meeting.

Supervisor 2 and Supervisor 4 did not recall that they would have pulled the matter of the BOS meeting agenda if the LLC did not deliver the \$400,000 check prior to the BOS meeting.

The County Counsel believed that if the LLC did not bring the \$400,000 to the County prior to the BOS meeting that the March 4, 2008 HHS building lease would have been pulled from the BOS meeting. Even though the contract had been signed, the Board of Supervisors would not have voted for the contract because she believed the \$400,000 was a "consideration" for the new HHS Building lease.

Senior Staff in Auditor's Office Statement Regarding "CO Special Revenue Trust – HHS Lease Reserve"

A senior staff member of the Auditor's office believed that the \$400,000 was a kickback¹⁰. She believed it was clear that the owners of the HHS building got what they wanted; referring to the LLC selling the HHS building for a profit, and the County chose the expensive HHS building over jobs for employees.

The Senior Staff member believed that unless the public knew "the codes" for the County budget, which included the codes for the County Special Revenue Trust – HHS Lease Reserve Fund, and knew how County budget worked that the public could not and would not find the \$400,000 "HHS Building Trust Fund" nor would the public learn how the money was spent.

¹⁰ W&I Code section 14107.2.b (2) (d) For purposes of this section, "kickback" means a rebate or anything of value or advantage, present or prospective, or any promise or undertaking to give any rebate or thing of value or advantage, with a corrupt intent to unlawfully influence the person to whom it is given in actions undertaken by that person in his or her public, professional, or official capacity.

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

(Please Note: In one instance the Grand Jury traced the LLC funds through four accounts before they ended up in the Department of Alcohol and Drug Services Program building rental account. Then about \$45,000 was transferred to and comingled funds from another department's funds. The \$45,000 was then moved to Amador County's County Medical Services Program account to cover a deficit in that account. The transfers are discussed in detail below.)

Deposit of the \$400,000 - CO Special Revenue Trust – HHS Lease Reserve

On March 5, 2008, at the direction of the CAO and BOS, the Auditor's office deposited the \$400,000 from the LLC in the Treasurer's Office and opened the "HHS Building Trust Fund" account, Number 31101-101225. However, the actual name for Fund 31101-101225 is the "CO Special Revenue Trust – HHS Lease Reserve".

The Auditor was told by the CAO that the \$400,000 was strictly for HHS projects and the BOS wanted the Auditor to open a "HHS Building Trust Fund." The Auditor was not aware of any resolutions, written orders or any other documents from the BOS ordering the Auditor's office to deposit the \$400,000 check into a "HHS Building Trust Fund" with the County Treasurer's office except for the CAO memorandum.

The Auditor knew the "HHS Building Fund Trust" account was and is the only trust account where a developer or contractor paid the County cash, in this matter \$400,000 cash, for the County to lease or to extend a lease for a building and/or after a building was constructed for the County.

The Auditor knew that in the last 20 or more years that he could remember, the "HHS Building Trust Account" is the only account of its kind. The Auditor knew that normally developers' place a bond with the county before the development and construction phases of a construction project. When the construction project is completed, the County returns the bond if the developer completes the project according to their submitted plans.

Trust Fund – Developer's Bond Sample

The Auditor knew that the County had only 3 or 4 construction trust fund accounts at any one time. The HHS Building was not one of them. The Grand Jury was told by several individuals that typically, land developers/contractors deposit funds into a developer's trust account via a bond during the development of a property, and not cash.

Normally the funds or bond are given to the County prior to the project starting and not after the work is completed. The bond is held by the County. These funds are released to the developer once the project is completed and the County BOS votes to release the bond. This was done during the construction phase of the HHS building. The property owner, as a separate business entity, had placed bonds with the County to develop the property to sub-divide the land and build the roads. The LLC placed a bond to build the HHS building.

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

The County refunded the land development and property tax bonds when the project was completed.

Amador Central Business Property Tax Bond

The property owner, a California corporation, was a corporate partner of the LLC, and is one of the largest property owners in Amador County and in California. The property owner placed a bond with the County to develop Amador County Parcels 044-010-114-000 and 044-010-122-000. The property owner put up a property tax bond with the County to develop what is now called Amador Central Business Park (ACBP) which included the lot for 10877 Conductor Boulevard, Sutter Creek, CA.

Starting in 2005, the property owner developed these previously identified and vacant parcels into the ACBP by sub-dividing the parcels and building the streets and infrastructure. The previously identified parcels happened to be in an area the RFP had selected as a possible location for the HHS building.

Once the original parcels were split, new parcels were created. The parcels were divided into lots. Parcel 044-054-010-000, Lot 43, was a newly created lot on one of the parcels and its street address is 10877 Conductor Boulevard, Sutter Creek, CA. This 5.66 acre lot was selected as the HHS building location.

On August 27, 2007, the property owner sold Lot 43 to the LLC for \$1.49 million and the Assessor's office reassessed the property.

Property Taxes for Parcel 044-010-122-000, Amador Central Business Park

According to Amador County 2007 property tax records for parcel 044-010-122-000, on October 15, 2007 the County paid the property tax for the property owners, a corporate partner of the LLC. Amador County property tax records reveal that the December 10, 2007 property tax payment of \$11,482.36 and the April 10, 2008 property tax of \$11,482.36 were paid by the County. The property taxes were reimbursed by the property owner's property tax bond.

However, the County Assessor's office completed a tax assessment on the building on December 31, 2007, but did not complete a full tax assessment for the HHS building and land on Lot 43 at 10877 Conductor Boulevard, Sutter Creek, CA, until several months later. The County's first combined assessment which included the land and the HHS building was completed on April 18, 2008, but only after the LLC requested the reassessment.

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

Resolutions 7-145 and 7-146 County Partnership Agreement with the Property Owner to Obtain Highway Encroachment Permits

The following is a sample of a bond a developer would place with the County when developing property.

On July 17, 2007, the BOS voted to unanimously to approve Resolutions 7-145 and 7-146. These resolutions were agreements between the County and the property owner of Amador County Parcels 044-010-114-000 and 044-010-122-000 that acknowledged a partnership between the County and the property owner to develop the roads and infrastructure in ACBP to connect to the adjacent State highways. The BOS agreed to apply for Caltrans highway encroachment permits for the roads, Locomotive Lane and Conductor Boulevard, which connected the ACBP to State Highways 104, aka Ridge Road. Additionally, the County agreed that it would apply for the encroachment permits to Highway 88 from a road that has not been completed. In return, the property owner agreed that it would build Locomotive Lane and Conductor Boulevard and their entrances/encroachments to Highway 104 and Highway 88.

The encroachment for the entrances to the ACBP via Locomotive Lane and Conductor Boulevard were completed prior to the County occupying the HHS building.

On March 25, 2008, the County BOS passed Resolution 8-045 acknowledging the road and encroachment project for the Martell Business Park Phase II Subdivision No. 104 Amador Central Business District was completed. The BOS ordered the release of the \$3,011,201.28 bond to the property owners. County records show that the original bond was returned to the property owners on April 29, 2008. (Please note that March 25, 2008 was four days after the HHS building went into escrow.)

The County BOS that approved Resolutions 7-145 and 7-146 included former Supervisor 1, Supervisor 2, Former Supervisor 3, and Supervisor 4.

The County BOS that approved Resolutions 8-045 included former Supervisor 1, Supervisor 2, Former Supervisor 3, Supervisor 4 and Supervisor 5.

Why A \$400,000 HHS Building Trust Fund?

During the Grand Jury's investigations, including the 2014-2015 investigation, current and former County executive officers and elected officials told the Grand Jury that the State withheld and or reduced Mental Health Services Act (MHSA) Proposition 63 realignment funds from the County. The reduction in funds caused the County's HHS agency to have very serious financial issues, including the reduction in funding by the State for the mental health services for the County.

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

This Grand Jury re-interviewed former and current executive officials, elected officials, and administrative staff regarding FY 2007-2008 deficit issues that were caused by the State reducing the MHSA alignment funds the County had expected. Former Supervisor 1, Supervisor 2 and Supervisor 4, and the CAO knew that the HHS agency was having financial problems in FY 2007-2008 because the State had withheld mental health program's realignment funds. They were aware that the County needed cash, i.e., the \$400,000, to help balance the budget for HHS and the Mental Health Programs. However, not one county employee, executive officer or elected official could explain why the County wanted \$400,000 and not any other amount of cash.

The Grand Jury learned that HHS Director tried to assure the CAO and the County BOS that the shortfall in realignment funds was only temporary, that the State would make adjustments, and the realignment funding would return to anticipated and required levels of funding. The Grand Jury discovered that in FY 2008/2009 the California Department of Mental Health resumed funding for MHSA programs and services after the BOS approved the March 4, 2008.

According to the CAO a major portion of the HHS' fiscal problem was caused because the only person who controlled the HHS budget prior to FY 2007-2008 was the HHS Director. It was alleged the HHS Director would transfer funds from one HHS Trust Fund to another HHS Trust Fund without her, the CAO, knowing that the transfer of funds took place. (Note that prior to 2011, the HHS Director was a direct report to the Board of Supervisors and the HHS Director did not have to advise the CAO of inter-department transfers. Department heads would submit an ATF to the BOS to request the transfer of revenue from one trust fund to another trust fund. The BOS would put the item on the BOS meeting agenda for a vote. However, the CAO can approve intra-department transfer of funds.)

HHS Building Rent Payments – Pay Back To the HHS Building Owner

Department of Mental Health Rent-Lease Payments FY 2007-2008

Documents provided by the various County departments reveal how the distribution of the \$119,070 of the HHS lease was apportioned from January 1, 2008 to May 30, 2008. The County Department of Mental Health received about \$2,517,000 in revenue from the State, but did not pay any rent (\$0) in FY 2007-2008. However, a review of the audit trail and expenditures reports and other county records reveal that from December 26, 2007 to May 30, 2008 the Department of Social Services actually paid for the Department of Mental Health's rent for its portion of the HHS building lease through account 11600-5106-52600. The DMH portion of the rent was about \$22,632 per month.

Beginning January 1, 2008, the Department of Social Services paid \$76,713 per month for rent. The amount included the following allocation of funds:

- DSS - \$50,565

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

- DMH -\$22,632¹¹
- IHSS - \$1176*
- HRC - \$2340*
(*sub-leases)

The Department of Public Health paid \$38,357 per month and the County's Drug and Alcohol Services Program paid \$4000 per month for their share HHS building monthly rent.

Rental Payment Process

According to the HHS staff statements and financial reports, and the Auditor's office expenditure reports, from January 1 to May 30, 2008, Amador County's Department of Public Health paid the HHS building rent in one lump sum to the LLC. The Department of Social Services which included the Department of Mental Health Services portion of the rent, the Alcohol and Drug Services program and sub-lessees transferred or reallocated their share of the rent payment to the Department of Public Health's Fund 11800-101180 to pay their share of the rent for the lease of the HHS building. Once the entire rent was collected, the Public Health Department would allocate its share of the HHS building rent and a request was made to the Auditor's office to release \$119,070 in funds to pay the LLC for the lease.

The LLC should have been the vendor listed for the lease payments from the first payment on December 26, 2007 to May 30, 2008 on the Department of Public Health's Expenditure Audit Trail report for account 11800-4000-52600. However, "Federal Aviation" is listed as the vendor for the first prorated rent payment on December 26, 2007; T1732 is listed as the vendor with no name for the January 29, 2008; and "Concord Crowne P" is listed as the vendor for the rental payments made on February 26, 2008, March 11, 2008, April 15, 2008, and May 13, 2008. The LLC is not listed as a vendor for any payments for the HHS building lease.

Starting with the June 17, 2008 payment the Department of Social Services paid the current owners the HHS building lease payment. Presently, the Amador County Department of Social Services pays the HHS building rent in one lump sum to the owners of the HHS building. As of April 2016, the HHS building rent payment is \$132,635.00 per month.

During the FY 2007-2008 the Auditor's office was reusing "vendor identification numbers". This caused the incorrect vendor names or no names to be entered on the Auditor's computerized records. Thus, the LLC's name never showed up on the Auditor's records as being paid by the County for the HHS lease. However, the Auditor's office has ended this practice.

ADP's \$75,000 Request for Rent Payment to THE LLC

In FY 2007-2008, the County's Alcohol and Drug Services Program (ADP) was under the Department Public Health even though the ADP was receiving funds from the CDMH and the CDAP contracts that were made with the Amador County Department of Mental Health and

¹¹ The \$22,632 per month for DMH's share of the rent was obtained from DSS records.

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

Department of Behavioral Services. The County's ADP is now a department within the County's Department of Behavioral Health Services, which includes the Department of Mental Health. It is important to note that between FY 2005/2006 to the present ADP funding sources, included but not limited to, Federal Drug and Alcohol Program Funds, State Welfare Administration Funds, and State Proposition 36 Substance Abuse Funds. Currently, the County's ADP is receiving Short-Doyle Medi-Cal program funds.

Fiscal Year 2007/2008 Alcohol and Drug Services Program Rent Budget Deficit

The Grand Jury reviewed HHS departments' expenditure reports, Board and Supervisors' meeting agendas, numerous HHS building lease documents, Amador County's Final County Budget Reports and the 2013-2014 Grand Jury HHS building report. Based on the review of all these documents the BOS knew or should have known that the FY 2007/2008 approved budget did not allocate adequate funds for the ADP to pay for rent at both its former Jackson location and at the HHS building present location.

Prior to the FY 2007-2008 budget being approved, the BOS, the County Counsel and the HHS Director knew that in December 2007, the ADP would be moving to the HHS building in Sutter Creek, CA. This meant that the County HHS Director and County Counsel would have to terminate the leases at the two HHS buildings located in Jackson, CA. As previously discussed, the County Counsel was aware of the termination clauses in the lease for 1003 Broadway, Jackson, CA, and the County knew that in December 2007 the County would have to provide notice to the owners of the Jackson buildings to terminate the HHS leases on June 30, 2007 if the County did not want to pay rent for a vacant building in Jackson. This did not happen.

When the BOS Supervisors approved the FY 2007-2008 budget they severely underfunded the ADP's rent budget. On July 10, 2007, the beginning balance for ADP's 4003-52600 rental fund account was \$52,390 for FY 2007-2008. The \$52,390 would only cover the costs for the Jackson building for FY 2007/2008, and not the additional rent for the HHS building when the County planned to occupy the HHS building in December 2007 per the October 17, 2006 HHS building lease. The ADP's budget actually needed over \$82,000 to cover its rent payments.

ADP Request for \$75,000.00 for Rent

After the County moved in the HHS building on December 10, 2007, ADP started to pay \$4,000 for monthly rent for space at the new HHS building in addition to the rent and property taxes at the Jackson HHS building location. Between December 26, 2007 and June 30, 2008, ADP paid about \$ \$27,000 in rent for the HHS building to the LLC.

On March 26, 2008, the ADP requested \$75,000 be transferred from the HHS Reserve Fund account, Number "31101-101225-201002" to the ADP's account 4003-47890 "Miscellaneous Revenue" account. According to the ADP's documents, \$75,000 was then transferred to ADP's account 4003-52600 which is the ADP's "Rents-Leases, Buildings" account.

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

However, on April 30, 2008, according to the Auditor's records, \$75,000 from ADPs' account 4003-47890 "Miscellaneous Revenue" was actually transferred to the Department of Public Health's cash account fund 11800-101180 from ADP's accounts.

On May 6, 2008, the Board of Supervisors approved the transfer of \$75,000 to Public Health Fund 11800, Department Drug and Alcohol Program fund 4003, Account 52600 Rents and Leases.

Between May 30, 2008 and June 30, 2008, ADP allocated \$12,086 of the \$75,000 to rent for the HHS Building and the former Jackson location of HHS. \$8,000 can be traced directly to being allocated to pay the LLC for rent for the HHS building and about \$29,000 was used to pay off the deficit that was caused by ADP allocating funds to pay the LLC for the HHS building rent and the \$4,086 in rent at the Broadway building

Inter-Department Transfer of \$45,351- Journal Entry 127A and 167A

On June 16, 2008, \$14,030 of the \$75,000 was reallocated in the department's budget at the ADP's request. The Auditor's office records, Transaction Journal Entry Number 127-A, reveal \$14,030 was transferred from ADP's rental funds account (4003-52600) to ADP's Professional/and Specialized Services account (4003-52300).

Requests to change an Adopted Budget Expense Line Account within the same Department by Budget Transfers are frequently made by Departments. When Budget Transfers are made between expenses such as services and supplies as in this case, they only require the CAO's approval.

The Grand Jury obtained a copy of the original request to transfer the \$14,030. The request was made by the then Director of the ADP on May 26, 2008 and approved by the CAO on May 28, 2008. The approved request was received by the BOS on May 28, 2008. The reason for the request was listed as:

"The above transfer is to cover unexpected expenses for professional/Specialized Services."

However, the Grand Jury discovered that two weeks after the \$14,030 was transferred to the account (4003-52300) that account had a surplus of over \$132,000. On June 30, 2008, \$132,000 was transferred from 4003-52300 and comingled with other HHS funds to balance the Public Health Trust Fund's budget.

On June 30, 2016, according to the Auditor's Transaction Journal Entry 167-A, in addition to other transfer from other HHS accounts, \$31,321¹² from account 4003-52600 (ADP Building Rent) and \$132,149 from 4003-52300 (ADP's Professional/and Specialized Services) account,

¹² The \$31,321 was from the original \$75,000 the ADP requested for rent from the \$400,000 the LLC paid the County. .

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

were transferred to balance the FY 2007-2008 Budget. The money was comingled with \$121,467 from the Public Health Trust Fund's Health Department State Realignment Fund (4000-45163). According to Journal entry 167A, \$340,570 was transferred to the Department of Public Health State of California County Medical Services Program (CMSP) Fund (4000-52395) to balance that funds FY 2007-2008 budget.

As matter of policy, Amador County's external auditors require that the Auditor's office to submit documentation of the all transfers to balance a budget deficit. The Auditor's office submitted the report regarding Journal Entry 167A to BOS on November 4, 2008, Election Day. The entries on Journal Entry 167A are not considered expenditure transfers.

Health and Human Services Agency April 15, 2008 Request to Transfer Funds

On April 15, 2008, at the Board of Supervisors meeting, the Health and Human Services Agency requested increases of revenue in its Public Health Department (11800) Account # 101180-45640 (Federal Aid From Other Agencies) in the amount of \$32,000 and Public Health Department (11800) Account 101180-45240 (State Aid Other) in the amount of \$13,555; and requested increases in account #4000-52600 (Rents-Leases Buildings) in the amount of \$32,000, and requested a total of \$8,250 for utility payments, special department expenses, staff training, and office equipment. The Board of Supervisors approved the request.

On April 16, 2008, \$32,000 was added to the Public Health's rental account 11800-4000-52600. Without the transfer of the \$32,000, the Health department building rent budget would have had \$32,000 deficit.

HHS Director's \$165,000 Request for Funds to Pay Rent

On April 11, 2008, the HHS Director submitted a memorandum to the Auditor's office and an ATF to the BOS requesting that \$165,000 be transferred from the "Trust 31101-101225" to Mental Health Fund account 11700-110170, the DMH operating budget, for expenses in April 2008. Account number 11700-110170 is also known as the DMH's account cash account. The ATF was reviewed by the Auditor, the CAO, the County Counsel and the GSA Director. The process followed County policy.

On April 22, 2008, the BOS unanimously approved the HHS Director's request to transfer the \$165,000.

On April 30, 2008, the Auditor's office transferred the \$165,000 from the County Reserve Fund 31101-201002 to the HHS Reserve Fund 31101-101225, and then to Department of Mental Health Fund 4112-47890 (Miscellaneous Revenue Account). The \$165,000 was then transferred to the Department of Mental Health cash account 11700-101170 to pay for Department Mental Health operational expenses.

A review of the Department of Mental Health's account 11700-101170 expenditure report reveals that on April 30, 2008, \$165,000 was transferred into the account and co-mingled with

AMADOR COUNTY CIVIL GRAND JURY 2015-2016 SPECIAL INVESTIGATIVE REPORT

other funds. On the same day, \$86,250 was credited to the account for “REALIGNMENT ADJ 4/8” and \$140,491 was credited for payroll warrants. It is unknown what accounts were funded by the \$165,000.

According to senior staff at the Auditor’s office, the transfer of \$165,000.00 from the County Special Revenue Trust Fund to the Behavioral Health Services operating account was to pay for regular operating expenses. The increase in revenue was not allocated for any specific expense, but to help increase the revenue and cash account at that time. It appeared to the Senior Staff member that expenses were being paid as budgeted, but revenues were not received at the same rate expenses were paid, which created a shortfall in the available cash at the time the request was made by the department head. The Senior Staff reported that the funds stayed in the Behavioral Health Services cash account to pay for regular operating expenses.

Please note that the March 4, 2008 MHSA Contract for MHSA realignment funds that the HHS Director submitted for approval and the County BOS approved, forbids County executives, employees and elected officials from accepting money or any other consideration from a third party for the performance of an act reimbursed in whole or part by the County or the State.

1003 Broadway HHS Building Settlement

As previously discussed, the October 17, 2006 contract between the County and the CDMH states that federal law does not permit the use of SAMHSA funds for the following purpose:

- *To purchase or improve land, purchase, construct, or permanently improve (other than minor remodeling) any building or facility, or purchase major medical equipment.*

On December 9, 2008, a new HHS Director submitted a memorandum to the Auditor’s office and an ATF to the BOS requesting that \$130,000 be transferred from the HHS Reserve Account Fund 31101-101225 to the Mental Health Trust Fund account number 11700-110170.

County financial records show that after the \$130,000 was requested that the funds stayed in account 31101-101225, until December 29, 2008. On or about December 29, 2008, the \$130,000 was released by the Auditor’s office to the pay the owner of 1003 Broadway, Jackson, CA, for repairs the County agreed to pay at the Jackson HHS building.

County Early Retirement Incentive Program

As previously discussed, the October 17, 2006 contract between the County and the CDMH states that federal law does not permit the use of SAMHSA funds for the following purpose:

- *To provide financial assistance to any entity other than a public or private entity.*

The County’s fiscal year budget process begins in January of each calendar year and the County has a fairly good idea of the budget by April/May of each year. However, by January 2008, the

AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT

CAO knew that the County budget was “tight.” All the County individuals interviewed gave sworn testimony that they knew the County’s budget was either “tight”, the County was not getting the revenues to pay for its financial obligations, the State withheld the County’s mental health programs realignment funding which caused financial problems at HHS, or the County simply had a deficit. Their sworn statements were consistent with their statements to the previous grand juries.

The CAO knew that in late 2007 and early 2008, the CAO and the County BOS knew that the remaining FY 2007/2008 budget would be “tight”, and the FY 2008/2009 budget would be challenging. The HHS budget was challenging because the way in which the HHS programs were funded by State grants and how the HHS Director managed the HHS budget.

In FY 2007/2008 all County employees took a 10% reduction in pay, and the County implemented other budget reduction programs. During the development of the FY 2008/2009 budget, the CAO and the Board of Supervisors decided that to balance the budget that the County would have to lay off some County employees for cost savings to balance the FY 2008/2009 budget.

The CAO knew that one County employee cost the County about \$100,000 to fund each year. The CAO and the Board of Supervisors decided that to balance the County’s FY 2008/2009 budget, the County would have to lay-off 37 full-time and 14 part-time County employees for Fiscal Year 2008/2009, which started July 1, 2008.

On June 17, 2008, after the FY 2008/2009 Budget was approved, the CAO proposed and the Board of Supervisors approved an Early Retirement Incentive Program (ERIP) for qualified County employees. The County BOS created a new department the Early Retirement Incentive Department #1405, and account 50405. ERIP would later be funded by County departments who wished to participate in the ERIP.

The ERIP required that each department provide the funding for its eligible employees to participate. Each eligible employee would receive \$1,000 in tax free health care benefits for each eligible year of Amador County CalPERS service. The employees would have to have a minimum of five years of Amador County CALPERS eligibility to take advantage of the ERIP.

The eligible County employees had to voluntarily agree to participate in the ERIP. After the County announced the ERIP to County employees, 27 employees retired and 24 eligible county employees opted in to accept the ERIP’s tax free health care benefits. Thirteen of the 24 ERIP retirees were longtime HHS employees who could have and would have retired without the ERIP.

In FY 2007/2008 and in FY 2008/2009, HHS County employees’ salaries and benefits were paid entirely by State and Federal funds. County records reveal that the 13 HHS employees received about \$216,916 in tax free incentives to retire early. The Department of Public Health, Dept.

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

#4000, contributed \$13,617, the Drug/Alcohol Program, Dept. #4003, contributed \$1275; the Department of Mental, Dept. #4112, contributed \$31,642; and Department of Social Service, Dept. #5106, contributed \$170,384. According to County journals, the ERIP Department #1405 made the transfers for the funds on August 31, 2008 and November 3, 2008. However, the ERIP program funds were not proposed nor approved when the FY2007/2008 budget was approved, so all the HHS departments had to transfer funds from other accounts, like the salary, benefits, rental, and professional services accounts, to the ERIP account. The transfer of funds between accounts caused shortfalls in some of those accounts.

The accounts that had shortfalls were reimbursed on June 30, 2009, when the Auditor's office transferred funds between accounts to balance the budget on June 30, 2009. The funds to reimburse the shortfalls, which included the HHS departments' ERIP account 50405, included account 50100 – Salaries; 50300 – Employees Share; 50400 - Employee Group Insurance; and 50800- Special Department Expenses. In addition, Public Health's Account 4003-52600 (Rental and Lease Account) was charged \$28,500 to cover the budget shortfall.

HHS Director's ERIP Payment

The HHS Director, who was an active participant in both HHS building leases received \$21,600 in tax free benefits, when she was "forced to retire" in July 2008. The HHS Director wanted to retire in December 2008, but the CAO told her that if she did not voluntarily retire, that the Board of Supervisors would fire her and that she would not get any of the ERIP funds. The HHS Director chose to receive the \$21,600 in tax free benefits and retired 5 months early.

The CAO and Chairman of the Board of Supervisors were aware that the DHS Director was forced to retire early.

The BOS voted to eliminate the GSA Printing Unit and that the employees would lose their positions if they did not find another position in the County. A relative of a then County Supervisor, whose GSA Print Shop position was being terminated by the BOS in FY 2008-2009 received \$30,000 in tax free benefits when he retired in September 2008.

The former County Supervisor he knew his relative was eligible to retire and knew his relative's position was going to be eliminated in FY 2008-2009, so he voted to approve the ERIP.

Resolution to Transfer of 2007-2008 FY Mental Health Trust Funds

Former Supervisor 1, Supervisor 2 and Supervisor 4, and the CAO knew that the HHS agency was having financial problems in December 2007 because the State had withheld the mental health program's realignment funds. They believed that County needed the \$400,000 to help balance the budget for the mental health program. However, the Grand Jury learned that the FY 2007-20078 Mental Health Trust Fund actually had a budget surplus of at least \$93,000.

AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT

On February 8, 2011, the 2010-2011 HHS Director submitted an ATF and a draft resolution to the Board of Supervisors to request that the BOS authorize the transfer of 10% of the Mental Health Care Trust Fund Fiscal Year 2007-2008 and Fiscal Year 2008-2009 budgets to the FY 2010-2011 Social Services Trust Fund. The transfer of 10% of the Mental Health Trust Fund to the Social Service Trust Fund is permissible by California Welfare and Institutions Code Section 17600.20(a) pertaining to the transfer of realignment funds from on trust fund to another trust fund.

The BOS unanimously voted to approve Resolution 11-011 to transfer 10% of the FY 2007-2008 Mental Health Trust Fund's budget to the FY 2010-2011 Social Services Trust Fund Budget. According to the audio tape of the February 8, 2011 BOS meeting, the Amador County citizens were receiving unemployment benefits because of the fall of the economy in late 2008. The transfer of the funds by the BOS was approved under the guise that Amador County citizens were seeking more services from DSS because they were losing their unemployment benefits.

Please note that in FY2007/2008, the Department of Mental Health did not pay any rent for any building leases. County audit records reveal that the Department of Social Services paid the Department of Mental Health portion of the HHS building lease from December 10, 2007 to June 30, 2008. During this time period, the Department of Mental Health would have had to pay approximately \$155,000 for its share of the HHS building rent.

Resolution to Transfer FY 2009-2010 Mental Health Trust Funds

A review of the County Auditor's financial records for Resolution 11-011 reveal that on February 28, 2011, \$92,254 was transferred from the FY 2007-2008 and \$84,235 from the FY 2008-2009 Mental Health Trust Fund #11700-101602 to the FY 2010-2011 Social Services Trust Fund Social Services Realignment Trust Fund #11600-101603 .

A review of the County Auditor's financial records for the Mental Health Trust Fund reveal that in February 2012 the then HHS Director requested the transfer of 10% FY 2009-2010 and FY 2010-2011 Mental Health Realignment Funds to the County's Health Trust Fund. The BOS approved the transfer of \$155,973 from the Mental Health Realignment Trust Fund #11700-101602 to the Public Health Realignment Trust Fund #11800-101604. The records show that the funds were transferred from the FY 2009/2010 and FY 2010-2011 Mental Health Trust Fund #11700-101602 on February 29, 2012.

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

CHAPTER 8 - AMADOR COUNTY HHS BUILDING PROPERTY TAXES

The owners for the former HHS building at 1001 Broadway, Jackson, California; the LLC, the original owners and landlords for the HHS Building at 10877 Conductor Boulevard, Sutter Creek, California; and the new owners of the HHS building paid different percentages of the property taxes to Amador County. The County had three different methods in determining how much property tax the property owners would pay. However, in all cases the taxpayers paid a portion of the property taxes for the HHS buildings.

1001 Broadway – Jackson

The County agreed to pay 50% of the property taxes for the HHS building located at 1001 Broadway, Jackson, California. The County agreed to make this payment to the owners in the form of an extra monthly payment for the lease.

10877 Conductor Boulevard – Sutter Creek

The contract terms for the property tax for the HHS Building highly favored the LLC when it owned the building. The LLC paid the property tax for the HHS building property based on the market value of the property and not the income value of the property and the March 4, 2008 HHS Building lease.

According to the Tax Assessor’s public website new construction “is appraised at its value as of the date it was completed.” In this matter, the HHS building was completed on December 10, 2007, and after the County paid its first rent payment on December 26, 2007. The HHS building was assessed at \$12.1 million based on its market value on December 31, 2007. However, the first combined assessment that included the building and land was not completed until April 18, 2008.

Section 6.5 for both HHS building lease addresses the terms for the real property taxes for the HHS building and real Property. Section 6.5 reads as follows:

Lessor shall pay all real property taxes and general and special assessments levied and assessed against the Premises”. County shall reimburse the Lessor in an amount equal to that portion of the real property taxes that results from application of the inflationary increase in the full cash value of the Premises allowed by California Constitution Article 13 A, Section 2(b) within thirty (30)

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

days after receipt from Lessor of evidence of payment of real property taxes for the Premises. County shall not be liable for increases in taxes based upon reassessment of the Premises following completion of construction of improvements, but County shall be liable for the inflationary increases applied to the full cash value based of the Premises following construction of improvements. In no event shall the County be liable for any increase in real property taxes other than the regular annual adjustment set forth in 6.5, including without limitation by any increase due to a change in ownership of the Premises.”

The Grand Jury determined that the LLC’s (the original owner) real property tax for the HHS building was based on the property’s market value of its first combined property tax assessment of \$13.6 million on April 18, 2008. Essentially, the LLC’s HHS building's property tax was based on the first combined assessment of the HHS building and property after the County occupied the HHS building. Any subsequent owner would pay the property taxes over the initial assessed value but not the inflationary increase of the value of the property.

The Grand Jury was initially led to believe by the County Assessor’s office that Amador County paid the property tax for the first \$13.6 million of the original assessed real property value of the HHS building and the inflationary increases of the originally assessed value of the property. This belief was based on the County Assessor’s May 25, 2010 testimony and presentation to the Amador County Board of Equalization (BOE) hearing regarding the new owners appeal to lower the HHS buildings property reassessment.

The Grand Jury had requested all the property tax records for 10877 Conductor Boulevard, Sutter Creek, CA, for the property tax periods between 2005 and 2015. However, due to a clerical error which was just discovered only a portion of the 2007-2008 property records for 10877 Conductor Boulevard were provided to the Grand Jury. The records that were not provided related to the period of time in 2007-2008 that the LLC owned the HHS building.

During the May 25, 2010 BOE hearing, the Assessor testified and presented evidence that Amador County was responsible for and paid the property tax on the first \$13.6 million of the property tax assessment. The Assessor testified that the best method to determine the property tax was by the ‘income method” and not the market value method which was used for the LLC’s property tax assessment. This income value method took into consideration the value of the March 4, 2008 HHS building lease that the BOS approved. Based on the income method, the Assessor believed that the HHS building and property was valued at about \$17.2 million on January 1, 2009.

The BOE voted unanimously to deny the new owners’ appeal based on the Assessor’s evidence that the value of the property had increased as of January 1, 2009, and the County paid the property taxes that had increased since the property was purchased in June 2008. This issue is addressed in detail later in this report.

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

However, the Grand Jury just recently learned that the Assessor now believes that his testimony and the evidence that he presented at the May 25, 2010 BOE hearing regarding the County paying the property taxes for the HHS building was totally incorrect. The County Assessor now believes that the owners of the HHS building pay all the property taxes on the value of the property except the inflationary increases to original value of the first assessment of the property.

New Owners Property Tax Assessment

On or about March 19, 2008, the LLC received a supplemental tax bill because it bought Lot 43 for \$1.45 million on August 27, 2007. The LLC contacted the Assessor to appeal the supplemental tax bill because they disagreed with the value of the property.

On or about March 21, 2008, the LLC received an offer to buy the HHS building and lease from a third party (the current owners) and the property went into escrow. The building and lease sold for about \$16.9 million dollars, largely because of the guaranteed 100% occupancy rate, the guaranteed 20 year term, guaranteed income of over \$1.2 million per year (currently over \$1.5 million per year) with guaranteed rent increases each year. The rent was guaranteed never to be reduced pursuant to the terms of the lease. The terms and conditions of the March 4, 2008 HHS building lease resulted in a low capitalization rate which increased the value of the HHS building as a commercial building rental.

After the HHS building and property went into escrow and before the sale of the HHS building was recorded on June 6, 2008, the County reassessed the value the HHS building and real property at \$13.6 million dollars for the 2008-2009 Tax Year. The assessment was based on the land being valued at \$1.5 million and the improvements at about \$12.1 million. Subsequently, in tax year 2008-2009, the Assessor's office re-assessed the HHS building at \$16.9 million (the purchase price) as of January 1, 2009.

The new owner's property tax reassessment for the supplemental tax bill was initially based on the difference between the new property tax assessment of \$16.9 million and the County's first property tax assessment of \$13.6 million. At that time the Assessor as well as the BOS believed that the County was responsible for paying the property tax on the first \$13.6 million of assessed value plus an annual inflationary adjustment of about 2% per year.

If the Assessor's opinion and the BOS belief regarding Article 6.5 of the March 4, 2008 HHS building lease were correct, this would have resulted in the County being responsible for paying nearly \$1.2 million in property taxes between 2008 and 2015. These payments by the County did not happen. Rather the owner paid the full amount less the inflationary adjustment.

The County Assessor now believes the County is responsible for paying only the inflationary adjustment amount which is currently about \$10,300 (about 5% of the total property taxes due.)

AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT

Subsequent to the purchase by the new owners, the County Assessor's office originally re-assessed the property, based on the market value of the property which was the sale price of \$16.9 million. The new owners received their supplemental property tax statement during Tax Year 2008-2009 and challenged the reassessment because the collapse of the economy, especially in the commercial building industry.

The County Assessor's office acknowledged the fall of 2008 collapse of the national economy and would later re-assess the HHS property based on its guaranteed income from the rent the County pays for the guaranteed 20 year lease. This property tax assessment was about \$17.1 million.

In 2010, the new owners appealed the HHS Building's 2008-2009 property tax assessment to the Board of Equalization (BOE) because the new owners believed that due to the economic collapse the value of the property decreased. In Amador County, the hearing officers of the BOE are the members of the Board of Supervisors and the County Counsel represents the BOE. The County Tax Assessor recommended that the County deny the appeal for a property tax reassessment and the BOE agreed.

On May 25, 2010, after being rescheduled at least three times, the Amador County BOE held a public hearing for the new owners property tax reassessment appeal. The hearing was recorded and the audio recording was made available for public on the BOS web page. Four of the five County Supervisors who approved the March 4, 2008 HHS building lease were BOE hearing officers. The County Counsel who negotiated and wrote the March 4, 2008 HHS building lease was the legal counsel for the BOE and was present at the May 25, 2010 hearing.

The new owners' representatives testified that they believed that the property value of the HHS building decreased approximated 24% since they bought the property on June 6, 2008. The new property owners believed they bought the HHS building at the height of the real estate market boom, but the unexpected and devastating collapse of the state and national economy in of the fall of 2008 virtually killed the commercial real estate market in California as well as in Amador County. The new owners testified that they believed the HHS building's value was approximately \$12.8 million based on a nine point capitalization rate and requested a Proposition 13 property tax reduction.

During the hearing, the HHS building owners testified that they paid the property taxes based on the full assessment of the HHS building, which contradicted the Assessor's testimony. One BOE hearing officer rebuked the owner and stated the "tenant", the County, paid the taxes. This conflicting testimony, continued to remain unresolved until the end of May 2016.

The Assessor presented evidence that Amador County was responsible for paying the property tax on the HHS building which included quotes from Article 6.5 of the March 4, 2008 HHS lease which was reviewed and or approved at various times by four of the five County supervisors who were acting as BOE hearing officers. It was the Assessor's belief at the time of the BOE hearing

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

the County was responsible for the property tax on the first \$13.6 million property tax assessment and that the County paid the property taxes on the HHS building including the increases of the property taxes above the value of the initial \$13.6 million property tax assessment. However, the County was not responsible for the payment of the property tax for the difference of the property's sale price and initial property tax assessment.

The Assessor presented evidence that the HHS building and real property was valued at \$17.01 million based on an "income approach" which included a property "Tax Rate" of 1%, a Capitalization Rate of 6.9%, a guaranteed income of \$1,428,851 per year, a zero vacancy and collection rate, and County payment of the property taxes on the initial \$13.6 million assessment with inflation adjustments.¹³

Additionally, if the Assessor's testimony and evidence were true, and the County Counsel's and the BOE original interpretation of Article 6.5 that the County paid the property taxes for the original and subsequent HHS building owners for the property taxes based on the value of the HHS building's first property tax assessment, the new owners would not pay any property taxes on the HHS building property because the real property market value of the land and the HHS building would have decreased below the initial property tax assessment because of the fallen real estate market.

The BOE hearing officers and the Assessor made several key statements during the hearing.

The first key statement regarding who pays the property taxes by a BOE hearing officer occurs at minute 29:50. The property owner's representative is asked, "Do you pay the property taxes?" The owner's representative replies, "Yes." A BOE hearing officer then responds "The tenant is."

Then the Assessor makes multiple statements concerning payment of property taxes. Starting at minute 33:18, the Assessor stated multiple times that the County pays for the property taxes and quotes Article 6.5 in the lease. During this portion of the Assessor's presentation a third BOE hearing officer follows-up on the Assessor's statements that the County pays the property taxes "plus increases."

And finally at minute 33:45, the Assessor states that the "County shall be liable for the property taxes for the first \$13.6 million of assessed value".

During this portion of the hearing a BOE hearing officer is heard addressing the County Counsel and stated that the conversation regarding Article 6.5 of the lease sounded like a bunch of lawyer-ease. The County Counsel did not respond.

During the one hour and six minute hearing, BOE hearing officers were quite astute to the issues regarding the HHS building lease. They were aware of the terms and conditions of the March 4, 2008 HHS building lease which included a guaranteed 20 year term, a guaranteed tenant,

¹³ The Assessor later retracted his BOE testimony regarding the County's payment of property taxes.

AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT

guaranteed rent and property tax payments. The BOE officers acknowledged that there was a down turn in the economy in the fall of 2008 and said the “lease” had value because it lowered the capitalization rate which in turn made the HHS building more valuable.

One BOE hearing officer referred to the March 4, 2008 lease as having no risk for the owners and another described the lease as being “gold.” It was also quite clear that the BOE hearing officers believed that the new owners did not pay the property taxes on the property based on the first assessment and that the County paid those property taxes.

On July 13, 2010, the BOE voted unanimously to deny the new owners appeal to lower the property tax for 10877 Conductor Boulevard, Sutter Creek, California. The BOE listed the following facts that supported its decision to deny the new owners request to change the property tax assessment for the HHS building:

- Zero Percent Vacancy Rate
- 97% of 20-Year Term Remaining
- Very Good rent
- Guaranteed Rent increases and increases in tax payments borne by tenant
- The “income approach” method was the best way to assess the property

The BOE Statement of decision reads as follows:

“Based upon the income approach and in light of the evidence of the newness and quality of the Property, zero percent vacancy rate, the length of the lease term remaining as of the valuation date, the amount of the annual rent payment, the guaranteed cost of living rent expenses and the increases in tax payments by the tenant, and the low expenses for the Property, and the other evidence presented by the Assessor and the Applicant at the hearing, the Board of Equalization finds by a preponderance of the evidence that on January 1, 2009 the value of the property was \$17,016,000.”

County records reveal that four of the five BOE hearing officers who voted to deny the new HHS Building owners appeal to lower the property tax for the HHS building were aware of all the terms and conditions, including the payment of the \$400,000 to the County to renegotiate and approve the March 4, 2008 HHS building lease. County records also reveal that four of the five County Supervisors that were on the BOE for this hearing either voted to approve the March 4, 2008 HHS building lease and/or the June 3, 2008 Subordination agreement between the County, the new owners and a bank that held the loan on the HHS building.

In addition, the County Counsel who wrote the March 4, 2008 HHS building lease and who was the 2008 County’s BOS legal advisor, was present at this hearing as the BOE’s legal advisor and approved the BOE’s findings. The County Counsel did not provide any legal advice relating to

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

who was liable to pay the property taxes despite the fact the property owners testified that they did and the County Assessor and the BOE said that the County paid the property taxes.

County Assessor's Office Retraction of Board of Equalization Testimony and Evidence

In late May 2016, the County Assessor confirmed that his original statements and evidence that he presented to the May 25, 2010 BOE hearing were correct. However, the very next day the Assessor stated that he now believed that he misinterpreted Section 6.5 of the March 4, 2008 HHS building lease and that his testimony and presentation before the BOE were incorrect. In addition, the Assessor now believes that the County only reimburses the new owners for the inflationary increase in the property taxes.

Review of Property Tax Payments

As stated previously, the current owners testified to the BOE that they paid the property taxes for the HHS, but the BOE rebuffed their testimony.

The Grand Jury's review of all of the Amador property tax records for the HHS building confirmed that the new owners of the HHS building have been paying the property taxes since they purchased and took possession of the property on June 6, 2008. And, that the County has not been reimbursing the new owners for the property tax equal to the first \$13.6 million of the County's first assessment of the property.

The representatives of the owners confirmed that the County reimburses their company only a small portion of the property taxes which is equal to about two percent of the annual inflationary increase of the initial property tax payment.

The Grand Jury's review of the Auditor's records for the HHS building lease confirmed that the new owners of the HHS building have been reimbursed that portion of the value of the inflationary increase for the property tax since they purchased and took possession of the property on June 6, 2008. County Auditor's records reveal that the new owners were reimbursed approximately \$9,060 in June 2014 and \$10,236 in June 2015 for property taxes.

The Grand Jury also reviewed the property tax records for the LLC for the HHS building property. Due to a minor computer programming error, all the property tax records for the LLC, were not available to the Grand Jury until the end of May 2016. However, the County Tax Collector's office resolved the minor programming error and the Grand Jury provided all the property tax records for the HHS property.

The Grand Jury determined that the LLC paid the property taxes for the HHS building.

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

April 16, 2008 HHS Building Property Tax Appraisal

An email obtained from the County revealed that a representative of the LLC contacted the County Assessor's office on April 14, 2008, at 4:25 PM, to discuss a revision for the March 19, 2008 Supplemental Assessment for Lot 43, the land for the address of 10887 Conductor Boulevard. The assessment of the HHS building was not discussed in this email.

In addition, the LLC's representative reminded the County Assessor that at an April 11, 2008 meeting with County staff, the property owner advised the County Assessor that the HHS building was "in escrow, pending the receipt of the final assessment." The LLC's representative wrote in the email that it was their "understanding that an assessment of this type takes approximately two weeks. Any help you can provide in meeting or exceeding that time frame would be greatly appreciated."

According to County appraisal records, on April 18, 2008, the County Assessor's office completed the initial property tax assessment which included both the land and the HHS building. The HHS building at 10877 Conductor Boulevard, Sutter Creek, California, was initially appraised at \$12.125 million for the building and about \$1.5 million for the land for a total of \$13.6 million. *If the LLC had not sold the HHS building and lease, the Assessor believed that the LLC would not have had to pay any property tax if it continued to own both the land and building.*

According to County records, a second assessment of the HHS building and real property did not occur until after the property closed escrow on June 6, 2008.

HHS Building Subordination Agreement - June 3, 2008

On June 3, 2008, the Amador County BOS voted unanimously to approve (and the Chairman of the Board of Supervisors, former Supervisor 3, signed) a subordination, non-disturbance attornment, and estoppel agreement with a bank that guarantees to the bank that if the new owners of the HHS building default on the bank loan, the County will continue to make the monthly lease payments to the bank throughout the 20 year guaranteed term on the contract.

Cost to Amador County Taxpayers

The March 4, 2008, contract allows for rent increases that are calculated on the CPI index, and at no time can the rent decrease. As of April 2016, the monthly rent for the HHS building rent is \$132,705 per month an increase \$13,635 per month, or 11.4% more than the original monthly lease payment. The County departments that rent space in the HHS building pay their portion on the property tax based on the square footage they lease. The new owners pay the property tax

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

Based on the average CPI increase for the last two years, the County will be paying about \$175,000 per/month or \$2.1 million annually for rent to the owners of the HHS building and up to \$12,200¹⁴ in annual property tax for a total rent of over \$2.21 million per year in 2027.

If the owners default on the bank loan, the County is obligated to continue to pay the bank the rent for the lease until the end of the term of the March 4, 2008 contract. The March 4, 2008 guaranteed 20 year HHS building lease will cost Amador County taxpayers, the California and Federal governments that fund the County's HHS programs over \$11 million for the lease and property taxes for the extra five year term from 2022 to 2027.

¹⁴ As of May 30, 2016, the Grand Jury has not discovered or received any official County documents that refutes the Assessor's statements and evidence presented to at the May 25, 2010 BOE hearing, and the BOE's July 13, 2010 findings that the County paid the property taxes for the LLC and the new owners of the HHS building.

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

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**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

CHAPTER 9 – COUNTY EMPLOYEES, EXECUTIVES, AND ELECTED OFFICIALS

As earlier reported, the Board of Supervisors responded to the 2013/2014 Grand Jury HHS building report that the “County had sufficiently experienced staff, but were not properly utilized” during the HHS building construction project and the negotiations for the March 4, 2008 HHS building lease. After interviewing employees, executives and elected officials, this Grand Jury agrees with the BOS response to the 2013-2014 Grand Jury’s report. *There is no doubt that the Amador County employees, executives and the Board of Supervisors knew exactly what they were doing when they negotiated the March 4, 2008 HHS building lease. However, it is apparent that the GSA Director and the Auditor were deliberately excluded from discussions regarding the March 4, 2008 HHS building lease.*

The following is an overview of the experience and knowledge of the key County personnel involved in the March 4, 2008 HHS Building lease.

All personnel discussed below were employees, executive officers, or elected officials during the period of January 2006 to February 2011.

HHS Director

The HHS Director worked for Amador County for over 21 years. She retired in July 2008. The HHS Director was the Director of HHS from at least January 2005 to her retirement.

The HHS Director does not live in California. The last two grand juries contacted the HHS Director three times by telephone to arrange a face to face interview with the Grand Jury. The HHS Director refused to be interviewed by the Grand Jury in person each time.

The HHS Director was aware of the 2013-2014 Grand Jury report regarding the HHS building lease and believed that she was “the BOS scapegoat” because the BOS, the CAO and County Counsel were well aware of the HHS building plans and how HHS was funded.

The HHS Director was disappointed at the CAO because she had hired the CAO for a management position at HHS and the CAO turned on her. The Grand Jury later learned that it was the CAO who told the HHS Director that the BOS would terminate her, the HHS Director, if she did not resign in July 2008.

Official County documents clearly show that the HHS Director was fully aware of the County’s purchasing, leasing and contract policies, GSA 5-100 and GSA 1-310; the terms and conditions for the March 4, 2008 HHS Building lease; the October 17, 2006, contract between the County and CDMH for Short /Doyle Medi-Cal reimbursements; the March 4,

AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT

2008 contract between the County and CDMH for MHSA funds and that in fiscal FY 2006-2007 that CDMH denied the County over \$765,000 in requested reimbursements which caused the BOS to believe that the County's Department of Mental Health had a budget short fall; the April 1, 2008 contract with California Alcohol and Drug Programs; and Amador County's policies and procedures regarding the transfer of funds from one account into another account.

From the inception of the HHS building lease project in 2005, the HHS Director worked directly with the GSA Director, Assistant GSA Director (now the GSA Director) and the CAO on the HHS building project. The HHS Director was instrumental in preparing and submitting the Request for Proposal (RFP) for the HHS Building Construction and Lease Project (RFP 6-01).

The HHS Director was on HHS building project's RFP review and selection committee and announced the award for the contract to the BOS. The 2006-2008 BOS, which included former Supervisor 1, Supervisor 2 and Supervisor 4, voted unanimously to approve the RFP and contract without public comment. Not one Supervisor questioned the HHS Director's plans to build the HHS building and how the County would pay for the lease of the HHS building.

The HHS Director and the BOS knew that the HHS building was too large for the services that HHS would be providing (at that time or in the future based on population growth estimates.) They knew this prior to the RFP being approved and published. The HHS Director also knew that the State would only pay for the lease of the HHS building - not the construction. The HHS Director knew the HHS building was built for services that the County was predicted to provide in 2023.

In late March 2006 when the HHS Building Construction and Lease project was awarded to the LLC, the BOS (which included former Supervisor 1, Supervisor 2 and Supervisor 4), appointed the HHS Director to the HHS building Negotiation Team, and ultimately assigned her to be the HHS building construction project manager.

Throughout the HHS building construction phase and move in period, the HHS Director communicated directly with the LLC executive staff.

The HHS Director also communicated directly with other County executive staff and the BOS throughout the HHS building construction project and when HHS was moving into the HHS building in December 2007.

In September 2006, the HHS Director, pursuant to GSA 5-100 and GSA 1-310, submitted an ATF with a proposed contract between the County and original Contractor for the HHS building to the BOS for approval. She knew the Contractor was going partner with the property owner to form a LLC. This ATF and supporting documents were distributed to all

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

the appropriate Department Heads and elected officials, including the GSA Director and the Auditor for review.

In September 2006, the HHS Director also submitted an ATF for the contract between the County and the CDMH for the Short/Doyle Medi-Cal program for mental health services to the BOS for approval. This contract was submitted pursuant to the policies and procedures found in GSA 5-100 and GSA 1-310. (See more information in previous section regarding County Resolution No. 06-310.) The BOS approved this contract on October 17, 2006.

After the County took possession of the HHS building (in December 2007) she was contacted by a LLC representative about negotiating a new lease. The HHS Director did not know the date but it was while the County was moving into the HHS building when the LLC representative “offered a lot of money” for an extension of the term of the HHS Building lease. However, the HHS Director she did not recall how much money. The HHS Director immediately told the CAO about the LLC offer because “the County needed the money”.

The HHS Director met with the County Counsel and CAO to discuss the LLC’s offer to renegotiate the HHS building lease. Subsequently, County Counsel and CAO took over the negotiations for the new lease with the LLC.

The HHS Director did not participate in the negotiations for the March 4, 2008 lease because the County Counsel was considered the County’s real estate expert.

The CAO and the County Counsel corroborated the HHS Director’s statements regarding the HHS Building negotiations.

On or about February 20, 2008, the HHS Director submitted an ATF for the contract between the County and the CDMH for the MHSA funded programs for mental health services to the BOS for approval. This contract was submitted pursuant to the policies and procedures found in GSA 5-100 and GSA 1-310. This contract prohibited County employees, executive officers and elected officers from soliciting and receiving funds from third parties to fund programs that were funded by the contract. (See more information in Chapter 6 regarding County Resolution No. 08-031.) The BOS approved this contract on March 4, 2008.

The HHS Director knew that the State reduced the mental health realignment funds that the County had requested and that the State refused to reimburse the County any MHSA funds for FY 2006-2007 when she submitted the MHSA contract for approval.

The HHS Director had to know that the contracts with the CDMH and the CDAP had termination clauses as she personally submitted each one.

In late April 2008, the HHS Director submitted an ATF and a request to transfer \$165,000 from the County’s Reserve Fund-HHS Reserve Fund to the County’s Mental Health Trust Fund to cover operating and lease expenses for the County’s Department of Mental Health

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

(currently part of the Department of Behavioral Health Sciences). The HHS Director's request to transfer \$165,000 to the Mental Health Department funds followed all the Counties policies and procedures for transferring funds between accounts. The \$165,000 was comingled with DMH funds to pay for operational expenses.

The Grand Jury learned that 3 out of 5 County Supervisors, the CAO or any other executive officer believed that the HHS Director was qualified to fulfill the job requirements when the HHS Building project was initiated. Two Supervisors were not in office when the project began. However, all the County Supervisors, the CAO and the GSA Director expressed doubts to the HHS Director's ability to manage HHS and the HHS building construction project when the County budget started to have signs of a deficit 2007 and 2008.

All the Supervisors and the CAO believed that it was best for the HHS Director to terminate her employment with the County when she voluntarily left in July 2008.

County Administration Officer (CAO)

In December 2007, the CAO had at least one year of experience (as a CAO) in negotiating contracts. Prior to being appointed by the BOS as the CAO, the CAO worked as the Assistant CAO and a HHS department head for another County department for over a year. She had been meeting with the GSA Director in closed sessions negotiating real property issues, including the HHS building contract.

The CAO knew that she was an "at will employee" and worked at the discretion and direction of the BOS. The CAO questioned the need for the March 4, 2008 HHS building lease with the new terms, however she continued to negotiate the new lease at the direction of the Chairman of the BOS.

The March 2008 Chairman of the BOS (Supervisor 2) knew that the CAO worked at the BOS direction and provided advice on administrative matters to the BOS, including the HHS Building lease.

According to the documentation submitted with ATF's for the CDMH and CDAPs' contracts, the CAO reviewed the contracts and approved them. The CAO had to know that all the contracts with the State had termination clauses based on available funding.

All County elected official and executive officers did not have any concerns regarding the CAO's qualifications.

The CAO knew that the GSA Director was deliberately excluded from any negotiations and contract reviews regarding the March 4, 2008 HHS Building lease. The CAO believed there were personal "issues" between the HHS Director and the GSA Director and that the BOS was aware of these "issues." The CAO, at the BOS' direction, excluded the GSA Director from negotiating and reviewing the March 4, 2008 lease with the LLC.

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

The CAO and the BOS considered the County Counsel to be the County's expert in real estate law and negotiations. It was at the BOS direction that the CAO the then County Counsel negotiated the March 4, 2008 HHS building lease with the LLC's executive officers.

The CAO questioned the need for a new contract for the HHS building lease as the County had just moved into the HHS building and still had 15 years left on the lease. However, as an exempt employee she knew that she worked at the will and direction of the BOS, so she negotiated the March 4, 2008 as the Chairman of the BOS requested.

Prior to the March 4, 2008 BOS meeting, the CAO talked to all the County Supervisors individually and in small meetings about the new HHS lease when they had questions regarding the lease.

On or about February 22, 2008, the CAO, at the direction of the Chairman, sent a letter to the LLC's executive staff requesting a final agreement for the new terms and conditions for the amended HHS lease. These new terms required the LLC to agree to make a one-time cash payment of \$400,000 to "compensate the County for increased risks" by eliminating the (County required) early termination clause contingent on available County, State and Federal funding, and by extending the term by five years from 15 to 20 years. The LLC executive was instructed in this letter to sign the February 22, 2008 letter if the LLC agreed with the new terms, and to return three signed and executed copies of the "amended (sic) and Restated Lease Agreement" between the County and the LLC which were enclosed with the letter. The CAO wrote that once she had the signed lease and agreement that the County would place the matter on the next Board of Supervisors meeting agenda for approval.

The Grand Jury confirmed that the CAO signed that letter and that she did not write the letter. The County Counsel's office could not confirm who wrote the February 22, 2008 CAO letter, but the County Counsel believed that it could have been her.

One LLC executive, the LLC's managing partner and President, was not sure if he saw or read the CAO's letter, but he was aware that the County wanted to renegotiate the HHS building lease. He believed that the County wanted to go "green" and needed the money to complete the green project. In return for the \$400,000, the LLC President wanted a five year extension to the HHS lease and a no cut contract. He also knew the national economy was going into an economic dive and wanted to sell the HHS building because of the financial situation his company was in. However, his green story was not corroborated.

A second LLC executive officer, the LLC's HHS Lease Administrator and Vice President of Marketing, received the CAO letter and responded to the letter on behalf of the LLC. The LLC agreed to the terms of the letter.

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

The Chairman of the BOS believed that the CAO letter would have had to been reviewed by the County Counsel's office and would have been sent to the LLC only after the BOS approved the CAO letter.

County Counsel

This Grand Jury discovered documents and obtained other evidence that showed the County Counsel was an active participant in the negotiations for the March 4, 2008 HHS building lease with the LLC's representatives and attorney.

The County Counsel was the Amador County's legal expert in County ordinances, and policies and procedures, and in "real estate matters". In December 2007, the County Counsel had about eight years of legal experience with Amador County's Office of the County Counsel providing legal expertise and reviewing legal documents relating to HHS building leases.

The County Counsel was appointed to a four year term by the 2006-2008 Amador County BOS, and worked at the discretion of the BOS. The County Counsel represented the County BOS. The BOS did not pressure the County Counsel to make decisions as the County Counsel made her own legal decisions.

The County Counsel's law specialty was real estate law and that the County Counsel actively negotiated the March 4, 2008 HHS building lease with the LLC executive staff at the direction of the BOS.

The County Counsel knew that the services that were provided by HHS and the HHS building lease were funded by state and federal health care and mental health services funds. And that all the contracts had a termination clause based on available State and Federal funding.

In addition, the County Counsel had to know that the MHSA contract informed the County that its employees, executive officers and elected officials could not accept or solicit funds from a third party to fund Department of Mental Health programs. (As previously discussed, pursuant to GSA 1-310, the County Counsel must review all contracts over \$25,000. The County Counsel's signature appears on the signature lines for "County Counsel" on the ATFs that submitted for the approval contracts, dated October 17, 2006 and March 4, 2008, between the County and the CDMH.)

Additionally, County lease documents reveal that the County Counsel and her legal staff (which includes the current County Counsel) were involved as legal advisers with the former HHS building leases at 1001 Broadway and 1003 Broadway, Jackson, California in 1997, 2000, 2007, and 2008.

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

County documents confirmed that between May 30, 2000 and June 3, 2008, the County Counsel had been involved in reviewing and approving legal documents and ATF's for HHS building leases, and subordination agreements with banks and the owners of the HHS buildings.

County documents also revealed that in December 2007, the County Counsel and the then Assistant County Counsel negotiated the termination of the lease for the former HHS' building at 1001 Broadway, Jackson, California. The County Counsel's legal staff also negotiated to terminate and settle a lease dispute between the owners of the former HHS building located at 1003 Broadway, Jackson, CA, in 2008.

Statements by individuals and letters between the LLC, the developer and the developer's legal counsel, and the County Counsel, confirm the County Counsel was involved in negotiating, finalizing and executing the March 4, 2008, HHS building lease.

The Grand Jury confirmed that the County Counsel and the CAO negotiated the March 4, 2008 contract for the HHS Building lease with the LLC's executive officers. The County Counsel knew that the GSA Director had been excluded from any meetings and negotiations regarding the March 4, 2008 contract between the County and the LLC.

The County Counsel worked at the direction of the Chairman of the BOS and the BOS, but she made her legal decisions regardless of what the BOS opinion was regarding a subject matter.

The County Counsel knew of one meeting with the LLC's executives where the new terms and conditions for the March 4, 2008 contract were discussed. The County Counsel believed the new terms and conditions for the new HHS building lease were fairly straight forward and simple. The County Counsel she did not need to keep any notes. The County Counsel knew that some sum money was offered, and that the LLC agreed to eliminate the \$500,000 in liquidated damages if the county eliminated the early termination clause based on available County, State and Federal funding and the term of the lease was extended.

The County Counsel knew that the GSA Director and the CAO were on the HHS building Negotiation Team. The County Counsel knew that the CAO and the GSA Director met on May 22, 2007, to discuss a contract issue regarding the HHS building. (According to the BOS May 22, 2007, meeting agenda, the CAO and GSA Director met in a BOS closed session meeting to discuss an item regarding a HHS building contract issue.)

The County Counsel knew that the GSA Director did not participate in the negotiations and the GSA Director did not participate in writing or reviewing of the new HHS building lease.

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

The County Counsel did not know of any County ordinances or policies and procedures that were contrary to GSA 1-310 and GSA 5-100. The County Counsel opined that when “shall” was in a policy that the policy applied to all county staff.

The County Counsel believed, in retrospect, that it was clear that the LLC wanted to sell the HHS building and that it was probably not a good idea to get a new contract.

The County Counsel was not absolutely sure that she wrote the March 4, 2008 “Memorandum of Lease” and the Amended and Restated Lease Agreement between the County and the LLC. However, the County Counsel confirmed that her signature that appeared on each document and the writing style were hers.

The \$400,000 cash payment and the elimination of the \$500,000 penalty for terminating the October 17, 2006, HHS building lease prior to July 1, 2015, are not mentioned in the terms and conditions of the March 4, 2008, HHS building lease or the Memorandum of Lease between the County and the LLC. The term “For valuable consideration” was used instead.

The County Counsel used “For valuable consideration” to cover the \$400,000 one-time payment and for the elimination of the \$500,000 payment for renegotiating the HHS building lease. The \$400,000 cash payment was taken because the County had taken on additional risk, and that the \$400,000 was a consideration by the LLC for the new lease.

Please note the 2006 County Counsel signed off that she reviewed the October 17, 2006 contract between the County and CDMH for Short/Doyle that clearly advised the County that the State and Federal governments could void the contract at any time due to insufficient funding.

The County Counsel, as the Assistant County Counsel, signed off that she reviewed the previously discussed May 30, 2000 ATF for a lease between the County and the owners of 1001 Broadway, Jackson, California, a former HHS building that had a termination clause based on available funding.

The County Counsel also signed off that she reviewed the March 4, 2008 ATF and contract between the County and CDMH that clearly stated that County employees, executive officers, and elected officials could not take any funding from outside sources to that would directly or indirectly fund MHSA services.

County elected officials and executive officers believed that the County Counsel and assistant County Counsel were qualified to fulfill the County Counsel’s job requirements relating to the HHS building lease.

The 2008 Chairman of the BOS, and other County Supervisors would seek legal counsel from the County Counsel’s office if they had any questions. County Counsel worked at the

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

BOS direction and provided legal advice on all matters to the BOS, including the HHS Building leases.

General Services Administration Director

In December 2007, the GSA Director had about two decades of experience working with the County GSA, which included about ten years working either as the GSA Deputy Director or as the GSA Director. The GSA Director was and is a certified California licensed building contractor.

As mentioned previously, County Ordinances and GSA 5-100 identify the GSA Director as the County's "purchasing agent" and describes one of the GSA Director's jobs a "negotiating leases for real property for the county." The GSA Director's official job description includes "negotiating leases of real property" for the county. The GSA Director is responsible for all County leased or owned real property. (The Grand Jury wants to emphasize the GSA Director only negotiates leases for real property at the direction of the BOS, and that the GSA Director can make recommendations for a contract or agreement. The BOS has to approve all leases over 3 years and over \$25,000.)

The GSA Director knew that he is the "county's purchasing agent" and is fully aware of GSA policies 1-310 and 5-100. The GSA Director is the County's designated "lease administrator" for the HHS building lease. However, as the HHS Building lease administrator that GSA Director is responsible for the maintenance and upkeep of the building. HHS is not responsible to make the rental payments for the lease¹⁵.

The GSA Director does not believe that GSA 5-100 applies to building leases because building leases are not contracts. However, the GSA Director is aware that building leases are enforceable by the court if the tenant does not make payments to the owner of the building.

The GSA Director was aware that he designated as the HHS Building "lease administrator" in the October 17, 2006 and March 4, 2008 leases by the BOS. According to the ATFs submitted for the HHS building leases, the GSA Director reviewed the October 17, 2006, HHS building lease, but not the March 4, 2008 lease.

The GSA Director has conducted numerous negotiations for leases, purchases and the sales of real property for the County during his career with Amador County.

¹⁵ Currently, the Department of Social Services is responsible for collecting the monthly rent from all parties that lease or sublease space at the HHS building. After collecting the rent from the various County departments and government agencies, DSS makes a once a month payment to the owners of the HHS Building.

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

Official County documents show the GSA Director's office had a long history of reviewing contracts for leases of HHS facilities. The GSA Director reviewed the HHS building lease at 1001 Broadway, Jackson, California in May 2000, and from at least February 2006 to the present the GSA Director has been involved with the HHS building contract to build and lease the HHS building with the one exception of the March 4, 2008 HHS building lease.

From September 22, 2006 to June 8, 2008, the GSA Director received or was copied on most correspondence between the County and the LLC regarding the HHS building lease with one major exception, the March 4, 2008 HHS Building lease. The Grand Jury could not find any form of communications from December 1, 2007 to March 4, 2008, between the BOS, the CAO, the County Counsel's office, or the LLC executive officer's and the GSA Director regarding the termination of the October 17, 2006 contract to construct and to the lease of the HHS Building, or regarding the negotiations for the March 4, 2008, HHS building lease.

The GSA Director overheard a conversation between the County Counsel, the CAO and the HHS Director regarding possible negotiations for a new contract for the HHS building lease. The GSA Director offered his assistance to the County Counsel, the CAO and the HHS Director. However, the CAO, in the presence of the County Counsel and the HHS Director, told the GSA Director that his services were not needed.

The GSA Director was subsequently excluded from any further negotiations, communications, and anything to do with the termination of the October 17, 2006, HHS building lease and approval of the March 4, 2008 contract to lease the HHS building.

The GSA Director did not review the March 4, 2008 contract (pursuant to GSA 1-310). Not one individual from the HHS agency, the CAO's, the BOS' offices, or the County Counsel's offices distributed a copy of the March 4, 2008 lease for the HHS building to the GSA Director to review prior to the March 4, 2008 meeting. However, prior to the March 4, 2008 BOS meeting when he was not available to review a new contract at an Agenda Review Committee meeting the GSA Director received a copy of the contract or document to review before a BOS meeting.

The GSA Director would have not have recommended that the BOS approve the lease as it was a "bad" lease.

County documents reveal that the GSA Director reviewed the October 17, 2006 mental health services agreement between the County and CDMH, and documentation between the new owners of the HHS building before they purchased the HHS building in June 2008.

According to the ATF for the October 17, 2006 contract between the County and CDMH for MHSA, the GSA Director reviewed this contract. This contract between the County and CDMH clearly advised the County that the State and Federal governments could void the

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

contract to reimburse the County for services that it provided to the Medi-Cal Short/Doyle Mental Managed Health Care program at any time due to insufficient funding.

According to the ATF for the March 4, 2008 contract between the County and CDMH for MHSA funding, the GSA Director reviewed the contract. This contract clearly advised the County that it could not take any funding from outside sources to directly or indirectly fund MHSA services.

Between 2006 and 2011, the GSA Director reported directly to the Chairman of the BOS, and the BOS. The BOS knew the GSA Director was the County's HHS Building Lease Administrator and on the HHS building Negotiation Team. The BOS meeting agenda and meeting minutes show that on March 28, 2006, the BOS appointed the GSA Director to be on the HHS Building contract and lease negotiation team; that the BOS appointed the GSA Director as the HHS building "lease administrator", and on May 22, 2007, the GSA Director and the CAO met with the BOS in a closed session regarding the HHS building contract.

On December 10, 2007, the GSA Director spoke before the BOS at a special meeting regarding the County taking possession of the HHS building.

Between December 2007 and March 2008, no one advised the GSA Director that the CAO and the County Counsel were conducting secret negotiations with the LLC's executive officers and that the BOS had agreed to a new lease for the HHS Building. The GSA just happened to overhear a conversation between the HHS Director, the County Counsel and the CAO regarding the negotiations for a new HHS building lease. However, during this same period, the GSA Director was notified by the BOS, the County Counsel's office, the CAO, and the LLC executive officers of other lease matters concerning the original HHS building lease.

The GSA Director was not aware of the February 22, 2008 CAO letter or its contents. He was not aware that the Chairman, the CAO, and the County Counsel, had agreed with the LLC to terminate the October 17, 2006 HHS Building lease, and to execute a new 20 year guaranteed lease for the HHS Building until after the March 4, 2008 BOS meeting.

All County elected officials or executive officer believed that the GSA Director was qualified to fulfill the GSA Director's job requirements. However, the Grand Jury learned that the CAO, the County Counsel and the Chairman of the BOS deliberately excluded the GSA Director from any activities related to the March 4, 2008 contract between the County and the LLC.

Auditor

The Auditor was not aware of the February 22, 2008 CAO letter and its contents. He was not aware that the Chairman, the CAO, and the County Counsel, had agreed with the LLC to

AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT

terminate the October 17, 2006 HHS Building lease, and to execute a new 20 year guaranteed lease for the HHS Building until after the March 4, 2008 BOS meeting.

The Auditor found out that the County Counsel, CAO and the BOS had terminated the original HHS building lease and negotiated a new contract for the lease of the HHS building on the morning of March 5, 2008. The Auditor only became aware of the March 4, 2008 contract when the CAO handed him a \$400,000 check from the LLC and told him that the BOS requested him to open a special “HHS Building Trust Fund”. In addition, the CAO gave the Auditor a one paragraph memorandum to document that she had given the Auditor a copy of the March 4, 2008 HHS Building Lease and Memorandum of Lease, and to instruct the Auditor to open a HHS Building Trust account.

NOTE: The Grand Jury could not find any documents regarding any BOS meetings where the BOS instructed the CAO to open a special building trust account for the \$400,000 paid to the County.

According to the ATF for the October 17, 2006 contract between the County and CDMH for MHSA, the Auditor reviewed this contract. This contract between the County and CDMH clearly advised the County that the State and Federal governments could void the contract to reimburse the County for services that it provided to the Medi-Cal Short/Doyle Mental Managed Health Care program at any time due to insufficient funding.

According to the ATF for the March 4, 2008 contract between the County and CDMH for MHSA funding, the Auditor reviewed the contract. This contract clearly advised the County that it could not take any funding from outside sources to directly or indirectly fund MHSA services.

Senior Staff at Auditor-Controller’s Office

A senior staff member at the Auditor-Controller’s office was interviewed. The senior staff member had decades of county auditing experience. She was the Auditor’s designated alternative to attend ARC meetings when he was not available.

The senior staff member reviewed the February 27, 2008 Agenda Transmittal Form (ATF) and accompanying documents for the lease between the County and the LLC submitted for the March 4, 2008 BOS meeting. The senior staff member signed off that she reviewed the documents. The Auditor’s office did not determine the fiscal impact to the County because there was not enough time. The senior staff member believed that the department that proposed a contract that had fiscal implications was responsible for the fiscal study and how a project would impact the fiscal stability of the County.

The senior staff member believed that after the March 4, 2008 contract was approved and after the original owners sold the HHS building that it was obvious that the \$400,000 paid to

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

the County was a “kickback” so that the developer could sell the HHS building. The senior staff member believed the March 4, 2008 contract was a bad contract because it locked the County into a guaranteed contract, and the \$400,000 was just a kickback paid to the County so the developer could sell the property.

The senior staff member believed that the BOS made a choice and selected a building over people.

Supervisor 1

Former Supervisor 1 had over eleven years of experience as a County Supervisor on March 4, 2008 when he voted to approve the March 4, 2008 HHS building lease. He was the Chairman of the Board at least once in the eleven years.

Supervisor 1 also voted to approve the October 17, 2006 and March 4, 2008 contracts with the CDMH, and the April 1, 2008 contract with the CDAP.

Supervisor 1 believed that before the CAO could mail the (CAO) letter that the BOS and County Counsel would have had to approve the CAO letter. The former Supervisor believed the \$400,000 listed in the letter “was nothing” because the BOS deals with million dollar contracts all the time. However, if someone had brought the CAO letter into his office that he would have told that person he was a “crook” and for the person to leave his office because that’s not how he did business. However, later, former Supervisor 1 believed that the County needed the money, the \$400,000, and that “it was there for the taking”.

The Grand Jury learned that between February 1, 2006 to June 6, 2008, Supervisor 1 voted to approve all the contracts between the County and the LLC for the HHS building leases, and between the County the CDMH and CDAP.

Supervisor 2 - Chairman Board of Supervisors

Supervisor 2, the Chairman of the BOS (Chairman), had about seven years of experience as a County Supervisor on March 4, 2008 when he voted to approve the March 4, 2008 HHS building lease. He was the Chairman of the Board at least twice in the seven years.

Supervisor 2 was aware that the County Counsel and the CAO negotiated the March 4, 2008 lease with the LLC. He was aware that at the direction of the BOS, the CAO and the County Counsel negotiated the March 4, 2008 HHS building lease with the LLC. He knew that the GSA Director had been excluded from any negotiations with the LLC, meetings or in-house discussions regarding the terms and conditions for the lease of the HHS Building.

The Grand Jury learned that between February 1, 2006 to June 6, 2008, Supervisor 2 voted to approve all the contracts between the County and the LLC for the HHS building leases, and between the County the CDMH and CDAP.

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

Supervisor 3

Former Supervisor 3 had about two years of experience as a County Supervisor on March 4, 2008 when he voted to approve the March 4, 2008 HHS building lease. He was the Chairman of the Board in June 2008. Prior to being elected to the BOS, Supervisor 3 was a director for the Amador Water Agency.

Former Supervisor 3 could not recall reading the CAO letter, nor much else regarding the March 4, 2008 HHS building lease.

Former Supervisor 3 was out of the office for the March 4, 2008 BOS meeting. Supervisor 3 spoke with other supervisors regarding the HHS building lease prior to going on vacation. The only item on the agenda that concerned him on March 4, 2008 was another issue regarding the Buena Vista Rancheria.

Supervisor 3 voted to approve the contracts between the County and CDAP. He also voted to approve to renew the CDMH contract for MHSA funding in May 2008.

Former Supervisor 3, as Chairman of the BOS, signed the June 3, 2008 Subordination Agreement between the County and a bank that requires the County to continue paying the lease payments to the bank if the new owners default. Attached to the subordination agreement was a copy of the March 4, 2008 HHS lease. Supervisor 3 had an opportunity to discuss the HHS building lease prior to voting to approve and signing the June 3, 2008 subordination agreement, but he did not.

In October 2014, former Supervisor 3 signed the Board of Supervisors' response to the 2013/2014 Grand Jury Final report.

Supervisor 4

Supervisor 4 was a senior supervisor on the BOS on March 4, 2008, and had been the Chairman of the BOS on previous occasions. Documents show that he voted to approve county ordinances regarding the County's purchasing agent and the County's policies and procedures regarding contracts and leases of real property for the County as early as 1997. County documents reveal that he initiated the submission of items regarding HHS contracts to be heard by the BOS.

Supervisor 4 spoke to other BOS members about the March 4, 2008 HHS building lease prior to voting to approve the lease. However, Supervisor 4 could not recall the vast majority of the events relating to the HHS building lease.

According to public documents, Supervisor 4 voted to approve all the contracts between the County and the LLC for the HHS building leases, and between the County the CDMH and CDAP.

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

Supervisor 5

Supervisor 5 was the junior supervisor on the BOS on March 4, 2008.

Supervisor 5 relied on County staff and his fellow Supervisors for guidance regarding matters, and was preoccupied with another matter on the BOS March 4, 2008 agenda when he voted to approve the March 4, HHS building lease.

Supervisor 5 had spoken to other BOS members about the March 4, 2008 HHS building lease. He had requested that the termination clause remain in the HHS contract and was concerned about the extra 4 years of the HHS building lease. However, Supervisor 5 was one of the BOE hearing officers that questioned the need for the reduction of the property taxes for the HHS building because the March 4, 2008 HHS building lease brought value to the lease.

Supervisor 5 voted to approve all the 2008 contracts between the County and the CDMH and CDAP, and the LLC for the HHS building lease. Supervisor 5 had an opportunity to discuss the March 4, 2008 HHS building lease prior to voting to approve and signing the June 3, 2008 subordination agreement, but he did not.

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

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**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

CHAPTER 10 - FINDINGS AND RECOMMENDATIONS

Findings

- F1.** 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.
- F2.** 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.
- F3.** 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.
- F4.** 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 MHSA 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.
- F5.** 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

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

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.

- F6.** 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.
- F7.** 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.
- F8.** 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.
- F9.** 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.

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

- F10.** 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.
- F11.** 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.
- F12.** 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.
- F13.** 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.
- F14.** 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.
- F15.** 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 general operating expenses funded by the Mental Health Trust Fund.
- F16.** 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.

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

- F17.** 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.
- F18.** 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 belief was one factor as to why the BOE believed the HHS building lease is "gold".
- F19.** 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.

Recommendations

- R1. 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.
- R2. 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.
- R3. Void the Contract:** Since the Board of Supervisors agreed to accept a \$400,000 one-time cash payment and \$500,000 in other considerations to eliminate the County

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

- 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.
- R4. 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.
- R5. 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.
- R6. 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.
- R7. 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.
- R8. 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.

**AMADOR COUNTY CIVIL GRAND JURY 2015-2016
SPECIAL INVESTIGATIVE REPORT**

- R9. 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.

Request for Responses

Pursuant to California Penal Code, section 933 (c), a response to this report is required no later than 90 days after the Grand Jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment on the findings and recommendations.