SCC FMC

Santa Clara County Fairgrounds Management Corp.

The Fair • Community Events • San Jose Fair Downs Satellite Wagering

13 September 2011

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DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY D. ALDYCKI

Richard J. Loftus, Presiding Judge
Santa Clara County Superior Court
191 North First Street
San Jose, Ca 95113

Honorable Judge Richard J. Loftus:

Please find enclosed the Santa Clara County Fairgrounds Management Corporations, Inc response to the Santa Clara County Civil Grand Juries final report of June 22nd, 2011.

Our response complies with the Penal Code 933.05(a) and Penal Code 933.05(b) as requested within the notification document. If any future information or data is required we are be prepared to provide it.

Respectfully,

Michael Donohoe, President
Santa Clara County Fairgrounds
Management Corporation, Inc.

Raymond G. Lueckeman, Executive Director
Santa Clara County Fairgrounds
Management Corporation, Inc.

CC: Gary Graves, C.O.O, Office of the County Executive
Bruce Knopf, Asset Manager, Office of the County Executive

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CIVIL GRAND JURY RESPONSE DOCUMENTS

SANTA CLARA COUNTY FAIRGROUNDS MANAGEMENT CORPORATION, INC.

13 September 2011

ATTENTION:
Richard J. Loftus, Presiding Judge
Santa Clara County Superior Court
191 North 1st Street
San Jose, Ca 95113

DOCUMENT INDEX:

I. CIVIL GRAND JURY REPORT RESPONSE DOCUMENTS FROM THE SANTA CLARA COUNTY FAIRGROUNDS MANAGEMENT CORP, INC.

Santa Clara County Fairgrounds Management Corporation

Response to Grand Jury Report dated June 22, 2011

July 15, 2011

1. The Board of directors and management of the Santa Clara County Fairgrounds Management Corporation (FMC) have reviewed the Grand Jury Report dated June 16, 2011.

2. Although the FMC Board of Directors presently consists of four members, for most of the last four years there have only been three Board members. The Grand Jury chose to speak to only two of the four Board members, one of whom has served throughout the last four years, and the other of whom was only appointed to the Board in April 2010.

3. FMC sets out below the Grand Jury's Findings and Recommendations and FMC's responses thereto, in accordance with Penal Code Section 933.05(a) and 933.05(b).

4. **GJ Finding 1**: The County established FMC as a nonprofit to operate the Fairgrounds; however, FMC has not been successful. FMC has operated at a loss and has required County bailout in all but one of the past sixteen years.

5. **FMC Response to GJ Finding 1**:

    a. FMC disagrees with Finding 1 that FMC has not been successful, and that FMC has operated at a loss and has required County bailout in all but one of the past sixteen years.

    b. The attached spreadsheet – **Appendix 1 - Comparison of Statement of Activity 1996 - 2009** (which was provided to the Grand Jury by FMC and appended to the Grand Jury Report) – shows that FMC made a profit in eight of the fourteen years between1996 - 2009. The Grand Jury Report confirms that FMC made a profit in 2010, meaning that FMC has been profitable in nine years out of the past fifteen, or 60% of the time.

    c. The attached spreadsheet – **Appendix 2 - Comparison of Statement of Activity 1996 – 2010** shows that FMC's three-hundred-sixty-day business (its day-to-day operations excluding the County Fair mandated by the County) has been profitable in all but three of the past fifteen years (80% of the time), and has made profits during that time totaling $2,667,056.

    d. The attached spreadsheet – **Appendix 3 – Impact of FMC's management of fairgrounds on County's General Fund** – shows that FMC's operation of the Santa Clara County fairgrounds has saved Santa

Clara County taxpayers more than $10.8 million dollars over the past sixteen years.

e. The attached spreadsheet – **Appendix 4 – Equity (Fund Balance) and Profits and Losses since inception** – shows that FMC has operated for fifteen years without the benefit of any capital (equity or reserves), and demonstrates the years in which FMC made profits or losses, and its equity deficiency at the end of each year.

f. The County has provided a total of $1,165,000, in six different years (1999, 2000, 2001, 2002, 2007 and 2010), to support the mandated County Fairs. Despite those subsidies the County Fairs have lost $2,864,468 over those fifteen years.

g. As a result of the $2,864,468 of County Fair losses, the profits of $2,667,056 generated by the three-hundred-sixty-day businesses were reduced to an overall loss for FMC of $197,412 over that period of time.

h. The story of the Fairgrounds over the years since their management was taken over by FMC was explained in detail to the members of the Grand Jury:

    i. In 1995 FMC took over management of the fairgrounds from the Fair Association which had managed the fairgrounds for many years. The Santa Clara County fairgrounds had first been brought into use in 1946, with additional infrastructure built in the period 1946 – 1970.

    ii. The Fair Association incurred losses for years as a result of which, the physical plant of the fairgrounds was allowed to deteriorate under its management. When the Fair Association declared Chapter 11 bankruptcy, the County took back the fairgrounds and placed it in the hands of the FMC. Nothing was done at that time to alleviate the years of neglect and deferred maintenance.

    iii. At the time of its formation in 1995 FMC had no capital (that means no equity, no reserves, no fund balance) and depended entirely on the cash flow from its various businesses for its day-to-day survival. During the ensuing sixteen years FMC has not been able to be consistently profitable to enable it to accumulate the reserves which a prudent nonprofit would expect to have. FMC's Board has discharged its responsibility to obtain sufficient capital resources by obtaining funding from the County to catch up with some of the deferred maintenance and for capital improvements to the County's property, and to finance the losses on the County-mandated County fairs.

iv. The County, as owner of the fairgrounds, had not invested any money to improve or repair the complex's infrastructure over a period of twenty years. The Facility Conditions Assessment Final Report dated March 6, 1998 (prepared by Kitchell, a firm of land-use development consultants) indicated that improvements and repairs to the existing infrastructure would involve an estimated expenditure of in excess of $21,400,000. No nonprofit, regardless of its management skills, could conceivably generate that kind of capital given the fairgrounds business model and operating impediments.

v. As a result of the Kitchell report, the County and FMC prepared a Master Land Use Plan for the fairgrounds designed to result in substantial redevelopment of the fairgrounds. That redevelopment was stopped when the City of San Jose and the San Jose Downtown Association filed law-suits against the County to stop the fairgrounds redevelopment taking place (Superior Court Case # 442629). The Court ruled in favor of the County on February 16, 2006, and the City paid the County's legal fees. However, the delay undermined the redevelopment plan and caused the proposed partners in the redevelopment to walk away from the project.

vi. To make way for that redevelopment plan, in 1998 the car race track and other significant revenue-generating facilities were torn down, and FMC experienced a subsequent reduction in its operating revenues.

vii. In 2006 the County, together with FMC, initiated the Repair and Modernization Project (RMP) to improve the physical plant of the fairgrounds. In the years 2006 – 2008 the County invested a total of $5,523,000 in catching up with deferred maintenance on, and improving, the facilities which it owned at the fairgrounds. **Appendix 5 – Fairgrounds RMP Project** – shows how those funds were spent and demonstrates that 42% of the funds were spent on essential maintenance, which had been neglected for many years, and the replacement of aged equipment, and 58% of the expenditures were on improvements to the fairgrounds infrastructure. A balance of RMP Project funds of $406,000 remained unspent at December 31, 2010.

viii. Following completion of the RMP project, business at the fairgrounds began to improve, and the complex staged some newsworthy events, such as renting the newly-air-conditioned Expo Hall to the Department of Homeland Security, U.S. Citizenship and Immigration Services, for the swearing in of a large number of new U.S. citizens on August 7 and 14, 2008. Those two events generated an additional $60,000 in new revenue for FMC.

ix. On July 31, 2008 the County Executive's Office announced that it expected to recommend to the Board of Supervisors (BOS) that the County enter into an Exclusive Negotiating Agreement (ENA) with Catellus Development Group, the recommended development team for the Fairgrounds Development. Catellus announced on August 1, 2008 that its preliminary vision for the fairgrounds project incorporated a network of streets and paths that would encourage walking and cycling, office and retail buildings that featured green building technology, community gathering places and parks, and affordable housing.

x. Catellus's plans called for the re-development of the whole site (158 acres) with only a very small amount of space to be retained for public events. The precise nature of that public space was not identified. Catellus's plans were expected to result in the entire existing fairgrounds infrastructure being torn down and replaced by housing and retail development. It was also expected that FMC would cease to exist.

xi. As the Fairgrounds Development plans unfolded over the summer of 2008 it became clear that the development plans would result in FMC ceasing major operations at the fairgrounds in the first quarter of 2011. FMC immediately began the process of developing its business plan to wind down operations towards the scheduled closure of the fairgrounds in 2011.

xii. Beginning in September 2008, the largest world-wide economic downturn in 75 years occurred. Santa Clara county businesses suffered huge losses during this period, and there were many lay-offs. FMC suffered a substantial decline in its business, but avoided laying-off any of its employees. The full effect of the Great Recession was felt in 2009 when FMC suffered its largest-ever loss of $348,000. Catellus withdrew from the Fairgrounds Development project in March 2009.

xiii. In 2010, with the national economy turning around, the benefits of the County's $5,523,000 investment in the fairgrounds complex began to be felt, and FMC became profitable.

xiv. In 2010 the County entered into a three year management agreement with FMC. Prior to that time FMC had only had yearly management agreements, whose short-term nature and short-notice cancellation provision were not conducive to building profitable business arrangements at the fairgrounds.

xv. At no time has the County "waived" any fees charged by County agencies to the Fairgrounds. Indeed, all of the examples listed by the Grand Jury as having been "waived" are clearly shown as liabilities on FMC's financial statements, and FMC's independent auditors have consistently given their professional opinion that FMC's financial statements present fairly the state of FMC's liabilities.

xvi. Major fairgrounds in California have been unable to maintain profitability, except for those with modern exposition facilities and at least one other substantial-revenue-generating enterprise (e.g. horse-racing; car-racing) to subsidize the operations and maintenance of the fairgrounds. Urban fairgrounds have increasingly become exposition and entertainment centers where private and community-based events are held and the Annual Fair is an ancillary event. Annual fairs have been losing attendance across the State, and not doing well financially.

6. **GJ Recommendation 1**: The County should reconsider whether the nonprofit model is the best way to operate the Fairgrounds.

7. **FMC response to GJ Recommendation 1**:

    a. FMC is not the appropriate party to take action.

8. **GJ Finding 2**: In the last sixteen years, the FMC Board has not commissioned – nor has the County requested the Board to commission – an independent performance audit of FMC, even though FMC's poor performance warrants this type of audit.

9. **FMC Response to GJ Finding 2**:

    a. FMC disagrees with Finding 2. FMC disputes the Grand Jury's unsubstantiated assessment of poor performance, as fully set out above in response to Finding 1.

    b. During 2009 two departments of the County (Parks and Recreation, and Facilities) independently performed operational audits of FMC to determine if they would be able to operate the fairgrounds more efficiently than FMC. Each of them found that they could not. The Grand Jury Report identifies that in 1995 the County had calculated that for County departments to operate the fairgrounds, rather than FMC, would cost Santa Clara County taxpayers an additional $900,000 per year. The operating audits performed by County departments in 2009 found that it would now cost taxpayers at least $2,000,000 per year to operate the fairgrounds as a County department, rather than leaving the fairgrounds under the management of FMC.

c. FMC's outside auditors (Froshman, Billings and Lewandowski; Abbott Stringham and Lynch, and Berger/Lewis and Company) have routinely commented on FMC's operations by issuing Management Letters, in which they identified any potential deficiency in FMC's organizational structure or internal controls. FMC's Board and management have ensured that the auditors' recommendations were adopted.

d. FMC has on staff a person with substantial experience in performance auditing (having been requested by San Jose State University to develop and teach courses on the subject for mid-career professional auditors from abroad). That expertise is consistently applied to the business of FMC.

e. During the past sixteen years highly-qualified staff from the Office of the County Executive have analyzed FMC's business extensively.

f. A land-use consultant - Kitchell - reported on the property/infrastructure in 1998.

10. **GJ Recommendation 2A**: The County should request the FMC Board to commission an independent performance audit of FMC and the FMC Board.

11. FMC Response to Recommendation 2A:

a. FMC is not the appropriate party to take action.

b. Requiring FMC to pay an expensive outside consultant (estimated fees $75,000-90,000) for services that it already receives does not seem to FMC to be a wise business decision.

c. If the FMC were to be required to hire and pay for an expensive outside consultant to tell it what it already knows about its operations, FMC would need to request funding for those services from the County.

12. **GJ Recommendation 2B**: The FMC Board should require FMC to comply with its contractual requirement to produce an annual budget and business plan and financial audit.

13. FMC Response to Recommendation 2B:

a. The recommendation to have an annual audit for the year ended December 31, 2010 will be implemented by December 31, 2011.

b. FMC already produces an annual budget and business plan each year for the past sixteen years in accordance with the instructions contained in the Budget Preparation Guide published annually by the California Department of Food and Agriculture, Division of Fairs and Expositions. Each year's budget and plan has been approved by the Santa Clara County Board of Supervisors and the State's Division of Fairs and Expositions.

c. As the Grand Jury Report states on Page 6, paragraph 1: "FMC has prepared financial audits". Financial statement audits have been completed by FMC's independent CPAs for thirteen of the past sixteen years. In 2008 and 2009, FMC obtained a waiver from the County to have its independent CPAs perform Financial Statement Reviews (which are less in scope than an audit) rather than audits. Work is in now process on the audit of the 2010 financial statements, and will be completed before December 31, 2011.

14. **GJ Finding 3**: The County does not hold the FMC Board accountable for its lack of oversight in ensuring FMC meets its contractual obligations, and the FMC Board does not demonstrate the business acumen necessary to effectively oversee the FMC. There is a seat vacant (to be filled by the District 4 Supervisor) on the FMC Board.

15. **FMC Response to Finding 3**:

a. FMC disagrees with Finding 3.

b. The explanations of the reasons for disagreement are:

i. FMC is not the appropriate party to take action.

ii. FMC Board members have considerable knowledge and experience of the fairgrounds business. One has served on FMC's Board since its inception in 1995, and before that served on the Board of the Fair Association. Another Board member, while employed by the County, provided legal services to FMC's Board and management.

iii. As stated under Finding 1 above, FMC was formed in 1995 without benefit of capital or reserves, and the FMC Board has consistently sought to discharge its responsibility to "obtain sufficient capital resources" by requesting the County to provide adequate funding.

1. With its cash balances dwindling fast during the Great Recession in 2009, FMC requested that the County

"approve conversion of unspent and unobligated capital hedge against emergency repairs and as an operating reserve for the period 2010-2012". This request would have allowed FMC to wind down its affairs in an orderly fashion in the event that its business continued to deteriorate during 2010. Had such a deterioration occurred FMC would have been forced to liquidate its operations. Since FMC has been operating for sixteen years without any reserves, these funds would have enabled FMC to pay all of its third-party obligations in the event of a liquidation.

2. No commercial provider of finance would be willing to finance the operations of a fairground.

iv. The Grand Jury asserts that "to engage in satellite wagering, FMC must convene an annual fair". There is no longer any connection between Satellite Wagering and the holding of an Annual Fair.

v. Satellite Wagering is a year round business operating five or six days per week. In 2010 the Satellite Wagering business made a contribution to FMC of $600,000. FMC used those funds to support its total fairgrounds facilities and operations (including Satellite Wagering) which was the reason Satellite Wagering was originally attached to county fairgrounds by the State of California.

16. **GJ Recommendation 3A**: District 4 Supervisor Yeager should recruit to fill the vacancy with an individual with strong business acumen.

17. **FMC Response to Recommendation 3A**:

    a. FMC is not the appropriate party to take action.

18. **GJ Recommendation 3B**: The FMC Board should hold the FMC Executive Director accountable for ensuring appropriate actions are taken to operate FMC as a well-run, break-even or profitable operation.

19. **FMC Response to Recommendation 3B**:

    a. The recommendation has been implemented.

    b. The FMC Board continues to hold the FMC Executive Director accountable through a process of performance review.

20. **GJ Finding 4**: The County, supported by the Office of the County Executive, appears to have only a "land management" concern when FMC is required by contract to pay all expenses of the fair.

21. **FMC Response to Finding 4:**

a. FMC disagrees with Finding 4.

b. The explanations of the reasons for disagreement are:

i. FMC does not seem to be the party required to take action, in so far as FMC can understand what this Finding is about.

ii. As stated above, during the past sixteen years highly-qualified staff from the Office of the County Executive have analyzed FMC's business extensively, and have provided advice and counsel from which FMC has benefited.

22. **GJ Recommendation 4**: The County should modify its contractual agreement with FMC stipulating that FMC be required to sustain a break-even or positive cash flow operation.

23. **FMC Response to Recommendation 4**:

a. FMC is not the party to take action.

b. FMC continues to generate new business revenues and continues to strive to retain existing business revenues, to cut costs wherever and to generate profits and positive cash flow from an aging facility - the four major buildings rented by FMC for events, and their related infrastructure, were constructed between 1953 – 1972. The injection of $5,523,000 in capital improvements by the County, even though its full fruits were delayed by the Great Recession, is beginning to have a positive impact, but bringing new paying customers to the fairgrounds will continue to be a challenge.

24. **GJ Finding 5**: FMC has not optimized its supplier contracts and has demonstrated inability to fully perform its own contract to effectively manage the Fairgrounds, costing the taxpayers in the form of County bailouts.

25. **FMC Response to Finding 5**:

a. FMC disagrees with Finding 5.

b. FMC is already developing its plans to bid the catering concession contract so that a new contract is in place when the existing agreement ends on January 31, 2012.

c. FMC has entered into bartering arrangements with its paving and landscaping contractor permitting them to park their equipment at the fairgrounds in exchange for reduced cost services.

d. FMC is working continuously to retain existing and generate new business revenues, to cut costs, and to generate positive cash flow from a facility that is sixty-six years old.

26. **GJ Recommendation 5A**: The FMC Board should require FMC to prepare plans and implement changes geared toward increasing revenue to cover costs.

27. **FMC Response to Recommendation 5A**:

a. Recommendation 5A has been, and is continuously implemented. The County injected $5,523,000 in deferred maintenance and capital improvements into the fairgrounds between 2006 - 2008 and, even though the full fruits of that investment were delayed by the Great Recession, it is now beginning to have a positive impact, but bringing new paying customers to the fairgrounds will continue to be a challenge.

b. FMC continuously strives to improve the facilities, with its limited resources, in order to generate new revenues. Examples include the recent agreement with Marquez Brothers to install shading over the Arena greatly increasing its revenue potential.

28. **GJ Recommendation 5B**: The FMC Board should require FMC to restructure the concessionaire contract to a best practices model, such as paying FMC a percentage on sales, not profits, and should seek competitive bids for this and all other contracts as a means to increase revenue and profits.

29. **FMC Response to Recommendation 5B**:

a. FMC will implement Recommendation 5B upon termination of the existing agreement in 2012.

b. The concessions contract with Ovations emanated from a bid process that was conducted a decade ago. There was only one bid. Ovations were not willing to enter into a contract with a percentage of gross sales arrangement.

c. The current contract with Ovations runs for a term of six years ending on January 31, 2012. FMC's management action to change that contract could not be taken earlier.

d. FMC will seek competitive bids for the concessionaire contract as it does for all major contracts.

30. **GJ Recommendation 5C**: The FMC Board should require FMC to seek to increase short- and long-term use agreements to improve the positive cash operation.

31. **FMC Response to Recommendation 5C**:

    a. FMC is implementing Recommendation 5C on an ongoing basis.

    b. FMC's Board has consistently required FMC to seek to increase short- and long-term use agreements to improve the positive cash operation.

    c. Rates for Long Term Leases and Annual Licenses are constantly under review. In 2009 rates for the Paint Ball licencee were increased 17% over those of 2008. Their rates were increased 5% in 2010 and in 2011. Rental rates for motocross increased 5% in 2010 over 2009, and another 5% in 2011. Rates are generally on par with other facilities, especially considering the age of the buildings.

32. **GJ Recommendation 5D**: The FMC Board should require FMC to be in compliance with the contractual management agreement.

33. **FMC Response to Recommendation 5D**:

    a. The recommendation is being implemented with regard to the completion of FMC's financial statement audit for the year ended December 31, 2010. That independent audit is currently in process and will be promptly completed in the next two-three months.

    b. FMC is unaware of other specific issues of contract non-compliance.

34. **GJ Finding 6**: FMC paid bonuses to employees in 2010. The reason for these bonuses has no apparent connection to any operational decisions that would ensure continued profitability. Rather, the bonuses looked like a distribution of an unexplained windfall.

35. **FMC Response to Finding 6**:

    a. FMC disagrees with this Finding.

    b. As a means of containing costs during difficult economic times, FMC's rank and file employees did not receive routine cost-of-living salary increases; step increases; bonuses, or merit increases for the ten year period between 2000 and 2010, simply because of losses that were absorbed by the nonprofit on the annual fair.

c. In 2010 FMC's Board approved payment of a one-time merit payment to all of FMC's 40 employees. The total amount of that merit payment was $65,000, and it was paid equally to all employees based on their years of service.

36. **GJ Recommendation 6**: The FMC Board should not permit bonuses to be paid unless FMC demonstrates the ability to consistently run a profitable operation, as measure 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.

37. **FMC Response to Recommendation 6**:

    a. See previous comments.

38. **GJ Finding 7**: The FMC Board does not adequately perform its oversight function of FMC.

39. **FMC Response to Finding 7**:

    a. FMC does not agree with this Finding.

    b. FMC Board meets regularly; receives and approves the annual budget, and periodic and annual financial reports; meets with FMC's independent CPA auditors; discusses, advises on, and approves FMC management's plans for the fairgrounds; considers the future financing needs, and reviews and approves management plans to enter into significant long-term contracts.

    c. Two members of FMC's Board attended training sessions conducted by the Western Fairs Association (WFA) in November 2010, in order to better-educate themselves about the problems facing fairgrounds in today's marketplace.

    d. FMC management meets with individual Board members from time-to-time between Board meetings to facilitate communication and receive appropriate advice and guidance.

    e. With the full knowledge and approval of the Board a plan to restructure the FMC management team during 2009 and 2010 was implemented saving the nonprofit roughly $150,000 over that same two year period.

    f. Appointing an existing member of the management team to head the organization following the former Executive Director's resignation was unequivocally justified in light of his lengthy and successful tenure, his direct involvement in implementing new contractual agreements that were underway, and his demonstrated skills as a manager.

40. **GJ Recommendation 7A**: The FMC Board should require that FMC provide a training program with orientation for current and future incoming Board members, defining roles, duties and fiduciary responsibilities. This would familiarize board members on how this nonprofit business can be managed.

41. **FMC Response to Recommendation 7A**:

    a. FMC agrees with this Recommendation. FMC will train and orient incoming Board members when appointed.

42. **GJ Recommendation 7B**: The FMC Board should review and approve all requests for proposals and bid documents that would precede issuing a contract to ensure that the best interests of the Fairgrounds are reflected in such requests.

43. **FMC Response to Recommendation 7B**:

    a. FMC's Board has received and reviewed all proposal and bid documents issued by FMC, and the relevant responses.

44. **GJ Finding 8**: The County is undercharging communications tower renters, effectively diluting potential revenue to FMC.

45. **FMC Response to Finding 8**:

    a. The tower rental contracts are currently-binding, long-term contracts not subject to rent renegotiation.

46. **GJ Recommendation 8**: The County should increase communications tower rental fees in line with local rates for similar services.

47. **FMC Response to Recommendation 8**:

    a. FMC disagrees with Recommendation 1.

    b. The recommendation will not be implemented by FMC because:

        i. FMC is not the appropriate party to take action.

        ii. The tower rental contracts are long-term contracts that were established years ago, with escalator clauses to provide increases in annual rental rates based on the Cost of Living Index. When these contracts are up for renewal – in 2017 and 2019 respectively –

FMC anticipates that the County will re-negotiate them at then-current rates.

II. DOCUMENT APPENDICES TO THE CIVIL GRAND JURY REPORT.

Appendix # 1 -- Comparison of Statement of Activity 1996-2009.

Appendix # 2 -- Comparison of Statement of Activity 1996-2009 (Format 2).

Appendix # 3 -- Impact of FMC Management of Fairgrounds on County's General Fund.

Appendix # 4 -- Equity (fund balance) and Profit and Losses since Inception.

Appendix # 5 -- RMP Project Expenditures.

SANTA CLARA COUNTY FAIRGROUNDS MANAGEMENT CORP. **APPENDIX 1**

Comparison of Statement of Activity

1996-2009

NOTE: 2009 results are as projected in Fall 2009, for details of actual 2009 results see APPENDIX 2

Statement of Activity for Combined Admin., Grounds Rental and Satellite Wagering, Exclusive of County Fair

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	Projected (See NOTE) 2009	Fourteen Year (See NOTE) Total
Revenue	3,576,778	3,715,391	4,765,939	5,457,011	5,232,665	5,090,200	4,629,247	4,401,440	4,360,223	4,357,839	3,925,336	3,704,841	3,554,850	3,049,468	59,821,228
COGS			492,977	845,594	690,689	656,264	584,354	538,335	538,335	519,449	342,236	277,830	233,607	223,623	5,723,293
Direct Costs	2,347,205	2,465,787	2,636,550	3,020,370	2,839,109	2,185,782	1,905,018	1,699,255	1,767,285	1,814,611	1,610,857	1,867,341	1,665,855	1,655,926	29,480,950
Other Direct Costs						22,595									22,595
Marketing	28,976	10,086	2,240	24,592	12,512	14,141	12,125	10,601	3,723	4,358	21,041	13,481	46,135	41,526	245,537
Administration Costs	864,630	949,799	1,456,580	1,634,953	1,846,812	1,897,174	2,013,370	1,869,125	1,810,937	1,912,442	1,526,472	1,387,386	1,471,769	1,411,589	22,053,059
Profit/(Loss) Exclusive of County Fair	335,967	289,719	(22,408)	131,502	(156,457)	314,244	134,380	284,125	239,942	106,979	424,729	358,803	137,464	(283,196)	2,295,794

Statement of Activity - County Fair Only

	1996 (12 Days)	1997 (11 Days)	1998 (10 Days)	1999 (10 Days)	2000 (10 Days)	2001 (10 Days)	2002 (3 Days)	2003 (3 Days)	2004 (3 Days)	2005 (3 Days)	2006 (3 Days)	2007 (5 Days)	2008 (3 Days)	2009 (4 Days)	Fourteen Year Total
Revenue	2,483,703	2,432,171	2,312,115	2,134,572	2,198,200	1,760,845	579,111	520,107	518,054	300,059	247,349	591,984	24,199	30,930	16,133,399
COGS	0	0	14,499	9,689	3,947	4,219	0	0	0	0	0	0	0	0	32,354
Direct Costs	1,422,022	1,295,926	1,143,149	1,001,848	1,015,262	1,004,865	464,350	272,432	340,307	234,431	239,417	455,093	77,481	92,006	9,058,590
Other Direct Costs	0	0	0	0	0	229,274	0	0	0	0	0	0	0	0	229,274
Marketing	1,032,413	861,395	1,073,436	750,771	898,615	884,497	267,585	275,655	256,053	90,261	114,400	456,811	2,073	5,361	6,989,325
Administration Costs	420,944	509,688	509,040	524,909	510,721	469,149	127,299	114,605	154,876	95,034	102,504	138,995	50,067	45,688	3,773,518
Profit/Loss Exclusive of County Subsidy	(391,676)	(254,838)	(428,009)	(152,645)	(230,345)	(831,159)	(280,123)	(142,585)	(233,181)	(119,687)	(208,971)	(458,915)	(105,422)	(112,125)	(3,949,882)
County Subsidy	0	0	0	200,000	200,000	200,000	200,000	0	0	0	0	285,000	0	0	1,085,000
Profit/Loss	(391,676)	(254,838)	(428,009)	47,355	(30,345)	(631,159)	(80,123)	(142,585)	(233,181)	(119,667)	(208,971)	(173,915)	(105,422)	(112,125)	(2,864,662)

Statement of Activity for Facility and Grounds Rental Only

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	Projected 2009	Fourteen Year Total
Revenue	1,429,407	1,449,458	2,632,812	3,013,258	2,887,833	2,537,096	2,329,418	2,095,032	2,081,762	2,045,103	1,747,707	1,456,579	1,560,806	1,314,117	28,580,388
COGS	0	0	315,933	367,672	370,561	299,913	231,642	235,442	235,066	216,911	10,045	0	0	-14,877	2,268,308
Direct Costs	781,110	809,030	1,414,699	1,543,847	1,700,441	1,526,381	1,278,676	1,136,889	1,186,115	1,204,770	992,343	1,007,187	1,037,072	1,092,126	16,710,685
Dther Direct Costs	0	0	0	0	0	22,595	0	0	0	0	0	0	0	0	22,595
Maketing	28,976	8,127	2,240	21,521	11,512	10,716	5,664	1,734	2,946	2,638	8,675	9,012	44,595	20,077	178,433
Administration Costs	530,755	635,667	1,061,998	1,271,288	1,492,684	1,470,132	1,570,256	1,454,518	1,355,263	1,434,848	1,039,101	863,945	1,017,786	1,038,887	16,237,129
Profit/(Loss) Facility & Grnds Rental	88,566	(3,366)	(162,058)	(191,070)	(687,365)	(792,841)	(756,820)	(733,550)	(697,629)	(814,064)	(302,458)	(423,565)	(538,847)	(822,096)	(6,836,762)

Statement of Activity for Satellite Wagering Only

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	Projected 2009	Fourteen Year Total
Revenue:			*			**									
Admissions	469,471	423,889	423,734	412,463	378,998	320,822	297,066	508,060	476,063	430,453	424,185	410,745	409,788	369,600	5,755,337
Commissions	847,418	862,683	930,086	1,137,676	1,198,789	1,219,025	1,130,987	1,073,846	1,043,536	1,046,046	1,011,385	1,018,531	869,770	962,460	14,352,238
Other Revenue	830,482	979,361	779,307	893,814	767,045	1,013,257	871,776	724,502	758,862	836,237	742,059	818,986	714,486	403,291	11,133,265
Total Revenue	2,147,371	2,265,933	2,133,127	2,443,753	2,344,832	2,553,104	2,299,829	2,306,408	2,278,461	2,312,736	2,177,629	2,248,262	1,994,044	1,735,351	31,240,840
COGS	0	0	177,044	277,922	320,128	356,351	332,712	302,893	303,269	302,538	332,191	277,830	233,607	238,500	3,454,985
Direct Costs															
Impact Fees	497,080	500,544	512,259	464,568	401,357	0	0	0	0	0	0	0	0	0	2,375,808
County Fees	247,401	293,085	139,650	322,573	74,700	0	0	0	0	0	0	0	0	0	1,077,409
Other Direct Costs	821,614	863,128	769,942	689,382	662,611	659,401	626,342	562,366	581,170	609,841	618,514	660,154	628,783	563,800	9,317,048
Total Direct Costs	1,566,095	1,656,757	1,421,851	1,476,523	1,138,888	659,401	626,342	562,366	581,170	609,841	618,514	660,154	628,783	563,800	12,770,265
Marketing	0	1,959	0	3,071	1,000	3,425	6,461	8,867	777	1,720	12,368	4,469	1,540	21,449	67,104
Administrative Costs	333,875	314,132	394,582	363,665	354,128	427,042	443,114	414,607	455,674	477,594	487,371	523,441	454,003	372,702	5,815,930
Profit/(loss)	247,401	293,085	139,650	322,572	530,908	1,106,885	891,200	1,017,675	937,571	921,043	727,187	782,368	676,111	538,900	9,132,556

*=Change in Catering Contract

**= County fees and impact fees abolished

Statement of Activity for Combined Divisions

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	Projected 2009	Fourteen Year Total
Combined Profit/(Loss)	$ (55,709)	$ 34,861	$(450,417)	$178,857	########	$(316,915)	$ 54,257	$ 141,540	$ 6,761	$ (12,688)	$215,758	$184,888	$ 32,042	$ (395,321)	$ (568,868)

SANTA CLARA COUNTY FAIRGROUNDS MANAGEMENT CORP. **APPENDIX 2**

Comparison of Statement of Activity

1996-2010

NOTE: A copy of this report was provided to the Grand Jury

Statement of Activity Exclusive of County Fair

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	Fifteen Year Total
Revenue	3,576,778	3,715,391	4,765,939	5,457,011	5,232,665	5,090,200	4,629,247	4,401,440	4,360,223	4,357,839	3,925,336	3,704,841	3,554,850	3,100,713	3,517,893	63,390,366
COGS			492,977	645,594	690,689	656,264	564,354	538,335	538,335	519,449	342,236	277,830	233,607	287,550	201,263	5,988,483
Direct Costs	2,347,205	2,465,787	2,836,550	3,020,370	2,839,109	2,185,782	1,905,018	1,699,255	1,767,285	1,814,611	1,610,857	1,667,341	1,665,855	1,516,365	1,541,289	30,882,678
Other Direct Costs						22,595										22,595
Marketing	28,976	10,086	2,240	24,592	12,512	14,141	12,125	10,601	3,723	4,358	21,041	13,481	46,135	36,165	20,068	260,244
Administration Costs	864,630	949,799	1,456,580	1,634,953	1,846,812	1,897,174	2,013,370	1,869,125	1,810,937	1,912,442	1,526,472	1,387,386	1,471,789	1,496,996	1,430,844	23,569,310
Profit/(Loss) Exclusive of County Fair	335,967	289,719	(22,408)	131,502	(156,457)	314,244	134,380	284,125	239,942	106,979	424,729	358,803	137,464	(236,363)	324,429	2,667,056

Statement of Activity - County Fair

(# of days of County Fair)	1996 (12 Days)	1997 (11 Days)	1998 (10 Days)	1999 (10 Days)	2000 (10 Days)	2001 (10 Days)	2002 (3 Days)	2003 (3 Days)	2004 (3 Days)	2005 (3 Days)	2006 (3 Days)	2007 (5 Days)	2008 (3 Days)	2009 (4 Days)	2010 (4Days)	Fourteen Year Total
Revenue	2,483,703	2,432,171	2,312,115	2,134,572	2,198,200	1,760,845	579,111	520,107	518,054	300,059	247,349	591,984	24,199	30,700	51,187	16,184,356
COGS	0	0	14,499	9,689	3,947	4,219	0	0	0	0	0	0	0	0	0	32,354
Direct Costs	1,422,022	1,295,926	1,143,149	1,001,848	1,015,262	1,004,865	464,350	272,432	340,307	234,431	239,417	455,093	77,481	89,002	75,270	9,130,856
Other Direct Costs	0	0	0	0	0	229,274	0	0	0	0	0	0	0	0	0	229,274
Marketing	1,032,413	881,395	1,073,436	750,771	898,615	884,497	267,585	275,655	256,053	90,261	114,400	456,811	2,073	5,361	3,225	6,992,550
Administration Costs	420,944	509,688	509,040	524,909	510,721	469,149	127,299	114,605	154,876	95,034	102,504	138,995	50,067	47,907	53,053	3,828,790
Profit/Loss Exclusive of County Subsidy	(391,676)	(254,838)	(428,009)	(152,645)	(230,345)	(831,159)	(280,123)	(142,585)	(233,181)	(119,667)	(208,971)	(458,915)	(105,422)	(111,570)	(80,361)	(4,029,468)
County Subsidy	0	0	0	200,000	200,000	200,000	200,000	0	0	0	0	285,000	0	0	80,000	1,165,000
Profit/Loss	(391,676)	(254,838)	(428,009)	47,355	(30,345)	(631,159)	(80,123)	(142,585)	(233,181)	(119,667)	(208,971)	(173,915)	(105,422)	(111,570)	(361)	(2,864,468)

Satellite Wagering - Statement of Activity

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	Total
Revenue:			*			**										
Admissions	469,471	423,889	423,734	412,463	378,998	320,822	297,066	508,060	476,063	430,453	424,185	410,745	409,788	378,715	350,285	6,114,737
Commissions	847,418	862,683	930,086	1,137,676	1,198,789	1,219,025	1,130,987	1,073,846	1,043,536	1,046,046	1,011,385	1,018,531	869,770	768,276	793,983	14,952,037
Other Revenue	830,482	979,361	779,307	893,614	767,045	1,013,257	871,776	724,502	758,862	836,237	742,059	818,986	714,486	578,846	702,400	12,011,220
Total Revenue	2,147,371	2,265,933	2,133,127	2,443,753	2,344,832	2,553,104	2,299,829	2,306,408	2,278,461	2,312,736	2,177,629	2,248,262	1,994,044	1,725,837	1,846,668	33,077,994
COGS	0	0	177,044	277,922	320,128	356,351	332,712	302,893	303,269	302,538	332,191	277,830	233,607	226,904	201,263	3,644,652
Direct Costs																
Impact Fees	497,080	500,544	512,259	464,568	401,357	0	0	0	0	0	0	0	0	0		2,375,808
County Fees	247,401	293,085	139,650	322,573	74,700	0	0	0	0	0	0	0	0	0		1,077,409
Other Direct Costs	821,614	863,128	769,942	689,382	662,611	659,401	626,342	562,366	581,170	609,841	618,514	660,154	628,783	555,525	565,484	9,874,257
Total Direct Costs	1,566,095	1,656,757	1,421,851	1,476,523	1,138,668	659,401	626,342	562,366	581,170	609,841	618,514	660,154	628,783	555,525	565,484	13,327,474
Marketing	0	1,959	0	3,071	1,000	3,425	6,461	8,867	777	1,720	12,366	4,469	1,540	8,320	1,868	55,843
Administrative Costs	333,875	314,132	394,582	363,665	354,128	427,042	443,114	414,607	455,674	477,594	487,371	523,441	454,003	379,919	366,018	6,189,165
Divisional profit/(loss)	247,401	293,085	139,650	322,572	530,908	1,106,885	891,200	1,017,675	937,571	921,043	727,187	782,368	676,111	555,169	712,035	9,860,860

Statement of Activity for Combined Divisions

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	Total
Combined Profit/(Loss)	(55,709)	34,881	(450,417)	178,857	(186,802)	(316,915)	54,257	141,540	6,761	(12,688)	215,758	184,888	32,042	(347,933)	324,068	(197,412)
Proof with Appendix 1	-	-	-	-	-	-	-	-	(0)	(0)	-	-		-		

* = Change in Catering Contract

unty fees and impact fees abolished

Impact of FMC management of Fairgrounds on County's General Fund **APPENDIX 3**

1995 estimate of annual amount that a County-managed department would cost in excess of FMC costs as reported by Grand Jury in their report dated June 2011.		$ 900,000
Since those savings were expressed in 1995 dollars they need to be re-calculated on an annual basis into then-current dollars. The following CPI Index year-on-year increases are used to calculate the annual savings for each of the years 1996 - 2010		
	Year-on-year increase	
CPI Index of price increases:		
1995	2.80%	$ 900,000
1996	3.00%	$ 925,200
1997	2.30%	$ 952,956
1998	1.60%	$ 974,874
1999	2.20%	$ 990,472
2000	3.40%	$ 1,012,262
2001	2.80%	$ 1,046,679
2002	1.60%	$ 1,075,986
2003	2.30%	$ 1,093,202
2004	2.70%	$ 1,118,346
2005	3.40%	$ 1,148,541
2006	3.20%	$ 1,187,591
2007	2.80%	$ 1,225,594
2008	3.80%	$ 1,259,911
2009	-0.04%	$ 1,307,788
2010		$ 1,307,265
Anticipated cost to County of running Fairgrounds over actual cost generated by FMC		$ 17,526,668
Amounts paid by County as subsidies to FMC:		
Subsidies provided by County to support County-mandated County Fairs - 1999, 2000, 2001, 2002, 2010		880,000
Subsidy provided by County to FMC in support of County Fair and for general operations - 2007		285,000
Amount paid by County to improve County-owned property at the Fairgrounds, 2005-2008		5,523,000
Total savings to County General Fund over sixteen years of Fairgrounds being managed by FMC		**$ 10,838,668**

SCCFMC

Equity (Fund Balance) and Profits and Losses since inception

		Per annual P&Ls		FMC Equity (Fund Balance)			
		Profits	**Losses**	**Beginning**	**P&L**	**PY Adj.**	**Ending**
1995	Equity deficiency on inception FMC operated for part-year only in 1995			-			(50,593)
1996	Internally-prepared		(55,709)	(50,593)	(55,709)		(106,302)
1997	Internally-prepared	34,881		(106,302)	34,881		(71,421)
1998	Internally-prepared		(450,417)	(71,421)	(450,417)		(521,838)
1999	Internally-prepared	178,857		(521,838)	178,857		(342,981)
2000	Internally-prepared		(186,802)	(342,981)	(186,802)		(529,783)
2001	Internally-prepared		(316,915)	(529,783)	(316,915)		(846,698)
2002	Internally-prepared	54,257		(846,698)	54,257		(792,441)
2003	Internally-prepared	141,540		(792,441)	141,540		(650,901)
2004	Internally-prepared	6,761		(650,901)	6,761		(644,140)
	Audit prior period adjustment			(644,140)		127,159	(516,981)
2005	Internally-prepared		(12,688)	(516,981)	(12,688)		(529,669)
2006	Internally-prepared	215,758		(529,669)	215,758		(313,911)
	Audit prior period adjustment			(313,911)		(62,422)	(376,333)
2007	Internally-prepared	184,888		(376,333)	184,888		(191,445)
2008	Internally-prepared	32,042		(191,445)	32,042		(159,403)
2009	Internally-prepared		(347,933)	(159,403)	(347,933)		(507,336)
2010	Internally-prepared	324,068		(507,336)	324,068		(183,268)
		1,173,052	**(1,370,464)**	**(50,593)**	**(197,412)**	**64,737**	**(183,268)**

Profit/(Loss) reported fifteen years, internally reported			**(197,412)**
Add:	Prior period adjustment in 2005 related to 2001	**189,580**	
	Prior period adjustment in 2005 related to 2003	**(62,421)**	
	Net 2005 Prior period adjustment		**127,159**
	Prior period adjustment in 2006		**(62,422)**
Profit/(Loss) for fifteen years			**$ (132,675)**

FROM INCEPTION:

Number of years with profits	**9**	
Number of years with losses		**6**

PAST TEN YEARS - 2001-2010

Number of years with profits	**7**	
Number of years with losses		**3**

12/31/2010	Total Fund Balance per unaudited Balance Sheet		727,421
	Long-term debt due to SC County		(910,689)
	Total Equity (Deficiency)/Fund Balance per unaudited Balance Sheet		**(183,268)**
		Proof	(0)

RMP PROJECT EXPENDITURES **APPENDIX 5**
Maintenance & Improvements to Fairgrounds)

	$	%
Deferred maintenance & replacement equipment expenditures:		
Sewer repairs	551,554	
Electrical repairs - Expo Hall	326,117	
Ceiling repair - Expo Hall	79,699	
Grounds maintenance	38,179	
Structural repairs - Fiesta	18,210	
Underground transformers	61,520	
Roofing repairs:		
Admin building	38,077	
Fiesta Hall	74,306	
Cafeteria and Restrooms	65,981	
CTRC	54,747	
Painting, preparation, gutters, concrete, etc.	526,965	
Misc. repairs	55,164	
Replacement equipment:		
Irrigation	5,800	
Tractor/mower	38,760	
Kitchen equipment	64,098	
Gator tractors	28,732	
Computers & office equipment	26,655	
Operational equipment	23,475	
Traffic control system	5,030	
Water truck	46,621	
Total deferred maintenance & replacement equipment	**2,129,690**	**42%**
Fairgrounds Improvements:		
Airconditioning:		
Expo Hall	1,399,711	
Pavilion	484,410	
Gateway	163,685	
Fire control system	13,594	
Expo Hall lounge conversion	76,052	
Bleachers for Arena	849,853	
Total fairgrounds improvements	**2,987,305**	**58%**
Total RMP expenditures to December 31, 2010	**5,116,995**	**100%**
Funds available at December 31, 2010 for future projects	406,003	
TOTAL RMP PROJECT FUNDING	**$ 5,522,998**	

III. CIVIL GRAND JURIES FINAL REPORT AND COVER LETTER, DATED: JUNE 22RD, 2011.

GRAND JURY

June 22, 2011

COPY

William Anderson
Chairperson
Fairgrounds Management Corporation Board
County of Santa Clara
Executive Director's Suite
344 Tully Road
San Jose, CA 95111

Dear Chairperson Anderson and Members of the Board:

The 2010-2011 Santa Clara County Civil Grand Jury is transmitting to you its Final Report, **Santa Clara County Fairgrounds Management Corporation.**

California Penal Code § 933(c) requires that a governing body of the particular public agency or department which has been the subject of a Grand Jury final report shall respond within **90 days** to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. California Penal Code § 933.05 contains guidelines for responses to Grand Jury findings and recommendations and is attached to this letter.

PLEASE NOTE:

1. **As stated in Penal Code § 933.05(a), attached, you are required to "Agree" or "Disagree" with each *APPLICABLE* Finding(s)** 2, 3, 5, 6 & 7. ***If you disagree, in whole or part, you must include an explanation of the reasons you disagree.***

2. **As stated in Penal Code § 933.05(b), attached, you are required to respond to each *APPLICABLE* Recommendation(s)** 2A, 2B, 3B, 5A, 5B, 5C, 5D, 6, 7A & 7B, ***with one of four possible actions.***

Your comments are due in the office of the Honorable Richard J. Loftus, Jr., Presiding Judge, Santa Clara County Superior Court, 191 North First Street, San Jose, CA 95113, no later than **Friday, September 23, 2011.**

Copies of all responses shall be placed on file with the Clerk of the Court.

Sincerely,

Helene I. Popenhager

HELENE I. POPENHAGER
Foreperson
2010-2011 Civil Grand Jury

HIP:dsa
Enclosures (2)

cc: Ray Lueckman, CEO, Fairgrounds Management Corporation

COPY

California Penal Code Section 933.05, in relevant part:

933.05. (a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:

(1) The respondent agrees with the finding.

(2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

(b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

(1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.