

000487	REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO	1. CERTIFICATE NO. (FOR AUDITOR'S USE ONLY) N/A
TO: CITY ATTORNEY	2. FROM (ORIGINATING DEPARTMENT): General Services / Storm Water Pollution Prevention Division	3. DATE: 03/28/07

4. SUBJECT:
Project SWELL Ongoing Copyright and License Agreement with the City of Oceanside

5. PRIMARY CONTACT (NAME, PHONE, & MAIL STA.) Chris Zirkle, 619.525.8644, MS 27A	6. SECONDARY CONTACT (NAME, PHONE, & MAIL STA.) Deborah Castillo, 619.525.8649, MS 27A	7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED <input type="checkbox"/>
---	---	---

8. COMPLETE FOR ACCOUNTING PURPOSES				9. ADDITIONAL INFORMATION / ESTIMATED COST:	
FUND	105081			City of Oceanside	\$10,750
DEPT.	105081			San Diego Coastkeeper	- \$10,750
ORGANIZATION	2007				\$0
OBJECT ACCOUNT	4151				
JOB ORDER	002007				
C.I.P. NUMBER					
AMOUNT	\$0				

10. ROUTING AND APPROVALS							
ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIG. DEPT.	<i>[Signature]</i>	4/17/07	8	DEPUTY CHIEF	<i>[Signature]</i>	5/8/07
2	E.O.C.	<i>[Signature]</i>	4/19/07	9	C.O.O.	N/A	
3	E.A.S.	<i>Allison Shenwood</i>	4/24/07	10	CITY ATTORNEY	<i>Fabrizio M. Castillo</i>	5/9/07
4	LIAISON OFFICE			11	ORIG. DEPT.	<i>[Signature]</i>	5/11/07
5	F.M.	<i>[Signature]</i>	5/1/07		DOCKET COORD:	<i>[Signature]</i>	
6	AUDITOR	<i>Marilyn Nguyen</i>	5/3/07		COUNCIL LIAISON	<i>[Signature]</i>	
7					COUNCIL PRESIDENT	<i>[Signature]</i>	

SPOB CONSENT ADOPTION
 REFER TO: _____ COUNCIL DATE: 6/5/07

11. PREPARATION OF: RESOLUTIONS ORDINANCE(S) AGREEMENT(S) DEED(S)

1. Authorize the Mayor, or designee, to enter into a Copyright and License Fee Agreement with the City of Oceanside in Fiscal Year 2007 for the term of five years maximum for the Project SWELL 6th Grade Curriculum, and authorize the Mayor to enter into the same agreement for future grade level curricula when requested for use in the City of Oceanside School District.
2. Authorizing the City Auditor and Comptroller to accept and deposit a Copyright License Fee in the amount of \$10,750 for the 6th grade curricula from the City of Oceanside into the Think Blue Fund (#105081) in Fiscal Year 2007.
3. Authorizing the City Auditor and Comptroller to appropriate and expend \$10,750 for the 6th grade curricula from the Think Blue Fund (#105081) to San Diego Coastkeeper.
4. Certifying that this activity is not a "project", and, therefore, exempt from CEQA pursuant to CEQA Guidelines Section 15060(c)(3).

11A. STAFF RECOMMENDATIONS:
Staff recommends Council adopt the resolution.

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

COUNCIL DISTRICT(S): All

COMMUNITY AREA(S): All

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

ATTACHMENTS: Copyright License and Fee Agreement for Project SWELL 5th Grade Curriculum with the City of Oceanside, Resolution # RR-301830, authorizing SWWPP to enter into a Copyright and Licensing Fee agreement. Copyright Assignment and Agreement for Project SWELL with San Diego Coastkeeper, Resolution # RR-301323.

CITY CLERK INSTRUCTIONS: Please forward four (4) originals and two (2) copies of the agreement, along with four (4) copies of the resolutions to GS/ Storm Water Pollution Prevention Division, Attention: Jennifer Nichols Kearns, MS 27A.

000489

EXECUTIVE SUMMARY SHEET

REPORT
NO.:

DATE REPORT ISSUED: 03/29/07
ATTENTION: Council President and City Council
ORIGINATING DEPARTMENT: General Services / Storm Water Pollution Prevention Division
SUBJECT: Accept Funds from the City of Oceanside for Project SWELL Copyright License for 6th grade curricula and expend to San Diego Coastkeeper
COUNCIL DISTRICT(S): All
STAFF CONTACT: Chris Zirkle, Deputy Director, x 58644, MS 27A

REQUESTED ACTION:

Approve the Agreement and authorize the Mayor, or designee, to enter into a Copyright and License Agreement with the City of Oceanside for Project SWELL 6th grade level curricula, along with future curricula as needed, and to accept and appropriate funds in the amount of \$10,750 into the THINK BLUE Fund (#105081) for Copyright and Licensing Fees, and expend funds to San Diego Coastkeeper, Licensor of Project SWELL.

STAFF RECOMMENDATION:

Staff recommends approval of the Resolution and Agreement.

EXECUTIVE SUMMARY:

The City of San Diego Storm Water Pollution Prevention Division is responsible for reducing the effects of storm water pollution or urban runoff on the City's recreational waters. In addition to water quality monitoring, enforcement activities, regional watershed coordination and oversight of the City's municipal activities, the Division is also responsible for public outreach and changing the pollution related behaviors of residents, businesses, industries and school-aged children.

In an effort to increase the awareness and affect behavioral changes within the community regarding storm water pollution, the Storm Water Pollution Prevention Division initiated an extensive San Diego specific K – 12 curriculum development effort on behalf of San Diego City Schools and in conjunction with San Diego Coastkeeper. Currently, the City of San Diego works with San Diego Coastkeeper on Project SWELL (Stewardship: Water Education for Lifelong Leadership), which enhances the existing science curriculum in San Diego City Schools. Project SWELL currently reaches more than 20,000 4th, 5th and 6th graders.

On August 15, 2006, the Council approved the Project SWELL Licensing and Fee Agreement with the City of Oceanside, (R-301830) for the 5th Grade Curriculum. Based on the success of the 5th grade curriculum, the City of Oceanside wants to purchase the Project SWELL curriculum for the 6th grade and have the ongoing option of purchasing additional Project SWELL curricula in existence and those in development. Future purchase requests would require payment of approximately \$10,750 per grade level to the City of San Diego's Think Blue fund (105081) (#10581). The funds would then be expended to San Diego Coastkeeper for the Licensing fee and customization of each curriculum. The fees would be deposited, appropriated and expended from the Think Blue Fund (#105081).

The Agreement will provide funding for payment to San Diego Coastkeeper for the Project SWELL Copyright and Licensing Fee, which provides water quality and environmental education for elementary school children throughout San Diego in accordance with the requirements of The Municipal Permit (Order No. 2007-0001).

FISCAL CONSIDERATIONS:

000498
The City will accept Copyright and Licensing Fees from the City of Oceanside, appropriate and expend funds into and from the Think Blue Fund (#105081) in the amount of \$10,750 for the 6th grade curricula. The fees would be used to reimburse San Diego Coastkeeper for costs incurred in the preparation and customization of the specific curricula per the Project SWELL Copyright and Licensing Agreement between the City of San Diego, San Diego Coastkeeper and the City of Oceanside.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

Resolution No. R-301830 was adopted by the Council on April 7, 2006 for Project SWELL (Stewardship: Water education for Lifelong Leadership) Copyright Assignment and Agreement with San Diego Coastkeeper. Resolution # RR-301830 was adopted by Council on August 15, 2006 authorizing SWPP Division to enter into a Copyright and Licensing Fee agreement and to accept funds for Project SWELL 5th Grade Curriculum from the City of Oceanside.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

San Diego Coastkeeper is actively promoting the Project SWELL curricula in the community and via their website at www.sdcoastkeeper.org to raise contributions and solicit partnerships in order to fund Project SWELL development costs. The City of San Diego has information about Project SWELL curricula posted on the Think Blue website at: www.ThinkBlue.org.

KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable):

City of San Diego, San Diego Coastkeeper and the City of Oceanside.


Mario X. Sierra
General Services Department


For Richard F. Haas
Deputy Chief of Public Works

000491

(R-2007-1100)

RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

BE IT RESOLVED, by the Council of the City of San Diego that the Mayor or his designee, is authorized to enter into a Copyright and License Fee Agreement with the City of Oceanside in Fiscal Year 2007 for the term of five years maximum for the Project SWELL 6th Grade Curriculum, and authorize the Mayor to enter into the same agreement for future grade level curricula when requested for use in the City of Oceanside School District.

BE IT FURTHER RESOLVED, that the City Auditor and Comptroller is authorized to accept and deposit a Copyright License Fee in the amount of \$10,750 for the 6th grade curricula from the City of Oceanside into the Think Blue Fund (Fund No. 105081) in the Fiscal Year 2007.

BE IT FURTHER RESOLVED, that the City Auditor and Comptroller is authorized to appropriate and expend \$10,750 for the 6th grade curricula for the Think Blue Fund (Fund No. 105081) to San Diego Coastkeeper.

BE IT FURTHER RESOLVED, that this activity is not a "project," and, therefore, exempt from California Environmental Quality Act [CEQA] pursuant to CEQA Guidelines Section 15060 (c)(3).

000492

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By Frederick M. Ortlieb
Frederick M. Ortlieb
Deputy City Attorney

FMO:sc
05/09/07
Aud.Cert.: N/A
Or.Dept: General Services
R-2007-1100

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

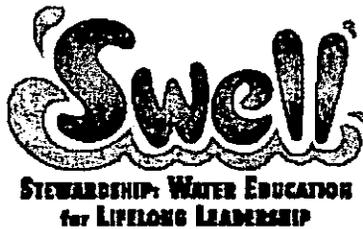
By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor



**Copyright License and Fee Agreement for the Project SWELL 6th grade curriculum
in the City of Oceanside School District**

This license agreement (the "Agreement") is made and entered into as of _____, 2007 (the "Effective Date"), by and among San Diego Coastkeeper, a California non-profit Corporation, and the City of San Diego (together referred to herein as "LICENSORS"), and the Oceanside Unified School District, and the City of Oceanside (each herein referred to individually as "LICENSEE" and together as "LICENSEES") to use the Project SWELL 6th grade curriculum (referred to herein as "LICENSED MATERIALS").

RECITALS:

WHEREAS, Licensors together are the owners of all the right, title and interest, including without limitation all copyright and other intellectual property rights in the Licensed Materials, as they are more fully defined below; and

WHEREAS, Licensees desire to obtain, and the Licensors are willing to grant, a license upon the terms and conditions of this Agreement to licensees in order for Licensees to use the Licensed Materials for instruction in the Oceanside Unified School District's 6th grade classes;

AGREEMENT:

NOW, THEREFORE, the parties hereto agree as follows:

1. License

LICENSORS own all copyrights and other intellectual property interests in Project SWELL – *Stewardship: Water Education for Lifelong Leadership*, a K-12th grade science curriculum ("Project SWELL"). LICENSORS hereby grant LICENSEE the right and license to use Project SWELL only under the terms of this Agreement. Subject to the terms of this Agreement, Licensee shall have a non-exclusive, non-transferable, five-year license to use Project SWELL. The Project SWELL curriculum provided to LICENSEE is licensed, not sold.

2. Fee

Upon execution of this Agreement, LICENSEE shall pay to Licensor a one-time fee for the Project SWELL 6th grade curriculum and the cost to customize the curriculum for Oceanside waterways in the amount of Ten Thousand Seven Hundred and Fifty Dollars (\$10,750).

3. Copyright/Ownership

The license of the Project SWELL curriculum does not constitute a transfer of copyright interests in any manner. Unless otherwise specified, the Project SWELL curriculum is for non-commercial use. LICENSEE may not modify, copy, distribute, transmit, display, perform, reproduce, publish, license, create derivative works from, transfer, or sell any information, products, or services obtained from the Project SWELL curriculum to another party in any form, except as defined herein.

4. Limited Rights to Reproduction and Distribution

Any reproduction or redistribution of the curriculum not in accordance with the License Agreement is expressly prohibited by law, and may result in severe civil and criminal penalties. Violators will be prosecuted to the maximum extent possible.

5. Transferability

The rights granted to the LICENSEE under this Agreement may not be assigned, transferred, or sub-licensed to any third party.

6. Authorized Users

- 6.1. The Project SWELL curriculum may be used by "Authorized Users" which shall mean the following: all enrolled students or employees of LICENSEE, temporary employees, and contractors and consultants of the LICENSEE who work on-Site. "Site" as used herein shall mean any elementary, middle, or high school located in the City of Oceanside. LICENSEE shall ensure that any electronic copies of the Project SWELL curriculum used by temporary employees, contractors, and consultants are immediately removed from such individual's computers once they cease working at LICENSEE's Sites and that any contract or other agreement between LICENSEE and any temporary employees, contractors, or consultants, includes language stating that all electronic and hard copies of the Project SWELL curriculum shall be returned to LICENSEE upon termination of the applicable contract or when such temporary employees, contractors, or consultants cease working at Sites as defined herein.

7. LICENSEE Rights & Obligations

- 7.1. LICENSEE has the right to print an unlimited number of documents that are part of the Project SWELL curriculum, for use by Authorized Users at the Site.
- 7.2. The LICENSEE acknowledges the Project SWELL curriculum is licensed, not sold, to the LICENSEE for use only under the terms and conditions of this license. If LICENSEE does not agree to the terms of this License, LICENSEE must not use the Project SWELL curriculum, and LICENSEE must promptly return the Project SWELL curriculum to either San Diego Coastkeeper or the City of San Diego.
- 7.3. LICENSEE shall have the right to transfer an unlimited number of resource files that are part of the Project SWELL curriculum onto computers at the Site, for use by Authorized Users.
- 7.4. Authorized Users (other than students) may also use the Project SWELL curriculum on LICENSEE's desktop and portable computers which, on a temporary basis, are away

000495

from LICENSEE's facilities, provided that it is for the purpose of using the Project SWELL curriculum at the Site.

- 7.5. LICENSEE shall be solely responsible for all expenses incurred in the printing, installation, and implementation of the Project SWELL curriculum by LICENSEE.
- 7.6. The LICENSEE may not sell, lend, lease, or transfer the Project SWELL curriculum to another party in any form.
- 7.7. LICENSORS may, at its discretion, allow approved changes to the Project SWELL curriculum to accommodate geographic description revisions. LICENSORS must approve any Project SWELL curricula writer who will make the revisions. LICENSOR will retain all copyright and other intellectual property rights in any such revisions, and LICENSEE agrees to provide such written assignments as are necessary to memorialize LICENSOR's ownership of such revisions.

8. Terms & Termination

- 8.1. **Term.** The term of this Agreement commences on the day and year first set forth on this Agreement.
- 8.2. **Termination.** LICENSORS may terminate this Agreement and the rights and licenses granted hereunder in the event that LICENSEE shall have committed a material breach of any term of this Agreement and shall not have remedied the same (if capable of remedy) within twenty (20) days of notification in writing by either Licensor. On termination of this Agreement, LICENSEE shall immediately cease to distribute or make available the Project SWELL curriculum.
- 8.3. **Renewal.** If the parties determine the relationship to be mutually beneficial they may renew the Agreement based on the terms set forth in this Agreement for an additional term of any length by mutual written assent.

9. Limited Warranty; Limitations on Liability; Limitations on Claims

- 9.1. Precautions have been taken in preparation of the Project SWELL curriculum. LICENSORS assume no responsibility for any errors or omissions. Neither LICENSORS nor writers of the Project SWELL curriculum are licensed in the fields of curricula development or pollution prevention in the state of California, nor in any other state. Content of the Project SWELL curriculum is based solely on the opinions of the Project SWELL curricula writer. LICENSEE agrees that LICENSORS shall not be liable for damages or harm that results from the use or implementation of the Project SWELL curriculum or the opinions stated therein.
- 9.2. No refund will be given in the event of any issues related to LICENSEE's lack of knowledge regarding implementation of the Project SWELL curriculum.
- 9.3. The Project SWELL curriculum is provided "AS-IS" to the fullest extent allowed by law. Any and all other warranties are expressly disclaimed, including but not limited to any implied warranties of merchantability, quality, or fitness for a particular purpose. Author shall not be liable for any loss of use, interruption of activity, or indirect, special, incidental, or consequential damages of any kind whether under this agreement or otherwise. There is no warranty that the Project SWELL curriculum will fulfill any of LICENSEE's particular purposes or needs. This disclaimer must be included, in writing, whenever LICENSEE distributes to Authorized Users the Project SWELL curriculum.

000496

10. Settlement of Disputes

- 10.1. **Arbitration.** Any claim, dispute or controversy arising out of or relating to this Agreement shall be submitted by the parties to arbitration. The award rendered by the arbitrators shall include costs of arbitration, reasonable attorneys' fees, and reasonable costs for expert and other witnesses, and judgment on such award may be entered in any court having jurisdiction; provided, however, that nothing in this Agreement shall be interpreted as preventing either party from seeking injunctive relief from the courts to protect against infringement, misappropriation, or other violation of its name, trademarks, or copyright, trade secret, or other intellectual property or proprietary rights.
- 10.2. **Governing Law.** This Agreement is governed by the laws of California. The parties consent to jurisdiction in the State of California on any matters relating to this Agreement. The parties further agree that any dispute that arises from or relates to this Agreement not subject to the arbitration provisions of this Agreement shall be resolved in the courts of the County of San Diego.

11. General Provisions

- 11.1. **Entire Agreement.** This Agreement contains the entire agreement between the parties, and supersedes all prior agreements, representations and understandings of the parties, relating to the subject matter of this Agreement.
- 11.2. **Headings.** The headings in this Agreement are included for convenience only and shall not be used in the interpretation of any provision in this Agreement or affect any right or obligation under this Agreement. Each party has participated in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement.
- 11.3. **Waiver.** Modifications to this Agreement are only valid if they are recorded in writing and signed by authorized representatives of LICENSOR and LICENSEE. No waiver of a breach or any right or remedy relating to this Agreement shall be effective unless made in writing signed by an authorized representative of the party waiving the agreement; and no such waiver shall be deemed a waiver of any future breach or any right or remedy relating to this Agreement, unless the writing so specifies.
- 11.4. **Severability.** If any provision of this Agreement or its application to any person or circumstances is held to be unenforceable or invalid by any court of competent jurisdiction, its other applications and the remaining provisions of this Agreement shall not be affected and shall be enforceable to the fullest extent permitted by law.

000497

12. Notice Requirements

All notices under this Agreement shall be given in writing and shall be deemed delivered when dispatched by registered mail (return receipt requested) or delivered personally to the other parties at the addresses set forth below:

To Licensee:

Oceanside Unified School District
2111 Mission Ave.
Oceanside, CA 92054
Attention: Robyn Phillips
Assistant Superintendent

To Licensee:

City of Oceanside
300 N. Coast Highway
Oceanside, CA 92054
Attention: City Manager

With a copy to:

City Attorney's Office
300 N. Coast Highway
Oceanside, CA 92054
Attention: Barbara Hamilton

To Licensor:

City of San Diego
San Diego, CA 92101
Attention: Storm Water Pollution
Prevention Division

With a copy to:

Office of the City Attorney
1200 Third Avenue, 11th Floor
San Diego, CA 92101
Attention: Fritz Ortlieb

To Licensor:

San Diego Coastkeeper
2825 Dewey Road, Suite 200
San Diego, CA 92106
Attention: Kate Hanley

