

# Memorandum

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**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Richard Doyle  
City Attorney

**SUBJECT:** City of San Jose Finance  
Authority, et al. v. Green Valley  
Corporation, dba Barry  
Swenson Builder, et al.  
Settlement Agreement

**DATE:** November 6, 2008

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## RECOMMENDATION

Adopt a resolution authorizing the City Attorney to execute a settlement agreement and release with Green Valley Corporation dba Barry Swenson Builder considered by the City Council during the Closed Session held on March 25, 2008, for which the City will receive \$125,000.

## OUTCOME

To resolve a lawsuit brought by the City against Barry Swenson Builder relating to design and construction deficiencies associated with the Rancho Del Pueblo Golf Course.

## BACKGROUND

In January 1995 Barry Swenson Builder entered into a Purchase and Sale Agreement for a 53-acre site containing the Thunderbird Golf Course (an 18-hole golf course). In June 1997, Swenson agreed to transfer its right to acquire a portion of this site (approximately 31.41 acres) to the City of San Jose Financing Authority ("Authority") on a condition that Swenson would be the contractor for a 9-hole golf course known as Rancho Del Pueblo.

On March 1, 2000, the Rancho Del Pueblo Golf Course was opened to the public. Almost immediately, problems developed with errant golf balls being hit over the 90-foot driving range netting along King Road. Additional problems then developed along hole #8 where complaints of errant golf balls were received from the Friendship Church of God and Christ. These problems have resulted in the installation of additional safety netting by the City.

Since the course opened, there have been over 100 reported incidents of damage to cars and houses as a result of balls leaving the course.

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Swenson has denied any liability and has asserted in the litigation brought by the City that the height of the netting which had been installed was agreed to by the City and that Swenson is therefore not responsible for any alleged deficiencies.

### **ANALYSIS**

To date, the City has expended approximately \$403,000 in additional netting along the driving range, along hole #8, as well as replacement of netting which was beyond the one-year warranty. The sum also includes approximately \$26,000 the City has paid in claims associated with damaged cars and houses from balls leaving the course. In addition, further mitigations are being considered by staff relating to hole #4. However, any final decision has not been obtained with regard to any proposed additional enhancements.

In light of the risks and costs inherent in litigation, following extensive mediation sessions, the City Attorney's Office has negotiated a settlement calling for payment by Swenson to the City in the amount of \$125,000. A copy of the proposed settlement agreement and release is posted on the City's internet page.

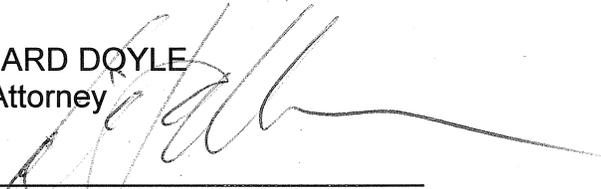
### **COORDINATION**

This memo has been coordinated with Parks, Recreation and Neighborhood Services staff.

### **CEQA**

Not a project.

RICHARD DOYLE  
City Attorney

By 

Michael J. Dodson, Esq.  
Sr. Deputy City Attorney

cc: Debra Figone

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