

000263		REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO		1. CERTIFICATE NUMBER (FOR AUDITOR'S USE ONLY) 2800924			
TO: CITY COUNCIL		2. FROM (ORIGINATING DEPARTMENT): CITY ATTORNEY		3. DATE: June 6, 2008 103 07/15			
4. SUBJECT: Authorizing the continued retention of Latham & Watkins and Worley Schwartz, et al, as co-counsel to prosecute the case of <i>CITY OF SAN DIEGO V. SUNROAD ENTERPRISES, ET AL.</i> , SAN DIEGO SUPERIOR COURT CASE NO. GIC 877054.							
5. PRIMARY CONTACT (NAME, PHONE, & MAIL STA.) Carmen Brock 619 236-6220		6. SECONDARY CONTACT (NAME, PHONE, & MAIL STA.) Lawrence Tomanek 619 236-6220		7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED <input checked="" type="checkbox"/>			
8. COMPLETE FOR ACCOUNTING PURPOSES							
FUND	81140			9. ADDITIONAL INFORMATION / ESTIMATED COST:			
DEPT.	82440 82240			Authorize the City Comptroller to expend up to \$120,000 from the Public Liability Fund.			
ORGANIZATION							
OBJECT ACCOUNT	4141						
JOB ORDER	082240						
C.I.P. NUMBER							
AMOUNT	\$120,000						
10. ROUTING AND APPROVALS							
ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIG. DEPT	LAWRENCE TOMANEK	6-2-08	8	CFO	Mary Heavin	7/1/08
2	RISK MGMT	<i>[Signature]</i>	6-12-08	9			
3	LIAISON OFFICE	ED PLANK	6/18/08	10			
4	FINANCIAL MGMNT	<i>[Signature]</i>	6/23/08	11	CITY ATTORNEY	Karen Hansen	6/2/08
5	COMPTROLLER	<i>[Signature]</i>	6/26/08		DOCKET COORD:	SC	COUNCIL LIAISON SC 6/26/08
6					<input checked="" type="checkbox"/> COUNCIL PRESIDENT	<input type="checkbox"/> SPOB	<input checked="" type="checkbox"/> CONSENT
7					<input type="checkbox"/> REFER TO:		COUNCIL DATE: 7/15/08
11. PREPARATION OF: <input checked="" type="checkbox"/> RESOLUTIONS <input type="checkbox"/> ORDINANCE(S) <input type="checkbox"/> AGREEMENT(S) <input type="checkbox"/> DEED(S)							
1. Authorizing the continued retention of Latham & Watkins and Worley Schwartz Garfield & Prairie LLP, as co-counsel, to defend the case of <i>CITY OF SAN DIEGO V. SUNROAD ENTERPRISES, ET AL.</i> , SAN DIEGO SUPERIOR COURT CASE NO. GIC 877054.							
2. Authorizing the City Auditor and Comptroller to expend up to \$120,000 from the Public Liability Fund for the coverage of Latham & Watkins' (up to \$100,000) and Worley Schwartz (up to \$20,000) legal fees and costs related to this matter.							
11A. STAFF RECOMMENDATIONS: ADOPT THE RESOLUTION.							

12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)

COUNCIL DISTRICT(S):

COMMUNITY AREA(S):

ENVIRONMENTAL IMPACT: This activity is not a "project" and therefore is exempt from CEQA pursuant to State CEQA Guidelines 15060(c)(3).

HOUSING IMPACT:

OTHER ISSUES:

000264

000265

EXECUTIVE SUMMARY SHEET

DATE ISSUED: June 2, 2008 **REPORT NO.:**

ATTENTION: COUNCIL PRESIDENT AND COUNCILMEMBERS

ORIGINATING DEPARTMENT: CITY ATTORNEY

SUBJECT: Authorizing the continued retention of Latham & Watkins LLP and Worley Schwartz, as co-counsel, to prosecute *City of San Diego v. Sunroad Enterprises, et al.*, San Diego Superior Court Case No. GIC 877054

COUNCIL DISTRICT(S): All

CONTACT/PHONE NUMBER: Carmen Brock 619-533-5800 or Lawrence Tomanek 619-236-6220

REQUESTED ACTION:

Authorize the continued retention of Latham & Watkins LLP and Worley Schwartz Garfield & Prairie LLP (formerly Stephenson Worley Garratt Schwartz Garfield & Prairie), as co-counsel;

Authorizing the City ~~Auditor and~~ Comptroller to expend up to \$100,000 from the Public Liability Fund for Latham & Watkins' LLP for legal fees and costs related to this matter;

Authorizing the City ~~Auditor and~~ Comptroller to expend up to \$20,000 from the Public Liability Fund for Worley Schwartz Garfield & Prairie LLP for legal fees and costs related to this matter.

STAFF RECOMMENDATION:

Approve the Resolution

EXECUTIVE SUMMARY:

This case arose over the construction of an office building above height restrictions. The ~~L~~aw firm of Latham & Watkins was retained to defend the City in the matter and to provide legal advisory services to the Mayor's Office.

^{llw} The firm of Stephenson Worley Schwartz Garfield & Prairie was retained to represent the separate interests of two former City employees.

FISCAL CONSIDERATIONS:

With this action the Council will authorize the City ~~Auditor and~~ Comptroller to expend up to \$120,000 from the Public Liability Fund to cover the Latham & Watkins and Worley Schwartz representation of the City and former employees in the case.

The firms will proceed with the case on an hourly billing basis pursuant to the terms of their retainer agreement.

With this action the cumulative authorized for this matter is \$970,000; \$850,000 has been paid to Latham & Watkins.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

The City Council on February 5, 2008, voted in Closed Session on Item CS-2, *City of San Diego v. Sunroad Enterprises, et al.*, San Diego Superior Court Case No. GIC 877054, additional authority for outside counsel (\$100,000 for Latham and Watkins and \$20,000 for Stephenson Worley Schwartz Garfield & Prairie LLP). The motion was made by Councilmember Frye and the second by Council President Pro Tem Madaffer. The motion passed 7 to 0 with Councilmember Hueso absent.

On December 4, 2007, Council authorized retention of Latham & Watkins and authorized an amount not to exceed \$850,000. (R-303278)

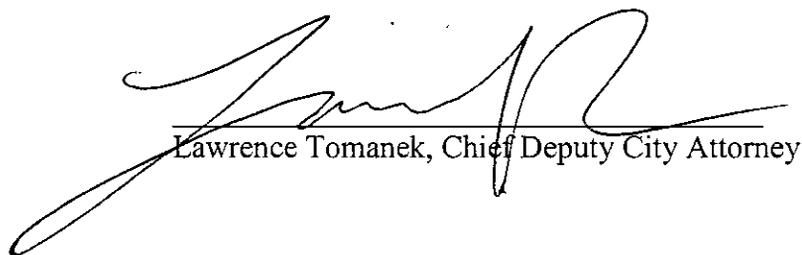
On July 31, 2007 in Closed Session, Council authorized retention of Latham & Watkins.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

N.A.

KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable):

Law firms of Latham & Watkins and Worley Schwartz.



Lawrence Tomanek, Chief Deputy City Attorney

**The City of San Diego
CERTIFICATE OF CITY AUDITOR AND COMPTROLLER**

000267

CERTIFICATE OF UNALLOTTED BALANCE
ORIGINATING

AC 2800924
DEPT. NO.: 45

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: _____ Fund: _____

Purpose: _____

Date: _____ By: _____
AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
TOTAL AMOUNT										

FUND OVERRIDE

CERTIFICATION OF UNENCUMBERED BALANCE

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed: \$120,000.00

Vendor: Latham & Watkins, LLP

Purpose: Authorize the continued retention of Latham & Watkins and Worley Schwartz, as co-counsel, to defend the case of the City of San Diego v. Sunroad Enterprises. Authorize the City Comptroller to expend up to \$120,000 from the Public Liability Fund for the coverage of L&M (\$100k) and W. Schwartz (\$20k) for legal fees and costs related to this matter.

Date: June 26, 2008 By: Pam Halbur 6/26/08
AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
001	0	81140	82240		4141	082240				\$120,000.00
TOTAL AMOUNT										\$120,000.00

FUND OVERRIDE

000269

RESOLUTION NUMBER R- _____

DATE OF FINAL PASSAGE _____

A RESOLUTION AUTHORIZING THE CITY ATTORNEY TO CONTINUE THE AGREEMENT WITH LATHAM & WATKINS IN AN AMOUNT UP TO \$100,000 AND WITH WORLEY SCHWARTZ GARFIELD & PRAIRIE LLP IN AN AMOUNT UP TO \$20,000 TO PROVIDE LEGAL SERVICES IN CONNECTION WITH THE DEFENSE OF THE CITY IN THE CASE OF THE *PEOPLE OF THE STATE OF CALIFORNIA AND THE CITY OF SAN DIEGO V. SUNROAD CENTRUM, L.P., SAN DIEGO SUPERIOR COURT CASE NO. GIC 877054* AND AUTHORIZING THE CITY COMPTROLLER TO EXPEND RELATED FUNDS.

WHEREAS, the City of San Diego [City] previously retained the firm of Latham & Watkins to provide litigation and legal advisory in connection with the defense of the City in the case of *The People of the State of California and the City of San Diego v. Sunroad Centrum, L.P.*, San Diego Superior Court Case No. GIC877054; and

WHEREAS, the City previously retained the firm of Worley Schwartz Garfield & Prairie LLP (formerly known as Stephenson Worley Garratt Schwartz Garfield & Prairie [Worley Schwartz] to represent the separate interests of two former city employees; and

WHEREAS, Latham & Watkins and Worley Schwartz have provided the legal support services requested by the City on an ongoing basis; and

WHEREAS, The City Council on February 5, 2008, voted in Closed Session on Item CS-2, *City of San Diego v. Sunroad Enterprises, et al.*, San Diego Superior Court Case No. GIC-877054, additional authority for outside counsel (\$100,000 for Latham & Watkins and \$20,000 for Worley Schwartz). The motion was made by Councilmember Frye and the second by Council President Pro Tem Madaffer. The motion passed 7 to 0 with Councilmember Hueso absent; NOW THEREFORE,

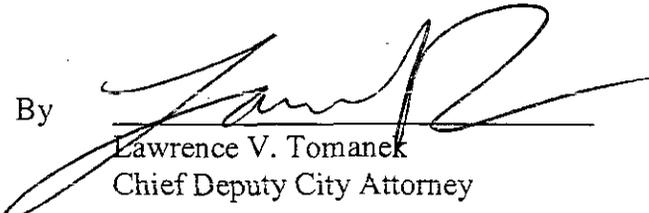
BE IT RESOLVED, that the Council authorizes the continued retention of Latham & Watkins and authorizes the expenditure of an amount not to exceed \$100,000 for paying attorney's fees as described above.

BE IT RESOLVED, that the Council authorizes the continued retention of Worley Schwartz and authorizes the expenditure of an amount not to exceed \$20,000 for paying attorney's fees as described above.

BE IT FURTHER RESOLVED, that the Council authorizes the City Comptroller to allocate and expend \$120,000 from the Public Liability Fund.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By



Lawrence V. Tomanek
Chief Deputy City Attorney

LVT:ca
July 2, 2008
Audit. Cert.: AC 2800924
Or.Dept: City Attorney
R-2009-17

000271

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor