

THE SANTA CLARA COUNTY FAIRGROUNDS: A DIAMOND IN THE ROUGH



2018-2019 Civil Grand Jury
of Santa Clara County

June 19, 2019

THE SANTA CLARA COUNTY FAIRGROUNDS

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GLOSSARY AND ABBREVIATIONS

4-H	A nationwide organization, National 4-H Council, that provides learning and leadership opportunities for youth, including hands-on projects in the arts and with animals.
Agreement	The Management Agreement between the County of Santa Clara and Fairgrounds Management Corporation, dated April 18, 2000, as amended.
BOD	Fairgrounds Management Corporation Board of Directors
BOS	Santa Clara County Board of Supervisors
County	County of Santa Clara
Fairgrounds	Santa Clara County Fairgrounds
FMC	Fairgrounds Management Corporation, a non-profit IRC 501 (c)(3) corporation established by the County of Santa Clara in 1995.
Non-profit Organization	A corporate entity that is dedicated to charitable or public purposes and qualifies under Internal Revenue Code Section 501 (c)(3) for tax exempt status.
OTB	Off-track betting facilities that enable wagering on horse races around the world, broadcast by satellite from remote tracks.
RFP	Request for proposal is a process frequently used by governmental entities intended to solicit business proposals through open and fair competition which satisfy specified requirements.

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SUMMARY

Santa Clara County (County) possesses a gem in the form of the County Fairgrounds (Fairgrounds), a nearly 150-acre property in an unincorporated pocket surrounded by the City of San José (City). By all measures, the Fairgrounds is a valuable piece of real estate, but its aging buildings are beset with deferred maintenance and in need of many improvements. The once-thriving two-week long Santa Clara County Fair (Fair), with robust livestock and agricultural competitions coupled with ongoing entertainment, has dwindled to four days attracting a fraction of its original attendance. Aside from the five main exhibit halls, much of the property is used for a recreational vehicle (RV) park and RV/boat storage, and rented out to private businesses for use as storage yards, vehicle auctions and paintball. Two dedicated buildings are used for gambling activities, bingo and off-track betting (OTB). The Fairgrounds is expected to be self-supporting, yet it relies on County funds to provide needed health and safety repairs.

The County Board of Supervisors (BOS) has, in the past 10 years, twice sought developers to implement the Board's "vision" for the Fairgrounds without success. The BOS has no current long-term plan for the Fairgrounds and is following a hands-off approach relying on the Santa Clara County Fairgrounds Management Corporation (FMC) to maintain the property and host the annual Fair. The FMC Board of Directors (FMC BOD) is inattentive to financial and oversight of FMC's operations. The Grand Jury has uncovered financial reports lacking in accuracy and transparency, violations of local bingo regulations, questionable tax reporting practices, potential open meeting violations by the FMC BOD, and a relaxed level of scrutiny and oversight by both the County and the FMC BOD of the types of activities that are conducted on the Fairgrounds.

The 2018-2019 Civil Grand Jury (Grand Jury) recommends that the BOS and the FMC BOD aggressively alter their stewardship of the Fairgrounds to improve financial oversight and regulatory compliance, and ensure use of the property consistent with FMC's non-profit purpose. The BOS owes it to the residents of the "Valley of Hearts Delight" to transform the Fairgrounds into a true jewel.

METHODOLOGY

The Grand Jury reviewed numerous documents, including the:

- 2010-2011 Santa Clara County Civil Grand Jury report entitled “Santa Clara County Fairgrounds Management Corporation”¹
- FMC Articles of Incorporation
- Management Agreement between the County and FMC
- BOS meeting minutes and recordings
- FMC Board of Directors meeting agendas and minutes
- FMC Schedules of Revenues and Expenses
- FMC Statement of Activities
- FMC Statements of Financial Position and budgets
- Audit of the Fairgrounds structures
- Harvey M. Rose Associates, LLC 10-year audit of FMC’s financial status
- FMC Federal tax returns
- Monthly Bingo Activity Reports
- FMC license agreements
- County ground lease agreements
- FMC Statements of Operations submitted to the California Department of Food and Agriculture
- Indemnification Agreement between the City of San José and County of Santa Clara

The Grand Jury conducted 34 interviews² with all the important stakeholders such as elected and appointed officials, and persons and groups that interact with FMC. The Grand Jury also toured the Fairgrounds and observed bingo and OTB activities.

¹ http://www.sccourt.org/court_divisions/civil/cgj/grand_jury_archive.shtml#11

² By law, the Grand Jury is not permitted to disclose the persons interviewed in this investigation (Penal Code section 929).

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BACKGROUND

The Grand Jury reviewed the stewardship of the Fairgrounds. It is a story with great promise. The 150-acre Fairgrounds has been the home of the Santa Clara County Fair for almost 75 years. The property consists of 136 acres of land located within the County south of Tully Road that is zoned as quasi-public and open space. The remaining 14 acres of land north of Tully Road is within the City of San José and is zoned Industrial.

Five buildings (Pavilion, Expo, Fiesta, Town and Gateway halls) provide space for event rentals. OTB and bingo take place in the Fair Downs building. An adjacent Turf Club building serves OTB customers. A cafeteria annex provides kitchen facilities for the other buildings and private food trucks. The buildings provide a total of approximately 167,000 square feet with 20 acres of parking area.

Various past efforts to develop the property have been in vain and led to the removal of much of the Fairground's infrastructure that was previously used to showcase livestock, including the racetrack, barns, and stables.³

FAIRGROUNDS MANAGEMENT CORPORATION

In 1995, the County created FMC, a 501 (c) (3) non-profit entity, to manage the property and host the Fair. FMC is governed by its Articles of Incorporation.⁴ FMC also has Bylaws.

In 1998, the BOS adopted a Fairgrounds Good Neighbor Policy (Board Policy 3.24) that states in part:

“It is the policy of the Board of Supervisors that the Santa Clara County Fairgrounds maintain a “Good Neighbor” relationship* with the surrounding community; that the Fairgrounds be used for children and family-oriented uses; that the County Fair continue to be situated at the Fairgrounds; that the Fairgrounds become economically self-sufficient; and that the County of Santa Clara seek public/private partnerships to generate revenue to support capital improvements.

*Note: The term, ‘Good Neighbor’ relationship, for the purpose of this policy statement refers to the County having a relationship with the surrounding community in which the County is respectful and responsive to community concerns that arise from activities at the Fairgrounds.”

³ *Historic Mitigation and Archival Photo Documentation for the Sheep and Swine Building* by the Dill Design Group, February 8, 2001. <https://www.sccgov.org/sites/faf/capital-projects/fg/Documents/Fairgrounds%20Historical%20Study-%20Dill%20Design%20Grp.pdf>

⁴ See Appendix 2

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Currently, the County's and FMC's duties and responsibilities are laid out in an April 18, 2000, Fairgrounds Management Agreement (Agreement).⁵ The 19-year old Agreement has been amended several times to extend its term in one and three-year increments, and the current term will expire on December 31, 2019. Past amendments have also addressed the ownership of fixtures, responsibility for servicing a PG&E energy loan, one-time permission to cancel the Fair, and the incorporation of the County's no smoking policy. FMC intends to seek a 15-year extension of the Agreement.

However, California Government Code Section 25905 states in part:

“The board of supervisors may contract with a nonprofit corporation or association for the conducting of an agricultural fair, as agent of the county, for a period not exceeding five years. The contract may provide for the use, possession, and management of any public park or fairgrounds by the nonprofit corporation, as agent of the county, during the period of the contract....”

Whether any extension or revision of the Agreement may exceed a period of five years deserves further examination.

Aside from the term of the Agreement, it is in need of further updating. For instance, the definition of the “residual property” that FMC is obligated to manage excludes the ill-fated 2001 “House of Blues” project site⁶ even though FMC currently manages that site and there is no House of Blues.

The FMC governing documents describe the permissible activities that may take place at the Fairgrounds. First, Article Two of FMC's Articles of Incorporation⁷ states FMC's non-profit purpose is: “organizing and operating the annual Santa Clara County Fair and similar cultural, educational and community functions.” Second, Section 4.01 of the Agreement states, in addition to operating the Fair, FMC may permit the Fairgrounds property to be used “for the promotion of any educational, charitable, informational, cultural, entertainment or amusement purpose.”. Section 4.01 also states that FMC may permit any pre-existing promoter to continue its use of the Fairgrounds provided that such use is consistent with BOS policies. That provision is largely irrelevant because none of the current uses of the Fairgrounds, except the Fair and OTB, were in existence in 2000 when the Agreement was created.

Under the FMC governing documents, the County explicitly retains ownership of the land and all of the buildings, as well as all subsequent improvements (Agreement, Article 16). The Agreement, however, requires FMC to maintain the buildings and other facilities. In the past 20 years, several

⁵ Management Agreement, See Appendix 1

⁶ San Mateo County Superior Court Case #CIV442629 regarding City and County litigation over the House of Blues project. This nine acre site is located at the corner of Monterey Highway and Umbarger Road.

⁷ See Appendix 2

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facilities key to hosting the Fair have been removed by the County. A 2018 County audit determined that the remaining facilities have accumulated a minimum of \$7.6 million in deferred maintenance.⁸ Even though FMC is obligated to maintain the facilities, the County spent more than \$300,000 in 2018 addressing health and safety issues at the Fairgrounds, including repairs to electrical connections. The County will spend an additional \$200,000 on upgrades to the RV park sewer in 2019.

Together, these three governing documents (collectively FMC’s “purpose”) direct the stewardship of the Fairgrounds, and should be the guideposts of FMC BOD governance and FMC’s operations. There is no fidelity to these governing documents by the FMC BOD or the County.

FMC MANAGEMENT TEAM

Under the Agreement, the FMC BOD hires an executive director whose selection of other executive managers is approved by the FMC BOD. In 2018, the executive director received a salary increase of 5%, to \$184,800 in annual salary. Previous executive directors were paid in the range of \$102,000 to \$112,000. FMC has had three different executive directors in the past five years and has experienced multiple financial crises through those years. For example, in 2015, the embezzlement of funds by an employee was discovered, resulting in an audit condition directing FMC to implement better cash controls in multiple areas of its operations. In 2018, FMC received an insurance payment of \$118,184 as partial reimbursement of the embezzled funds.

FMC’s Bylaws require that the BOD appoint from its members a chief financial officer (Bylaws, Article X, Section 10.01).⁹ Since the resignation of the prior chief financial officer, however, the BOD has not filled the position. Rather, the BOD has decided to tighten its belt by opting to hire a director of finance in addition to the existing accounting manager position. The accounting manager prepares the monthly financial reporting documents and maintains the corporation’s bookkeeping.

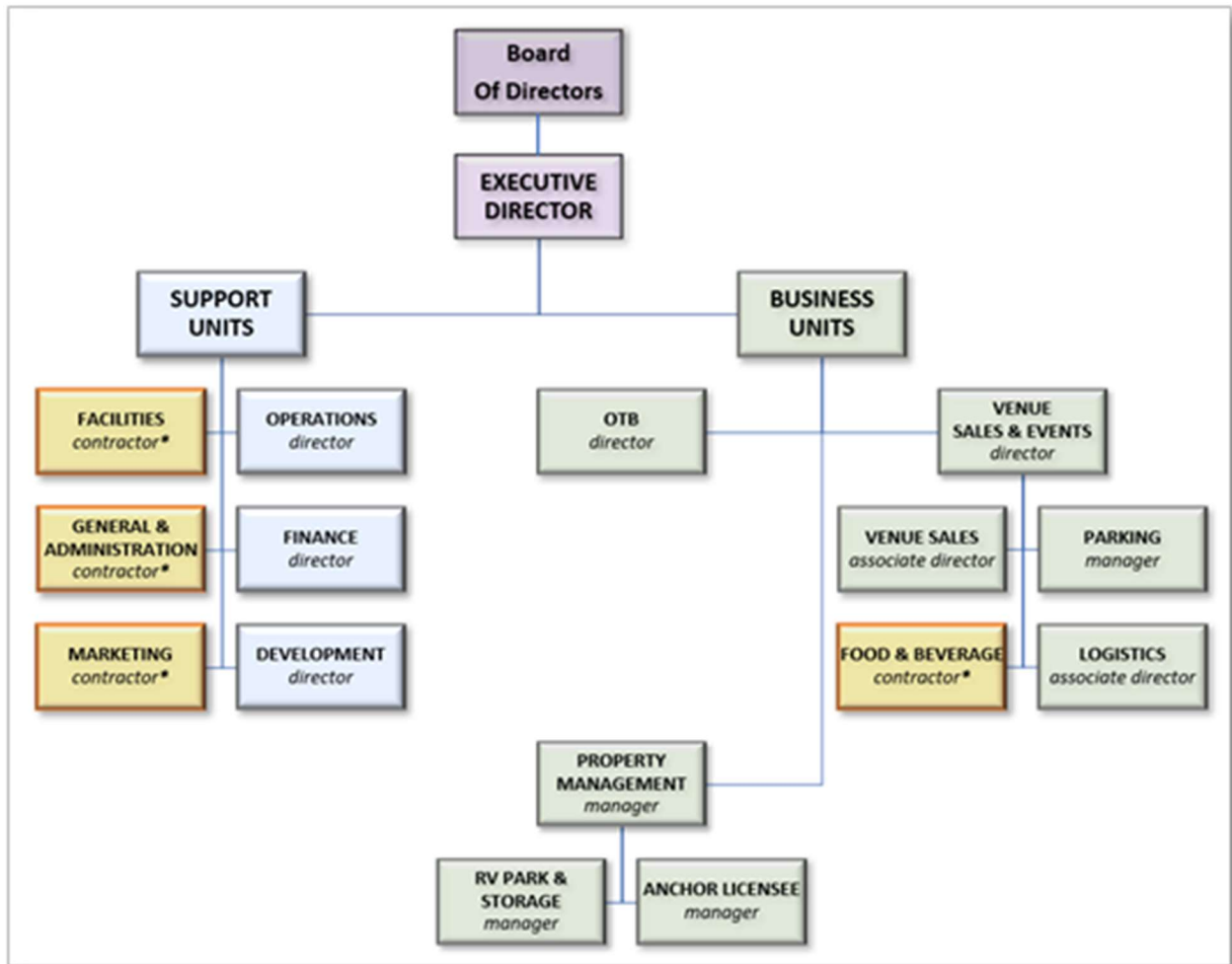
FMC has numerous divisions each headed by a manager. Currently there are managers for Facilities, Food & Beverage, Parking, Events, Marketing, Operations, Development (Fair and special events), Hosted Events (Bingo and OTB), Venue Sales and Events, and Property Management (RV park and storage, anchor tenants). Four of these managers are contract consultants. Figure 1 below is an organization chart.

⁸ “Building Assessment for the Santa Clara County Fairgrounds, May 15, 2018”, Joseph Chow and Associates. The audit did not address the seismic stability to or upgrades of the buildings.

⁹ See Appendix 7.

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Figure 1: Fairgrounds Management Corporation Organization Chart

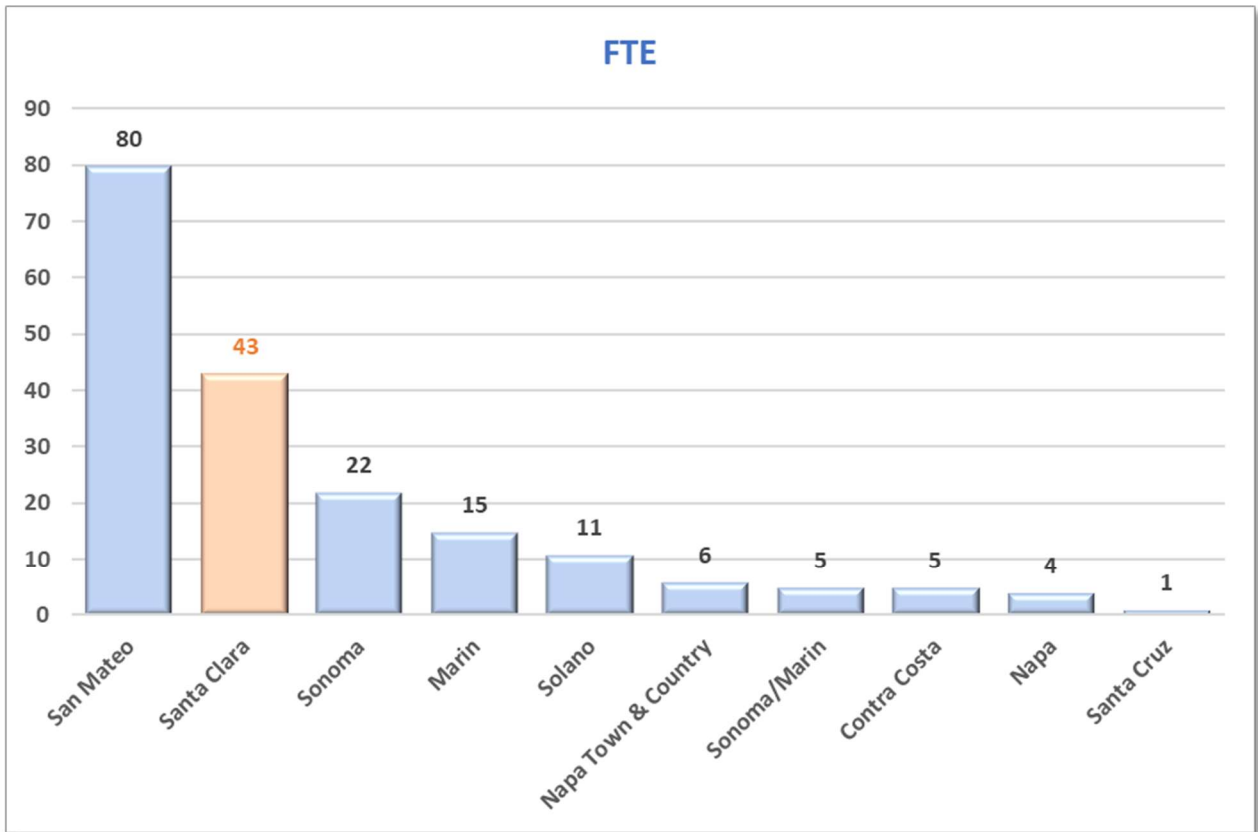


The total number of FMC employees is currently reported to be 39, with an additional seven contract personnel. There are 10 managers out of these 46 people. A few of those contract personnel, as consultants, are highly compensated. For instance, the consultant providing marketing and advertising services to FMC during 2017 reportedly received \$226,571 in compensation, as stated in FMC’s 2017 IRS Form 990. Organizing and operating the annual four-day Fair comprises very little of the duties throughout the year for these 39 employees. Nevertheless, FMC has the second highest number of full-time employees when compared with many county fairs within the Bay Area region, based on the data provided in the California Department of Food and Agriculture (CDFA), Statement of Operations reports (STOP)¹⁰ submitted by each county fair. Figure 2 below includes this data.

¹⁰ The California Department of Food and Agriculture (CDFA) requires county fairs to submit data in an annual Statement of Operations (STOP) report.

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Figure 2: STOP 2017 Full Time Employee Comparisons ¹¹



With 39 staff members, the FMC bi-weekly payroll on average exceeds \$90,000. The monthly cash demand – for employee salaries and other monthly expenses – is reported to be \$300,000. FMC’s cash on hand, as reported to the FMC BOD in April 2019, was \$652,000. At present, FMC has very low cash reserves and significant ongoing monthly financial obligations, particularly as to salary/wage obligations to its employees.

¹¹ Sonoma and Marin Counties hold separate fairs in addition to a combined Sonoma-Marín Fair.

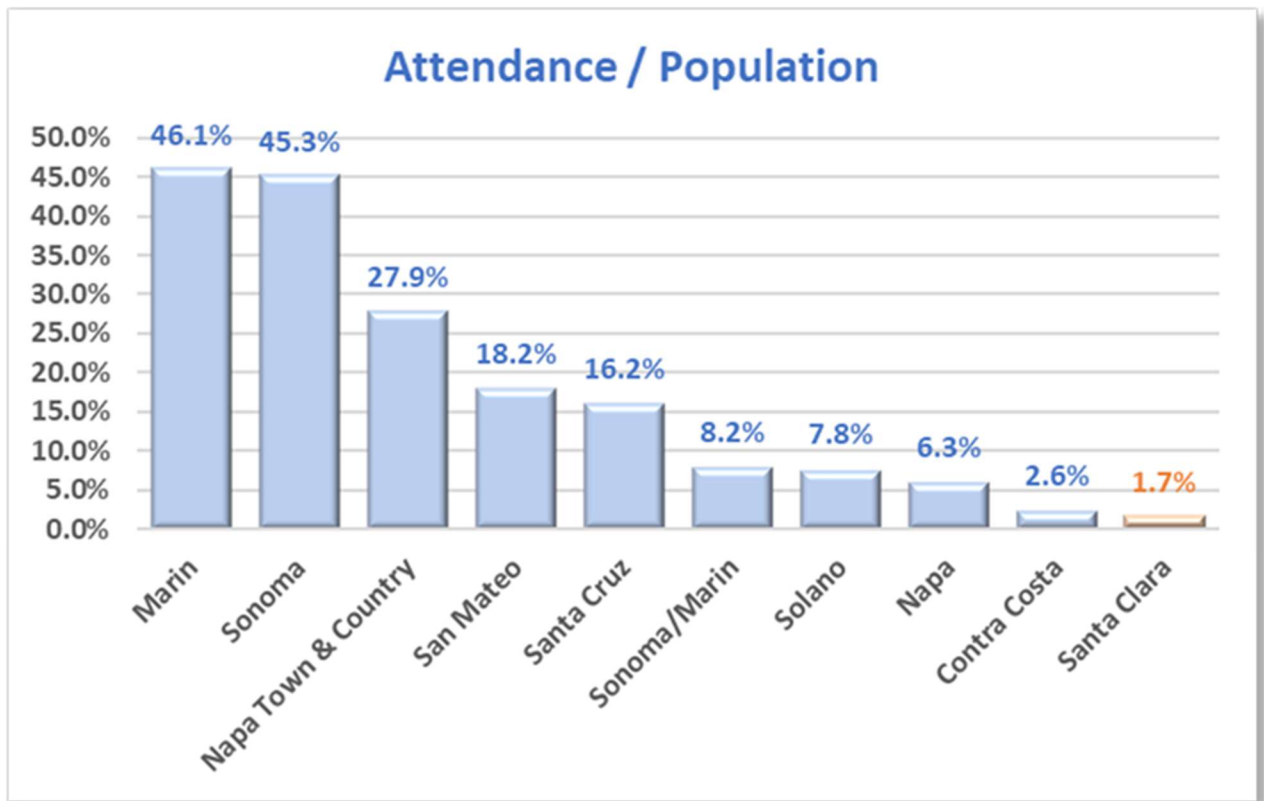
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THE FAIR

The CDFA requires county fairs to submit data in an annual STOP report.¹² The STOP report is used to determine what level of subsidy the CDFA will provide to a given county fair.

The core responsibility of FMC is the County Fair. Given FMC's level of staffing compared to other fairs reviewed by the Grand Jury, FMC is well resourced to put on a successful fair. The four-day Fair attracted an average of 26,000 people between 2006 and 2018, or about one percent of the County's total population of almost two million people. This attendance percentage is lowest among those fairs reviewed as shown in figure 3 below.

Figure 3: STOP 2017 County Fair Attendance by Population Comparison



Nearby county fairs attract a much higher percentage of their population and generate significantly higher revenue. Referring to the 2017 STOP reports, comparisons of overall attendance, and admission revenue for other county fairs are shown below in Figures 4 and 5.

¹² 2017 Statement of Operations Publications (STOP), California Department of Agriculture. https://www.cdfa.ca.gov/Fairs_&_Expositions/Resources_and_Publications/STOP_Publications.asp

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Figure 4: STOP 2017 County Fair Attendance Comparison

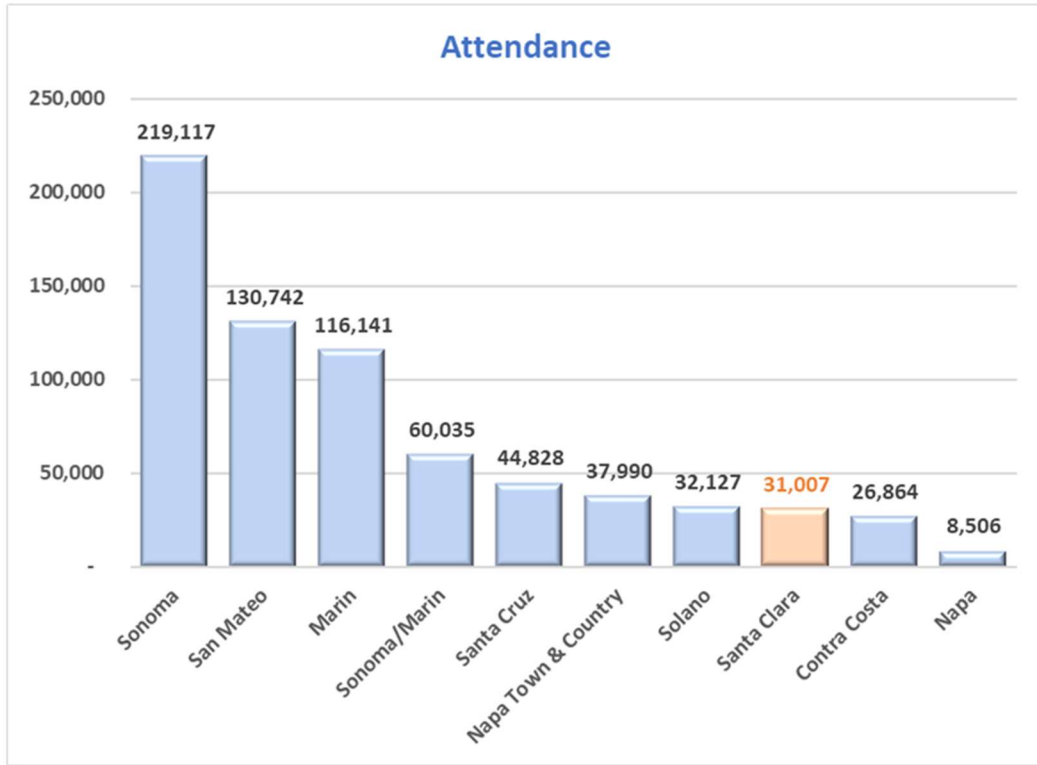
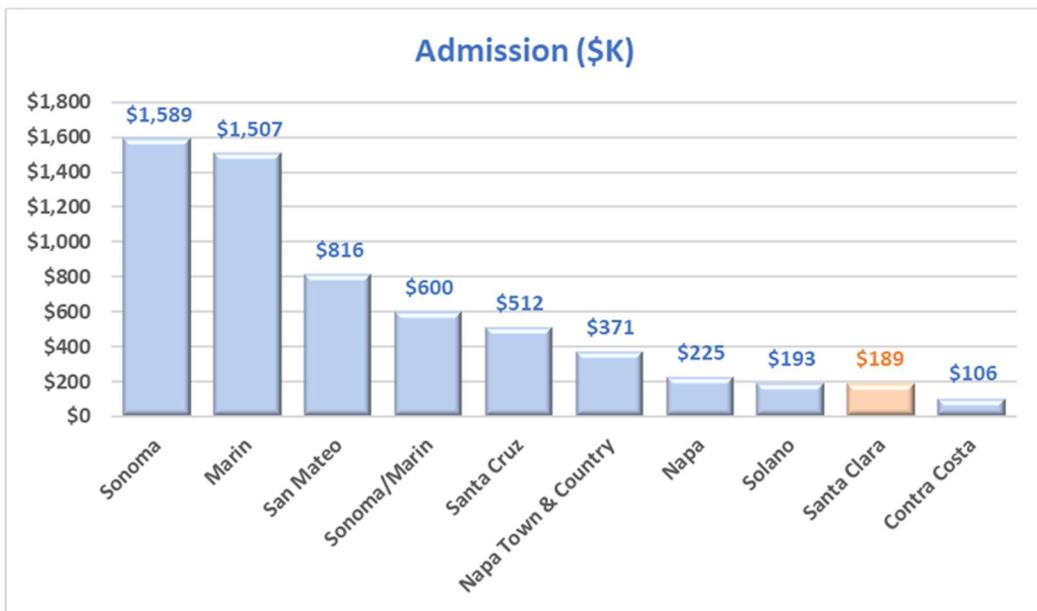


Figure 5: STOP 2017 County Fair Revenue Comparison



The Fair is the primary showcase for the eleven 4-H chapters in the county and is a capstone to their members' year of development and investment. While Fair attendance is low compared to other county fairs, the Fair is critical for 4-H members as an opportunity to showcase their skills

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and to qualify for state-wide competition. The Fair has a dedicated core of supporters and is considered to be both entertainment and educational, which clearly conforms to FMC's purpose.

Ticket revenue for the Fair covers less than half the cost of operating it. In 2017 and 2018, the Fair lost money. In 2018, the Fair is reported to have made \$13,225 but when the bingo subsidy of \$135,000 (discussed below) is considered, it lost money. Although the Fair is a core responsibility of FMC, and contributes to youth agriculture programs, it runs only four days, has very low attendance and loses money.

OTHER REVENUE GENERATING ACTIVITIES AT THE FAIRGROUNDS

In addition to the four-day long Fair, FMC operates several revenue-generating activities, many of which are completely unrelated to the FMC purpose. These activities include:

- Licenses. These are long term agreements with businesses to use Fairgrounds property for various purposes. FMC uses the term "anchor tenants" even though they do not hold any property interest in the land.
- Events. These are rental of buildings for short-term events.
- RV Park and RV/boat storage. Short-term rental of spaces with utility hook-ups and spaces for the long-term storage of RVs and boats.
- OTB and bingo. FMC calls these "hosted events".
- Cell Towers leases. These leases are between the vendor and the County.

LICENSES (AKA "ANCHOR TENANTS")

These anchor tenants include: ADESA, operator of a wholesale car auction (16.7 acres); an outdoor paintball facility (9 acres); and twelve contractor storage yards. The rental fees are based on a per acre charge. FMC considers the market rate currently to be \$6,600/acre per month. Most of the tenants are paying rent at this level. However, the paintball operation has bargained for a lower rate of \$1,070/acre, ADESA pays only \$1,639/acre and Fairground Enterprises pays \$2,255/acre.¹³ Two non-profit organizations use a total of 0.8 acre with reduced or no fees. The Grand Jury understands another tenant is apparently making use of the property without any written authorization and not paying any rent.

All the tenants are occupying their facilities under one-year leases that expire on December 31, 2019, to coincide with the expiration of the Agreement. The one exception is Fairgrounds Enterprises which negotiated a rental term that extends beyond the expiration of the Agreement.

¹³ FMC Board Meeting, March 27, 2019, Agenda Item 4a, page 15. <http://sccgov.iqm2.com/citizens/default.aspx>

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Revenue from the anchor tenants was \$1.9 million in 2018 and required little oversight or management by FMC employees; in essence it is passive income. These anchor tenant business activities do not comport with FMC's purpose.

EVENTS

FMC rents out buildings at the Fairgrounds to local community groups and individuals, hosting several dozen events each year. Examples of the type of events are dog training, quinceañeras, weddings, birthday parties, and food-truck meal preparation. In 2018, events generated \$813,738 in total revenue and \$207,674 in gross profit, after subtraction of direct costs. Most of the events that take place in the buildings would be considered within FMC's purpose.

The Grand Jury has been unable to obtain actual attendance counts for these events and therefore is unable to accurately determine the actual portion of the County's population that attends activities and events at the Fairgrounds other than the Fair. FMC does tabulate attendance estimates that are provided in advance by the various renters¹⁴, but these are not actual attendance numbers. Adding the 2018 estimates for all FMC events to the 2018 Fair attendance results in a total attendance of 268,902 for the year. In comparison, the attendance at the 2017 Sonoma County Fair alone was 219,417.

In 1993, the County and City entered into an Indemnification Agreement.¹⁵ The Indemnification Agreement appears to have been created in response to two public hearings regarding car shows where the County determined that the car shows created "an unreasonable nuisance" and prohibited them from Fairgrounds property. The only exceptions to the car show prohibition noted in the Indemnification Agreement are: 1) Single model cars of a specific make; 2) Pre-1950 antique car shows; and 3) Car shows intended to display new makes and models. Currently, FMC hosts several car shows that are not consistent with these exceptions. It is unclear whether the Indemnification Agreement is still in effect.

RV PARK AND RV/BOAT STORAGE

In addition, about two acres of Fairgrounds property are devoted to an RV park with utility service. Currently guests pay \$750 by the month or \$31 by the day to park their RV and hook up to water, sewer and electric services. At that rate, the RV Park could be said to fall within FMC's determined market rate. The RV Park rents space on a short-term basis, not to exceed 30 days. Thereafter, guests must depart for at least 24 hours before reentering the park to start a new 30-day period.

¹⁴ FMC 2018 List of Events. See Appendix 6

¹⁵ Indemnification Agreement by and between the County of Santa Clara and the City of San Jose, 3/29/1993. See Appendix 5

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These RV Park rules are in place to avoid creating a landlord/tenant relationship. However, loose enforcement of these rules in the past has now made it difficult to obtain full compliance. The Grand Jury has been informed that as a result of lax enforcement of the 30-day rule, there is concern that some guests may in fact be tenants subject to protections under California landlord/tenant law as well as rights to relocation assistance in the event of eviction.

The RV Park, and RV/boat storage facility, generated another \$491,237 in 2018. This use of the Fairgrounds is not consistent with FMC's purpose.

OTB AND BINGO

The most consistently attended activities at the Fairgrounds are OTB, which is held five days a week, and bingo, which is held twice weekly. Attendance is not taken, but the Grand Jury believes based on its observations that average bingo attendance is approximately 120 per night for bingo. Gambling profit from bingo in 2018 was \$140,297 after the \$135,000 Fair subsidy is added back in. OTB draws a group of regulars and, in 2018, this operation made a profit of \$279,811. It is unknown how many people attend OTB.

For the years 2013 through 2017, gambling accounted for over 45% of FMC's gross yearly revenue. However, the profit from gambling is much less.

Gambling is a form of entertainment for some people, but whether this form of entertainment should be permitted at the Fairgrounds is a decision left for the BOS.

CELL TOWERS

The County has entered into three ground leases for cell towers which generate about \$4,200 in monthly income that FMC is permitted to collect as its own revenue.

OTHER REGIONAL ENTERTAINMENT VENUES

Other entertainment facilities nearby include the Municipal Stadium, which attracted 147,688 fans in 2018; Happy Hollow Park, which is visited by nearly 200,000 people each year; and Raging Waters, which entertains huge crowds every summer day. By contrast, the Fairgrounds sits empty most of the year and lacks any sporting fields or parks.

Twin Creeks Sunnyvale Inc. (Twin Creeks) leases another County-owned parcel and hosts thousands of athletic events (at a lighted baseball, softball and soccer complex) each year that

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entertain 500,000 people and generates a profit.¹⁶ The Twin Creeks lease¹⁷, as restated on February 4, 2014, has requirements similar to the FMC Agreement: rent must be paid to the County (\$120,000 base rent per year plus COLA); improvements revert to County ownership; the lessee is obligated to maintain the athletic fields, clubhouse and restaurant; and use of the premises is restricted to commercial parklands uses. The ground lease has recently been extended to 2033. The athletic field improvements are funded from a portion of the rent payments. This for-profit entity is able to be self-sufficient in providing the public with sports fields while returning revenue to the County.

FMC'S FINANCIAL REPORTING OF REVENUE

The Grand Jury reviewed numerous financial documents prepared by FMC, which are very opaque and inconsistent. In particular, financial documents provided by FMC do not use consistent terminology. For instance, “Events” in one report¹⁸, include income from anchor tenants, RV Park and storage, and parking revenue, while “Events” in a different report¹⁹ only refers to short-term rental of the buildings. Both reports are routinely published at the FMC BOD meetings. These confusing definitions make it difficult for the FMC BOD to easily interpret data. Some observations can be made notwithstanding these inconsistencies.

Although not consistent with FMC’s purpose, the “licenses” (aka anchor tenants) are profitable. Total revenue from the anchor tenants in 2018 was \$1,910,247, yielding a profit of \$1,898,631 with little expense required to generate these revenues.²⁰ The numbers for 2017 were similar with \$2,051,538 in revenue and \$1,495,079 in reported profit.²¹ Likewise, the RV Park and RV/boat storage - another inconsistent purpose - is profitable and earned \$491,237 in revenue and made a profit of \$442,518 in 2018.

Rentals, which generally are consistent with FMC’s purpose, make a modest profit. With respect to “events” (building rentals), FMC reported revenue of \$813,738, for a profit of \$207,764 in 2018.²² These revenue numbers exclude related parking, food & beverage and “other” related

¹⁶ Sports parks hope to hit grand slam, Alastair Goldfisher. February 1, 1999.

<https://www.bizjournals.com/sanjose/stories/1999/02/01/smallb1.html> (link verified as of June 2019)

¹⁷ BOS agenda, 2/4/2014,

http://sccgov.iqm2.com/Citizens/Detail_LegiFile.aspx?ID=70287&highlightTerms=twin%20creeks

¹⁸ Supplemental Schedule of Revenues and Expenses, FMC Board Meeting, January 24, 2019, Item 7a, <http://sccgov.iqm2.com/citizens/default.aspx>

¹⁹ Contribution Margin Report, report for period ending December 2018, FMC Board Meeting, January 24, 2019, Item 7a, <http://sccgov.iqm2.com/citizens/default.aspx>

²⁰ FMC Contribution Margin report for period ending December 2018, FMC Board Meeting, January 24, 2019, Item 7a, page 26. <http://sccgov.iqm2.com/citizens/default.aspx>

²¹ FMC Contribution Margin report for period ending December 2017, FMC Board Meeting, January 31, 2018, Item 7a, page 31. <http://sccgov.iqm2.com/citizens/default.aspx>

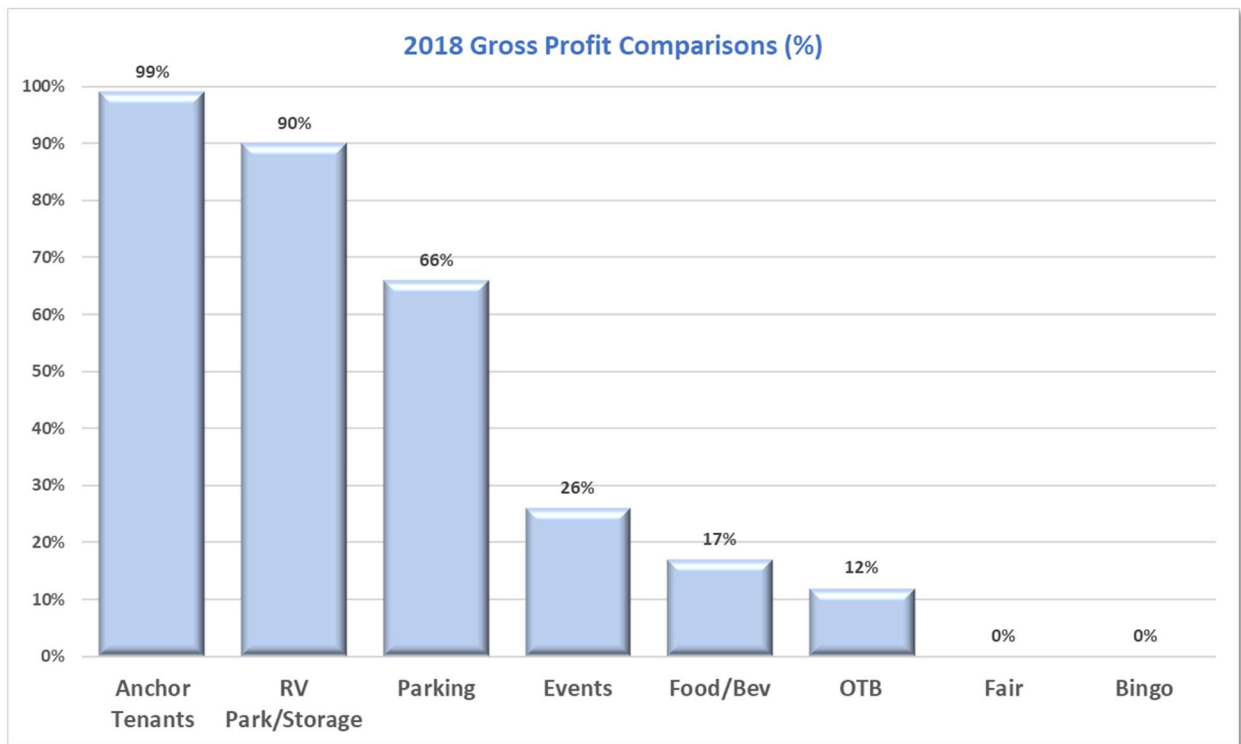
²² FMC Contribution Margin report for period ending December 2018, FMC, supra

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revenues also generated from the events. For 2017, FMC reported revenue from event rentals of \$770,113 and a profit of \$265,205.²³

FMC's two most profitable business lines in 2018 were the anchor tenants and RV Park and RV/boat storage. These two business lines together represented over two-thirds of all profits, before facility and general & administrative expenses are deducted. See Figure 6 below. Few employees are needed to service the anchor tenants and the RV Park and RV/boat storage.

Figure 6: 2018 Gross Profit as a Percentage of Revenue for Categories of Activities



²³ FMC Contribution Margin report for period ending December 2017, FMC Board Meeting, January 31, 2018, Item 7a, page 31. <http://sccgov.iqm2.com/citizens/default.aspx>

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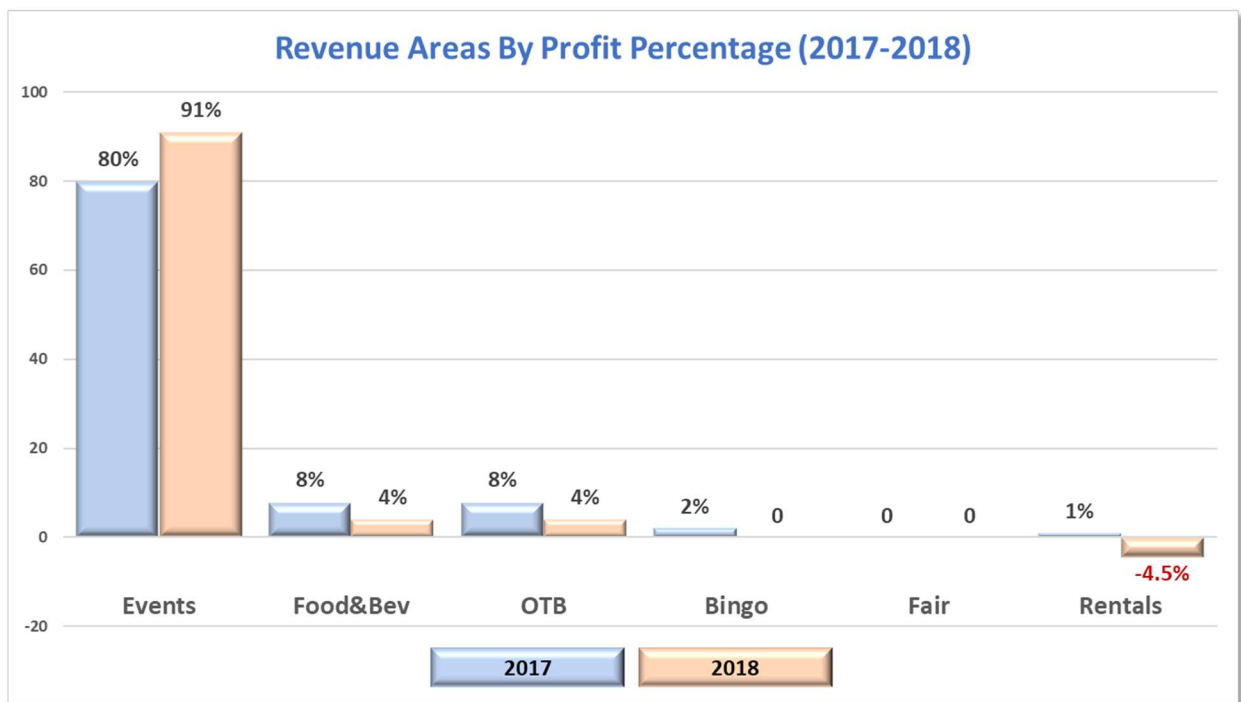
SCHEDULE OF REVENUE AND EXPENSES REPORTS

FMC provides reports to the FMC BOD called “Schedule of Revenues and Expenses”. In 2018, FMC reported a gross profit of \$3,192,130.²⁴ Of that amount, 91% came from Events (as defined by FMC to include anchor tenants and RV Park and RV/boat storage and parking revenues) and the remaining categories were smaller by comparison. The 2018 gross profit of approximately \$3.2 million is reduced by facility and general & administrative expenses. After that deduction, FMC’s overall net profit was \$127,281. Note that the profit in 2018 included a one-time \$118,184 insurance payout for a prior year’s embezzlement.

In 2017, FMC had a gross profit of \$3,115,688.²⁵ Events produced 80% of the total profit and the remaining categories were again smaller by comparison. In that year, FMC recorded an overall net loss of \$41,721, again after facility and general & administrative expenses were deducted.

See Figure 7 for the revenue areas as a percentage of profit in 2017 and 2018.

Figure 7: 2017-2018 Revenue Areas as a Percentage of Profit²⁶



²⁴ Supplemental Schedule of Revenues and Expenses, FMC Board Meeting, January 24, 2019, Item 7a, <http://sccgov.iqm2.com/citizens/default.aspx>

²⁵ Supplemental Schedule of Revenues and Expenses for period ending December 2017, FMC Board Meeting, January 31, 2018, Item 7a, <http://sccgov.iqm2.com/citizens/default.aspx>

²⁶ “Events” data is derived from the 2017 and 2018 Supplemental Revenues and Expenses reports.

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In sum, the two most profitable business lines, which are not consistent with FMC purpose and require little involvement from FMC staff, keep FMC solvent. The other activities and expenses associated with running those activities, which are consistent with FMC's purpose, deplete the income earned from the incompatible revenue sources.

COUNTY FAIR FINANCIAL REPORTING

The financial documents presented to the FMC BOD and the public mask the real financial numbers for the Fair and Fairgrounds Bingo. The annual budgets do show a Fair subsidy from bingo of \$135,000 in 2017 and 2018. In other words, the net profit for bingo for both 2017 and 2018 was \$135,000 more than reported in the financial statements, and the net profit for the Fair was \$135,000 less than reported in the financial statements presented to the FMC BOD.

The Fair actually lost money in 2018 when it was reported that it made a small profit of \$13,225.²⁷ The Fair lost even more in 2017 than the reported loss of \$245,503.²⁸ FMC's purpose includes putting on the Fair but it has needed a subsidy to do so. However, the amount of the subsidy is not known to the public for any given year because the financials are opaque.

FMC'S NON-PROFIT TAX RETURNS

FMC indicated on its 2017 tax return²⁹ that it owns \$2 million worth of buildings, when it is very clear in the Agreement (Section 16.1) that the County retains ownership of buildings and improvements at the Fairgrounds.

As a reference point for this discussion, the year 2008 was examined. At the end of 2008, FMC had \$1.5 million in cash and savings; it listed liabilities of almost \$1.9 million, including \$845,689 owed to the County. Adjusted for the loan later forgiven (referenced below), FMC had a positive asset balance of \$721,311 in 2008.

Between 2011 and 2016, FMC reported an increase of \$2.5 million in building assets, and doubled their depreciation expense. FMC would then have reported negative net worth balances as shown in Figure 8 if FMC did not report these building assets.

²⁷ Supplemental Schedule of Revenues and Expenses, for period ending 12/31/2018. FMC Board Meeting Jan. 24, 2019, Agenda Item #7a, page 29. <http://sccgov.iqm2.com/citizens/default.aspx>

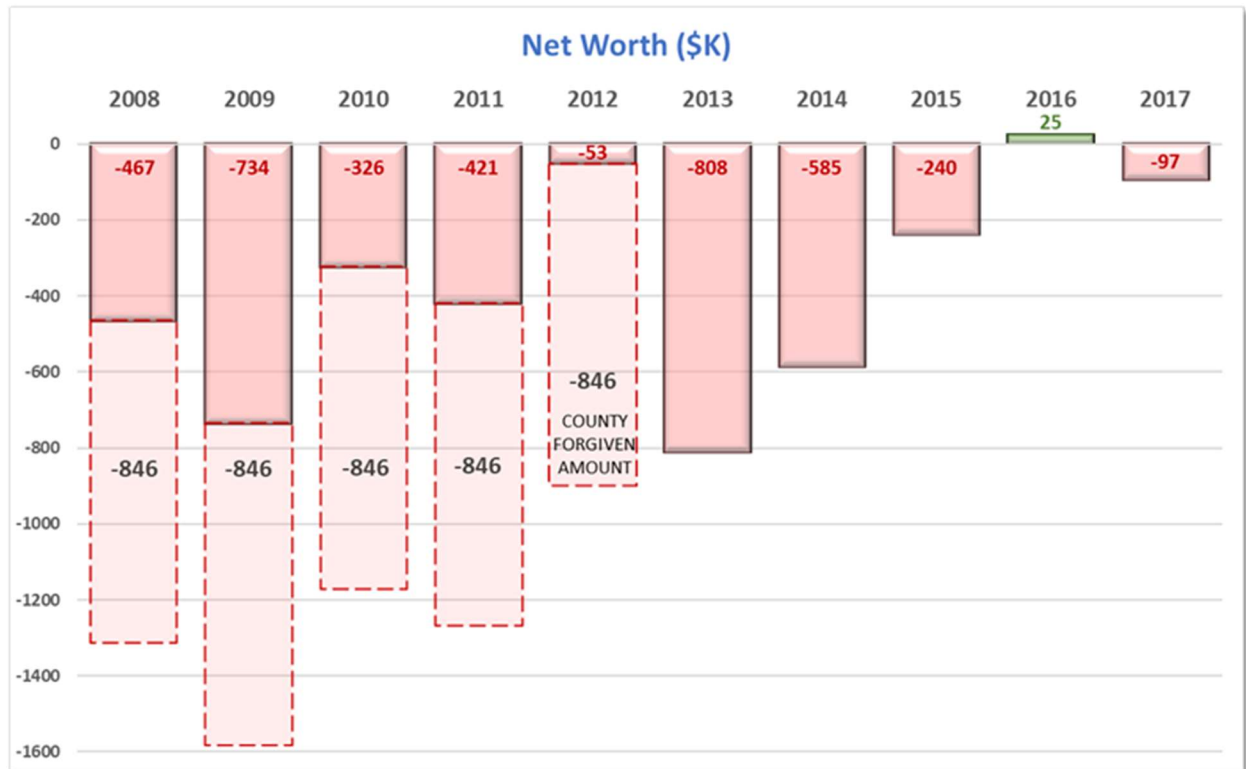
²⁸ Supplemental Schedule of Revenues and Expenses for period ending December 2017, FMC Board Meeting, January 31, 2018, Item 7a, <http://sccgov.iqm2.com/citizens/default.aspx>

²⁹ FMC IRS Form 990, tax year 2017. <https://www.guidestar.org/profile/77-0399864>

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The list of assets used by FMC for depreciation expense³⁰ reflects some questionable items. For example, FMC assigned a 15-year life to a \$70,000 landscaping project for the 2017 Island Reggae festival, landscaping that the Grand Jury recently observed to be nothing more than a ragged gravel patch. Some of the entries are labeled "Maintenance", and "Lumber to repair...", which do not appear to represent depreciable assets. Office supplies are depreciated when the common practice is to expense these in the year of acquisition.

Figure 8: Net Worth Trend (Total Assets Less Total Liabilities)



In 2012, the County forgave \$845,689 in outstanding obligations, except for \$65,000 that was converted to a loan. That prior debt constituted of a group of obligations to the County that were being carried on FMC's books, but which were unlikely ever to be repaid. As a result of forgiving this debt, FMC's net worth increased (see Figure 8 above). After the loan was forgiven, FMC began reporting an increase in its holdings of assets in land and buildings as if these assets were owned. FMC had been depreciating about \$2 million of these assets at roughly \$100,000 per year. Under the Agreement, however, FMC does not own any buildings or improvements.

In reality, cash has diminished almost every year for the past ten years from \$1.5 million at the end of 2008 to \$776,915 at the end of 2018. Liquid reserves are now less than short-term

³⁰ Depreciation is the reduction in the value of a capital asset with the passage of time due to wear and tear and applies to long-term assets.

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obligations. FMC is technically insolvent if you strip away the illusion of \$1.3 million in building improvement assets.

FAIRGROUNDS BINGO

The traditional game of bingo was introduced by FMC to the Fairgrounds as “Fairgrounds Bingo” in October 2013 to generate income, purportedly to be used to subsidize the annual Fair. The Grand Jury attended several bingo nights. No attendance records were available for inspection but the average attendance appeared to be around 120.

Fairgrounds Bingo is governed by California Penal Code Section 326.5 and Chapter V of the Santa Clara County Ordinance Code (Code).³¹

Penal Code Section 326.5(o) states:

“As used in this section, “bingo” means a game of chance in which prizes are awarded on the basis of designated numbers or symbols that are marked or covered by the player on a tangible card in the player’s possession and that conform to numbers or symbols, selected at random and announced by a live caller. Notwithstanding Section 330c, as used in this section, the game of bingo includes tangible cards having numbers or symbols that are concealed and preprinted in a manner providing for distribution of prizes. Electronics or video displays shall not be used in connection with the game of bingo, except in connection with the caller’s drawing of numbers or symbols and the public display of that drawing, and except as provided in subdivision (p). The winning cards shall not be known prior to the game by any person participating in the playing or operation of the bingo game. All preprinted cards shall bear the legend, “for sale or use only in a bingo game authorized under California law and pursuant to local ordinance.” Only a covered or marked tangible card possessed by a player and presented to an attendant may be used to claim a prize. It is the intention of the Legislature that bingo as defined in this subdivision applies exclusively to this section and shall not be applied in the construction or enforcement of any other provision of law.”

VOLUNTEERS

³¹ All references herein to the Santa Clara County Ordinance Code (Code) are to Chapter V, (Ord. No. NS-502.7, 9-14-04)

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Under state and county law, the organization's members shall not receive a profit, wage or salary from any bingo game (See also Penal Code section 326.5(b) & (h), Code section B3-80). Bingo games are held at the Fairgrounds on Tuesdays and Thursdays and are staffed by "volunteers", which include one salaried and one hourly FMC employee. The other volunteers are reported to include 6 to 10 non-FMC employees who are not compensated directly. However, these individuals may direct a donation of \$60.00 per evening to a designated charity.

Volunteer is defined in Labor Code Section 1720.4(a) as: "... an individual who performs work for civic, charitable, or humanitarian reasons for a public agency or corporation qualified under Section 501(c)(3) of the Internal Revenue Code [1] as a tax-exempt organization, without promise, expectation, or receipt of any compensation for work performed."

FMC contends that its two employees who manage its bingo operations do so as volunteers and not paid staff. This is suspect because these two employees, one salaried and the other hourly, have work schedules adjusted to allow them to "volunteer" during the bingo hours. Typical bingo games put on by churches and other community organizations use their parishioners and members to conduct the bingo games without compensation. FMC's claim is further suspect because its IRS Form 990 filed by FMC for 2017, in Schedule G, Part III, Line 6 states that bingo is not conducted by volunteer labor. That 2017 IRS Form 990, Schedule G, Part III, Line 11 also incorrectly reports that FMC does not conduct gaming operations with non-employees (non-employees referring to members of the public).

Further, during visits by the Grand Jury, none of the FMC or non-FMC bingo "volunteers" were observed wearing identification badges as required by Code Section B3-80.

MONTHLY REPORTS

FMC must further file a monthly report with the County stating the gross revenue, prize payout and game expenses (See Code section B3-99). Expenses may not exceed \$2,000 or 20% of revenue per month whichever is less (See Penal Code section 326.5(k)(4) and Code section B3-85).

When FMC began offering bingo, expenses were accurately reported to the County even if they exceeded \$2,000. After the County pointed out Code Section B3-99, FMC altered its reporting so that expenses never exceeded \$2,000. In reality the Grand Jury learned, the monthly expenses, primarily the cost of bingo cards and supplies, greatly exceed \$2,000. FMC's IRS Form 990 for 2017, Schedule G, reports \$110,412 as direct bingo expenses. This number equates to more than \$9,000 per month. In order avoid exceeding the \$2,000 limit, the Grand Jury learned that FMC has been incorrectly reporting monthly bingo revenue and expenses to the County for the past four years, by deducting monthly expenses from the gross revenue and not reporting the accurate expense figures.

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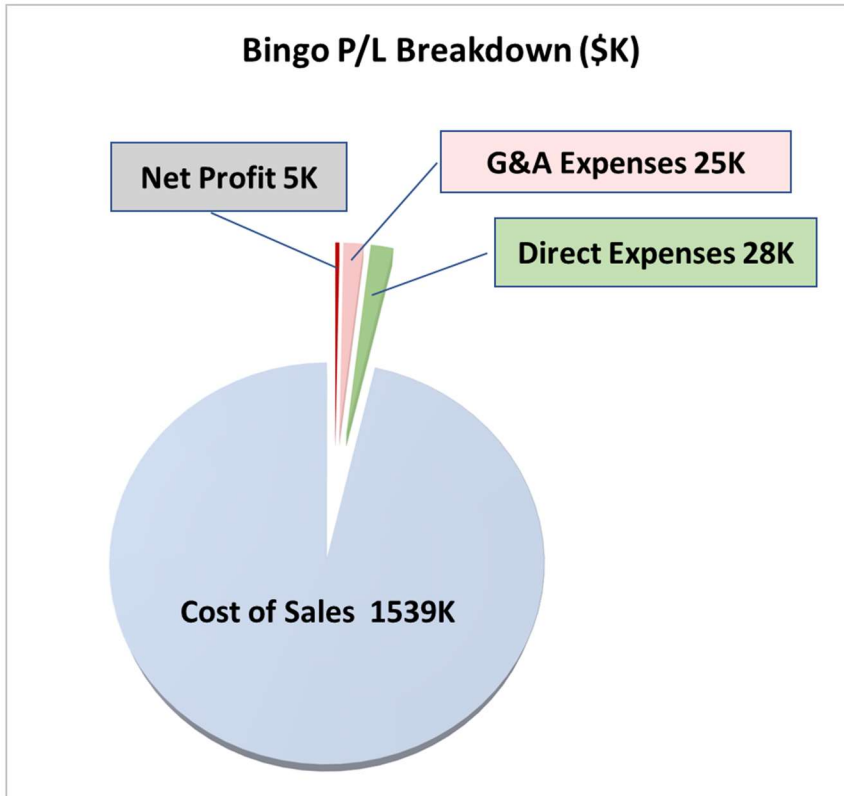
USE OF BINGO PROCEEDS

All proceeds from bingo, with the exception of \$2,000 in allowable expenses, must be maintained in a special fund or account and not commingled with other funds (Penal Code section 326.5(k) and Code section B3-85). As of the date of this report, bingo revenue is not maintained in a separate account and is commingled with the FMC operating accounts.

In the monthly publication *Bingo Bugle*, FMC advertises, "Fairgrounds Bingo Benefits County Fair Youth Programs." This is misleading because only \$135,000 from bingo proceeds is specifically designated for the Fair, and not necessarily for the Fair's youth programs. Bingo profits above the \$135,000 go to FMC's operating accounts, which as discussed above is used for various purposes associated with operating FMC.

After FMC pays for prizes, bingo supplies, security, and administrative and labor costs, biweekly bingo is a very insignificant source of profit for FMC. In 2018, the \$1,597,355 bingo operation generated a profit of \$140,297 for FMC. This profit is before deduction of the Fair subsidy of \$135,000 that is not reflected in the bingo (hosted events) profit figures contained in the 2018 Supplemental Schedule of Revenues and Expenses. See Figure 9.

Figure 9: Breakdown of 2018 Bingo Total Revenues and Expenses



NOTE: The total revenue was \$1596K

OPERATING WITHOUT A LICENSE

A license is required from the County of Santa Clara's Planning Department/Zoning Administrator on an annual basis to operate bingo games. Code Section B3-91.

In November 2017, FMC re-applied for its annual bingo license. During an inspection by the County Fire Marshal, code violations were identified, including an uncapped gas line. No license was issued. Corrective action was signed off by the Fire Marshal on February 6, 2018. Due to an administrative oversight by the County and no follow-up by FMC, no license was issued during the entire year of 2018.

Regardless, FMC continued to hold its regularly scheduled twice-weekly bingo games during 2018. FMC re-applied for a bingo license for 2019 that was granted on March 26, 2019, ending a period of 14 months without a valid license. The FMC BOD was unaware that FMC was operating bingo without a license throughout 2018.

OTHER BINGO GAMES (PULL TABS AND STRIPS)

Penal Code Section 326.5(o) and Code Section B3-76 both define bingo in similar language to include non-traditional forms of the game such as strips and pull tabs.³²

In addition to traditional bingo, FMC sells “flash cards” (or pull tabs) and “strips” during bingo (See Appendix 8). Flash cards are cards with a tear-away cover that reveals symbols, similar to lottery scratchers. Some flash cards reveal a monetary instant win feature, as well as a bingo component. Strips are an abbreviated form of traditional bingo. Strips and flash cards generate 98% of bingo profit according to FMC. The governing statutory and Code language cited above seems to permit instant winners or pull tabs type of games within the definition of bingo. However, these styles of games raise issues under the federal tax law definition of bingo, as will be discussed below. Furthermore, many of the flash cards sold by FMC do not have labeling required by Code section B3-76, “For sale or use only in a bingo game authorized under California law and pursuant to local ordinance.”

³² Penal Code Section 326.5 states, “As used in this section... the game of bingo includes tangible cards having numbers or symbols that are concealed and preprinted in a manner providing for distribution of prizes....”

Code Section B3-76 states, “...The game of bingo shall include cards having numbers or symbols which are concealed and preprinted in a manner providing for the distribution of prizes....”

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UNRELATED BUSINESS INCOME

FMC is operating bingo contrary to state law and local ordinance. Additionally, FMC is not accurately capturing some of the bingo revenue on its IRS Tax Forms. Unrelated business income (URBI) is income from a trade or business, regularly carried on, that is not substantially related to the charitable, educational, or other purpose that forms the basis of the organization's exemption.³³ Gambling generally is not a charitable activity nor substantially related to the exempt purpose of a 501 (c)(3) entity, even if the revenue supports the exempt purpose.³⁴

Bingo is an exception to the general rule that gambling is URBI if the bingo games: 1) meet the IRS definition of bingo; 2) do not violate state or local law; and 3) are played where bingo is not regularly played by for-profit entities.³⁵ The IRS defines bingo to exclude “pull tab” or “instant bingo” type games.³⁶ The pull tab games conducted during bingo nights by FMC, and which account for a significant percent of bingo revenue (94%), appear to disqualify those games from the definition of bingo. FMC, however, reports its bingo proceeds to the IRS as one number without separating by style of game (regular bingo, strips, flash cards). Furthermore, FMC operated bingo without a permit for 14 months and therefore was in violation of local law during this period. Indeed, FMC operation of bingo continues to violate local law in a variety of ways described above, e.g., failure to use volunteer name badges, use of employees, improper monthly reporting, and expenses that exceed \$2,000 per month. Given these facts, some of FMC’s bingo revenue, could be subject to tax as URBI.

FMC OVERSIGHT IS LACKING

The FMC BOD is comprised of five appointed members, appointed by each of the five County Supervisors to serve a term concurrent with their appointing Supervisor. The FMC BOD is responsible for ensuring that FMC’s executive director dutifully manages the day-to-day operations of the Fairgrounds.

The FMC BOD meets monthly on the third Wednesday. The BOD held meetings in only 8 of 12 months during 2018; with the May, June, September and October meetings cancelled due to lack of a quorum. Only two meetings since January 2018 had all five appointed directors in attendance. Some meetings have been delayed waiting for a meeting quorum. One FMC board member was not present at many BOD meetings in 2018, effectively creating a vacancy on the BOD. This

³³ *Tax-exempt Organizations and Gaming*, IRS Publication 3079 (rev. 10-2018), Department of the Treasury, Internal Revenue Service. www.irs.gov

³⁴ *Tax-exempt Organizations and Gaming*, supra

³⁵ *Tax-exempt Organizations and Gaming*, supra

³⁶ *Tax on Unrelated Business Income of Exempt Organizations*, IRS Publication 598 (rev. 02-2019), Department of the Treasury, Internal Revenue Service. https://www.irs.gov/publications/p598#en_US_201901_publink1000267770

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member was recently replaced by a newly elected Supervisor for the district. Other county fair operations maintain a larger Board of Directors, including: Alameda (21), Sonoma (15), Contra Costa (8) and San Mateo (8). Having a larger board could bring more diversity of opinion to the BOD and help in achieving quorums.

During the past calendar year, the interaction between individual FMC Board members and FMC's executive director has varied from routine monthly visits by some to less frequent quarterly visits by others. This limited interaction suggests a somewhat hands-off relationship between the FMC Board and their sole managed employee, the executive director.

Board members receive a Board Meeting packet from FMC management approximately one week prior to the monthly meeting. During board meetings, the FMC BOD reviews a summary report from the executive director, a financial report, and special presentations, and conducts a closed session period, followed by approvals and announcements. The Grand Jury observed that the FMC Board routinely accepts at face value the financial report materials presented during the meetings with little discussion or questions.

With the expiration of the current Agreement looming, the FMC BOD during board meetings has not provided any direction to the FMC management team on the crafting of a long-term business plan for the Fairgrounds consistent with FMC's purpose. It remains unclear what plan, if any, the FMC Executive Staff has drafted to date. There is an expectation that a long-term plan will be adopted by the FMC BOD and presented to the BOS. This was to have occurred in late 2018 but no proposed plan has been publicly presented to the FMC BOD as of the date of this report.

BROWN ACT

The FMC BOD is subject to the Ralph M. Brown Act (Brown Act).³⁷ The Brown Act guarantees the public's right to attend and participate in meetings of local agencies. It also regulates what is permissible to discuss during closed (non-public) sessions. One permissible closed session meeting is the "personnel exception." Under this exception, the Brown Act authorizes a closed session "to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee."³⁸ The purpose of this exception is to avoid undue publicity or embarrassment for an employee or applicant for employment and to allow full and candid discussion by the legislative body; thus, it is restricted to discussing individuals, not general personnel policies.³⁹ The body must possess the power to appoint, evaluate, or dismiss the employee to hold a closed session under this exception.

³⁷ California Government Code Section 6250, et seq.

³⁸ California Government Code section 54957(b)

³⁹ 63 Ops.Cal.Atty.Gen. 153 (1980)

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Closed session items must be briefly described on the posted agenda and the description must state the specific statutory exemption.⁴⁰ If the FMC Board wishes to convene in private under one of the closed-session exceptions, it must clearly list the exemption being use.

Meeting agenda items, including closed sessions, are established in advance by the FMC BOD chair and the executive director. During 2018, every FMC BOD meeting agenda included a closed session item listed as “Public Employee Performance Evaluation...Executive director”. This practice continued for the months of January through April 2019 as well.

The executive director is the only employee directly selected and hired by the BOD so that position is the only position FMC can meet in closed session to discuss under the personnel exception. The above exemption is supposed to be used to evaluate the executive director’s performance. It is difficult to believe that the FMC Board is evaluating its executive director at every meeting. It would appear that these repeated closed session agenda items, purportedly for employee evaluations, may act as a place holder and foster the discussion of unrelated matters, a practice that is not permitted by the Brown Act. This concern is supported by a recent occurrence.

During the 2018 Fair, a family livestock sale ended in a pricing dispute that led to a subsequent acrimonious confrontation. The confrontation was itself a violation of the Fair’s Code of Conduct rules. The FMC executive director notified the family of the violation by letter in December 2018 and imposed a two-year ban from livestock events at the Fair. The family protested the decision to the FMC executive director and other public officials. As a consequence, the family received a subsequent letter in February 2019 rescinding the two-year ban. This rescission occurred against FMC staff recommendations and was approved by the FMC Board during a closed session of the BOD on January 24, 2019. The only closed session item on the January 2019 agenda was “Public Employee Performance Evaluation...Executive Director”. Conceivably, the FMC BOD could have evaluated the executive director’s performance in handling the code of conduct discipline; however, any action to reverse the discipline was not permissible under the exception invoked. And the FMC BOD did not report out any reportable action that was taken during closed session, as would be required under the Brown Act.

⁴⁰ California Government Code section 54954.5

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FINANCIAL OVERSIGHT

FMC produces a financial statement before each BOD meeting and makes that publication available through the County's public portal as required. There are several unusual accounting practices that make these financial statements lack transparency.

1. Revenue from twice-weekly bingo games is reported as Hosted Events, which is misleading. FMC financial reports describe two festivals as follows: "Hosted two major events, Island Reggae and Cinco de Mayo..." Yet those events are reported as Special Events, and bingo is reported as Hosted Events. As noted above, "Events" as used in the Supplemental Schedule of Revenues and Expenses include only anchor tenants, RV Park and storage and parking lots.
2. The annual budget includes a subsidy of \$135,000 for the Fair from bingo revenues. But profit from bingo games is reported as income for the Fair, with the net effect that bingo is break-even, and the Fair is profitable. In fact, the Fair was not profitable in 2017 (lost \$380,000) nor in 2018 (lost \$121,000).
3. The treatment of bingo revenue in the monthly financial reports presented to the FMC BOD and to the public does not reconcile with other required filings by FMC, including monthly Bingo Operation Reports filed with the County and the annual Form 990 filed with the IRS. FMC is regularly misreporting its expenses to the County.
4. In 2008, FMC had \$1.5 million in cash (liquid assets). In its 2017 Form 990, FMC reported it had \$594,988 in cash. Given the amount of reported liabilities, FMC is technically insolvent.
5. During the ten-year period from 2008 to 2017, FMC claimed an increase in net building assets from \$300,000 to \$1.4 million. It is very clear in the Agreement that FMC does not own buildings or building improvements. These phantom assets inflate FMC's perceived profitability and mask its insolvency.
6. Over the past seven years, FMC has depreciated many maintenance expenses and has assigned 15-year depreciation schedules to many temporary assets like landscaping and RV storage parking.
7. In its 2016 STOP filed with CDFA, FMC claimed to own \$252,457 in land; \$1,470,557 in buildings and improvements (with \$794,745 in accumulated depreciation); and \$1.2 million worth of equipment. The very next year, in its 2017 STOP filing, FMC claimed \$0 in land assets; \$1,928,333 in buildings and improvements (with \$911,831 in accumulated depreciation); and \$1.3 million worth of equipment. In 2018, FMC recognized that it does

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not own any land but continues to report ownership in buildings and improvements. Again, the Agreement specifies that FMC does not own any buildings or building improvements.

ADHERENCE TO THE AGREEMENT

The FMC BOD, as the governing body of a non-profit entity, has the responsibility to ensure that the organization is complying with its contractual obligations including the Agreement. It appears to the Grand Jury that FMC is operating in violation of multiple provisions of the Agreement, including:

1. FMC is required to pay for any and all maintenance to the facilities (Article 3. Contractor Compensation, Section 3.01), yet the County spent more than \$5 million in 2009 and 2010 on improvements and will have spent \$500,000 through 2019 on health and safety maintenance items and sewer upgrades. The facilities have accumulated more than \$7 million of deferred maintenance expense that the Agreement requires FMC to address. These amounts exclude the \$780,000 in debt to the County that was forgiven in 2012.
2. If FMC generates any net profits, it is required to pay those to the County by April 1 each year (Agreement, Article 3, Contractor Compensation, Section 3.01). According to Form 990s filed by FMC, it has generated net profits (including the reported depreciation) in each of the last three years but has paid nothing to the County.
3. FMC operates car shows that appear to be in conflict with a 1993 Indemnification Agreement between the County and the City of San José. The Grand Jury is unaware that this agreement is no longer in effect.
4. Multiple below-market rentals and free office space have been provided in trade or barter in the past or for no compensation.

COUNTY'S OVERSIGHT OF THE FAIRGROUNDS AND FMC

PRIOR GRAND JURY DISCOVERED SIMILAR PROBLEMS

A previous Civil Grand Jury report in 2010-11 studied the Fairgrounds pursuing the premise: “The Grand Jury is aware that the Fairgrounds has historically been a financial drain to the taxpayers and decided to investigate why this seemingly valuable asset did not provide a positive revenue stream, or at a minimum, a cost recovery service to the community.”⁴¹ The 2010-11 Grand Jury focused on FMC’s operations, noting that the County had continued to fund FMC’s losses. A few recommendations from this past report are relevant to the current investigation.

⁴¹ http://www.sccscourt.org/court_divisions/civil/cgj/grand_jury_archive.shtml

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1. The County should reconsider whether the nonprofit model is the best way to operate the Fairgrounds. (Recommendation 1)
2. The County should modify its contractual agreement with FMC stipulating that FMC be required to sustain a break-even or positive cash flow operation. (Recommendation 4)
3. The FMC Board should require FMC to be in compliance with the contractual management agreement. (Recommendation 5D)
4. The FMC BOD should not permit bonuses to be paid unless FMC demonstrates the ability to consistently run a profitable operation, as measured against specific goals. To this end, the FMC Board should require FMC to develop and implement a business plan with measurable goals specifically tied to the operational success of the Fairgrounds. (Recommendation 6)

The County responded to the 2010-11 Grand Jury recommendations by protesting that they were unwarranted. But the County admitted that financial viability depended on a revitalization plan and long-term investment; it contended that FMC was not responsible for the lack of financial returns.⁴²

These recommendations remain relevant today. FMC depends on the County for emergency repairs while the facilities under FMC's management degrade due to the lack of sufficient maintenance investment.

FMC submits an annual budget and business plan, and quarterly financial reports to the County Executive's Office. Providing this financial information was a key recommendation of the prior Grand Jury to which the County responded by instituting annual reviews.

⁴²Response of County of Santa Clara to 2010-11 Grand Jury Report.
http://www.scsocourt.org/court_divisions/civil/cgj/grand_jury_archive.shtml#11, 7/15/11 memo to County Chief Operating Officer, page 3 of 15

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COUNTY EXECUTIVE'S OFFICE

The County Executive's Office's Asset and Economic Development section is assigned the general oversight of the Fairgrounds. The Facilities and Fleet Department has the responsibility to periodically assess and oversee the health and safety repairs and improvements to the Fairground facilities.

The County Executive's Office staff attends FMC BOD meetings and reviews FMC's annual audit, annual budgets, and monthly financial statements. Any monitoring of compliance by the County with FMC's purpose or Agreement with the County, or oversight of FMC financial documents, rests with the County Executive's Office. However, the Grand Jury learned the County Executive Office's review of the audit and financial documents is only cursory. There was no recognition by that office of the financial problems outlined herein or the activities at the Fairgrounds that are inconsistent with the Agreement and FMC's purpose.

As a result of the prior Grand Jury report, business plans and budgets are now being submitted, but it seems that the County conducts very little critical review of these documents. Although the County Executive Office's staff attends FMC BOD meetings and read the agenda packets, including the financial documents that are proffered by FMC staff to the BOD for approval, the County's review is focused on trends and outlier numbers rather than an in-depth analysis. Certainly, the level of review does not appear to have uncovered the financial reporting issues identified in this report, issues that have been prevalent for several years.

COUNTY BOARD OF SUPERVISORS

Each FMC BOD member has his or her own reporting relationship to their respective district County Supervisor. The Grand Jury learned that infrequent interaction takes place between each Supervisor and her or his appointed FMC BOD member, and Supervisors provide little oversight to their appointees. The Grand Jury learned some FMC BOD members have a brief quarterly discussion either in person or by phone with their County Supervisor. One County Supervisor struggled to recall the name of their appointee.

Other than the BOS approval of the 2017 RFP, the Supervisors to-date have maintained a hands-off policy and engaged in no public discussion of the Fairgrounds.

As referenced earlier, the BOS has attempted on two occasions in the past 10 years to seek an overall development proposal for the Fairgrounds. These efforts have come to naught, the first due to the 2008 financial climate and the second, in 2017, due, in part to very restrictive requirements of the RFP.

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The BOS expressed a vision for the Fairgrounds that set the tenets for the 2017 RFP.⁴³ As embodied in the RFP, respondents would offer a regional destination comprised of high-quality active and passive recreational opportunities for families of and visitors to Santa Clara County, continue to be home to the Fair, continue the existing Event Center function, devote approximately 60 acres to passive recreation and open space uses, and offer the remaining approximately 60 acres for privately-sponsored commercial recreational uses. The RFP also suggested the 14-acre parking lot as a possible candidate for incidental commercial uses, such as a hotel, restaurants, snack bars or retail. Respondents were required to outline a comprehensive use of the entire Fairgrounds. Two additional restrictions were imposed: title of the property was to remain with the County and no County funds were to be invested for capital improvements.

The County received five responses. None of them were comprehensive, and none adhered to the conditions requested in the RFP. As of the date of this report, the BOS has not formally acted to reject the responses received, nor has the BOS pursued either a new or differing vision for the Fairgrounds since the 2017 RFP was authorized.

The current FMC Agreement expires on December 31, 2019. Prior to the end of the year, the BOS presumably will be presented with a long-term plan drafted by FMC and recommended by the FMC BOD. It has been often stated that FMC management desires to obtain a long-term (10-20 year) agreement in order to be able to attract tenants who could pay market rate rent and be willing to invest in capital improvements. Before the end of 2019, the BOS will be faced with numerous decisions regarding the Fairgrounds, including what uses should be made of the facilities, whether FMC should be retained as the Fairgrounds' operator and, if so, the term for any extension and what provisions in the Agreement should be changed.

CONCLUSION

The County chartered a non-profit corporation in 1995 with the mandate to manage the 150-acre Fairgrounds for the County's benefit. In addition to running the yearly Fair, the vision and mission for the Fairgrounds were to create opportunities for recreation and sporting events, and to celebrate the County's agricultural heritage.

The 2010-2011 Santa Clara County Civil Grand Jury investigated the Fairgrounds and recommended that the County revisit the governance and oversight of the management effort. It found that a lack of fiscal management and a passive FMC Board had resulted in years of losses at the Fairgrounds, resulting in large financial challenges requiring ongoing subsidies from the County.

⁴³ December 13, 2016, Board of Supervisors Resolution. See Appendix 2

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The 2018-2019 Santa Clara County Civil Grand Jury revisited the situation and found that many of the same challenges continue to weigh on FMC and its management of the Fairgrounds. Despite a \$5 million investment by the County in repairs and improvements at the Fairgrounds in 2009 and 2010, the Fairgrounds today has a backlog of \$7 million in deferred maintenance. In 2019, the County is projected to spend over \$200,000 on health and safety issues at the Fairgrounds.

As detailed above, the FMC's largest source of income is through licenses with anchor tenants and the RV Park, neither of which require significant FMC employee time or is consistent with FMC's purpose.

FMC's financial reports lack transparency, and financial data presented to the FMC BOD and BOS are confusing, inconsistent and misleading. The money used to fund FMC comes primarily from the RV Park and RV/boat storage, and anchor tenants, which in reality benefit few residents of the County.

Questionable accounting practices hide an increasingly precarious financial situation, with nearly \$1 million in liquid assets reduced between 2008 and 2018. Embezzlement and below market license agreements in the past five years, coupled with opaque financial reporting suggests poor management by FMC and lax financial oversight by the FMC BOD and, ultimately, by the County. Despite an obligation to maintain the property, FMC continues to require substantial County subsidies. The FMC BOD does not always adhere to requirements of the Brown Act.

The Grand Jury finds there is little oversight by the BOS of the financial viability of FMC and the ongoing activities at the Fairgrounds. There is no current master plan by FMC or the BOS to develop the Fairgrounds that would be consistent with the FMC's charitable purpose, "the promotion of any educational, charitable, informational, cultural entertainment or amusement purpose."

With the expiration of the Agreement at the end of this year, now is the time to consider the future for the Fairgrounds. If the BOS agrees to extend or revise the Agreement, there should be rigorous County oversight to ensure compliance with the law, and guidelines to ensure use of the Fairgrounds conforms to FMC's purpose. The Grand Jury recommends that tighter fiscal oversight be exercised by the FMC BOD and the BOS. It is time to polish the County's diamond in the rough.

FINDINGS AND RECOMMENDATIONS

Finding 1a

The Santa Clara County Fairgrounds is a financially unproductive asset for the County of Santa Clara which is accruing millions of dollars in deferred maintenance and has continually required the County's financial support to address deferred maintenance.

Finding 1b

There is no realistic chance that FMC will have sufficient financial ability to address the backlog of deferred maintenance.

Recommendation 1

The County should develop a realistic financial plan to address the deferred maintenance of the County's property and buildings by June 30, 2020.

Finding 2a

Many of the current uses of Fairgrounds property are inconsistent with FMC's purpose to provide "...county fair and similar educational, cultural, and community functions." The County knows that these uses are inconsistent with FMC's purpose.

Finding 2b

FMC is not adhering to the Agreement. The County knows that FMC is not adhering to the Agreement.

Finding 2c

The 25-year old Management Agreement is woefully outdated and in need of review and revision.

Recommendation 2

By December 31, 2019, the County should either enforce proper use of the FMC property consistent with FMC's purpose and the Agreement or revise the governing documents to accurately reflect the use of the Fairgrounds.

Finding 3

Contractor storage yards, the RV park, RV storage and vehicle auctions are inconsistent with FMC's purpose to provide "...county fair and similar educational, cultural, and community functions."

Recommendation 3a

By October 31, 2019, the County should evaluate and determine if each of the current uses and activities carried out by FMC at the Fairgrounds comport with FMC's purpose to provide "...county fair and similar educational, cultural, and community functions."

Recommendation 3b

If the report prepared in response to Recommendation 3a identifies uses and activities carried out by FMC at the Fairgrounds that are not consistent with FMC's purpose, the BOS should prohibit the inconsistent uses and activities by December 31, 2019.

Finding 4

FMC's bingo games do not comply with many County bingo regulations.

Recommendation 4a

By October 31, 2019, the County should ensure that FMC's bingo games adhere to the County's bingo regulations.

Recommendation 4b

By October 31, 2019, FMC should ensure that the bingo games are in compliance with County's bingo regulations.

Finding 5

The FMC Board exerts inadequate fiscal oversight of FMC's financial reporting of its operations and has failed to address the numerous inconsistencies in its financial reports.

Recommendation 5a

FMC should direct its auditor to address and comment by December 31, 2019, on the appropriateness of FMC's reporting of building improvements and landscaping as capital assets, and the depreciation of those assets.

Recommendation 5b

FMC should take steps to have FMC's financial reporting revised to be more transparent and consistent across all its reports by December 31, 2019.

Finding 6

FMC's bookkeeping lacks transparency regarding the actual revenue received from different activities and events, specifically the profitability of bingo and the County Fair.

Recommendation 6a

FMC should immediately establish a separate account for bingo income consistent with the County Ordinance Code in order to enhance clarity around the financials of bingo.

Recommendation 6b

By October 31, 2019, FMC should ensure that FMC's public financial reports accurately reflect the revenue earned by FMC's bingo operations and the County Fair.

Recommendation 6c

FMC should seek financial advice on the proper reporting of income from pull tabs which appear to constitute unrelated business income; reporting of building improvements as capital assets and depreciation taken against such assets; and file all necessary tax forms.

Finding 7

The FMC appears to be using the closed session personnel discussion exception to discuss other business which is not permitted by the Ralph M. Brown Act.

Recommendation 7

The FMC BOD and FMC key staff should undergo training to comply with the Ralph M. Brown Act by October 31, 2019.

THE SANTA CLARA COUNTY FAIRGROUNDS

REQUIRED RESPONSES

Pursuant to Penal Code sections 933 and 933.05, the Grand Jury requests responses as follows from the following governing bodies:

Responding Agency	Finding	Recommendation
The County of Santa Clara	1a, 1b, 2a, 2b, 2c, 3, 4	1, 2, 3a, 3b, 4a
Fairgrounds Management Corporation	1b, 2b, 2c, 3, 4, 5, 6, 7	4b, 5a, 5b, 6a, 6b, 6c, 7

APPENDIX 1: Fairgrounds Management Agreement

MANAGEMENT AGREEMENT

**County of Santa Clara,
a political subdivision of the State of California**

and

**Santa Clara County Fair Management Corporation,
a California nonprofit corporation**

April 18, 2000

CONTRACTOR'S COPY

MANAGEMENT AGREEMENT
BETWEEN SANTA CLARA COUNTY AND
SANTA CLARA COUNTY FAIR MANAGEMENT CORPORATION

THIS AGREEMENT is entered into between the County of Santa Clara, a political subdivision of the State of California (the "County") with offices at 70 West Hedding Street, East Wing, 11th Floor, San Jose, CA (95110), and the Santa Clara County Fairgrounds Management Corporation (the "Contractor") with offices at 344 Tully Road, San Jose, CA (95111).

With the execution of this Agreement by both parties, and upon the effective date of this same Agreement, Contractor agrees to forego any possessory interest in the real property ("Property") described in Exhibit A and agrees to the termination of any and all prior lease agreements (including without limitation Lease between the County, as landlord, and Contractor, as tenant, dated April 1995, as amended) between the County and Contractor. Nothing in this Agreement is to be construed as waiving Contractor's obligations to repay loans that have been advanced by the County to Contractor; provided that said loans are to be repaid in a manner that is consistent with Article 3 of this Agreement.

Preliminary Statement

- A. County is the owner of the Property which consists of approximately 170 acres, commonly know as "the Santa Clara County Fairgrounds", located on Tully Road in San Jose. Previously, County and Contractor entered into that certain lease agreement dated April 1995 (the "FMC Lease") pursuant to which County leased to Contractor the Property.
- B. Pursuant to its authority under the FMC Lease, Contractor entered into a "Sublease Agreement by and between Santa Clara County Fairgrounds Management Corporation and Rollin' Ice, Inc., for a portion of Exposition Hall" (the "Rollin' Ice Lease"). Contractor also entered into that certain Lease and Promotion Agreement dated March 1999 with Alvarez and Garner pursuant to

April 6, 2000

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which Contractor leased to Alvarez and Garner a portion of the Property (the "A & G Lease").

- C. Pursuant to a fairgrounds revitalization plan, the County staff has been negotiating with House of Blues Concerts, Inc. ("HOB") for a ground lease (the "HOB Lease") to HOB of a portion of the Property for construction of a theater.
- D. There is a satellite wagering facility (the "Satellite Wagering Facility") located on the Property. Contractor operates the Satellite Wagering Facility.
- E. The County and Contractor have determined that the FMC Lease has served its purposes and desire to terminate the FMC Lease and all Contractor's possessory right, title and interest, as tenant, in the Property. In conjunction with the termination of the FMC Lease, the County will accept the attornment of Rolling' Ice, as tenant under the Rollin' Ice Lease and will accept Contractor's assignment of all right, title and interest, as landlord, under the Rollin' Ice Lease. Additionally, the County will accept the attornment of Alvarez and Garner, as tenants under the A&G Lease and will accept Contractor's assignment of all right, title and interest, as landlord, under the A&G Lease.
- F. The County desires for Contractor to continue to act as manager of the Property, except only the portion of the Property that is subject to the HOB Lease, (with the Property, less the HOB leasehold area, herein referred to as the "Residual Property"). Contractor desires to continue to act as manager for the Residual Property.
- G. Additionally, as manager, Contractor will assume responsibility for managing existing improvements and activities on the Residual Property for the County, for managing upon their completion any subsequent improvements on the Residual Property and for advising the County on potential future developments on the Residual Property; provided, however, (i) County will make all decisions regarding the fairgrounds revitalization on the Residual Property, (ii) County will be in charge of all construction related to fairgrounds revitalization and (iii) County reserves the right to lease portions of the Residual Property to entities independent of the parties to this Agreement. As part of its management responsibilities, Contractor hereby agrees to cooperate with County and any tenant or lessee of the County in developing and administering a site management plan for the Residual Property. Contractor's management responsibilities shall include event booking and coordination activities, promotional activities, property maintenance, as defined under the terms and conditions set forth in this Agreement.
- H. Contractor is a nonprofit corporation and recognizes that it has been formed for the sole purpose of managing the Residual Property, events and operations at the Residual Property, providing for the maintenance of assets on the

Residual Property, assisting the County in attracting new development to the Residual Property, and planning and overseeing the annual County Fair. Contractor is duly authorized under the laws of the State of California to enter into this Agreement. Contractor acknowledges that it has participated in the preparation of a long-term plan for the development, use and operation of the Residual Property and herein agrees, to the extent the County so requests, to participate in the implementation of that plan for the benefit of the County.

NOW, THEREFORE, in consideration of the terms and conditions herein set forth, County and Contractor do hereby agree as follows:

ARTICLE 1. MANAGEMENT DUTIES

Section 1.01 County appoints the Contractor as manager of the activities, events and operations on the Residual Property throughout the term of this Agreement and subject to the termination provisions contained herein. In managing the events on the Residual Property, Contractor shall be responsible for coordination with HOB in accordance with the provisions of the HOB Lease. Contractor shall assure that any event or promotion at the Residual Property, including without limitation, the County Fair, in all respects will be in compliance with the HOB Lease. Contractor shall be responsible to assure that there is no violation of any non-competition provision in the HOB Lease and that HOB has priority parking and access rights as set out in agreements between the County and HOB, whether such agreements are executed before, or after, this Agreement.

Section 1.02 Contractor shall present every year a County Fair in accordance with the provisions of this Agreement. Contractor shall pay all expenses of the Fair and, subject to the provisions of Article 3, shall be entitled to retain all proceeds of the County Fair.

Section 1.03 County and Contractor hereby recognize their obligations as parties to an agreement with Rollin' Ice, Inc., dated August 8, 1995, wherein Contractor agreed to sublet a portion of the Premises (formally described as a portion of Exposition Hall) for the use of Rollin' Ice. Contractor hereby assigns to the County all its right, title and interest in the Rollin' Ice Lease to County and the County hereby assumes all obligations of landlord, as set out in the Rollin' Ice Lease. Contractor shall administer the Rollin' Ice Lease, collect the rent due under the Rollin' Ice Lease and apply the rent from the Rollin' Ice Lease toward Contractor's annual operating expenses. So long as the tenant is not in default thereunder, the Rollin' Ice Lease shall remain in full force and effect.

Section 1.04 County and Contractor hereby recognize their obligations as parties to an agreement with Alvarez and Garner, dated _____, wherein Contractor sublet a portion of the Property for the use of Alvarez & Garner. Contractor hereby assigns to the County all its right, title and interest in the A & G Lease to County and the

County hereby assumes all obligations of landlord, as set out in the A & G Lease. Contractor shall administer the A & G Lease, collect the rent due under the A & G Lease and apply the rent from the A & G Lease toward Contractor's annual operating expenses. So long as the tenant is not in default thereunder, the A & G Lease shall remain in full force and effect.

Section 1.05 Contractor shall administer the Satellite Wagering Facility in accordance with Article 3 below.

Section 1.06 Contractor shall administer the Agreement for Historical Project, Restoration of Storage Facility for Historical Steam Engine, and, if so requested by the County, the Agreement Between County of Santa Clara, the Fair Management Corporation and California Trolley and Railroad Corporation, that is contemplated will be executed in the near future.

Section 1.07 Contractor shall administer the Spartan Little League Agreement for Improvement and Use of Santa Clara County Fairgrounds.

Section 1.08 The County and Contractor hereby terminate the FMC Lease and all FMC's right, title and interest in the premises (as defined in the FMC Lease).

Section 1.09 Subject to the provisions of the Parking and Access License Agreement between the County and HOB (the "Parking Agreement") and the HOB Lease, Contractor shall enter into and administer concession agreements for activities on the Residual Property (including without limitation, the County Fair and the Exposition Hall).

Section 1.10 Subject to the provisions of the Parking Agreement and the HOB Lease, Contractor shall enter into and administer agreements with parking managers to manage the parking activities on the Residual Property. In conjunction with this responsibility, Contractor may charge for parking in amounts set by Contractor.

Section 1.1 Title to the Residual Property and improvements existing on the Residual Property on the date hereof are retained by the County, which reserves all rights of ownership and possession in the improvements and real property. County, at its sole discretion, may sell or lease any portion of the Residual Property to an entity that is independent of the parties to this Agreement. In the event any sale or lease should occur during the term of this Agreement, the Residual Property definition shall automatically be modified to exclude any leased or sold property and no formal amendment shall be required to modify the definition of Residual Property.

ARTICLE 2. TERM

April 6, 2000

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Section 2.01 The term of this Agreement shall commence on the day of its execution by the County and shall end on December 31, 2005, (the "Term"). County and Contractor may extend this Agreement beyond its termination date upon the approval of both parties and subject to the Contractor's satisfactory performance. County may terminate this Agreement upon the default of Contractor. Under any circumstances, the County reserves the right to cancel this Agreement at its discretion and with or without cause upon six (6) months prior written notice to Contractor.

ARTICLE 3. CONTRACTOR COMPENSATION

Section 3.01 County and Contractor hereby agree that Contractor shall cover Contractor's annual operating expenses, capital improvement expenses, and any debt service expenses through revenue that Contractor receives from (i) the annual County Fair, (ii) the rent from the Rollin' Ice Lease, (iii) the rent from the A&G Lease, (iv) the proceeds from the Satellite Wagering Facility, (v) subject to any inconsistent provisions of the Parking Agreement, income from concessionaires and parking managers, (vi) income from promoters of events and (vii) any other income from Contractor's management activities hereunder. If, after payment of all its expenses, operating debts and obligations, Contractor generates any net profits for any calendar year during the Term, then not later than April 1 of the following year, Contractor shall deliver an amount equal to such profits to the County. If there then exists any unpaid balance to the County loan to Contractor, the sums delivered to the County shall be credited to reduce the loan balance. If there then is no outstanding unpaid loan balance from Corporation to County, then County may expend such sums as County determines, in its sole discretion.

Section 3.02 Satellite Wagering.

- (a) County has been designated as the recipient of sums described in California Business and Professions Code Section 199610.4 (the "Section 19610.4 Fee") which County receives from the time to time directly from the State of California. The procedure for collection and disbursement of those funds is described below.
- (b) Contractor collects certain gross income ("Wagering Gross Income") from its operation of the Satellite Wagering Facility including without limitation a handling fee, parking revenues, admission charges, a percentage of food concessions and miscellaneous retail sales.
- (c) Contractor pays all expenses ("Wagering Expenses") related to the Satellite Wagering Facility including without limitation fees to racing facilities, licensing fees, costs of repair, operation and maintenance of the facility and parking.
- (d) At the end of each calendar year Contractor shall determine its net satellite income ("Net Satellite Income") by deducting the Wagering Expenses from its

Wagering Gross Income. Pursuant to state law, Contractor then forwards to the State of California the Net Satellite Income. The State is required to rebate to the County a portion of the Net Satellite Income (the "Rebated Income").

- (e) County hereby agrees that Contractor shall be entitled to receive the Rebated Income and Contractor shall apply the Rebated Income toward Contractor's operating, capital and debt service expenses. Payment of Rebated Income to Contractor shall be made by the County in arrears and on a quarterly basis.

Section 3.03 Possessory Interest Taxes.

- (a) This Agreement constitutes an Agreement with the Board of Supervisors of the County of Santa Clara, which in part is made pursuant to Section 25905 of the California Government Code as it relates to the conduct of an agricultural fair. Therefore, pursuant to the provisions of Revenue and Taxation Code Section 201.2, the Contractor shall be deemed to be an agency of the County only for purposes of possessory interest taxes, and county-owned property used or possessed by the Contractor in the conduct of the agricultural fair shall be exempt from taxation under subdivision (b) of Section 3 of Article XII of the State Constitution.
- (b) Any license, permit or concession rights granted by Contractor to third parties to operate on the Residual Property, and the Rollin' Ice Lease and the Alvarez and Garner Lease, shall be subject to the imposition by Contractor and payment by the other contracting party of applicable possessory interest taxes. Contractor shall include a proviso regarding such taxes in each of its licenses, permits and concession right agreements, and in all of its contractual agreements.

ARTICLE 4. USE

Section 4.01. Contractor, in its management of the Residual Property, shall permit the Residual Property to be used and occupied for purposes of conducting the annual County Fair on behalf of the County of Santa Clara pursuant to Section 25905 of the California Government Code. Contractor, in its management of the Residual Property, also may permit the Residual Property to be used for promotion of any educational, charitable, informational, cultural, entertainment, or amusement purpose, provided that such uses must be in compliance with limitations contained in other leases of the Property, including without limitation the HOB Lease. All uses permitted by the Contractor shall be in accordance with local, state, and federal laws, and no events shall be permitted which shall interfere with the conduct of the annual County Fair. Further, Contractor may permit promoters to use the Residual Property for any uses that have been provided on the Residual Property in the past or at the time of execution of this Agreement; provided, however, no uses shall be permitted that are contrary to those policies of the Board of Supervisors governing the Residual Property and attached hereto as Exhibit B.

Section 4.02 Contractor hereby assumes and agrees to perform all obligations of the County or of Contractor under Contractor's existing agreements with the County, including (a) any County/CTRC Agreement for Historical Project, Restoration of Storage Facility for Historical Steam Engine at the Santa Clara County Fairgrounds; and (b) the Agreement For Improvement and Use of the Santa Clara County Fairgrounds dated March 21, 1989, between County, the Fair Association, Spartan Little League and City of San Jose. Contractor's assumption under this Section 4.02 shall expire on the expiration or earlier termination of this Agreement.

Section 4.03 Contractor shall assure that HOB and any party using the Residual Property coordinates its activities with the City of San Jose Police Department and/or the County Sheriff's Department to assure that the party presenting an event is in compliance with public safety requirements.

ARTICLE 5. ADDITIONAL CONTRACTOR COVENANTS

As additional consideration to County, Contractor shall annually prepare and submit for County's review and approval:

- (a) a budget and business plan that addresses prior year performance and financial projections for the budget year, including facility maintenance and repair and equipment requirements; and
- (b) an annual financial audit of the Contractor's operation, with said audit being conducted by an entity that is approved by County.

County shall review the budget and business plans and audits delivered to it within sixty (60) days following receipt and within said sixty (60) day period shall notify Contractor in writing either (i) that County approves Contractor's plan or (ii) that County disapproves of Contractor's plan, in whole or in part. If County disapproves of Contractor's plan, County in its notice shall specify the portions of the plan that are disapproved and shall set out proposed changes that would make the plan acceptable to County. County's failure to deliver a notice of approval or disapproval as required above shall be deemed approval of Contractor's submitted plan.

Section 5.01 Upon request by County, Contractor shall further complete and submit to County for its information:

- (a) a marketing plan developed using available community resources, to address community and media relationships and year-round facility use;
- (b) an operating plan for the annual County Fair and other interim events addressing areas of operations.

- (c) a proposed plan to maintain and improve the Residual Property, together with an outline of proposed funding sources for such improvements, a projection of gross and net income to be derived from any such new uses, and a plan for repayment of the financing of the capital improvements.

Section 5.02 Contractor agrees that the foregoing studies, plans and reports shall be generally consistent with the Fairgrounds Revitalization Plan, as adopted by the County and Contractor, or consistent with any revision or modification to that Plan or any other uses for the Residual Property that may be approved by the County.

Section 5.03 As part of its annual budget and business plan, Contractor shall prepare and submit to County for its approval an annual budget for the County Fair showing the estimated revenues and proposed expenditures from all sources during the ensuing calendar year. When approved the budget shall be submitted to the State Department of Food and Agriculture, in accordance with California Government Code Section 25905. Said budget shall be submitted by Contractor to County on or before December 1 of each year. If the budget is not submitted on or before December 1, County shall approve, or disapprove, the budget within thirty (30) days from receipt thereof. County's failure to disapprove the budget shall be deemed an approval of the budget.

Section 5.04 If any mechanic's lien or other similar encumbrance shall be filed against the Residual Property as a result of any activity of Contractor, Contractor shall, at its expense, cause such lien to be discharged of record or bonded within thirty (30) days after notice to Contractor of the filing thereof from County.

ARTICLE 6. ALTERATIONS

Section 6.01. Contractor shall maintain and repair the existing improvements, landscaping and parking areas on the Residual Property as set out in Article 7 below. Contractor shall make changes, alterations, or additions ("Alterations") to Residual Property, only with the prior consent of the County. In requesting County's approval of any Alterations, Contractor shall submit to County detailed plans and specifications of the proposed Alteration and an explanation of the reasons therefore. Contractor may, with County's written consent, demolish or materially alter and/or expand any building on the Residual Property. Any Alterations shall be made at Contractor's cost and expense. Contractor shall comply with the following conditions in making any Alterations:

- (a) No alterations shall be undertaken until Contractor shall have procured, at its expense, all necessary permits and authorizations of all governmental authorities having jurisdiction. County shall join in the application for such permits or authorizations within five (5) days after request whenever necessary.

- (b) No Alterations affecting the structure of any building on the Residual Property shall be made except in accordance with plans and specifications prepared by a licensed architect and/or engineer, and under the supervision of such licensed architect and/or engineer or other construction manager.
- (c) Before commencing any Alterations, Contractor at its own expense shall obtain any necessary and appropriate riders for fire and extended coverage, comprehensive general public liability and property damage insurance covering the risks during the course of such work, and certificates therefore. County shall be named as an additional insured on said insurance policies.
- (d) Any Alterations shall be made promptly (unavoidable delays excepted), in a good workmanlike manner and in compliance with all applicable laws, municipal ordinances, building codes, permits and requirements of all governmental authorities having jurisdiction, and of the local Board of Fire Underwriters, if any. Upon completion, Contractor shall obtain and deliver to County a copy of the amended Certificate of Occupancy, if required. The cost of any Alterations shall be promptly paid so that the Residual Property is free at all times from liens for labor and materials supplied for the Alterations.

ARTICLE 7. REPAIRS AND MAINTENANCE

Section 7.01.

- (a) Contractor, at its own expense and to the extent Contractor has funds available from its operation of the Residual Property, shall maintain the existing improvements on the Residual Property and shall make any repairs thereto, whether interior and exterior, structural and non-structural, foundation and roof, and whether extraordinary, foreseen or unforeseen necessary to so maintain the Residual Property. As used herein, the term "Repairs" shall include all such replacements necessary to keep the Improvements in the condition described above. All repairs made by Contractor shall be new and at least equal in quality to the condition of the improvements.
- (b) Contractor's obligations under this Section shall include, but not be limited to, repairing, patching, repaving and re-striping of the parking areas in a manner consistent with the Parking Agreement, and Contractor shall plant, replant, and replace landscaping, maintain sewer and drainage lines located on the Residual Property, and light the Residual Property, at its own cost and expense, subject to the financial limits described above.

ARTICLE 8. COMPLIANCE WITH LAW

Section 8.01 Except as otherwise provide in Section 8.04, Contractor shall, at its cost and expense, comply with all laws and regulations of federal, state and municipal governments, departments, commissions and boards which may impose any obligations, order or duty upon Contractor with respect to the Residual Property or the Improvements or arising out of Contractor's use thereof, and shall immediately comply with any notices of violation issued pursuant to law or any directives or orders issued pursuant thereto. In particular, Contractor shall operate the Residual Property in accordance with the applicable noise ordinances that are in effect on the date hereof or amended by duly authorized governmental authority thereafter. If Contractor does not have the financial ability to comply with law, Contractor shall promptly notify County and County may either (i) make arrangements for payment or (ii) terminate this Agreement.

Section 8.02 Contractor's Board of Directors shall comply with all applicable provisions of Court Ordinance Code NS-19.22, relating to ethical standards. Contractor's Board of Directors shall be bound by the applicable provisions of the California Fair Political Practices Act and shall file on or before their due date all financial disclosures required by law, including without limitation the California Fair Political Practices Act.

Section 8.03 Contractor shall have no liability for, or responsibility to respond to, any claim, action or inquiry regarding any Environmental and Hazardous Substance Matters (as defined in Section 14.02 below) located in, on, under or around the Residual Property prior to the commencement of this Agreement. County, as a material consideration to Contractor entering this Agreement, assumes full responsibility for any required response, removal, remediation, testing, or other obligation, including without limitation consultants' fees, attorneys' fees and court costs, arising out of any matter related to Hazardous Materials on the Residual Property.

Section 8.04. Toxic Materials

- (a) Contractor shall comply, at its sole cost, with all federal, state and local laws, statutes, ordinances, codes, regulations and orders relating to Contractor's (or its agents, licensees, contractors, employees or invitees) receiving, handling, use, storage, accumulation, transportation, generation, spillage, migration, discharge, and disposal of any flammable, combustible, explosive, infectious, corrosive, caustic, irritant, strong sensitizing, carcinogenic or radioactive materials, hazardous wastes, toxic substances or related materials, including without limitation, petroleum and petroleum byproducts, asbestos, substances defined as "hazardous substances," "hazardous materials," or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. &9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. &1801 et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. &6901, et seq.; The Clean Water Act, 33 U.S.C. &466, et seq.; the Safe Drinking Water Act, 14 U.S.C. &1401, et seq.; the

Superfund Amendment and Reauthorization Act of 1986, Public Law 99-499, 100 State. 1613; the Toxic Substances Control Act, 15 U.S.C. &2601, et seq.; as amended; those substances defined as "hazardous waste" "extremely hazardous waste," "restricted hazardous waste" or "hazardous substances" in the Hazardous Waste Control Act, &25100 et seq. of the California Health and Safety Code; and those materials and substances similarly described in the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. &136 et seq., as amended; the Atomic Energy Act of 1954, 42 U.S.C. &2011 et seq., as amended; the Porter Cologne Water Quality Control Act, &1300 et seq. of the California Health and Safety Code; and in the regulations adopted and publications promulgated pursuant to said laws (hereinafter collectively referred to as the "Laws"). Such materials and substances are hereinafter collectively referred to as "Toxic Materials". Contractor shall become aware of the content of such Laws and all other laws regulating Toxic Materials as enforced by, but not limited to, the city of San Jose, the Bay Area Air Quality Management District, Santa Clara County Health Department, the Santa Clara Valley Water District, California Regional Water Quality Control Board, California Environmental Protection Agency, Department of Toxic Substances Control and all state and Federal offices enforcing regulations concerning occupational safety and health. It shall be the sole obligation of Contractor to obtain any permits and approvals required pursuant to the laws.

- (b) At the commencement of this Agreement and during the month of January of each year through and including the year following the termination or expiration of this Agreement, Contractor shall disclose to County, in writing, the names and amounts of any Toxic Materials, whether solid, liquid or gaseous in form, which was stored, used or disposed of on the Residual Property, or which Contractor intends to store, use or dispose of on the Residual Property for the year prior to and following the date of each such disclosure; provided, Contractor shall not be required to disclose any Toxic Materials that are used in ordinary office or cleaning operations and are not present on the Residual Property in sufficient quantities to subject Contractor to reporting requirements with regard thereto.
- (c) If Contractor or its agents, employees, contractors, licensees, or invitees (except the Indemnities) causes contamination or deterioration of air, water or soil resulting in a level of contamination greater than the maximum levels established from time to time during the term of this Agreement by any governmental authority having jurisdiction over such contamination, then Contractor shall promptly take any and all action necessary to clean up such contamination in the manner as required by law; provided, however, that Contractor shall not take any remedial action in response to the presence of any Toxic Materials in or about the Residual Property, nor enter into any settlement agreement, consent decree, or other compromise in respect to any claims relating to any Toxic Materials in any way connected with the Residual Property, without first notifying the County of Contractor's intention to do so and affording County ample opportunity to appear,

intervene, or otherwise appropriately assert and protect County's interest with respect thereto. If Contractor fails to take such action, County may, but shall not be obligated to, take such action. In such event, all costs incurred by County with respect to such clean up activities shall be for the account of Contractor.

- (d) Contractor shall immediately provide County with telephonic notice, which shall later be confirmed by written notice, of any and all accumulation, spillage, discharge, and disposal of Toxic Materials onto or within the Residual Property, and any injuries or damages resulting directly or indirectly there from. Further, Contractor shall deliver to County each and every notice or order received from governmental agencies concerning Toxic Materials and the possessions, use and/or disposal thereof promptly upon receipt of each such notice or order. In addition, Contractor shall immediately notify County in writing of (i) any enforcement, cleanup, removal, or other governmental or regulatory action instituted, completed, or threatened pursuant to any Laws, (ii) any claim made or threatened by any person against Contractor or the Residual Property relating to damage, contribution, cost recovery, compensation, loss or injury resulting from or claimed to result from any Toxic Materials, and (iii) any reports made to any local, state or federal environmental agency arising out of or in connection with any Toxic Materials in or removed from the Residual Property, including any complaints, notices, warnings, or asserted violations relating in any way to the Residual Property, or Contractor's use thereof. Contractor shall promptly deliver to County copies of hazardous waste manifests reflecting the legal and proper disposal of all Toxic Materials removed from the Residual Property. County shall have the right to enter on the Residual Property upon twenty-four (24) hours oral notice to Contractor for the purpose of inspecting the Residual Property for compliance with all environmental requirements.
- (e) Contractor shall store in appropriate leak-proof containers, or in any other manner approved or prescribed by law, any and all Toxic Materials permitted within the Residual Property pursuant to this Agreement, which if discharged or emitted into the atmosphere, upon the ground or into or on any body of water will or may (1) pollute or contaminate the same, or (2) adversely affect the (a) health, safety or welfare of persons, whether on the Residual Property, or elsewhere, or (b) the condition, use or enjoyment of the Residual Property, or any real or personal property whether on the Residual Property or anywhere else, or (c) the Residual Property or any of the improvements thereto or thereon. There shall be no ponding or surface storage whatsoever of Toxic Materials on the Residual Property or any portion thereof.
- (f) Notwithstanding anything to the contrary contained in this Section 8.04, Contractor shall not dispose of any Toxic Materials, regardless of the quantity of concentration, within the drains and plumbing facilities within the Residual Property or other property of County. The disposal of Toxic Materials shall be in approved containers and removed from the Residual Property only duly licensed

carriers. If Contractor becomes aware of or suspects the presence of any Toxic Materials existing within or coming onto the Residual Property, Contractor shall immediately give written notice of such condition to County as required by California Health and Safety Code Section 25359.7.

- (g) Contractor shall pay, prior to delinquency, and all fees, taxes (including excise taxes) and fines which are charged upon or incident to Contractor's activities related to Toxic Materials, and shall not allow such obligations to become a lien or charge against the Residual Property or upon County.
- (h) On or before the expiration of this Agreement, Contractor shall take any and all action required to be taken under the Laws in order to (i) surrender the Residual Property to County in a condition which would be completely free of any and all Toxic Materials brought in, on or under the Residual Property by Contractor or Contractor's agents, employees, contractors, licensees or invitees.
- (i) Should Contractor breach any promise or fail to satisfy any of the conditions contained in this Section 8.04; time being of the essence thereof, County may, for no additional cause whatsoever, terminate this Agreement upon ten (10) days written notice to Contractor.
- (j) The following substances are prohibited from being brought onto the Residual Property:

Arsines	Etching
Asbestos	Fluorocarbons
Chlorocarbons Freon	
Dioxins, including dioxin precursors and intermediates.	

Anything contained in the California List of Extremely Hazardous Chemicals

- (k) Notwithstanding any other provision of this Section 8.04, Contractor shall have no obligation with regard to any contamination or deterioration of air, water or soil if such event were caused by party other than Contractor or its agents, employees, contractors, licensees or invitees. County shall be solely responsible for and shall indemnify, protect, defend (by counsel approved by Contractor) and hold harmless Contractor and Contractor's agents, employees, representatives, directors and officers (collectively "Contractor Indemnities") from and against any and all claims, costs, penalties, fines or losses which arise before, during or after the term of this Agreement as a result of a Toxic Material Act which is NOT caused by Contractor or Contractor's agents, employees, contractors, licensees or invitees. This indemnification by County shall survive the termination of this Agreement.

ARTICLE 9. UTILITIES

Section 9.01. Contractor shall be solely responsible for, and shall pay when they become due, the cost of utilities services consumed on the Residual Property by Contractor, including, without limitation, water, gas, light, heat, telephone, electricity, garbage, refuse and other utility and communication services rendered or used on the Residual Property during the Term.

ARTICLE 10. INDEMNITY

Section 10.01 Except as otherwise provided in Section 8.04, Contractor shall indemnify, reimburse, hold harmless and defend County, its governing board, directors, officers, agents, representatives and employees, from and against any and all claims, actions, damages, losses, costs, liabilities and obligations, including without limitation court costs and reasonable attorneys' fees, arising out of any claim, suit, judgment, loss or damage to any property, arising from or out of any occurrence, in or upon the Residual Property or any part hereof, or occasioned wholly or in part by any negligent act or omission of Contractor or those of its officers, agents, contractors and employees. To the extent, however, that the acts or omissions of the Board of the Fair Management Corporation are not fully covered by the policy of insurance required under Article 11 of this Agreement, County will indemnify, hold harmless, reimburse and defend those members of the Board of Directors for any claims, actions, damages, losses, costs liabilities and obligations, including without limitation court costs and reasonable attorneys' fees, arising out of any claim, judgment, loss or expense beyond the insurance coverage which the County determines arose from actions taken in their capacity as members of the Board and in accordance with reasonable business practices and applicable law.

ARTICLE 11. INSURANCE

Contractor, at its sole cost and expense, shall maintain the following insurance coverage in full force and effect throughout the term of this Agreement:

Section 11.01 Upon request from County, Contractor shall provide an original plus one (1) copy of a Certificate of Insurance certifying that coverage as required has been obtained and remains in force for the period required by the Agreement. In addition, a certified copy of the policy or policies shall be provided by Contractor upon request.

Section 11.02 All policies shall contain a special provision for thirty (30) days prior written notice of any cancellation, or change in coverage that no longer meets the herein specified insurance requirements to be sent to the Clerk of the Board of Supervisors, 70 West Hedding Street, San Jose, California 95110, or to the address shown on the Certificate of Insurance.

Section 11.03 All policies other than those obtained through CSFA's pooled insurance plan shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than AAA, according to the current Best's Key Rating Guide, unless otherwise approved by County's Insurance Manager.

Section 11.04

- (a) Throughout the term of this Agreement, Contractor, at its sole cost and expense, shall maintain in full force and effect, Comprehensive General Liability or Commercial General Liability insurance covering bodily injury (including death, personal injury and property damage).
 - (i) Limits shall be in an amount of not less than one million dollars (\$1,000,000) per occurrence, and two million dollars (\$2,000,000) aggregate, if applicable.
 - (ii) Such insurance shall name HOB, County, County's governing board, directors, officers, agents, representatives, and employees, individually and collectively, as additional insured.
 - (iii) Such insurance for additional insiders shall apply as primary insurance, and any other insurance maintained by HOB, County, its governing board, directors, officers, agents, representatives, and employees, shall be excess only and not contributing with the insurance required under this paragraph.
- (b) Throughout the term of this Agreement, Contractor, at its sole cost and expense, shall maintain in full force and effect, insurance coverage for bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicle/aircraft/watercraft.
- (c) Throughout the term of this Agreement, Contractor, at its sole cost and expense, shall maintain in full force and effect, insurance coverage for:
 - (i) Statutory California Worker's Compensation coverage includes a broad form all-states endorsement.
 - (ii) Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence for all employees engaged in services or operations under this Agreement.

- (iii) Inclusion of County and its governing board, directors, officer, representatives, agents, and employees as additional insured, or waiver of subrogation.

Section 11.05 Contractor shall maintain casualty insurance against loss or damage by fire and such other risks to the Improvements as are included in so-called "extended coverage" endorsements in an amount equal to one hundred percent (100%) of the replacement cost of the improvements without any deduction being made for depreciation and shall name County as a loss payee. Contractor shall also provide fire insurance on all personal property contained within or on the Residual Property. The policy shall be written on a standard "all risk" contract, excluding earthquake and flood. The contract shall insure for not less than ninety (90%) percent of the actual cash value of the personal property, and Contractor shall name County as an additional insured.

Section 11.06 Except as may be specifically provided for elsewhere in this Agreement, County and Contractor hereby each mutually waive any and all rights of recovery from the other in event of damage to the Residual Property or property of either caused by acts of God, perils of fire, lightening, and the extended coverage perils as defined in insurance policies and forms approved for use in the State of California. Each party shall obtain any special endorsements, if required by their insurer, to evidence compliance with the aforementioned waiver.

Section 11.07 If Contractor fails or refuses to procure or maintain insurance as required by this Agreement to be procured and maintained by Contractor, County shall have the right, at County's election, on ten(10) days' prior written notice to Contractor, to procure and maintain the insurance described in this Article 11 for the benefit of Contractor and County. County shall give prompt notice of the payment of such premiums, stating the amounts paid and the name(s) of the insured(s), which shall include Contractor.

ARTICLE 12. COUNTY'S COVENANTS AND DISCLOSURES

Section 12.01 Pursuant to California Health and Safety Code Section 25359.7, County hereby discloses to Contractor that County is aware of possible contamination of the Residual Property on the date hereof by Environmental and Hazardous Substance Matters as disclosed in Memorandum re: Santa Clara County Fairgrounds, 344 Tully Road, Santa Clara, California dated May 3, 1994, from Tom Callaghan, with said memorandum being on file with the Clerk of the Board of Supervisors. "Environmental and Hazardous Substance Matters" shall mean the presence of pollution or contaminants as defined by any applicable governmental regulatory agency, including but not limited to hazardous or toxic substances or materials regulated under Federal, State or local environmental statutes, ordinances, rules, regulations or orders, such as asbestos fibers or other asbestos containing materials, Radon gas, polychlorinated biphenyls ("PCB's") or any petroleum of

any kind and in any form, including gasoline, pesticides, ammonia, chlorine and derivatives thereof.

ARTICLE 13. DEFAULT

Section 13.01 Each of the following events shall be a default by Contractor and a breach of this Agreement:

- (a) Failure or refusal to pay when due any sum to be paid to the County under this Agreement, or to perform as required or conditioned by any other covenant or condition of this Agreement.
- (b) The subjection of any right or interest of Contractor to attachment, execution, or other levy, or to seizure under legal process, if not removed within thirty (30) days.
- (c) The appointment of a receiver to take possession of Contractor's assets, including but not limited to, assignment for benefit of creditors or voluntary or involuntary bankruptcy proceedings.
- (d) An assignment by Contractor for the benefit of creditors or the filing of a voluntary or involuntary petition by or against Contractor under any law for the purpose of adjusting Contractor a bankrupt; or for the purpose of adjudicating Contractor a bankrupt; or for extending time for payment, adjustment, or satisfaction of Contractor's liabilities; or for reorganization, dissolution, or arrangement on account of or to prevent bankruptcy or insolvency; unless the assignment or proceeding, and all consequent orders, adjudication, custody's, and supervisions are dismissed, vacated, or otherwise permanently stayed or terminated within thirty (30) days after the assignment, filing, or other initial event.

Section 13.02 As a precondition to pursuing any remedy for an alleged default by Contractor, County shall, before pursuing any remedy, give notice of default to Contractor. The notice of default shall specify in detail the alleged event of default.

Section 13.03 If the alleged default is nonpayment of any sums to be paid by Contractor, Contractor shall have thirty (30) days after notice is given to cure the default. For the cure of any other default, Contractor shall promptly and diligently after the notice commence during the default and shall have forty-five (45) days to cure default. Contractor shall not be in default if it commences to cure the default within forty-five (45) days and diligently proceeds to complete such cure within ninety (90) days after notice is given to Contractor, provided such time period may be extended by written agreement between the parties.

Section 13.04 If any default by Contractor shall continue uncured, following notice of default as required by this Agreement, for the period applicable to the default under the applicable provision of this Agreement, County may terminate this Agreement and pursue all other remedies available at law or in equity.

Section 13.05 County shall not be considered to be in default under this Agreement unless (1) Contractor has given notice specifying the default and (2) County has failed for sixty (60) days to cure the default, if it is curable, or to institute and diligently pursue reasonable corrective or ameliorative acts for non-curable defaults.

ARTICLE 14. NO WAIVER

Section 14.01 The failure of County or Contractor to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies that party or any other such party may have and shall not be deemed a waiver of any rights or remedies that party or any other such party may have and shall not be deemed a waiver of any subsequent breach or default in any terms, covenants or conditions.

ARTICLE 15. NOTICES

Section 15.01

- (a) Whenever it is provided herein that notice, demand, request, consent, approval or other communication ("Notice") shall or may be given to either of the parties by the other, it shall be in writing and, any law or statute to the contrary notwithstanding, shall not be effective for any purpose unless same shall be given or served (i) by registered or certified mail, postage prepaid, return receipt requested, or (ii) by personal service or (iii) by recognized delivery service (such as Federal Express), addressed and received as follows:

If to Contractor:

Santa Clara County Fairgrounds Management Corporation
344 Tully Road
San Jose, CA 95111
Attn: Executive Director

With a copy to:
Catherine C. Sprinkles
McPharlin & Sprinkles
10 Almaden Blvd., Suite 1460
San Jose, CA 95113

If to County:

County of Santa Clara
Office of the County Executive
County Government Center, East Wing
70 West Hedding Street
San Jose, Ca 95110

With a copy to:

William I. Anderson
Assistant County Counsel
County of Santa Clara
70 West Hedding Street
San Jose, CA 95110

- (b) Any Notice hereunder shall be deemed to have been given or served on the date of actual receipt, or the date delivery is rejected, as evidence by return receipt, or records of the delivery service, as the case may be.

ARTICLE 16. IMPROVEMENTS AND FIXTURES

Section 16.01 All repairs, improvements and alterations made by Contractor upon the Residual Property shall be and remain the property of County throughout the Term.

Section 16.02 All trade fixtures and leased equipment installed by Contractor on the Residual Property, regardless of the manner or mode of attachment, including but not limited to flooring, lighting, counters, shelves, racks, and general fixtures, shall be and remain the property of Contractor, subject, however, to the rights of any equipment lessor, and may be removed by Contractor or equipment lessor or other person or entity entitled to remove the same at any time during or at the end of the Agreement, or the Residual Property caused by removal of any such trade fixtures by Contractor or its sub-contractors or licensees.

ARTICLE 17. ASSIGNMENT

Section 17.01 Contractor may grant permits, licenses and concessions for the one time conduct of events permitted under this Agreement upon the Residual Property so long as such are consistent with historically approved uses for the Residual Property. Except as permitted by the preceding sentence, Contractor shall not assign this Agreement without the prior written consent of County, nor allow any enterprise or activity on the Residual Property that is inconsistent with all the requirements of this Agreement. County shall have the right to revoke and/or restrict and limit the use of such permit, license or concession allowing such enterprise or activity.

April 6, 2000

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ARTICLE 18. RELATIONSHIP OF PARTIES

Section 18.01 Nothing contained in this Agreement shall be constructed to create the relationship of principal and agent, partnership, joint venture or any other relationship between the parties hereto other than the relationship of County and Contractor. Nothing contained herein shall in any way impose any liability upon the officers, directors or supervisors of County or members, officers, directors or trustees of Contractor.

Section 18.02 Contractor will affirmatively represent, both orally and in writing, in every contract or agreement entered into by Contractor, including but not limited to, agreements or contracts with vendors, service providers, performers, independent contractors, and employees, that County has only a contractual relationship with Contractor, and that Contractor is not an agency of County. Further, Contractor shall affirmatively represent that County has no responsibility whatsoever for any debts, encumbrances or agreements made by Contractor. The following shall discharge Contractor's disclosure obligation under this Section:

"The Santa Clara County Fair Management Corporation is a private not-for-profit organization. The Contractor is a Contractor of Santa Clara County and is NOT an agent or representative of the County. The County has no responsibility whatsoever for any debts, encumbrances or agreements of the Contractor."

ARTICLE 19. CAPTIONS AND SECTION NUMBERS

Section 19.01 The captions, section numbers, and index appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such section or articles nor in any way affect this Agreement.

ARTICLE 20. APPLICABLE LAW/SEVERABILITY

Section 20.01 This Agreement shall be governed by, and construed in accordance with the laws of the State of California. If any provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each provision of the Agreement shall be valid and enforceable to the fullest extent permitted by the law.

ARTICLE 21. ADDENDA

Section 21.01 The following exhibits have been agreed to by the parties and annexed hereto or initialed by the parties prior to the execution hereof, it being the intention of the parties that they shall become a binding part of this Agreement as if fully set forth

herein. Nothing in this Agreement shall preclude County and Contractor from modifying any of the conditions set forth under the Addenda to this Agreement; provided, however, modifications to said Addenda shall require the express written consent of Contractor.

Exhibit A- Description of Residual Property

Exhibit B - Policies re: Use

ARTICLE 22. TIME OF THE ESSENCE

Section 22.01 Time is of the essence with respect to the performance of each of the covenants and agreements contained in this Agreement.

ARTICLE 23. LIMITATION OF LIABILITY

Section 23.01 No supervisor, member, official or employee of County shall be personally liable to Contractor, or any successor in interest to Contractor, in the event of any default or breach by County, or for any amount which may become due to Contractor or Contractor's successor on any obligation under the terms of this Agreement.

Section 23.02 No board member or employee of Contractor shall be personally liable to County, or any successor in interest to County, in the event of any default or breach by Contractor, or for any amount which may become due to County or County's successor or any obligation under the terms of this Agreement, including without limitation Article 8 and Article 10. Contractor has entered into this Agreement with the understanding that County's sole remedy for Contractor's default under this Agreement is to the assets of Contractor's corporation and specifically not the assets of any board members or employees of Contractor.

ARTICLE 24. CUMULATIVE REMEDIES

Section 24.01 No remedy or election hereunder shall be deemed exclusive but shall, whenever possible, be cumulative with all other remedies of law or in equity.

ARTICLE 25 COVENANTS AND CONDITIONS

Section 25.01 Each provision of this Agreement performable by County and Contractor shall be deemed both a covenant and a condition.

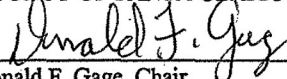
ARTICLE 26 BINDING EFFECT

ARTICLE 29. ENTIRE AGREEMENT

Section 29.01 This Agreement and the Exhibits Rider, if any, attached hereto and forming a part hereof, set forth all the covenants, promises, agreements, conditions and understandings between County and Contractor. No modification, amendment, change or addition to this Agreement shall be binding upon County or Contractor unless reduced to writing and signed by each party.

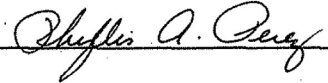
IN WITNESS WHEREOF, County and Contractor have executed this Agreement as of the date above written.

COUNTY OF SANTA CLARA

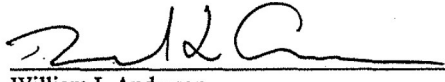


Donald F. Gage, Chair
Board of Supervisors

ATTEST: Phyllis A. Perez, Clerk
Board of Supervisors




APPROVED AS TO FORM AND LEGALITY:



William I. Anderson
Assistant County Counsel

SANTA CLARA COUNTY FAIRGROUNDS
MANAGEMENT CORPORATION, a California
nonprofit corporation

By: 

Its: Executive Director

April 3, 2000

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THE SANTA CLARA COUNTY FAIRGROUNDS

APPENDIX 2: Fairgrounds Management Corporation Articles of Incorporation

1897454
FILED
In the office of the Secretary of State
of the State of California
MAR 27 1995
Bill Jones
BILL JONES, Secretary of State

ARTICLES OF INCORPORATION

ONE

The name of this corporation is Santa Clara County Fairgrounds Management Corporation.

TWO

This corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Public Benefit Corporation Law for public and charitable purposes. The specific purposes for which this corporation is organized are:

To operate the Santa Clara County Fairgrounds in the best interests of the citizens of Santa Clara County by organizing and operating the annual Santa Clara County Fair and similar educational, cultural and community functions on such Fairgrounds.

THREE

The name and address in the State of California of this corporation's initial agent for service of process is Phyllis Perez, Clerk of the Board of the County of Santa Clara, 70 West Hedding Street, 10E, San Jose, CA 94110.

FOUR

A. This corporation is organized and operated exclusively for charitable and educational purposes within the

meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 or the corresponding provision of any future United States internal revenue law.

Notwithstanding any other provision of these Articles, the corporation shall not, except to an insubstantial degree, engage in any other activities not permitted to be carried on (1) by a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986 or the corresponding provision of any future United States internal revenue law or (2) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code of 1986 or the corresponding provision of any future United States internal revenue law.

C. No substantial part of the activities of this corporation shall consist of lobbying or carrying on propaganda, or otherwise attempting to influence legislation, except as provided in Section 501(h) of the Internal Revenue Code of 1986, and this corporation shall not participate or intervene in any political campaign (including the publishing or distribution of statements) on behalf of, or in opposition to, any candidate for public office.

FIVE

All property of this corporation is irrevocably dedicated to charitable, educational and public purposes, and no part of the net income or assets of the organization shall ever inure to the benefit of or be distributable to any of its

THE SANTA CLARA COUNTY FAIRGROUNDS

members, directors or officers or to the benefit of any private person.

On the dissolution or winding up of the corporation, its assets remaining after payment of, or provision for payment of, all debts and liabilities of this corporation, shall be distributed to an organization, nonprofit fund, foundation, or corporation which is organized and operated exclusively for charitable purposes and which has established its tax exempt status under Section 501(c)(3) of the Internal Revenue Code of 1954, or the corresponding provision of any future United States internal revenue law, or to the County of Santa Clara for public purposes.


Ann Miller Ravel
Incorporator

Date: March 21, 1995

APPENDIX 3: Santa Clara County Code Chapter V, Selected Sections

Code Section B3-91, - License required.

No person or organization may conduct bingo games without first obtaining a license from the Zoning Administrator.

(Ord. No. NS-502.7 ss 2, 9-14-04)

Code Section B3-80. - Staffing and operation.

A bingo game shall be operated and staffed only by members of the organization holding the license authorizing the game. The organization's members shall not receive a profit, wage or salary from any bingo game. Any person operating or staffing a bingo game shall wear an identification badge which is clearly visible and states the persons full name and function at the bingo game. Only an organization authorized to conduct a bingo game by license issued pursuant to this chapter shall operate a bingo game or engage in the promotion, supervision or any other phase of a bingo game. This section does not preclude the employment, by the organization holding the bingo license, of licensed security personnel, members of law enforcement agencies or other persons approved by the Sheriff who are not members of the organization , to serve as security personnel at bingo games.

(Ord. No NS-502.7, ss 2, 9-14-04).

Code Section B3-76 Definition:

All such preprinted cards shall bear the legend: "For sale or use only in a bingo game authorized under California law and pursuant to local ordinance."

(Ord. No. NS-502.7 ss, 9-14-04)

Code Section B3- 85 Proceeds

Receipts from a bingo game must be used for charitable purposes except as otherwise provided in this section. For the purposes of this chapter, the term "charitable purposes" means purposes that benefit the public interest. All proceeds derived from a bingo game shall be kept in a special fund or account and shall not be comingled with any other fund or account. Proceeds shall be used for charitable purposes except as follows:

(a) Subject to the limitations in Section B3-87, proceeds may be used for prizes to be awarded at authorized bingo games.

(b) A portion of the proceeds, not to exceed 20 percent of the total proceeds before the deduction for prizes, or \$2000.00 per month, whichever is less, may be used for the rental of property and for overhead, including the purchase of bingo equipment, administrative expenses, security equipment and security personnel.

(c) Proceeds may be used to pay license application fees.

(d) The exemptions from the restrictions on use of proceeds in subsection A3-85(a) through B3-85(c) do not apply to organizations exempt from payment of the bank and corporation tax Revenue

THE SANTA CLARA COUNTY FAIRGROUNDS

and Taxation Code -- 23701d. (Ord. No NS-502.7 ss 2, 9-4-04; Ord No. NS-502. 12 ss 2, 2-24-15)

APPENDIX 4: Board of Supervisors Resolution, 12/13/2016

“The Board sought to obtain competing proposals for the development and operation of the Fairgrounds to include existing community activities and the annual County Fair, and to propose uses for the balance the property divided equally between active and passive recreation. The Board further indicated that it sought private investment funding to correct maintenance deficiencies at the Fairgrounds and to improve the infrastructure without requiring County general fund contributions or commitments. Furthermore, the RFP expressed a preference for comprehensive proposals for use of all the property.

Only one respondent offered a comprehensive proposal, but that proposal also proposed a County financial commitment. The lack of multiple, comprehensive proposals for the entire 150-acre site made it highly unlikely that any future negotiations would result in achieving the desired results from this RFP process.

- Silicon Valley Curling Center
- Public Market @ The Faire
- El Mercado Popular: Farmer’s Market
- Cambrian Go-carts
- 408 MX

Attempts were made in the past to develop some or all of the Fairgrounds with the goal of supporting an annual fair and generating revenue for the county. In 2001, the County selected a developer to build a concert hall, Universal Concerts, later House of Blues, that would provide a venue and revenue. That proposal fell through in part due to litigation pursued by the City of San Jose. The BOS in 2007 began the process of soliciting proposals for a revitalization of the Fairgrounds whereby the County would maintain ownership of most of the Fairgrounds. One proposal submitted by Catellus Corporation would continue the Fair and also provide mixed uses of retail, commercial, open space and housing (affordable and market rate) on the remaining property. The selection process included representatives of the City of San Jose. Due to the economic downturn in 2008, this proposal fell apart. Subsequently in 2010, the BOS approved the sale and long-term lease of a 12-acre portion of the Fairgrounds for senior and family affordable apartments and market rate homes (ROEM lease). This project today returns approximately \$1,933,000 in lease payments to the County annually.

THE SANTA CLARA COUNTY FAIRGROUNDS

After the failure of the County's effort to pursue a master development in 2009, another attempt to solicit proposals for use of the Fairgrounds took place in 2014-15. The BOS undertook extensive community outreach soliciting the types of activities preferred by residents. From this outreach, the BOS developed guiding principles for a 2016 RFP. The BOS envisioned a Fairgrounds providing a regional destination comprised of high-quality active and passive recreational opportunities for families of and visitors to Santa Clara County and continuing to be home to the County Fair. The BOS wanted a continuation of the existing Event Center function, currently concentrated in the buildings on approximately 30 acres adjacent to and south of Tully Road. Half of the remaining acreage, or approximately 60 acres, should be allocated to passive recreation and open space uses. The remaining approximately 60 acres would offer privately-sponsored commercial recreational uses. Finally, the 14-acre parking lot located across Tully could be a possible candidate for incidental commercial uses, such as a hotel, restaurants, snack bars, recreation retail, etc.

The Request for Proposals and Financial Plans for Long Term Lease (RFP) was issued to solicit investors and operators of the entire property. A key condition was the retention of title to the property, a condition that seems to be a barrier to any realistic development and that no county funds be invested capital improvements. The County received few responses and the only one seeking to develop the entire property came from FMC.

The responses to the 2017 RPF were dismal. None of the respondents sought to manage the entire Fairgrounds nor did the responses adhere to the guiding principles. As a result, County staff recommended rejection of all the responses. For nearly two years, the BOS has not officially acted to reject the responses nor to give county staff any guidance on the next steps towards a revitalization plan. “

THE SANTA CLARA COUNTY FAIRGROUNDS

APPENDIX 5: Indemnification Agreement by and between the County of Santa Clara and the City of San Jose, 3/29/1993

INDEMNIFICATION AGREEMENT BY AND BETWEEN
THE COUNTY OF SANTA CLARA AND THE CITY OF SAN JOSE

This is an Indemnification Agreement by and between the County of Santa Clara, a political subdivision of the State of California, hereinafter referred to as "County" and the City of San Jose, a municipal corporation, hereinafter referred to as "City".

RECITALS

WHEREAS, County is the owner of the fairgrounds property located at 344 Tully Road, San Jose, California 95111, which property is currently being managed by the Santa Clara County Fair Association pursuant to a written agreement dated April 19, 1987; and

WHEREAS, under paragraph 9B of the Agreement, County retained the right to revoke and/or restrict any enterprise or activity conducted on the fairgrounds property that, after a duly noticed public hearing, was determined to be "unlawful, hazardous, or constitutes an unreasonable nuisance"; and

WHEREAS, City requested that County prohibit car shows from the fairgrounds property that create an unreasonable nuisance; and

WHEREAS, after duly noticed public hearings held on August 25, 1992 and February 23, 1993, County determined that car shows, with some exceptions, created an unreasonable nuisance and prohibited those car shows from the fairgrounds property. The exceptions are:

1. Single model car shows of a specific make;
2. Pre 1930 antique car shows; and
3. Car shows intended to display new makes and models.

The parties hereby agree as follows:

The original signed and one copy of this agreement was received and copy sent to Harrison Taylor, Office of County Counsel 11/29/93

THE SANTA CLARA COUNTY FAIRGROUNDS

1. INDEMNIFICATION

City shall indemnify, hold harmless, reimburse and defend County from any and all liability, damages, loss, costs, and obligations, including court costs and reasonable attorneys' fees, if any, arising out of any claim, suit, or judgment as a result of an action, lawsuit or claim challenging the County's February 23, 1993 prohibition of the non-exempt car shows at County's fairgrounds property and/or seeking damages as a result of said prohibition. It is understood that City's indemnification obligation shall be concurrent with County's maintenance of the February 23, 1993 prohibition.

2. WAIVER OF CONFLICT

The County agrees that the City may fulfill its obligation to defend the County pursuant to provision 1, above, through use of attorneys in the San José City Attorney's Office. If the City Attorney's Office assumes the County's defense in any such lawsuit, action or claim, the County agrees to waive any and all conflicts of interest.

3. ENTIRE AGREEMENT

This Agreement represents the entire agreement by and between the parties with respect to City's indemnification of County for the prohibition of certain car shows at County's fairgrounds property. Any prior or contemporaneous oral or written agreements by and between the parties or their agents and representatives with respect to such indemnification are revoked and extinguished by this Agreement.

IN WITNESS WHEREOF, the parties have executed this Indemnification Agreement as follows:

COUNTY
Date: 3-29, 1993

Ron Gonzalez MAR 30 1993
Chairperson, Board of Supervisors
County of Santa Clara RON GONZALES

CITY
Date: April 14, 1993

Patricia L. O'Connell
City Clerk
City of San Jose

5850c/0216c

P/S'D

ALMCO

TESORO ALMCO WESSING SS. 22 842

THE SANTA CLARA COUNTY FAIRGROUNDS

ATTEST: PHYLLIS A. PEREZ, Clerk

Phyllis A. Perez

APPROVED AS TO FORM:

George Rios
GEORGE RIOS,
Assistant City Attorney

APPROVED AS TO FORM AND LEGALITY:

Harrison D. Taylor 3-26-03
HARRISON D. TAYLOR,
Deputy County Counsel

5550c/0216c

-3-

TOTAL P. 03

THE SANTA CLARA COUNTY FAIRGROUNDS

APPENDIX 6: FMC 2018 List of Events

2018 EVENTS P/L

SANTA CLARA COUNTY FAIRGROUNDS MANAGEMENT CORP.
2018 LIST OF EVENTS

CONT. NO.	EVENT	DATE OF EVENT	Attendance	Rental	Parking	Food &	Other	Total	Direct	Profit
				Revenue	Revenue	Beverage Revenue	Revenue	Revenue	Cost	(Loss)
703	Crove Up	Jan. thru Oct.				2,880.00		2,880.00		2,880.00
714	Organic Kitchen	Jan. thru Oct.				1,920.00		1,920.00		1,920.00
715	CePati	Mar. thru Dec.				2,870.00		2,870.00		2,870.00
716	Tacos Don Jose	Feb. thru Dec.				15,725.00		15,725.00		15,725.00
717	Yon Mai	Feb.				249.00		249.00		249.00
718	Prepubescency	Apr. thru Dec.				2,537.00		2,537.00		2,537.00
719	Chorros El Guero -	Mar. thru Dec.				1,965.00		1,965.00		1,965.00
721	Alipali Foods, LLC -	Aug.				523.92		523.92		523.92
722	Sarah's Latin Taste	Aug. thru Dec.				5,265.00		5,265.00		5,265.00
723	Tacos Los Tres Hermanos	Jul. thru Dec.				3,300.00		3,300.00		3,300.00
1599	THE BULL REGISTRY	01/15/2018	250	2,050.00	830.00	1,752.75	201.00	4,833.75	631.86	4,201.89
1601	Quince Expo	01/28/2018	2,000	4,050.00	4,890.00		3,682.00	12,622.00	2,062.61	10,559.39
1602	San Jose Toy Show -	12/06/2018	2,000	3,465.00	7,820.00	4,315.60	3,277.00	18,877.60	5,125.80	13,751.80
1605	TREX Planet	01/06/2018 - 1/07/2018	4,000	11,750.00	17,205.00	9,397.48	1,674.00	40,026.48	4,461.90	35,564.58
1609	Gem & Mineral Show	09/17/2018	2,000	6,100.00	7,125.00	1,094.66	5,836.00	20,155.66	3,445.38	16,710.28
1610	Synopsis Science	02/20/2018	2,000	5,490.00	4,530.00	534.63	3,134.00	13,688.63	4,165.34	9,523.29
1623	Sanchez Wedding	03/17/2018	300	1,650.00	472.00	1,726.09	331.00	4,179.09	1,572.01	2,607.08
1647	AA Forum	04/07/2018 - 04/08/2018	450	2,880.00			3,855.50	6,735.50	1,500.30	5,235.20
1649	VW Car Show - NorCal Dist Affairs	01/21/2018		4,650.00	160.00	9,623.82	2,354.00	16,787.82	3,296.07	13,491.75
1656	SCV Kennel	03/17/2018	1,000	21,420.00	14,093.00	4,672.51	6,657.50	46,843.01	6,544.69	40,298.32
1656	BOBA Festival- Alpha Kappa Psi	01/13/2018	1,000	2,835.00	8,759.00	1,000.00	7,073.25	19,667.25	3,585.50	16,081.75
1660	Jurassic Tour	02/12/2018 - 02/04/2018	1,500	6,100.00	7,130.00	3,450.80	889.00	17,569.80	3,764.06	13,805.74
1665	Pedregal Quinceanera	12/15/2018	300	4,965.00		480.00		5,445.00	3,638.50	1,806.50
1668	Chico De Mayo Festival -	05/06/2018	10,000	16,275.00	27,560.00	83,394.48	12,457.50	139,686.98	17,857.02	121,829.96
1674	Mission Ball Trails	01/20/2018 - 01/21/2018	300	3,510.00	1,100.00		429.00	5,039.00	1,305.00	3,734.00
1678	Toy Show -	03/03-04/2018	2,000	7,200.00	12,522.00	6,800.00	3,387.00	29,919.00	2,897.00	27,022.00
1679	TERRAINE AMBLACKLIGHT RUN PM	05/19/2018	9,000	9,000.00	16,250.00	5,424.29	5,125.00	35,809.29	2,455.75	33,353.54
1680	BUBBLE RUN/BLACKLIGHT SLIDE	06/09/2018	5,000	9,000.00	10,592.50	5,426.60	2,300.00	27,319.10	2,512.46	24,806.64
1682	Hilltoppers Academy Banquet	06/29/2018	3,500	7,120.00	3,570.00	125.69	7,146.59	17,962.28	6,672.44	11,289.84
1680	Stredlow Car Show	06/24/2018	2,000	8,775.00	450.00	44,665.74	4,286.50	58,177.24	14,870.58	43,306.66
1685	Torneo Birthday	01/28/2018	80	600.00		963.53	267.50	1,831.03	1,235.75	595.28
1687	Vivendo Libre	02/19/2018	300	2,050.00	400.00		451.50	2,901.50	961.50	1,940.00
1689	WANG DE HOLI-UPMA, USA	04/03/2018	700	2,500.00			500.00	3,000.00		3,000.00
1700	Diwali 2018 Celebration	10/27/2018	11,000	7,350.75	21,545.00	1,500.00	8,123.50	38,519.25	8,433.89	30,085.36
1701	Code Of The West	02/10/2018 - 02/11/2018	500	3,900.00	4,300.00		1,867.50	10,067.50	1,978.50	8,089.00
1702	NAGA	03/03/2018	1,500	3,465.00	6,261.00	4,423.50	990.00	15,139.50	812.23	14,327.27

THE SANTA CLARA COUNTY FAIRGROUNDS

SANTA CLARA COUNTY FAIRGROUNDS MANAGEMENT CORP.

2018 LIST OF EVENTS

CONT. NO.	EVENT	DATE OF EVENT	Attendance	Rental	Parking	Food &	Other	Total	Direct	Profit
				Revenue	Revenue	Beverage Revenue	Revenue	Revenue	Cost	(Loss)
1706	GREAT TRAIN SHOW	03/09/2018	1,500	10,575.00	10,860.00	3,801.05	1,990.00	27,226.05	2,024.45	25,201.60
1707	Toy Show -	6/20/2018 - 6/30/2018	2,000	7,200.00	12,460.00	5,685.32	3,397.00	28,742.32	3,545.93	25,196.39
1708	SI Super Toy Show	09/29/2018	2,000	7,200.00	6,820.00	6,188.49	3,397.00	23,605.49	201.37	23,404.12
1709	SI Pro Short Track	04/14/2018	1,000	7,900.00	1,159.00	6,982.02	2,842.00	18,883.02	3,760.37	15,122.65
1710	VIETNAMESE SUMMER - CANCELLED	07/22/2018	0	1,620.00				1,620.00		1,620.00
1711	Lighthouse Tabernacle Sys -	05/25/2018	200	4,750.00	450.00		2,364.50	7,564.50	3,342.25	4,222.25
1712	CHITRA 2018 MUSICAL NIGHT	04/22/2018	1,200	3,118.50		1,075.00	2,699.00	6,886.50	1,669.80	5,216.70
1713	Bay Area Pet Expo	09/02/2018	8,000	4,050.00	6,300.00	5,346.22	2,899.00	18,595.22	4,319.58	14,275.64
1719	CITY LIGHTS THEATER COMPANY	01/22/2018	0	200.00				200.00		200.00
1720	EL BAILE ANO Cancelled	09/02/2018	8,000				3,750.00	3,750.00		3,750.00
1721	RO ENTERTAINMENT	03/31/2018	2,500	4,455.00	660.00	5,089.91	5,289.00	15,493.91	7,891.55	7,602.36
1723	RO ENTERTAINMENT cancelled	05/26/2018	2,500				4,455.00	4,455.00		4,455.00
1724	DURGA PURGA	10/19/2018	4,500	9,050.00	30,680.00	3,000.00	10,109.00	52,839.00	17,467.94	35,371.06
1725	OUTRAGEOUS OUTGROWNS	03/22/2018	2,000	19,450.00	4,860.00		2,470.00	26,780.00	1,472.40	25,307.60
1726	Osorio Quinceanera	11/03/2018	250	1,815.00	300.00	283.49		2,398.49	946.45	1,452.04
1727	OUTRAGEOUS OUTGROWNS	10/19-21/18	2,000	21,395.00	5,240.00		2,470.00	29,105.00	3,442.25	25,662.75
1729	Home & Garden Show	04/20/2018-04/22/2018	3,000	11,750.00	3,000.00		4,350.00	19,100.00	1,772.40	17,327.60
1730	KINIAL DAVE GARGA Cancelled	10/06/2018	2,500				2,225.00	2,225.00		2,225.00
1731	ATUL PUROHIT Cancelled	09/30/2018	4,500				4,480.00	4,480.00		4,480.00
1732	GANESH UTSAV - RADIO ZINDAGI	09/15/2018	80,000	15,630.00	41,208.30	8,000.00	11,239.00	76,077.30	8,934.17	67,143.13
1734	Grappling	01/27/2018	200	2,050.00	2,620.00		188.00	4,858.00	930.15	3,927.85
1736	SAN JOSE YU-GI-OH REGIONALS	04/21/2018	750	1,650.00		1,591.06	1,995.75	5,236.81	1,554.68	3,682.13
1738	CAM CAMP	01/14/2018	80	1,650.00				1,650.00		1,650.00
1738	TAILS & NO TALES CAT SHOW	03/03/2018	500	4,290.00	9,676.10	2,016.23	2,456.00	18,438.33	3,513.90	14,924.43
1741	MOTORSPORT LAB	03/17/2018	75	2,400.00	473.00			2,873.00		2,873.00
1742	SUMMER VEG FEST	06/16/2018	1,000	4,290.00	7,925.00	6,222.94	2,514.00	20,951.94	1,424.31	19,527.63
1744	TIMENEZ QUINCEANERA	07/07/2018	250	1,815.00		1,079.17		2,894.17	1,073.90	1,820.27
1745	Ski & Snowboard Festival Promoter	11/01/2018	5,000	11,995.00	8,820.00	1,500.00	2,976.00	25,291.00	4,910.08	20,380.92
1746	ISLAND REGGAE	07/14/2018	0	14,700.00	26,415.50	130,691.91	18,438.84	190,246.25	25,226.58	165,019.67
1747	CHICANO COMMENCEMENT GRADUATION	05/26/2018	1,000	3,150.00	3,000.00	2,837.61	1,154.00	10,141.61	1,127.00	9,014.61
1748	MONIQUE & HAILEY BDAY	03/31/2018	100	825.00		1,140.73	304.75	2,270.48	240.00	2,030.48
1749	LA QUELAGUETZA	06/24/2018	2,500	4,356.00		2,000.00	1,360.00	7,716.00	2,657.50	5,058.50
1750	TinyFest California	06/16/2018	10,000	18,825.00	17,959.00	8,130.42	9,525.75	54,440.17	6,564.19	47,875.98
1751	Castillo Quinceanera CANCELLED	05/05/2018	200-250				907.50	907.50		907.50
1752	GRAPPLING	05/05/2018	200	1,815.00	830.00		650.00	3,295.00	629.40	2,665.60
1754	ALAMA MEMORIAL SERVICE	02/17/2018	200	1,815.00	250.00			2,065.00	481.20	1,583.80
1760	FIRST COMMUNION	05/05/2018	100	825.00		690.00		1,515.00	860.60	654.40
1761	JURASSIC QUEST	11/16/2018	0	22,880.00	41,190.00	34,215.83		98,285.83	12,184.85	86,100.98

THE SANTA CLARA COUNTY FAIRGROUNDS

SANTA CLARA COUNTY FAIRGROUNDS MANAGEMENT CORP.
2018 LIST OF EVENTS

CONT. NO.	EVENT	DATE OF EVENT	Attendance	Rental	Parking	Food &	Other	Total	Direct	Profit
				Revenue	Revenue	Beverage Revenue	Revenue	Revenue	Cost	(Loss)
1762	ADVANTAGE HOMES EASTER PARKING	03/31/2018	20	250.00			-	250.00		250.00
1763	ABE ANDRADE BRIDAL SHOWER	03/11/2018	50	330.00		1,695.00	-	2,025.00	1,013.77	1,011.23
1765	RIVERA WEDDING	08/25/2018	200	1,452.00	220.00	2,389.91	299.00	4,354.91	2,048.50	2,306.41
1767	FOAM GLOW	07/07/2018	8,000	7,500.00	11,160.00	6,584.40	1,600.00	26,844.40	2,253.85	24,590.55
1769	KHUSHYAU CELEBRATION	03/24/2018	800	3,465.00	2,000.00	1,600.00	2,469.32	9,534.32	1,380.60	8,153.72
1770	MARIO'S GRADUATION	06/02/2018	250	1,815.00	300.00	1,297.25	1,721.75	5,134.00	1,271.20	3,862.80
1771	Graniterock Construction	04/26/2018	450	4,455.00	2,000.00	18,600.90	1,573.75	26,629.65	8,024.66	18,604.99
1772	FIESTAS PATRIAS	09/29/2018	800	1,815.00	3,059.00	6,588.11	987.00	12,449.11	346.25	12,102.86
1774	CLENTANO FEST	04/14/2018	2,000	3,465.00	2,700.00	9,083.56	2,923.00	18,171.56	5,402.44	12,769.12
1778	MAGA	09/15/2018	900	4,900.00	4,578.70	4,077.18	990.50	14,546.38	3,578.48	10,967.90
1781	JOHNY 21ST BIRTHDAY	06/02/2018	100	825.00	690.00	87.06	331.00	1,933.06	172.50	1,760.56
1783	SBA'S EID AL FITR	06/19/2018	2,000	2,250.00	1,500.00	-	4,038.10	7,788.10	3,546.43	4,241.67
1784	SBA'S EID AL FITR	08/21/2018	2,000	4,000.00	5,000.00	-	3,919.00	12,919.00	3,435.92	9,483.08
1785	FIGHT TO WIN	06/08/2018	1,000	4,455.00	10,592.50	11,224.08	3,475.00	29,746.58	3,176.71	26,569.87
1786	MATEO'S BAPTISM	07/28/2018	100	825.00	300.00	-	343.00	1,468.00	560.00	908.00
1788	VIVE LA CUMBIA Cancelled	10/21/2018	3,500	4,840.00			-	4,840.00		4,840.00
1789	SMOKE ME OUT	05/27/2018	3,500	4,455.00	11,030.00	45,452.88	4,868.50	65,806.38	16,436.61	49,369.77
1791	NADIA & FRANCISCO WEDDING	08/17/2019		825.00			331.25	1,156.25		1,156.25
1794	CUPERTINO ELECTRIC EMPLOYEE TRAINING	05/31/2018	70	2,500.00			-	2,500.00		2,500.00
1795	SAN JOSE REPTILE SHOW	08/25/2018	3,000	7,900.00	14,070.00	6,440.27	2,417.00	30,827.27	6,184.86	24,642.41
1796	QUINCEANERA EXPO	07/08/2018	1,000	3,465.00	1,400.00	-	1,504.00	6,369.00	2,396.75	3,972.25
1797	MAKE UP BLOWOUT	12/7/2018 - 12/9/2018	100	2,255.00	1,380.00		145.25	3,780.25	1,511.05	2,269.20
1798	HALLOWEEN PARTY	12/31/2018	1,000	1,815.00	1,970.00	4,817.43	806.00	9,408.43	4,147.75	5,260.68
1799	ADVANTAGE HOMES	06/30/2018	25	250.00			-	250.00		250.00
1803	INTERNATIONAL BULLY	09/18/2018	3,000	4,455.00	9,226.00	20,083.39	1,511.50	35,275.89	3,756.27	31,519.62
1804	Tattoo Tour	09/29/2018	4,000	9,955.00	13,640.00	10,435.38	3,246.00	37,276.38	6,907.50	30,368.88
1806	Red Hat Bay Area Truck Event	06/19/2018	40	825.00		2,371.80	418.08	3,614.88	1,016.31	2,598.57
1807	HOT IMPORT NIGHTS	08/18/2018	1,500	9,850.00	4,544.00	8,919.49	3,805.15	27,118.64	7,338.19	19,780.45
1811	Holiday Craftpalooza	12/01/2018	2,000	4,455.00	3,090.00	3,646.10	2,425.00	13,616.10	4,129.20	9,486.90
1813	Pop Warner Registration Day	08/29/2018	2,500	2,029.00	14,070.00	3,562.91	135.00	19,796.91	2,621.62	17,175.29
1814	UNION HOLIDAY PARTY	12/22/2018	2,500	8,959.50	5,000.00		4,956.00	18,915.50	4,925.00	13,990.50
1816	Silvia's Birthday	09/01/2018	50			618.35		618.35		618.35
1818	KAEDINGS RACE CAR SWAP MEET	12/01/2018	0	1,250.00	1,320.00		250.00	2,820.00	829.03	1,990.97
1821	LinkedIn Demo Day	09/19/2018	8	2,600.00			1,968.42	4,568.42	50.00	4,518.42
1831	HOT TUB & SWIM SPA SHOW	9-7-09/18	500	6,325.00	1,770.00		100.00	8,195.00	1,204.88	6,990.12
1832	Dev Pilley- Hicklebee's/San José Public Library Foundation	10/19/2018	1,200	2,029.50			1,600.00	3,629.50	835.00	2,794.50
1836	CECILIO'S 60TH BDAY	11/24/2018	75			290.00		290.00	100.00	190.00
1837	STATEWIDE ROOFING	11/21/2018	0	2,237.00			703.00	2,940.00		2,940.00

THE SANTA CLARA COUNTY FAIRGROUNDS

SANTA CLARA COUNTY FAIRGROUNDS MANAGEMENT CORP.

2018 LIST OF EVENTS

CONT. NO.	EVENT	DATE OF EVENT	Attendance	Rental	Parking	Food & Beverage	Other	Total	Direct	Profit
				Revenue	Revenue	Revenue	Revenue	Revenue	Cost	(Loss)
1845	HOT TUB & SWIM SPA SHOW	11/9-11/18	150	6,350.00	980.00		400.00	7,730.00	538.00	7,197.00
1848	YEE THANKSGIVING DANCE	11/24/2018	700	1,815.00	100.00	1,100.00	2,281.00	5,296.00	4,225.18	1,070.82
1851	GS RECRUITMENT FAIR	12/01/2018	200	2,029.50			463.50	2,493.00	2,145.63	347.37
1853	PG&E	12/01/2018	200	26,400.00				26,400.00		26,400.00
1856	CAM CAMP TOY DRIVE	12/22/2018	250	1,633.50				1,633.50	751.25	882.25
1857	EAST SAN JOSE KIWANIS	12/15/2018	50	350.00				350.00	235.00	115.00
				551,235.25	540,410.60	636,539.94	258,199.00	1,984,384.79	338,847.28	1,655,537.51

APPENDIX 7: Selected Provision of FMC Bylaws

ARTICLE X

OFFICERS

10.01 POSITIONS. The Board of Directors shall elect as officers of the Corporation a Chairperson of the Board, Vice President, Secretary and Chief Financial Officer. Any number of offices may be held by the same person, except that neither the Secretary nor the Chief Financial Officer may serve concurrently as the Chairperson of the Board.

10.02 TERM. Officers shall serve for a term of one (1) year beginning the first day of January following their appointment and ending the last day of the following December or until the resignation, removal or appointment of such officer.

10.03 VACANCIES. A vacancy in any office because of death, resignation, removal, incapacitation or any other cause, shall be filled in the manner prescribed in these Bylaws for regular appointments to such offices. Any officer designated to fill such a vacancy shall serve in that office during the remainder of the term of the vacated office and until a successor has been duly designated to an office.

10.04 REMOVAL AND RESIGNATIONS. Officers shall serve at the pleasure of the Board of Directors. Any officer may be removed with or without cause at any time. Any officer may resign at any time upon written notice to the Board without

prejudice to the rights, if any, of the Corporation under any contract to which such officer is a party. Any resignation shall take effect when the notice is received by the Board or at any later time specified in the notice, and unless otherwise specified in the notice, acceptance of the resignation shall not be necessary to make it effective.

10.05 RE-ELECTION. Officers elected pursuant to Section 10.01 of these Bylaws may serve an unlimited number of terms in the same office. Nothing in these Bylaws shall be construed to limit the number of terms of office to which a person may be elected to an office.

10.06 REMUNERATION. Officers shall not receive remuneration for their services as officers. Expenses incurred by any officer in connection with performance of official duties may be reimbursed. Directors who serve as officers of the Corporation are subject to the restrictions imposed under Sections 9.03 and 9.04 of these Bylaws.

10.07 CHAIRPERSON OF THE BOARD. The Chairperson of the Board shall be the chief executive officer of the Corporation and shall, subject to the direction of the Board of Directors, have authority to direct and control the business and affairs of the Corporation. The Chairperson of the Board shall have the general powers and duties usually vested in the chief executive officer of a nonprofit public benefit corporation with

respect to the activities and affairs of the Corporation, and shall have such other powers and duties as may be prescribed by the Board or these Bylaws, including but not limited to, the authority to enter into any contract or execute any instrument in the name of and on behalf of the Corporation. The Chairperson of the Board shall preside at all meetings of the Board of Directors.

10.08 VICE-PRESIDENT. In the absence or disability of the Chairperson of the Board, the Vice-President shall perform all the duties of the Chairperson of the Board and, when so acting, shall have all the powers of, and be subject to all restrictions upon, the Chairperson of the Board. The Vice-President shall have such other powers and perform such other duties as from time to time may be prescribed by the Board of Directors, the Chairperson of the Board or these Bylaws.

10.09 SECRETARY. The Secretary shall keep or cause to be kept the minutes of all meetings of the Board. The Secretary shall attend to the giving and serving of all notices for the Board and shall attest to the signatures of the proper officers to all contracts, securities and other obligations of the Corporation, and shall affix the seal of the Corporation, if any, thereto. The Secretary shall perform all duties incident to the office of Secretary, subject to the control of the Board, and such other duties as may from time to time be prescribed by the Board, the Chairperson of the Board or these Bylaws.

10.10 CHIEF FINANCIAL OFFICER. The Chief Financial Officer, shall be the chief financial officer of the Corporation and shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the Corporation, including accounts of its assets, liabilities, receipts, disbursements, gains and losses. The books of account shall at all times be open to inspection by any director. The Chief Financial Officer shall deposit all moneys and other valuables in the name and to the credit of the Corporation with such depositories as may be designated by the Board of Directors. The Chief Financial Officer shall disburse the funds of the Corporation as may be ordered by the Board of Directors, shall render to the Chairperson of the Board and directors, whenever they request it, an account of all transactions by the Chief Financial Officer and of the financial condition of the Corporation, and shall have such other duties as may be prescribed by the Board of Directors, the Chairperson of the Board or these Bylaws. The Chief Financial Officer may delegate duties to other employees of the Corporation, subject to approval by the Chairperson of the Board, but shall be responsible for the supervision of such employees. The Chief Financial Officer annually shall prepare, or cause to be prepared, the annual report specified by Section 13.02 of these Bylaws for presentation to the Board.

APPENDIX 8: Description of Pull tab strips available during Bingo

5/5/2019

Pull Tabs > | Bingo King • Trade Products



TPI

Ticket Information

It Pays To Play The Best!™

Pull tabs (or break opens) are similar to lottery tickets, but they are made from two layers of poster board, glued together with die cut "windows" which snap open to show symbols or numbers.

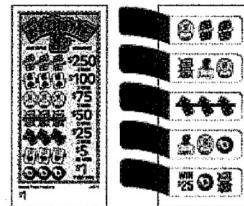
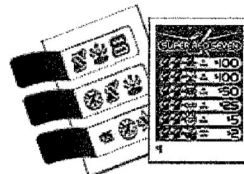
Players with tickets containing the winning combinations identified on the front of the ticket win the corresponding prize amount. Winning combinations of symbols are typically displayed horizontally within a single window. However, there are also games with winning symbols displayed vertically or diagonally or a combination of horizontal, vertical or diagonal.

Pull tabs are available in different price points including **\$0.50, \$1, \$2, \$3 and \$5** and different ticket counts including as low as 320 tickets per deal up to 3,000 tickets per deal.

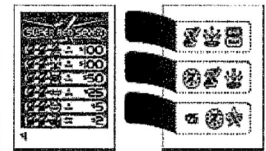
Pull tabs feature different levels of prizes which vary depending upon the price point and the deal size. Larger deals with higher price points generally offer higher prizes as there is more money to be distributed.

Pull tabs are sold at bingo games, civic clubs, fraternal or veterans' clubs and at instant stands much like instant lottery tickets or other licensed gaming venues and are a significant source of funding for charities.

Bingo King/Trade Products pull tabs include a variety of security features to assist organizations in paying out the correct amounts and to avoid the chance of redeeming fraudulent tickets. [Learn more about payout protection!](#)



5 Window



3 Window




Tablet

[https://www.bingoking.com/pulltabs/default.asp?product=Ticket Information](https://www.bingoking.com/pulltabs/default.asp?product=Ticket%20Information)

1/2

THE SANTA CLARA COUNTY FAIRGROUNDS

This report was **ADOPTED** by the 2018-2019 Santa Clara County Civil Grand Jury on this 19th day of June 2019.



John Pedersen
Foreperson