

TO: Board of Commissioners
FROM: Josh Tyler, Director of Operations
DATE: February 22, 2023
RE: **Glass Recycling Service Agreement with Strategic Materials Inc.**

CSWD Materials Recovery Facility (MRF) manages inbound glass by crushing it early on in our processing system and then sending the crushed material to a primary indoor clean up system that removes ferrous material via a magnet, fibers via a high-pressure negative suction extraction and then separates the cleaned glass with a three fraction trommel screen. The glass is then conveyed to a secondary clean up system that re-crushes the material with a vertical shaft impactor, rock crusher, and then separates it into two different sizes with a Bivitec Flip Flow Screen. The fines fraction from the Flip Flow screen is tested and managed as processed glass aggregate. This process works very well for approximately eight to ten months out of the year and is sensitive to the mixture of cold weather and moisture. Weather dependent winter conditions have pushed staff to find alternate wintertime glass management outlets.

CSWD has historically contracted with 2M Resources , Saint-Jean-sur-Richelieu, QC, Canada, for winter management services and more recently have sent material to Carney Environmental, Raynham, MA. The cost of wintertime glass management is high, with the most recent costs around \$138.00/ton. CSWD contacted Strategic Materials Inc. (SMI) to ask if they might be an additional outlet. SMI recently processed a test load of CSWD glass and has proposed providing wintertime management services. CSWD staff has developed a Glass Recycling Service Agreement with SMI, included as attachment A, and recommends moving forward with the agreement. The total expense associated of the agreement over a fully executed three-year term will exceed \$100,000, requiring Board of Commissioners approval.

Be it Resolved that the Board of Commissioners authorizes the Executive Director to enter into an agreement with Strategic Materials Inc., of Houston, TX, for a three year term commencing March 9th, 2023 through March, 2026 for the services to manage wintertime glass generated at the CSWD Materials Recovery Facility in accordance with the attached Glass Recycling Service Agreement, at a cost not to exceed \$120,000 annually.

**GLASS RECYCLING SERVICE AGREEMENT FOR BOTTLE CULLET
Strategic Materials, Inc. Service Agreement**

This Agreement is entered into on February _____, 2023, by and between the Chittenden Solid Waste District (hereinafter "Municipality" or "the District") and Strategic Materials, Inc., with a principal place of business in 17220 Katy Freeway, Suite 150 Houston, TX 77094, (hereinafter "Contractor" or "SMI") for services to the District. The District and Contractor are referred to collectively as "parties."

In consideration of the mutual covenants and Agreements as hereinafter set forth, the parties hereto agree as follows:

ARTICLE 1: SERVICES PROVIDED

Contractor agrees to perform the following service(s):

SMI agrees to pick up processed glass aggregate from the District Materials Recovery Facility (MRF) at minimum three times a week for ultimate disposition at the SMI, South Windsor Facility, located at 300 Rye St., South Windsor, CT 06074. Material pickup shall be within the MRF operating hours of 6:30 AM to 3:30 PM, Monday through Friday. All pickups will be scheduled through the District's operating contractor, Casella Waste Management.

Location: 357 Avenue C, Williston, Vermont 05495

Primary scheduling contacts:

Suad Caus: Casella Waste Management, Inc.
Site Manager
Chittenden MRF
Cell: 802-338-1644
Phone: 802-651-5484
Fax: 802-660-2991
Email Suad.Caus@casella.com

Jeff Truax: Casella Waste Management, Inc.
Chittenden MRF
Cell: 802-651-5481
Phone: 802-651-5484
Fax: 802-660-2991
Email jeffrey.truax@casella.com

Primary Service Agreement contacts:

Josh Tyler: CSWD
Director of Operations
Phone: 802-338-5304
Email jtyler@cswd.net

Brian Mital: CSWD
Associate Director of Operations
Phone: 802-233-0670
Email bmital@cswd.net

Material Quality and Quantity: The Contractor collected a trial load November 15th, 2022, to validate material quality. Upon quality assessment the Contractor concluded that the CSWD processed glass contained approximately twenty percent (20%) “non glass residue” (NGR) and set the payment rate for material disposition. Both the Contractor and the District agree that all processed glass transported off site from the CSWD MRF will be at or below the 20% NGR threshold. All material quality assessments indicating an exceedance of 20% NGR will need to be verified with both analytical and photographic documentation provided by the Contractor and agreed upon in writing by both parties. The Contractor agrees to collect at minimum twenty-seven (27) tons of processed glass each scheduled pick up over the service period.

Service Period: The Contractor shall provide service over a period starting December 1st and ending March 31st of each Agreement year. The District will send processed glass to an alternative outlet April 1st to November 30th of each Agreement year. The parties may extend an earlier start or later end to the service period, pending weather conditions or other relative circumstances, in any particular Agreement year. Any changes to the service period shall be agreed upon in writing by both parties.

Contractor shall perform all services required under this Agreement in a good workmanlike manner consistent within industry standards and according to professional waste industry practices adhering to all applicable laws, rules and regulations. A Glass Recycling Service Agreement for Bottle Cullet provided by SMI is included as Attachment A.

ARTICLE 2: COMPENSATION AND BILLING

Compensation for the services provided will be \$96.00/ton for all processed glass removed from the CSWD MRF location. Material weights will be recorded on the District MRF scale located at the facility. Once the processed glass is loaded into the Contractor’s trailer for transportation, the processed glass will be the property of the Contractor.

Invoices and Billing: The Contractor will bill for services monthly based on tons received by the Contractor in the preceding month. CSWD will pay the invoice within 30 days of receipt of the invoice excepting any charges which may be in dispute.

ARTICLE 3: TERM

The term of this Agreement shall be from the Signature Date of this Agreement to March 31, 2024, with two (2) consecutive one (1) year options to renew under the same terms and conditions and by mutual agreement, unless this Agreement is terminated under Article 13 herein, for a fully exercised Term of three (3) years.

ARTICLE 4: INDEPENDENT CONTRACTOR

Contractor further acknowledges and agrees that it is an independent contractor and that nothing herein shall be construed to create the relationship of employer and employee between Municipality and Contractor.

ARTICLE 5: ASSIGNMENT AND SUBCONTRACTING

This Agreement is binding upon and inures to the benefit of the heirs, successors and assigns of

the parties hereto. Neither party hereto may assign its rights or obligations under the Agreement without the prior written consent of the other party. This Agreement shall be governed by the laws of the State of Vermont.

Contractor shall not enter into any subcontract for performance of any services contemplated under this Agreement nor assign any interest in the Agreement without the prior written approval of Municipality and subject to such conditions and provisions as Municipality may deem necessary or desirable in its sole discretion. If Municipality permits the use of subcontractors, no subcontractor may perform any work under this Agreement without first providing Municipality certificates of insurance showing all of the coverages required in Article 10 of this Agreement. Contractor shall be responsible for the performance of all subcontractors.

ARTICLE 6: EQUIPMENT AND MATERIALS

Contractor warrants that it has the necessary equipment to provide the services required by this Agreement. All equipment or materials used or supplied under this Agreement shall be of first quality and meet the specifications established by the District, if any. Contractor will be solely responsible for supplying, storing, maintaining, and replacing any and all equipment that is necessary for implementing the services under this Agreement. Municipality will not supply, nor will it pay for any repairs, maintenance or replacement of, or new equipment expenses, or temporary work related to equipment.

ARTICLE 7: PERSONNEL

Contractor is responsible for compliance with all applicable State of Vermont and Federal laws. Contractor will manage their own personnel without general oversight by the Municipality and shall oversee and coordinate sub-contractors that are approved by Municipality. All drivers and equipment operators will be properly trained and have all certifications and valid licensing required to operate said equipment. The Contractor must certify to the Municipality that all drivers operating a commercial motor vehicle are in a federally mandated random drug and alcohol testing program that complies with Federal Motor Carrier Safety Administration (FMCSA) requirements.

Contractor alone shall be responsible for ensuring compliance with all applicable regulatory requirements including but not limited to those from FMCSA and Vermont Occupational Safety and Health Administration (VOSHA). Contractor further agrees to include this provision in all subcontracts in accordance with Article 5.

ARTICLE 8: SAFETY AND TRAFFIC CONTROL

The Contractor alone shall be responsible for safety and security of his/her own personnel when on site at the CSWD MRF. Contractor is solely responsible for traffic control, which practices shall comply with the Manual on Uniform Traffic Control Devices, latest edition.

ARTICLE 9: INDEMNIFICATION

Contractor shall indemnify and hold harmless Municipality and Municipality's agents and employees, from and against all losses and all claims, demands, payments, suits, actions,

recoveries, claims of outstanding indebtedness, attorneys' fees, liens, and judgments of every nature, and description brought or recovered against them by reasons of any act or omission of the said Contractor, its agents, employees, or sub-contractors, in the execution of the work or in guarding the same. The Contractor shall defend the Municipality and its officers and employees against all claims or suits arising in whole or in part from any act or omission of the Contractor or of any agent or subcontractor of the Contractor. The Municipality shall notify the Contractor in the event of any such claim or suit, and the Contractor shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit.

Contractor shall assume full responsibility for the protection of all buildings, structures and utilities (both public and private). All damage, injury or loss to any public or private property, by the Contractor, or any sub-contractor, shall be replaced or restored to at least the original condition to the satisfaction of the Municipality at the Contractor's expense.

Nothing in this Agreement shall constitute a waiver by the Municipality of any statutory limits or immunities from liability.

ARTICLE 10: INSURANCE

Before commencing work on this Agreement, the Contractor must provide certificates of insurance to show that the following minimum coverages are in effect. Contractor agrees that it will provide and maintain during the entire term of this Agreement the following insurances with at least the indicated amounts of coverage and provide Municipality a certificate of insurance showing such coverages before providing any services under this Agreement:

- (1) Commercial General Liability insurance coverage with a policy limit of at least \$1,000,000 per occurrence and \$2,000,000 in aggregate;
- (2) Business Automobile Liability coverage with total liability limits of at least \$1,000,000; and
- (3) Statutory Workers' Compensation insurance.

If Contractor is not required by law to carry workers' compensation insurance, in place of proof of workers' compensation insurance Contractor may provide a fully executed Non-Employee Work Agreement specifying the particular provision of 21 V.S.A §601(14)(F) that exempts Contractor from having to carry such coverage.

The Contractor's policies shall name the Municipality as an additional insured.

ARTICLE 11: WARRANTY AND BOND

No Warranty or Bond will be required under this Agreement

ARTICLE 12: NON-APPROPRIATION

Does not apply to this Agreement

ARTICLE 13: TERMINATION

Municipality may terminate this Agreement, with or without cause, upon 30 days written notice to the Contractor.

ARTICLE 14: DEFAULT

The occurrence of any of the following shall constitute default by Contractor and, if not corrected within 10 days of Municipality providing Contractor written notice of the default, shall allow Municipality to terminate this Agreement:

- (1) failure to adequately perform or deliver the required services;
- (2) if applicable, failure to provide the required bonds or other security acceptable to Municipality before starting any work;
- (3) declaration of bankruptcy by Contractor;
- (4) making a material misrepresentation to Municipality;
- (5) persistently disregarding laws, ordinances, rules, regulations or orders of any public authority having jurisdiction; or
- (6) failure to perform any other material provision of this Agreement.

Upon default of this Agreement by Contractor, Municipality may withhold any payment due Contractor for purposes of set-off until such time as the exact amount of damages due is determined. Such withholding shall not constitute default or failure to perform on the part of Municipality.

Neither party shall be held responsible for delay or failure to perform when such delay or failure is due to any of the following uncontrollable circumstances unless the act or occurrence could have been foreseen and reasonable action could have been taken to prevent the delay or failure: fire, flood, epidemic, strikes, wars, acts of God, acts of public authorities, or delays or defaults caused by public carriers; provided the non-performing party gives notice as soon as possible to the other party of the inability to perform. The Municipality and the Contractor agree to attempt to resolve quickly all matters related to uncontrollable circumstances and use all reasonable effort to mitigate its effects.

In addition to the above, in the event of a State or Federal Disaster Declaration, Municipality reserves the right to suspend certain provisions of this Agreement to conform with FEMA or Vermont Emergency Management regulations and directives.

Upon completion of the Agreement Term or upon termination of the Agreement, the Contractor shall remove from District DOC locations all equipment and/or all temporary structures, waste

materials and rubbish resulting from its operations, leaving the premises in a neat and presentable condition. In the event of failure to do so, the same may be done by the Municipality at the expense of the Contractor.

ARTICLE 15: REMEDIES

Default or breach of this Agreement by Contractor shall entitle Municipality to seek remedies under law and as provided by this Agreement. In the event this Agreement is terminated by reason of default by Contractor, Municipality may recover the necessary costs of termination, including but not limited to, administrative, attorneys fees and legal costs, from Contractor. Except when caused by uncontrollable circumstances, if Contractor fails to meet any performance deadlines established by this Agreement, or fails to perform in accordance with the specification, terms, and conditions of this Agreement, Municipality shall have the right to purchase the service and materials from other sources on the open market or to purchase those items necessary to continue functioning until delivery from Contractor is complete. Municipality may deduct as damages from any money due or coming due to Contractor the differences between Contractor's price and the higher price or the costs of temporary items. Municipality may require Contractor, at Contractor's sole expense, to re-perform any items of work provided for in this Agreement that do not meet the established specifications, standards, or Municipality directives.

Any remedies available to Municipality are cumulative and not exclusive. The seeking or exercising by Municipality of a remedy does not waive its right to seek or exercise any other remedy available to it at law, in equity, by statute, or under this Agreement.

ARTICLE 16: ARBITRATION

Should disputes arise between the Contractor and the Municipality about this Agreement or any related matter, the parties agree to arbitrate any such controversy, pursuant to the Vermont Arbitration Act, 12 V.S.A. § 5651 et seq.

ARTICLE 17: AGREEMENT DOCUMENTS

This Agreement shall constitute the entire Agreement between the parties on the subject matters. All prior Agreements, representations, statements, negotiations, and understandings shall have no effect. There shall be no modifications or amendments to this Agreement or to the Attachment unless said changes, modifications or amendments are in writing duly executed by the parties.

ARTICLE 18: SEVERABILITY

The provisions of this Agreement are severable and if a court of competent jurisdiction holds any portion of this Agreement unconstitutional or invalid, the remainder of this Agreement shall not be affected and shall remain in full force and effect.

IN WITNESS WHEREOF, the parties do hereby execute this Agreement on the day and year first written above.

Chittenden Solid Waste District

Contractor

Signature of District Authorized Party

Signature of Contractor

Title

Title

Dated: _____

Dated: _____

Attachment A



GLASS RECYCLING SERVICE AGREEMENT FOR BOTTLE CULLET

Subject to the attached Terms and Conditions and the following provisions, the supplier identified in the signature space at the end of this Agreement ("**Supplier**") grants to Strategic Materials, Inc. ("**Strategic**") the sole right but not the obligation to recycle all of the glass scrap and/or cullet generated or accumulated by Supplier at Supplier's facility(ies), as follows:

PARTIES & FACILITIES

Strategic Headquarters	Supplier Mailing Address		Supplier Facilities	Local Contact	Strategic Facility
Strategic Materials, Inc 17220 Katy Freeway, Suite 150 Houston, Texas 77094	Chittenden Solid Waste District 1021 Redmond Road Williston, VT 05495	1	Chittenden Solid Waste 357 Avenue C Williston, VT 05495	Josh Tyler Dir. Of Ops 802-338-5304	SMI-South Windsor 300 Rye St S. Windsor, CT 06074
		2			
		3			
<i>Strategic's Supply Contacts</i>	Josh Tyler	4			
Dora Servidio 860-334-7263	802-338-5304	<i>Strategic Contact: Mike Rock mrock@smi.com</i>			
dservidio@smi.com	jtyler@cswd.net				

TERM

Date of Agreement: _____ **Effective** _____ **Service** _____ **Date:** _____
 _____ 1/1/23 _____

The initial term of this Agreement is three (3) years from the Effective Service Date shown above. This Agreement shall automatically renew for successive three (3) year terms (the renewal term) thereafter unless either party shall give written notice of termination to the other party at least sixty (60) days prior to the termination of the initial term or any renewal term.

BASE RATES OF PAYMENT:

Base rates are based on the actual weight of Cullet received by Strategic, as determined by Strategic. Strategic may adjust fees, or reject and/or return at supplier's expense, cullet which contains foreign contaminants such as stones, ceramics, porcelain, paper, metal, wire glass, mirrored glass, leaded glass, CRT or electronic glass, rags, laminated glass, plastic, universal, biomedical or infectious waste, and general rubbish. Supplier also certifies that it will supply Strategic with only soda-lime type glass unless otherwise agreed to in advance and specified below under Other column. Supplier will not commingle different composition types of glass within any single container or bin.

Supplier's Facility (listed above)	Picked up or delivered	Flint bottle	Anther bottle	Green bottle	3-Mix bottle	Other
1	Picked Up					MIXSSU – Single Stream (\$96.00)/ton
2						

3						
4						
Attach additional sheet as needed for additional Supplier Facilities						

ADJUSTMENTS

The base rates shown above shall be adjusted for each Supplier Facility from time to time based upon the combination of the amount of non-glass residue contained with Cullet received from such Facility (termed "~~Non-Glass Residue~~" or "~~NGR~~") and the amount of Cullet which is less than 3/8ths of an inch in diameter (termed "~~Undersize~~" or "~~Fines~~"), each of which decreases the value of the Cullet to Strategic. These adjustments are set forth in the most recent Tipping Fee Calculator matrix which is attached to this Agreement and incorporated herein by reference. Strategic shall adjust the Tipping Fee Calculator from time to time based upon changes in its market for glass cullet and costs of production, either or both of which may be seasonal. Unless otherwise agreed to, Strategic will not adjust the Tipping Fee Calculator more frequently than once a month. These adjustments can be made either by base price adjustments or by monthly chargebacks.

SIGNATURES

The undersigned individual, signing this Agreement on behalf of Supplier, acknowledges that he or she has read and understands the Terms and Conditions of this Agreement set forth above and on the following pages, which are incorporated by reference, and that he or she has the authority to sign the Agreement on behalf of Supplier. This Agreement shall be complete when signed by Strategic by its authorized representative in Houston, Texas.

SUPPLIER: Chittenden Solid Waste District
(Print legal name of supplier above)

STRATEGIC MATERIALS, INC.

By: _____

By: Dora Servidio

Its: _____

Its: Regional Sourcing Manager

Date: _____

Date: 12/21/22

TERMS AND CONDITIONS

- 1. Services Rendered.** Supplier grants to Strategic the exclusive right, but not the obligation, to recycle all of Supplier's waste glass materials ("**Cullet**") and Strategic agrees to furnish such services specified above, all in accordance with the terms of this Agreement.
- 2. Cullet Definition.** The Cullet to be recycled by **Strategic** pursuant to this Agreement is all soda lime bottle cullet scrap glass identified by chemical type and free from contamination generated by Supplier's Facility(ies). Cullet specifically excludes and Supplier agrees not to deposit in Strategic's equipment or deliver to Strategic's plant any radioactive, volatile, corrosive, highly flammable, explosive, biomedical, infectious, biohazardous, toxic, universal, or hazardous material as defined by applicable federal, state, provincial, or local laws or regulations. Supplier also agrees not to deposit in Strategic's equipment or deliver to Strategic's plant any glass ceramic blends such as pyroceram or neoceram.
- 3. Title.** Strategic shall acquire title to the Cullet **when** it is loaded into Strategic's truck or delivered by supplier to Strategic's plant. Title to and liability for any material other than Cullet which has been deposited into Strategic's equipment ("Excluded Waste") shall remain with Supplier and Supplier expressly agrees to defend, indemnify and hold harmless Strategic from and against any and all damages, penalties, fines and liabilities resulting from or arising out of the deposit in Strategic's equipment or delivery to Strategic's plant any Excluded Waste. Supplier agrees to comply with any description of and/or procedures with respect to removal of contaminants rejected by a potential purchaser or otherwise determined by Strategic not to be resalable or to have a reduced resale value. Strategic may require Supplier to pay Strategic the charges incurred by Strategic (plus overhead and lost profit) for hauling, processing and/or disposal of such material and for the reduction in resale value of such material, or Strategic may automatically offset such sums against other monies owed to Supplier.
- 4. 3-Mix Supply.** Any 3-Mix shall be supplied in accordance with the standards and practices set forth in Strategic Materials' Single Stream Glass Cullet Specification SSGC-2015/2016, Rev-02, attached hereto and incorporated herein by reference. In addition, Strategic may adjust fees, or reject and/or return at Supplier's expense, 3-Mix which contains Excluded Waste, cross-contamination from Construction & Demolition wastes, or excessive moisture. If disputes arise as to the composition of the 3-Mix supply, the parties will adopt a composition testing and dispute resolution program.
- 5. Indemnification.** Supplier agrees to indemnify, protect, hold harmless and defend Strategic (and its subcontractors) from and against any and all liabilities, claims, losses, or voluntary settlement payments, of whatever kind and nature, and the costs and expenses incurred incident thereto, including coats of defense, settlement and reasonable attorneys' fees incurred by Strategic, as a result of death or bodily injuries to any employee of Supplier or other person, destruction or damage to any property, contamination of or adverse effects on the environment, or any violations of federal, state or local laws, regulations or orders, caused by, resulting from, or incidental to, (i) Supplier's breach of any term or provision of this Agreement; (ii) the sole negligence gross negligence, concurrent negligence, or willful misconduct of Supplier; (iii) Supplier's use, operation or possession of the equipment; or (iv) any Cullet which contains contaminants as listed in Section 2. This Section 4 shall survive any termination of this Agreement.
- 6. Payments.** If applicable, Supplier agrees to pay Strategic on a monthly basis for the cullet, services and/or equipment furnished by Strategic in accordance with the charges and rates provided for herein. Supplier shall make payment to Strategic within ten (10) days of the receipt of an invoice from Strategic. Strategic may impose and Supplier agrees to pay a late fee for all past due payments, such late fee as determined by Strategic in an amount not to exceed the maximum rate for same allowed by applicable law. If applicable, Strategic agrees to pay Supplier on a consignment basis for ~~the~~ cullet value in accordance with the charges and rates provided for herein. Strategic shall make payment to Supplier within sixty (60) days from the sale of surplus cullet.
- 7. Service Changes.** Changes to the type, size and amount of equipment, the type or frequency of service, and corresponding adjustments to the rates, may be made by Agreement of the parties, evidenced either in writing or by the practices and actions of the parties without affecting the validity of this Agreement and this Agreement shall be deemed amended accordingly. This Agreement shall continue in effect for the term provided here in and shall apply to changes of and new service address location of the Supplier within the area in which Strategic provides collection service.
- 8. Responsibility for Equipment.** Any equipment furnished by Strategic shall remain the property of Strategic, however Supplier acknowledges that it has care, custody, and control of the equipment while at the Supplier's location and accepts responsibility for all loss or damage to the equipment (except for normal wear and tear or for loss or damage resulting from Strategic's handling of the equipment) and for its contents. Supplier agrees not to overload (by weight or volume), move or alter the equipment, and shall use the equipment only for its proper and intended purpose. Supplier agrees to provide unobstructed access to the equipment free from the proximity of any hazards on the scheduled collection day. If the equipment is inaccessible so that the regularly scheduled pick-up cannot be made, Strategic will promptly notify the Supplier and afford the Supplier a reasonable opportunity to provide the required access; however, Strategic reserves the right to charge an additional fee for any additional collection service required by Supplier's failure to provide such access.
- 9. Damage to Pavement.** Supplier recognizes the difficulty of ensuring that the Supplier's pavement or driving surface is adequate to bear the weight of Strategic's vehicles. Therefore, Supplier agrees that Supplier will be responsible for any damage to Supplier's pavement, curbing or other driving surfaces resulting from the weight of Strategic's vehicles providing service at the Supplier's location.
- 10. Liquidated Damages.** In the event Supplier terminates this Agreement prior to its expiration other than as a result of a breach by Strategic or Strategic terminates this Agreement for Supplier's breach, Supplier agrees to pay to Strategic as liquidated damages a sum calculated as follows: (1) if the remaining term under this Agreement is twelve or more months, Supplier shall pay its average monthly activity measured in tons times \$25/ton times the remaining months in the contract; (2) if the remaining term under this Agreement is less than twelve months, Supplier shall pay its average monthly activity measured in tons times \$25/ton multiplied by the number of months remaining in the term. Supplier expressly acknowledges that in the event of an unauthorized termination of this Agreement, the anticipated loss to Strategic in such event is estimated to be the amount set forth in the foregoing liquidated damages provision and such estimated value is reasonable and is not imposed as a penalty. In the event Supplier fails to pay Strategic all amounts which become due under this Agreement, or fails to perform its obligations hereunder, and Strategic refers such matter to an attorney, Supplier agrees to pay; in addition to the amount due, any and all costs incurred by Strategic as a result of such action, including, to the extent permitted by law, reasonable attorneys' fees.
- 11. Suspension and Termination for Cause.** If, during the term of this Agreement, either party shall be in breach of any provision of this Agreement, the other party

may suspend or terminate its performance hereunder until such breach has been corrected; provided, however, that no termination shall be effective unless and until the complaining party has given written notice of such breach to the other party and the other party has failed to cure such breach within at least thirty (30) days thereafter. In the event any such breach remains uncured for a period of thirty (30) days, the complaining party may terminate this Agreement by giving the other party written notice of such termination; which shall become effective upon receipt of such notice.

12. Assignment. Strategic may assign its rights and obligations hereunder to any subsidiary, affiliated, or successor corporation or entity. Supplier shall not assign its rights and obligations hereunder without the prior written consent of Strategic.

13. Right of First Refusal to Provide Additional Service. Strategic shall have a right-of-first refusal to acquire any and all Cullet generated at Supplier's existing, additional, unnamed, or future facilities that are not currently covered by this Agreement.

14. Excused Performance. Neither party hereto shall be liable for its failure to perform or delay in performance hereunder due to contingencies beyond its reasonable control including, but not limited to, epidemics, strikes, civil disturbance, acts or regulations of government bodies, any failure or loss of supply or market in any locale, fires and acts of God, and such failure shall not constitute a default under this Agreement.

15. Binding Effect. This Agreement is a legally binding contract on the part of Strategic and Supplier and their respective heirs, successors and assigns, in accordance with the terms and condition set out herein.

16. Entire Agreement. This Agreement represents the entire understanding and Agreement between the parties hereto and supersedes any and all prior Agreements, whether written or oral that may exist between the parties regarding same.

17. Confidentiality. Supplier agrees not to disclose the terms and conditions of this Agreement to any other party without the express written consent of Strategic.

18. Governing Law. The validity, interpretation, and performance of this Agreement shall be governed and construed in accordance with the laws of the State of Texas, excluding its conflict of laws provisions.

These Terms and Conditions

**are part of the Glass Recycling Service
Agreement for Bottle Cullet.**