Council Meeting of
August 4, 2009

Honorable Mayor and Members
of the City Council
City Hall
Torrance, California

Members of the Council:

SUBJECT: Public Works – Approve contract amendment reflecting proper legal name for Smurfit Recycling Company. Expenditure: Not applicable.

RECOMMENDATION

Recommendation of the Public Works Director that City Council approve an amendment stating the proper legal name for Smurfit Recycling Company in the existing contract (C2007-115) for recycling services with the City.

Funding

Not applicable.

BACKGROUND/ANALYSIS

On July 3, 2007, the City Council approved a contract for recycling services for the City with Smurfit Recycling Company, Inc. The contract term is until July 2010, with two one-year extensions as an option.

It has recently come to our attention that the proper legal name for Smurfit Recycling Company, Inc. is actually Smurfit-Stone Container Company, Inc., DBA Smurfit-Stone Recycling Company Inc. Staff is requesting approval of an amendment to reflect the correct legal name of the company in the contract.

Respectfully submitted,

ROBERT J. BESTE
Public Works Director

By: Matthew Knapp
Sanitation Services Manager

CONCUR:

For
Robert J. Beste
Public Works Director

LeRoy J. Jackson
City Manager

Attachments: A. Amendment
B. Contract

8B

ATTACHMENT A

FIRST AMENDMENT TO AGREEMENT (C2007-115)

This First Amendment to Agreement C2007-115 is made and entered into as of August __ 2009, by and between the CITY OF TORRANCE ("CITY"), a municipal Corporation, and Smurfit-Stone Container Enterprises, Inc., a Delaware Corporation DBA Smurfit Recycling Company ("CONTRACTOR").

RECITALS:

A. CITY and CONTRACTOR entered into an Agreement on July 3, 2007, whereby CONTRACTOR agreed to accept, pay for, process and market the recyclable materials from the City's recycling program.

B. CITY is satisfied with the level of service provided by the CONTRACTOR.

C. Recently, CITY learned that the proper legal name of Smurfit Recycling Company is Smurfit-Stone Container Enterprises, Inc. a Delaware Corporation DBA Smurfit Recycling Company.

D. The parties wish to amend the contract to reflect Smurfit Recycling Company's proper legal name.

AGREEMENT:

1. The first paragraph of the agreement is amended to read in its entirety as follows:

   "This CONTRACT SERVICES AGREEMENT ("Agreement") is made and entered into as of July 3, 2007 (the "Effective Date"), by and between the CITY OF TORRANCE, a municipal corporation ("CITY"), and Smurfit-Stone Container Enterprises, Inc. , A Delaware Corporation DBA Smurfit Recycling Company. ("CONTRACTOR").

2. The person(s) executing this Agreement on behalf of the CONTRACTOR warrant that (i) the CONTRACTOR is duly organized and existing; (ii) they are duly authorized to execute this Agreement on behalf of the CONTRACTOR; (iii) by so executing this Agreement, the CONTRACTOR is formally bound to the provisions of this Agreement; and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which the CONTRACTOR is bound.

3. In all other respects, the Agreement entered into as of July 3, 2007, between CITY and CONTRACTOR is ratified and reaffirmed and is in full force and effect.

CITY OF TORRANCE,
A Municipal Corporation

By _____
Frank Scotto, Mayor

Smurfit-Stone Container Enterprises, Inc. a Delaware Corporation DBA Smurfit Recycling Company

By _____
Michael Oswald,
Vice President,
Recycling Division

ATTEST:

_____
Sue Herbers, City Clerk

APPROVED AS TO FORM:

JOHN L. FELLOWS III
City Attorney

By _____

ATTACHMENT B

CONTRACT SERVICES AGREEMENT

This CONTRACT SERVICES AGREEMENT ("Agreement") is made and entered into as of July 3, 2007 (the "Effective Date"), by and between the CITY OF TORRANCE, a municipal corporation ("CITY"), and Smurfit Recycling Company, Incorporated. ("CONTRACTOR").

RECITALS:

A. CITY wishes to retain the services of an experienced and qualified CONTRACTOR to accept, pay for, process and market the recyclable materials from the City's recycling program.

B. CONTRACTOR represents that it is qualified to perform those services.

AGREEMENT:

1. **SERVICES TO BE PERFORMED BY CONTRACTOR**
CONTRACTOR will provide the services listed in its Bid submitted in response to the CITY's Notice inviting Bids. The Notice Inviting Bids is made a part of this Agreement. A copy of the Bid is attached as Exhibit A. CONTRACTOR warrants that all work and services set forth in the Bid will be performed in a competent, professional and satisfactory manner.

2. **TERM**
Unless earlier terminated in accordance with Paragraph 14 below, this Agreement will continue in full force and effect from the Effective Date through July 11, 2010.

This Agreement will extend automatically for two one-year extensions on the same terms and conditions unless either party notifies the other in writing of its decision not to extend at least ninety days prior to the end of the initial Term or at least ninety days prior to the end of the first extension.

3. **COMPENSATION**
A. CITY's Fee.

For services rendered pursuant to this Agreement, CONTRACTOR agrees to pay CITY the sum of $48.00 per ton ("Agreement Sum") for all materials collected in the Torrance Recycling program that are delivered to CONTRACTOR's facility, in accordance with CONTRACTOR'S Bid. CONTRACTOR may sell the recyclable materials in any lawful manner it chooses.

C2007-115

COPY

B. Schedule of Payment.

CONTRACTOR agrees to remit payment to the CITY for the recyclable materials prior to the twenty-fifth (25th) day of the following month. A penalty of 10% of the prior month's remittance will be imposed if payment is not received by the due date. The 10% penalty will be applied each month until the remittance is paid. In addition, interest at the rate of 0.5% per month will be assessed from the date which the remittance first became delinquent until paid.

4. ADDITIONAL SERVICES

The CITY has the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Proposal or make changes by altering, adding to or deducting from the work. No extra work may be undertaken unless a written order is first given by the CITY, incorporating any adjustment in the Agreement Sum, or the time to perform this Agreement. It is expressly understood by the CONTRACTOR that the provisions of this paragraph do not apply to services specifically set forth in the Proposal or reasonably contemplated in the Proposal.

5. REPORTS

CONTRACTOR will furnish a monthly summary report which lists total City of Torrance recycling tonnage handled over the calendar month, the market value of all recyclable materials, processing costs and breakdown of types of materials. Categories used for the material breakdown must include at a minimum; Aluminum, Polyethylene Terephthalate (PET) and non-PET, Glass, Tin (or Metals), High Density Polyethylene (HDPE), Mixed Plastics, Newspaper, Mixed Paper and Old Corrugated Cardboard (OCC) as defined below.

Aluminum – aluminum cans, foil, trays and food containers

High Density Polyethylene (HDPE) – plastic bottles, bags or containers of any color with the designated HDPE (2) symbol

Glass - any food or beverage container, bottles or jars

Metals – steel or bi-metal cans, including but not limited to: empty aerosol cans, wire clothes hangers, empty paint cans, pie plates, cake pans, and vegetable and soup cans.

Mixed paper – including but not limited to: hard and soft cover books, magazines, phone books, cardboard boxes, catalogs, cereal-type and dry food boxes, colored paper, junk mail, fax paper, frozen food boxes, waxed paper cartons, copy and computer paper, egg cartons, envelopes, fax paper, aseptic packaging (juice boxes), milk and juice cartons, pizza and bakery boxes, newspaper and glossy inserts, paper bags, post-it notes, toilet paper tubes and wrapping paper.

Mixed plastics – plastic bottles, bags or containers with the designated 3, 4, 5, 6 and 7 symbols. Also includes items such as (but are not limited to): styrofoam (cup size and larger), plastic bags from newspaper, grocery and department stores, 6-pack beverage rings, butter tubs, empty motor oil or cleanser containers, juice bottles, ketchup bottles, soda bottles, syrup bottles, shampoo bottles, and milk and water jugs.

Newspaper – newspaper, including all inserts with and within the newspaper

Other - other materials as mutually agreed by City and Contractor

Polyethylene Terephthalate (PET) – plastic bottles, bags or containers with the designated PET (1) symbol

Other categories to be determined by agreement between CONTRACTOR and CITY. The summary report must be signed under penalty of perjury. The monthly report will be mailed to the CITY prior to the tenth (10th) day of the following month. Weight tickets will be provided daily for each load handled. CONTRACTOR must report the quantity of materials received that were recycled.

6. **OPERATIONS**

CONTRACTOR will provide for the term of this AGREEMENT, and any extension or renewal thereof, at least one facility consisting of land, buildings, machinery and personnel wherein the CITY may deliver and unload recyclable materials as defined above, and from which CONTRACTOR will handle, process and market the said material in a safe, sanitary, legal and permanent manner.

CONTRACTOR will provide sufficient trained personnel at all times to operate the said facility and further, that each such employee will be afforded the protection of worker's compensation in accordance with the provisions of Section 3700 of the Labor Code at all times during the term of this AGREEMENT.

CONTRACTOR will provide all equipment, both fixed and portable, together with all necessary tools, spare parts, maintenance, upkeep, repairs to modifications, in order to keep the said facility operation so as to meet the requirements of the AGREEMENT.

CONTRACTOR will provide any inspection it feels necessary in order to discover and separate deleterious materials from the recyclable materials which may tend to incapacitate the facility of the machinery, and the CITY will have no obligation to do so, except as may be specifically provided in this AGREEMENT.

CONTRACTOR will make arrangements for a suitable place for viewing, and will make available any safety equipment or apparel that may be reasonably required to accommodate visitors to the facility from time to time.

Within thirty (30) days of signed agreement, CONTRACTOR will, in consultation with the CITY, prepare a written contingency plan or plans satisfactory to the CITY for disposition of the CITY'S recyclable materials for short periods of time should CONTRACTOR'S facility or facilities become unavailable for recyclable materials for processing for any reason during the term of this AGREEMENT or in the event of a strike or work stoppage by CITY employees, unless such a contingency plan is already on file with the CITY.

CONTRACTOR may move or relocate its facility or facilities from time to time during the term of this AGREEMENT, but will maintain the facility or facilities within a radius of fifteen (15) miles of the Torrance City Hall.

7. **INSPECTION OF FACILITY**
CONTRACTOR agrees to keep the facility open for inspection by the CITY at reasonable times and upon reasonable notice, and will allow bona fide representatives of the CITY to inspect the facility from time to time for compliance with this AGREEMENT and for information seeking purposes.

8. **DRIVER'S STAND-BY TIME**
CONTRACTOR will provide for unloading of recycling trucks within fifteen (15) minutes after arrival at site. Failure to provide this turn-around time will be considered a basis for default provided, however, that trucks may occasionally be delayed for a longer period on condition that the delay does not amount to more than a thirty (30) minute delay of two (2) trucks per day.

9. **LIENS AND CLAIMS PROHIBITED**
CONTRACTOR may not permit any lien or claim to be filed or prosecuted against the CITY on account of any labor or material furnished at the request of or to the CONTRACTOR, and agrees to assume responsibility for satisfaction of any such lien so filed or prosecuted.

10. **SAFETY**
CONTRACTOR will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the operations at the said recycling facility.

CONTRACTOR will take all reasonable precautions for safety of, and will provide all reasonable protection to prevent damage, injury or loss to:

(a) All employees at the site and all other persons who may be affected thereby, including employees of the CITY. Personnel of the CITY will be subject to the reasonable direction or supervision of CONTRACTOR in order to implement safety precautions and programs.

(b) All the work and all the materials and equipment associated with the operation, whether on or off the site, under the care, custody or control of CONTRACTOR, or any of its subcontractors, or the CITY.

(c) Other property at any such facility adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, or relocation or replacement during the term of this AGREEMENT.

(d) CONTRACTOR must keep all driveways, traffic lanes, walkways and aisles clear and in good repair. Driveways, traffic lanes, walkways and aisles, when not properly defined, must be clearly defined by painted lines, curbings or other methods of marking.

11. **PATENT RIGHTS**

CONTRACTOR agrees to save, keep, bear harmless and fully indemnify the CITY and any of its officers, agents and employers from all damages, costs or expenses in law or equity that may at any time arise or be set up for any infringement of the patent rights of any person or persons in consequence of the use by the CITY, or by any of its officers, agents and employees, of articles supplied under this AGREEMENT, and of which the CONTRACTOR is not the patentee or assignee, or which the CONTRACTOR is not lawfully entitled to sell or use.

12. **ADVERTISING**

CONTRACTOR will not, without first obtaining written consent from the CITY, in any manner advertise or otherwise publish the fact that CONTRACTOR has contracted with the CITY to provide recyclable materials receiving processing and marketing facility services.

13. **CERCLA INDEMNIFICATION**

CONTRACTOR shall defend, indemnify and hold harmless the City, the City Council, each member thereof, and all employees and officers of the City from and against any and all losses, fines, penalties, claims, damages and liabilities or judgments including attorney fees, arising from or attributed to any repair, or cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or any other plan concerning any hazardous substances in any solid waste stored or disposed of by the bidder or their activities resulting in a release of hazardous substances into the environment. This indemnity is intended to operate as an agreement pursuant to Section 107 (e) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) 42 U.S.C.A. Section 9607 (e) and California Health and Safety code Section 24364 so as to protect, hold harmless and indemnify the City from all forms of liability under CERLA, other statutes or common law or any and all matters addressed in this request for proposal and shall be limited to the extent of the City's liability. This section shall survive the expiration of the period during which the CONTRACTOR'S services are provided. The CERLA liability provision required herein shall be applicable to all solid waste and recyclable materials the CONTRACTOR may dispose of.

14. TERMINATION OF AGREEMENT

A. Termination by CITY for Convenience.

1. CITY may, at any time, terminate the Agreement for CITY's convenience and without cause.

2. Upon receipt of written notice from CITY of such termination for CITY's convenience, CONTRACTOR will:

   a. cease operations as directed by CITY in the notice;
   b. take actions necessary, or that CITY may direct, for the protection and preservation of the work; and
   c. except for work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

3. In case of such termination for CITY's convenience, CONTRACTOR will be entitled to receive payment for work executed; and costs incurred by reason of such termination, along with reasonable overhead and profit on the work not executed.

B. Termination for Cause.

1. If either party fails to perform any term, covenant or condition in this Agreement and that failure continues for 15 calendar days after the nondefaulting party gives the defaulting party written notice of the failure to perform, this Agreement may be terminated for cause; provided, however, that if during the notice period the defaulting party has promptly commenced and continues diligent efforts to remedy the default, the defaulting party will have such additional time as is reasonably necessary to remedy the default.

2. In the event this Agreement is terminated for cause by the default of the CONTRACTOR, the CITY may, at the expense of the CONTRACTOR and its surety, complete this Agreement or cause it to be completed. Any check or bond delivered to the CITY in connection with this Agreement, and the money payable thereon, will be forfeited to and remain the property of the CITY. All moneys due the CONTRACTOR under the terms of this Agreement will be retained by the CITY, but the retention will not release the CONTRACTOR and its surety from liability for the default. Under these circumstances, however, the CONTRACTOR and its surety will be credited with the amount of money retained, toward any amount by which the cost of completion exceeds the Agreement Sum and any amount authorized for extra services.

3. Termination for cause will not affect or terminate any of the rights of the CITY as against the CONTRACTOR or its surety then existing, or which may thereafter accrue because of the default; this provision is in addition to all other rights and remedies available to the CITY under law.

C. Termination for Breach of Law.

In the event the CONTRACTOR or any of its officers, directors, shareholders, employees, agents, subsidiaries or affiliates is convicted (i) of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of a contract or subcontract; (ii) under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a public consultant or contractor; (iii) under state or federal antitrust statutes arising out of the submission of bids or proposals; or (iv) of violation of Paragraph 19 of this Agreement; or for any other cause the CITY determines to be so serious and compelling as to affect CONTRACTOR's responsibility as a public consultant or contractor, including but not limited to, debarment by another governmental agency, then the CITY reserves the unilateral right to terminate this Agreement or to impose such other sanctions (which may include financial sanctions, temporary suspensions or any other condition deemed appropriate short of termination) as it deems proper. The CITY will not take action until CONTRACTOR has been given notice and an opportunity to present evidence in mitigation.

15. FORCE MAJEURE

If any party fails to perform its obligations because of strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental control, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes beyond the reasonable control of the party obligated to perform, then that party's performance shall be excused for a period equal to the period of such cause for failure to perform.

16. RETENTION OF FUNDS

CONTRACTOR authorizes CITY to deduct from any amount payable to CONTRACTOR (whether or not arising out of this Agreement) any amounts the payment of which may be in dispute or that are necessary to compensate CITY for any losses, costs, liabilities, or damages suffered by CITY, and all amounts for which CITY may be liable to third parties, by reason of CONTRACTOR's acts or omissions in performing or failing to perform CONTRACTOR's obligations under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by CONTRACTOR, or any indebtedness

exists that appears to be the basis for a claim of lien, CITY may withhold from any payment due, without liability for interest because of the withholding, an amount sufficient to cover the claim. The failure of CITY to exercise the right to deduct or to withhold will not, however, affect the obligations of CONTRACTOR to insure, indemnify, and protect CITY as elsewhere provided in this Agreement.

17. CITY REPRESENTATIVE

The Public Works Director or their designee is designated as the "City Representative," authorized to act in its behalf with respect to the work and services specified in this Agreement and to make all decisions in connection with this Agreement. Whenever approval, directions, or other actions are required by CITY under this Agreement, those actions will be taken by the City Representative, unless otherwise stated. The City Manager has the right to designate another City Representative at any time, by providing notice to CONTRACTOR.

18. CONTRACTOR REPRESENTATIVE(S)

The following principal(s) of CONTRACTOR are designated as being the principal(s) and representative(s) of CONTRACTOR authorized to act in its behalf with respect to the work specified in this Agreement and make all decisions in connection with this Agreement:

Ryan Beachkofski, Account Manager
John Drucker, General Manager

19. INDEPENDENT CONTRACTOR

The CONTRACTOR is, and at all times will remain as to CITY, a wholly independent contractor. Neither CITY nor any of its agents will have control over the conduct of the CONTRACTOR or any of the CONTRACTOR's employees, except as otherwise set forth in this Agreement. The CONTRACTOR may not, at any time or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of CITY.

20. **BUSINESS LICENSE**
The CONTRACTOR must obtain a City business license prior to the start of work under this Agreement, unless CONTRACTOR is qualified for an exemption.

21. **OTHER LICENSES AND PERMITS**
CONTRACTOR warrants that it has all professional, contracting and other permits and licenses required to undertake the work contemplated by this Agreement.

22. **FAMILIARITY WITH WORK**
By executing this Agreement, CONTRACTOR warrants that CONTRACTOR (a) has thoroughly investigated and considered the scope of services to be performed, (b) has carefully considered how the services should be performed, and (c) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, CONTRACTOR warrants that CONTRACTOR has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services set forth in this Agreement. Should CONTRACTOR discover any latent or unknown conditions that will materially affect the performance of the services set forth in this Agreement, CONTRACTOR must immediately inform CITY of that fact and may not proceed except at CONTRACTOR's risk until written instructions are received from CITY.

23. **CARE OF WORK**
CONTRACTOR must adopt reasonable methods during the term of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and other components to prevent losses or damages, and will be responsible for all damages, to persons or property, until acceptance of the work by CITY, except those losses or damages as may be caused by CITY's own negligence.

24. **CONTRACTOR'S ACCOUNTING RECORDS; OTHER PROJECT RECORDS**
Records of the CONTRACTOR's time pertaining to the project, and records of accounts between CITY and the CONTRACTOR, will be kept on a generally recognized accounting basis. CONTRACTOR will also maintain all other records, including without limitation specifications, drawings, progress reports and the like, relating to the project. All records will be available to CITY during normal working hours. CONTRACTOR will maintain these records for three years after final payment.

25. **INDEMNIFICATION**
CONTRACTOR will indemnify, defend, and hold harmless CITY, the City Council, each member thereof, present and future, its officers, agents and employees from and against any and all liability, expenses, including defense costs and legal fees, and claims for damages whatsoever, including, but not limited to, those arising from breach of contract, bodily injury, death, personal

injury, property damage, loss of use, or property loss however the same may be caused and regardless of the responsibility for negligence. The obligation to indemnify, defend and hold harmless includes, but is not limited to, any liability or expense, including defense costs and legal fees, arising from the negligent acts or omissions, or willful misconduct of CONTRACTOR, its officers, employees, agents, subcontractors or vendors. It is further agreed, CONTRACTOR's obligations to indemnify, defend and hold harmless will apply even in the event of concurrent negligence on the part of CITY, the City Council, each member thereof, present and future, or its officers, agents and employees, except for liability resulting solely from the negligence or willful misconduct of CITY, its officers, employees or agents. Payment by CITY is not a condition precedent to enforcement of this indemnity. In the event of any dispute between CONTRACTOR and CITY, as to whether liability arises from the sole negligence of the CITY or its officers, employees, agents, subcontractors or vendors, CONTRACTOR will be obligated to pay for CITY's defense until such time as a final judgment has been entered adjudicating the CITY as solely negligent. CONTRACTOR will not be entitled in the event of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees and costs of litigation.

26. NON-LIABILITY OF CITY OFFICERS AND EMPLOYEES

No officer or employee of CITY will be personally liable to CONTRACTOR, in the event of any default or breach by the CITY or for any amount that may become due to CONTRACTOR.

27. INSURANCE

A. CONTRACTOR and its subcontractors must maintain at its sole expense the following insurance, which will be full coverage not subject to self insurance provisions:

1. Automobile Liability, including owned, non-owned and hired vehicles, with at least the following limits of liability:

   a. Primary Bodily Injury with limits of at least $500,000 per person, $500,000 per occurrence; and

   b. Primary Property Damage of at least $250,000 per occurrence; or

   c. Combined single limits of $1,000,000 per occurrence.

2. General Liability including coverage for premises, products and completed operations, independent contractors/vendors, personal injury and contractual obligations with combined single limits of coverage of at least $1,000,000 per occurrence.

3. Workers' Compensation with limits as required by the State of California and Employer's Liability with limits of at least $1,000,000.

B. The insurance provided by CONTRACTOR will be primary and non-contributory.

C. CITY, the City Council and each member thereof, members of boards and commissions, every officer, agent, official, employee and volunteer must be named as additional insured under the automobile and general liability policies.

D. CONTRACTOR must provide certificates of insurance and/or endorsements indicating appropriate coverage, to the City Clerk of the City of Torrance before the commencement of work.

E. Each insurance policy required by this Paragraph must contain a provision that no termination, cancellation or change of coverage can be made without thirty days notice to CITY.

28. SUFFICIENCY OF INSURERS

Insurance required by this Agreement will be satisfactory only if issued by companies admitted to do business in California, rated "B+" or better in the most recent edition of Best's Key Rating Guide, and only if they are of a financial category Class VII or better, unless these requirements are waived by the Risk Manager of CITY ("Risk Manager") due to unique circumstances. In the event the Risk Manager determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to CITY, the CONTRACTOR agrees that the minimum limits of any insurance policies or performance bonds required by this Agreement may be changed accordingly upon receipt of written notice from the Risk Manager; provided that CONTRACTOR will have the right to appeal a determination of increased coverage by the Risk Manager to the City Council of CITY within 10 days of receipt of notice from the Risk Manager.

29. CONFLICT OF INTEREST

A. No officer or employee of the CITY may have any financial interest, direct or indirect, in this Agreement, nor may any officer or employee participate in any decision relating to the Agreement that effects the officer or employee's financial interest or the financial interest of any corporation, partnership or association in which the officer or employee is, directly or indirectly interested, in violation of any law, rule or regulation.

B. No person may offer, give, or agree to give any officer or employee or former officer or employee, nor may any officer or employee solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any way pertaining to any

program requirement, contract or subcontract, or to any solicitation or proposal.

30. NOTICE

A. All notices, requests, demands, or other communications under this Agreement will be in writing. Notice will be sufficiently given for all purposes as follows:

1. Personal delivery. When personally delivered to the recipient: notice is effective on delivery.

2. First Class mail. When mailed first class to the last address of the recipient known to the party giving notice: notice is effective three mail delivery days after deposit in an United States Postal Service office or mailbox.

3. Certified mail. When mailed certified mail, return receipt requested: notice is effective on receipt, if delivery is confirmed by a return receipt.

4. Overnight delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account: notice is effective on delivery, if delivery is confirmed by the delivery service.

5. Facsimile transmission. When sent by fax to the last fax number of the recipient known to the party giving notice: notice is effective on receipt. Any notice given by fax will be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

6. Addresses for purpose of giving notice are as follows:

CONTRACTOR	Smurfit Recycling Company 20502 South Denker Avenue Torrance, CA 90501-1645 Fax: 310-328-8694
CITY:	City Clerk City of Torrance 3031 Torrance Boulevard Torrance, CA 90509-2970 Fax: (310) 618-2931

B. Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified, will be deemed effective as of the first date the notice was refused, unclaimed or deemed undeliverable by the postal authorities, messenger or overnight delivery service.

C. Either party may change its address or fax number by giving the other party notice of the change in any manner permitted by this Agreement.

31. PROHIBITION AGAINST ASSIGNMENT AND SUBCONTRACTING

This Agreement and all exhibits are binding on the heirs, successors, and assigns of the parties. The Agreement may not be assigned or subcontracted by either CITY or CONTRACTOR without the prior written consent of the other.

32. INTEGRATION; AMENDMENT

This Agreement represents the entire understanding of CITY and CONTRACTOR as to those matters contained in it. No prior oral or written understanding will be of any force or effect with respect to the terms of this Agreement. The Agreement may not be modified or altered except in writing signed by both parties.

33. INTERPRETATION

The terms of this Agreement should be construed in accordance with the meaning of the language used and should not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction that might otherwise apply.

34. **SEVERABILITY**
If any part of this Agreement is found to be in conflict with applicable laws, that part will be inoperative, null and void insofar as it is in conflict with any applicable laws, but the remainder of the Agreement will remain in full force and effect.

35. **TIME OF ESSENCE**
Time is of the essence in the performance of this Agreement.

36. **GOVERNING LAW; JURISDICTION**
This Agreement will be administered and interpreted under the laws of the State of California. Jurisdiction of any litigation arising from the Agreement will be in Los Angeles County, California.

37. **COMPLIANCE WITH STATUTES AND REGULATIONS**
CONTRACTOR will be knowledgeable of and will comply with all applicable federal, state, county and city statutes, rules, regulations, ordinances and orders.

38. **WAIVER OF BREACH**
No delay or omission in the exercise of any right or remedy by a nondefaulting party on any default will impair the right or remedy or be construed as a waiver. A party's consent or approval of any act by the other party requiring the party's consent or approval will not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and will not be a waiver of any other default concerning the same or any other provision of this Agreement.

39. **ATTORNEY'S FEES**
Except as provided for in Paragraph 25, in any dispute, litigation, arbitration, or other proceeding by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party will be awarded reasonable attorney's fees, together with any costs and expenses, to resolve the dispute and to enforce any judgment.

40. **EXHIBITS**
All exhibits identified in this Agreement are incorporated into the Agreement by this reference.

41. **CONTRACTOR'S AUTHORITY TO EXECUTE**
The persons executing this Agreement on behalf of the CONTRACTOR warrant that (i) the CONTRACTOR is duly organized and existing; (ii) they are duly authorized to execute this Agreement on behalf of the CONTRACTOR; (iii) by so

executing this Agreement, the CONTRACTOR is formally bound to the provisions of this Agreement; and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which the CONTRACTOR is bound.

CITY OF TORRANCE
a Municipal Corporation

Frank Scotto, Mayor

ATTEST:

Sue Herbers
City Clerk

APPROVED AS TO FORM:
JOHN L. FELLOWS III
City Attorney

By: _____
Heather K. Whitham,
Deputy City Attorney

Smurfit Recycling Company
Incorporated

By: _____
Michael Oswald
Vice President, Recycling Division

Attachments: Exhibit A Bid

Revised: 1/30/01

EXHIBIT A

SMURFIT-STONE

Smurfit-Stone
Container Corporation
20502 S. Denker Street
Torrance, CA 90501

310-533-0333
310-328-8694 *fax*

May 30, 2007

City Clerk
City of Torrance
3031 Torrance Blvd.
Torrance, CA 90503

Re: BID FOR RECYCLING SERVICES, B2007-23

Smurfit Recycling Company is pleased to present our bid for recycling services to the City of Torrance. As one of America's largest paper recycling companies we are well positioned to provide the services requested in the bid.

Our recycling plant has been located in its current location for over 30 years. We have been providing outstanding service to our customers in the area during this time and will continue to provide recycling services for years to come. The Smurfit facility is located 2.4 miles from City Hall and represents a very central location for all city trucks to deliver recyclables. The plant currently handles over 9000 tons per month of recyclables and has the capacity to double the volume. With 3 truck scales and a driver friendly layout getting trucks in and out in a timely manner will not be an issue.

As the safest company in our industry over the past 5 years it is clear Smurfit-Stone makes the safety of its employees our number one concern. The Recycling Division had a record low RCR in 2006 and is on pace to exceed our record in 2007. The Torrance facility is accident free in 2007. The plant has received numerous safety awards over the years from The Pulp and Paper Safety Council, The National Safety Council and the Smurfit President's Award for Safety.

We believe we are uniquely positioned to provide the City of Torrance the services required for its recycling program. Smurfit Recycling appreciates the opportunity to bid on these services and looks forward to the results on May 31st. Should you have any questions feel free to contact us.

Best regards,

John Drucker
General Manager
Smurfit Recycling- Torrance
310-533-0333

CITY OF TORRANCE
3031 Torrance Blvd.
Torrance, CA 90503

BID NO. B2007-23

Bid to Furnish Recycling Services for the City of Torrance, including the Processing, Marketing and Reporting of Recycling Materials

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SECTION III BID PROPOSAL

FAILURE TO COMPLETE ALL ITEMS IN THIS SECTION MAY INVALIDATE BID.

In accordance with your "Invitation to Bid", the following bid proposal is submitted to the City of Torrance.

Bid Proposal Submitted By:

Smurfit Recycling Company
Name of Company

20502 S. Denker Street
Address

Torrance, CA 90501
City/State/Zip Code

John Drucker/General Manager
Printed Name/Title

310-533-0333/310-328-8694
Telephone Number/Fax Number

Form of Business Organization:

Please indicate the following (check one);

Corporation X Partnership _____ Sole Proprietorship _____

Other: _____

Business History:

How long have you been in business under your current name and form of business organization?

10 Years

If less than three (3) years and your company was in business under a different name, what was that name?

N/A

Contact for Additional Information:

Please provide the name of the individual at your company to contact for any additional information

Kim Ruiz
Name

Controller
Title

310-533-0333/310-328-8694
Telephone Number/Fax Number

Addenda Received:

Please indicate addenda information you have received regarding this bid:

Addendum No. ____ Date Received: _____
Addendum No. ____ Date Received: _____
Addendum No. ____ Date Received: _____
Addendum No. ____ Date Received: _____

X____ No Addenda received regarding this bid.

References:

Please supply the names of companies/agencies for whom you recently supplied comparable goods as requested in this bid.

Waste Management 1800 S.Grand Ave. Santa Ana, CA 92705 Kevin Feeny 714-920-6705
Name of Company/Agency Address Person to contact/Telephone No.

Allied Waste 14905 S. San Pedro St. Gardena, CA 90248 Chris Coyle818-968-9849
Name of Company/Agency Address Person to contact/Telephone No.

Republic 2059 E. Steel Rd. Colton, CA 92324 92324 Peter Sterenberg 714-238-3337
Name of Company/Agency Address Person to contact/Telephone No.

Contractor's Information:

Contractor's License Number: N/A Expiration date: N/A

Sub Contractor's Information:

If subcontractor(s) is to be used in the performance of this project, please provide the following information:

1. Company Name: _____
   Address: _____

   Contractor's License Number: _____ Expiration date: _____

2. Company Name: _____
   Address: _____

   Contractor's License Number: _____ Expiration date: _____

3. Company Name: _____
   Address: _____

   Contractor's License Number: _____ Expiration date: _____

Price Proposal:

Provide the flat rate per ton of recyclables the City would receive:

$ 48.00/$$ delivered our yard in Torrance

List any other materials your facility would accept for recycling beyond the materials already defined in this proposal. Any additional items listed here would be accepted as part of the flat rate indicated above.

Bidder shall complete each item with either a check mark to indicate that the item being bid is exactly as specified, or enter a description in the bidder's comments column to indicate any deviation from the specifications of the item being bid.

ITEM SPECIFICATION COLUMN	BIDDER'S COMMENTS COLUMN
Provide processing, marketing and reporting of recyclable materials collected in the City's recycling program.	X
Provide a flat revenue rate per ton the City will receive. This flat rate would already include any potential deductions for contamination, rain-soaked materials or other waste received with the recyclables. No deductions from the flat rate will be allowed during the term of this agreement.	X
Provide City with a monthly report of tonnage of materials recycled, professionally documented market value of materials, processing costs and breakdown of material types. Categories used for the material breakdown must include at a minimum (see definitions section for full descriptions); Aluminum, Polyethylene Terephthalate (PET) and non-PET, Glass, Tin (or Metals), High Density Polyethylene (HDPE), Mixed Plastics, Newspaper, Mixed Paper and Old Corrugated Cardboard (OCC).	X
Contractor's facility must have demonstrated ability to accept and process an average of 60 tons of recyclable materials per day in a safe, sanitary and legal manner.	X Currently receiving 400-450 tons per day. 0 accidents or recordables ~~in 2007.~~
The Contractor's facility must be located within a 15 mile radius of Torrance City Hall. City will	X 2.4 miles from City Hall

consider mileage expenses as an added cost in proposals.	
Provide payment for materials in a timely manner on a monthly basis, or pay late fees.	X
Contractor's facility must be available to accept materials Monday through Friday, 7 a.m. to 5 p.m. Hours must accommodate City's holiday schedule. Saturday drop-offs may be required under unusual circumstances.	X Currently open for receiving M-F 6am-11pm Sat 6am-12pm
Contractor's facility must be available to accommodate visitors from the Torrance community to the facility from time to time, and will include instructional tours during normal operation hours if given a minimum of one (1) week notice.	X
Contractor's facility and operations meet or exceed all CAL-OSHA safety requirements, and must allow for periodic, unannounced safety inspections by city officials or their representatives.	X No accidents or recordable incidents in 2007
Provide contingency plan or plans for the processing of City's materials for short periods of time should Contractor's facility become unavailable for recycling materials processing for any reason during the term of the agreement. This plan must be completed and submitted to the City within thirty (30) days of award of this contract.	X Able to process at another Smurfit facility
Provide driver stand-by time (actual time taken for unloading of City trucks after arrival at Contractor's facility) of no more than 15 minutes.	X
Will allow City to take test loads to other facilities for cost comparisons two times a year, for two weeks at a time, four truck loads per day.	X
Will assist with monitoring and providing tonnage information on special City programs, if applicable.	X
Term of the agreement shall be three years from the date of the agreement with an for an additional two, one-year automatic extension unless either party to the agreement gives notice of non-renewal to the other party no later than 90 days prior to the end of the second year of the agreement.	X
Additional recycling items that the Contractor is willing to accept at their facility over and beyond the minimum.	N/A

ATTACHMENT 1

BIDDER'S AFFIDAVIT

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

John Drucker being first duly sworn, deposes and says:

1. That he/she is the General Manager (Title of Office) of Smurfit Recycling Company (Name of Company)

hereinafter called "Bidder", who has submitted to the City of Torrance a bid for

"BID FOR RECYCLING SERVICES, B2007-23" (Title of BID);

2. That the bid is genuine; that the same is not sham; that all statements of fact in the bid are true;

3. That the bid was not made in the interest or behalf of any person, partnership, company, association, organization or corporation not named or disclosed;

4. That the Bidder did not, directly or indirectly, induce solicit or agree with anyone else to submit a false or sham bid, to refrain from proposing, or to withdraw his bid, to raise or fix the bid price of the Bidder or of anyone else, or to raise or fix any overhead, profit or cost element of the Bidder's price or the price of anyone else; and did not attempt to induce action prejudicial to the interest of the City of Torrance, or of any other Bidder, or anyone else interested in the proposed purchase order;

5. That the Bidder has not in any other manner sought by collusion to secure for itself an advantage over any other Bidder or to induce action prejudicial to the interests of the City of Torrance, or of any other Bidder or of anyone else interested in the proposed purchase order;

6. That the Bidder has not accepted any bid from any subpurchase order or materialman through any bid depository, the bylaws, rules or regulations of which prohibit or prevent the Bidder from considering any bid from any subpurchase order or materialman, which is not processed through that bid depository, or which prevent any subpurchase order or materialman from proposing to any purchase order or who does not use the facilities of or accept bids from or through such bid depository;

7. That the Bidder did not, directly or indirectly, submit the Bidder's bid price or any breakdown thereof, or the contents thereof, or divulge information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, or to any individual or group of individuals, except to the City of Torrance, or to any person or persons who have a partnership or other financial interest with said Bidder in its business.

8. That the Bidder has not been debarred from participation in any state, federal or public works project.

Dated this 30th day of May, 2007

(Bidder Signature)

General Manager

(Title)