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DEPARTMENT OF  
PUBLIC WORKS  
SOLID WASTE DIVISION

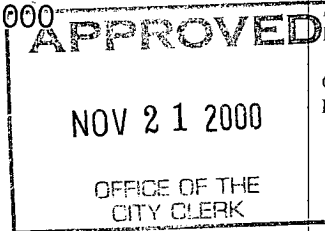
CITY OF SACRAMENTO  
CALIFORNIA

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August 1, 2000



City Council  
Sacramento, California

Honorable Members in Session:

**SUBJECT:** AMENDMENT OF SMURFIT-STONE CONTAINER CORPORATION  
PROCESSING AGREEMENT FOR CITY AUTOMATED COMMINGLED  
RECYCLING PROGRAM

**LOCATION AND COUNCIL DISTRICT:** Citywide

**RECOMMENDATION:**

This report recommends that City Council adopt the attached resolution authorizing the City Manager to execute Supplemental Agreement #1 with Smurfit-Stone Container Corporation for processing commingled recyclables.

**CONTACT PERSON:** Gary Van Dorst, SW Planning Superintendent, 264-7561

**FOR COUNCIL MEETING OF:** November 21, 2000

**SUMMARY:**

This report recommends City Council adopt a resolution authorizing the City Manager to execute a supplemental agreement that amends and extends our current processing agreement with Smurfit-Stone Container Corporation. This action is consistent with City Council direction to staff on May 30, 2000 (Resolution No. 2000-285).

**COMMITTEE/COMMISSION ACTION:** None.

**BACKGROUND INFORMATION:**

In January 1999, City Council adopted a resolution pertaining to the implementation of a citywide commingled recycling program. In order to streamline the process, on May 30,

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August 1, 2000

2000, the City Council adopted Resolution No. 2000-285 suspending competitive bidding for the processing of material from the commingled program. This action was taken by Council based upon staff's recommendation that amending and extending the existing contract with Smurfit-Stone would streamline the implementation of automated commingle recycling. The supplemental agreement is consistent with the City Council's direction to staff.

**FINANCIAL CONSIDERATIONS:**

The attached supplemental agreement with Smurfit-Stone Container Corporation will result in a new pricing structure for sharing revenue from recyclables upon implementation of the commingled recycling program. When the pricing structure of the supplemental agreement is benchmarked against neighboring jurisdictions current processing agreement, the Smurfit-Stone Container Corporation proposal provides the City with floor prices which would protect the City from negative revenue in the event of a dramatic downturn in the markets. Overall, the Smurfit-Stone Container Corporation proposal is competitive with greater revenue under most market conditions.

**ENVIRONMENTAL CONSIDERATIONS:**

The processing of commingled recyclables will not result in an impact to the environment relative to the processing of source separated recyclables. The conversion to a commingled, automated recycling collection system was also evaluated in the Negative Declaration for the curbside, single container recycling program, which determined that the system will have a less than significant effect on the environment. The project involves no new impacts or changed circumstances.

**POLICY CONSIDERATIONS:**

Authorizing the City Manager to execute the attached supplemental agreement is explicitly consistent with the City Council's direction pursuant to City Council Resolution No. 2000-285. This action will assist staff in complying with the City Council's direction to pursue an aggressive implementation schedule with regard to automated, commingled recycling.

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**ESBD CONSIDERATIONS:**

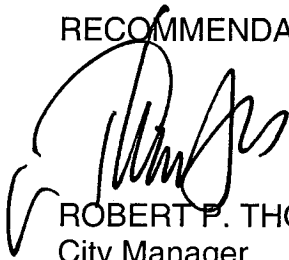
Research of the City's directory of ESB/SBE contractors indicates the absence of any local, qualified enterprises capable of processing the City's curbside recycling materials from a commingled collection program.

Respectfully submitted,



G. Harold Duffey  
Solid Waste Manager

RECOMMENDATION APPROVED:



ROBERT P. THOMAS  
City Manager

Approved:



Michael Kashiwagi  
Director of Public Works

**APPROVED**  
NOV 21 2000  
OFFICE OF THE  
CITY CLERK

**RESOLUTION NO. 2000-664**

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF \_\_\_\_\_

**RESOLUTION AUTHORIZING THE CITY MANAGER  
TO EXECUTE A SUPPLEMENTAL AGREEMENT  
WITH SMURFIT-STONE CONTAINER CORPORATION  
FOR RECYCLABLES PROCESSING**

**WHEREAS**, City Council Resolution 89-685 established a recycling goal of 70% waste diversion by January 1, 1999; and,

**WHEREAS**, automated commingled recycling is consistent with the solid waste industry trend toward increased automation and mechanization; and,

**WHEREAS**, automated, commingled recycling will provide residents with an increased level of convenience; and,

**WHEREAS**, accelerating the implementation of automated, commingled recycling will increase the tonnage of residential waste that is recycled; and,

**WHEREAS**, the City Council suspended competitive bidding for the purpose of extending and amending our current processing agreement as a means of streamlining the implementation of commingled recycling;

**THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SACRAMENTO THAT:**

The City Manager is authorized to execute the attached supplemental agreement with Smurfit-Stone Container Corporation.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

**FOR CITY CLERK USE ONLY**

RESOLUTION NO.: \_\_\_\_\_

DATE ADOPTED: \_\_\_\_\_

**RESOLUTION NO.**

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF \_\_\_\_\_

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\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

**FOR CITY CLERK USE ONLY**

RESOLUTION NO.: \_\_\_\_\_

DATE ADOPTED: \_\_\_\_\_

## SUPPLEMENTAL AGREEMENT NO. 1

**Project Title/Number: Recyclables Processing (CA # 96-132)**  
**Purchase Order #: N/A**

**Date: July 31, 2000**  
**Supplemental Agreement No.: 1**

The City of Sacramento ("City") and Smurfit-Stone Container Corporation as successor-in-interest to Smurfit Recycling Company ("Contractor"), as parties to that certain Nonprofessional Services Agreement designated as City Agreement Number 96-132 (hereafter referred to as the "Agreement"), hereby supplement and modify the Agreement as follows:

1. The provisions of Section 2 of Exhibit A of the Agreement describe the services and obligations to be provided and performed by Contractor for the acceptance and recycling of materials collected by the City's curbside recycling program and delivered to the Contractor in separate bins for newspaper, glass and mixed cans/plastics, and these provisions shall continue to govern the Contractor's acceptance and recycling of separated materials collected by the City's curbside recycling program.
2. The provisions of Section 2 of Exhibit A shall not apply to, nor govern, materials collected by the City's curbside recycling program and delivered for acceptance and recycling without being separated in different bins (hereafter referred to as "commingled materials"); for such commingled materials (and, as applicable, for used motor oil), the services and obligations provided and performed by Contractor shall be as follows:
  - A. Contractor shall accept commingled materials for recycling from the City's curbside recycling program.
  - B. By subcontract with BLT Enterprises (hereafter referred to as "BLT" or Contractor's "subcontractor"), which operates the Sacramento Recycling and Transfer Station located at 8491 Fruitridge Road, Sacramento, CA 95826 (hereafter referred to as the "Facility"), Contractor shall provide and make available the Facility for off-loading City recycling trucks and processing commingled materials from the City's curbside recycling program, on the terms set forth herein. The Facility shall be available to begin accepting materials not later than September 1, 2000. The City agrees to make reasonable business efforts to complete City-wide implementation of its commingled curbside recycling program within one (1) year after beginning implementation of the program.
  - C. Unloading Time/Truck Turn-around Time – Each City recycling truck entering the Facility shall have a maximum of 15 minutes turnaround time from the time the truck arrives at the Facility until the time the truck exits the Facility. The 15-minute turnaround time shall apply under all circumstances.
  - D. The Facility shall either provide separate scales for ingress and egress or otherwise accommodate City vehicles to avoid queuing City vehicles behind self-haul or other commercial trucks.
  - E. Contractor or its subcontractor shall provide a means to avoid "stacking" of recycling trucks on public streets as they enter the Facility. City trucks shall be provided preference if necessary to facilitate off-loading efficiencies and turnaround time.
  - F. Contractor's subcontractor (BLT) shall provide the City with scale tags and a disk (containing scale data). Contractor or its subcontractor shall devise a methodology for payment of processed materials from commingled loads derived from periodic sampling, waste characterizations, or by other means as agreed to by the City, to establish waste residual percentage from time to time as necessary.
  - G. The Contractor and its subcontractor shall comply with all State and local regulations that apply to recyclable materials delivered to them by City recycling trucks under the terms of this Agreement.
  - H. Motor Oil – Used motor oil, collected by the City, shall be delivered to the Facility in sealed, opaque, plastic containers (provided by City). All used motor oil delivered by City trucks shall be bulked and stored in accordance with all applicable State and local

## SUPPLEMENTAL AGREEMENT NO. 1

laws. Facility personnel shall help the driver unload oil containers from the truck at the used oil station. Contractor and its subcontractor shall cooperate with City to maximize reimbursement of expenses through grant funding. The City shall be entitled to used oil redemption monies from collection of the oil.

- I. Unmarketable Materials – In no case shall the Contractor or its subcontractor take any City delivered recyclable materials to a disposal facility, unless permission is provided by the City on a load-by-load basis. If the Contractor can demonstrate that a material is not marketable, such permission shall not be unreasonably withheld. This prohibition does not apply to normal residue from processing of commingled materials.
- J. Contractor or its subcontractor shall provide for alternative off-loading methods in the event of reasonable downtime due to repair and maintenance of equipment. The Facility shall maintain adequate space to stockpile recyclable materials during such reasonable downtime for acceptance of material without a break in service. "Reasonable down-time" shall be defined as less than one day each operating month.
- K. Contractor shall be responsible for disposal of residue from processing of City recyclables, and Contractor shall pay all costs for the disposal of such residue that does not exceed 10% of total weight. The City shall pay for the cost of disposal for residue that exceeds 10% of total weight, at the rate specified by City Agreement No. 98-131.
- L. The Facility shall be open to receive materials from City trucks at all times from 6:00 a.m. to 5:00 p.m., Monday through Friday, year round.
- M. The Facility shall provide an area for tipping of City vehicles separate from the waste transfer area and shall provide spotting of City trucks in areas at the Facility with tight maneuverability.
- N. The City's representative(s) may inspect the Facility during normal business hours to assure compliance with this Agreement.
- O. With the exception of what is commonly recognized by the recycling industry as "residue" or "contaminants", Contractor agrees to divert from landfilling all recyclable materials delivered by City recycling trucks under this Agreement.
- P. The Facility shall provide use of a phone to City employees in the event a City driver needs to contact their Supervisor regarding City business.
- Q. The Facility shall provide paved surfaces for all areas where City trucks will operate at the Facility and all ingress and egress from the Facility shall be paved.
- R. Contractor and its subcontractor shall make reasonable accommodations to provide tours of the Facility to the public upon request by the City's representative.
- S. Notwithstanding anything herein to the contrary, the Facility operator shall have the right to reject any load, before or after unloading, and shall not be deemed to have accepted any load, nor shall title thereto be deemed to have transferred to Contractor, containing any material defined as a "Hazardous Substance" under the Comprehensive Environmental Response Compensation and Liability Act or ("CERCLA"), 42 U.S.C. §9601 et seq., as amended, or any material defined as "Hazardous or Toxic Wastes" under the Resource Conservation and Recovery Act ("RCRA"), 43 U.S.C. §6901 et seq., as amended. If all or any portion of any load of material delivered to the Facility is found to contain any Hazardous Substance or Hazardous or Toxic Wastes, as defined above, such hazardous waste shall be diverted to the City Household Hazardous Waste Collection Facility, which is co-located at the Facility, for proper handling, recycling or disposal. The cost of such handling, recycling or disposal shall be paid in accordance with the provisions of City Agreement No. 98-131.
- T. Contractor and its subcontractor shall comply with all legal requirements that apply to

## SUPPLEMENTAL AGREEMENT NO. 1

the performance of their obligations under this Agreement, including without limitation all federal and state laws and regulations governing wages, working hours and other conditions of employment.

U. Contractor and its subcontractor shall adhere to the following "good neighbor" requirements:

- 1) Contractor and its subcontractor shall conform to all applicable local land use conditions.
- 2) Contractor and its subcontractor shall attend neighborhood meetings upon the request of the City representative to answer questions regarding materials processing operations.
- 3) Contractor and its subcontractor shall utilize best practices to prevent the migration of odors off-site.
- 4) Contractor and its subcontractor shall maintain landscaping and/or fencing to deny visual access to materials processing operations from the street contiguous to the Facility.
- 5) Contractor and its subcontractor shall pick up any litter on the approach to the Facility associated with materials processing operations.
- 6) Contractor and its subcontractor shall utilize dust suppressants, a water truck, sweeping and/or fogging equipment as needed to prevent dust from processing operations to migrate off-site.
- 7) In the event that the "good neighbor" actions taken by Contractor or its subcontractor are determined by the City, in its sole discretion, to be insufficient to resolve any problem or complaint, the City may provide a written notice to Contractor requiring the Contractor and its subcontractor to take additional action(s) to resolve the problem(s) or complaint(s). If the City determines, in its sole discretion, and not less than 30 days after the date of such written notice, that the Contractor or its subcontractor have not taken any action or additional action required hereunder and/or that such problem(s) or complaint(s) remain unresolved, then City may terminate this agreement upon providing a written notice of such determination and termination to Contractor.

V. Contractor shall not transfer or assign this Agreement, nor shall Contractor transfer, assign or modify its subcontract with BLT for the processing of commingled materials at the Facility as provided herein, without the City's written consent, and any such transfer, assignment or modification without such consent shall be void.

W. The City shall have the right to communicate directly with BLT, as the operator of the Facility, on matters relating to the off-loading and processing of, and payment for, the City's commingled materials.

X. Contractor or its subcontractor shall provide, at no cost to the City, approximately 4 acres of fenced and secure land at the Facility for storage and staging of the container distribution for the City's commingled recycling program.

3. Section 3 of Exhibit A of the Agreement (Term of Agreement) is amended to read as follows:

"This Agreement shall be effective on October 1, 1996, and shall terminate seven (7) years after the date that the first load of commingled materials is delivered to the Facility by City, unless termination occurs earlier in accordance with the provisions of this Agreement or by operation of law."

4. The provisions of Exhibit B of the Agreement describe the fee schedule and manner of payment



## SUPPLEMENTAL AGREEMENT NO. 1

to City for recyclable materials collected by the City's curbside recycling program and delivered to the Contractor in separate bins for newspaper, glass and mixed cans/plastics, and these provisions shall continue to govern Contractor's payment to City for such separated materials; provided that such payments shall be submitted to the City Representative specified in Section 1 of Exhibit A of the Agreement, rather than to Reina J. Schwartz.

5. The provisions of Exhibit B shall not apply to, nor govern, the payment to City for commingled materials collected by the City's curbside recycling program. Contractor or its subcontractor, BLT, shall make payment to the City for such commingled materials within 30 days of the end of each calendar month for such materials received from City during that month, and interest on amounts past due shall be assessed at the maximum rate permitted by law. The payments made to City for such commingled materials shall be as follows:
- A. The Floor Price paid to the City for all curbside commingled recycles delivered to the Facility shall be \$10 per net ton. At no time shall the price drop below \$10 per net ton.
  - B. Market pricing index shall be tied to the Official Board Market (O.B.M.) index, first issue, San Francisco, high-side.
  - C. The starting curbside materials price moving forward effective 3/1/00 shall be \$20 per net ton based on the March high-side O.B.M. index prices, San Francisco, for Mixed paper, #8 Newspaper and OCC which are \$60, \$105, and \$130 per ton, respectively.
  - D. Every month, fifty percent (50%) of the weighted average O.B.M. index price adjustment (up or down) compared to the previous month shall be added or subtracted from the City's curbside rate.
  - E. The weighted average percentages for Mixed Paper, #8 newspaper and OCC for purposes of the O.B.M. index shall be 15%, 70% and 15%, respectively.
  - F. Example: The O.B.M. index price adjustments from March to April 2000 for Mixed Paper, #8 Newsprint and OCC were \$0, \$5 and \$20 respectively. Applying the above referenced weighted average by material type, the price change, March to April, is \$6.50/ton. The City's curbside price for April would increase by 50% of the price change, increasing the per ton rate by \$3.25 per net ton. The City's adjusted April curbside rate would increase from \$20/ton to \$23.25/ton.
  - G. The above pricing assumes that the residual content of the residential commingled curbside recycling materials delivered to the Facility will not exceed 10%, and that Contractor will receive 100% of the City's residential commingled curbside recyclables volume. If either or both of these assumptions prove incorrect on a repeated basis, the City and Contractor shall meet and negotiate in good faith to attempt to reach agreement upon appropriate changes to the prices set forth above.
  - H. Most Favored Customer Clause: Notwithstanding any provision of the Agreement to the contrary, at no time during the term of the Agreement shall the City be paid less money for recyclable materials collected from the City's curbside recycling program and processed under the Agreement, than the prices that the Contractor or its subcontractor pay to any customer or other entity in the City or County of Sacramento for curbside materials of like or similar quality. The prices set forth above shall be increased as necessary to comply with this paragraph H.
6. The first line of Section 8 (Termination) of Exhibit D of the Agreement is revised to read as follows:
- Termination**. In the event of a material default in the performance of this Agreement by the Contractor or by its subcontractor, the..."
7. Subsection (1)(a) of subsection D. of Section 11 (Insurance Requirements) of Exhibit D of the Agreement is hereby amended to read as follows:

**SUPPLEMENTAL AGREEMENT NO. 1**

**(1) General Liability and Automobile Liability Coverages:**

(a) The City, its officials, employees and volunteers are to be covered as insured as respects: liability arising out of activities performed by or on behalf of the Contractor or its subcontractor; products and completed operations of the Contractor or its subcontractor; premises owned, leased or used by the Contractor or its subcontractor; or automobiles owned, leased, hired or borrowed by the Contractor or its subcontractor. The coverage shall contain no special limitations on the scope of the protection afforded to the City, its officials, employees or volunteers."

- 8. The Special Provisions to the Agreement are hereby incorporated in the Agreement by this reference, and Section 2 of said Special Provisions (Term of Agreement), is hereby deleted in its entirety.
- 9. Contractor shall include provisions in its subcontract with BLT expressly making BLT subject to, and requiring BLT to comply with, all applicable terms and provisions of the Agreement, as supplemented and modified by this Supplemental Agreement. Without limiting the generality of the foregoing, references to the "contractor's premises" in Section 9 of Exhibit D of the Agreement (Indemnity and Hold Harmless) shall be deemed to include the Facility.
- 10. Contractor warrants and represents that the person or persons executing this supplemental agreement on behalf of Contractor has or have been duly authorized by Contractor to sign this Supplemental Agreement No. 1 and bind Contractor to the terms hereof.
- 11. Except as specifically revised or made inapplicable herein, all terms and conditions of the Agreement shall remain in full force and effect, and Contractor, as successor-in-interest to the Smurfit Recycling Company, shall be fully obligated to, and shall fully perform all of the services, duties, obligations, and conditions required of the "Contractor" under the Agreement, as supplemented and modified by this Supplemental Agreement No. 1, as if Contractor had been an original party to the Agreement. In the event of a conflict between any provision of this Supplemental Agreement No. 1 and any other term or provision of the Agreement, the provisions of this Supplemental Agreement No. 1 shall prevail.

**Recommended By:**

\_\_\_\_\_  
Project Manager

**Approved By:**

\_\_\_\_\_  
Contractor

**Approved By:**

\_\_\_\_\_  
City of Sacramento

**Approved As To Form:**

\_\_\_\_\_  
City Attorney

**Attest:**

\_\_\_\_\_  
City Clerk