



MARR[®]
Major Appliance Recycling Roundtable

Negotiated Request for Proposal for Operational Services

Collection and Handling of Ozone Depleting Gas for Metro
Vancouver Collection Sites

Deadline to submit Notice of Intent to Bid:
August 31, 2021, 5:00pm Pacific Standard Time

Response Deadline:
September 15, 2021, 5:00pm Pacific Standard Time

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1. INTRODUCTION

1.1 BC MAJOR APPLIANCE STEWARDSHIP PLAN

The Association of Home Appliance Manufacturers Canada (“AHAM”) and the Retail Council of Canada (“RCC”) created a stewardship program that would provide industry-led management of the recycling of major appliances and discharge responsible stewards’ regulatory obligation. The Major Appliance Recycling Roundtable (MARR) is the stewardship organization created to meet those obligations. The approved stewardship plan covers major household appliances contained within the electronic and electrical product category of the Recycling Regulation, and includes, but is not limited to the following major product types:

- Refrigerators, wine coolers and beverage centers
- Freezers
- Portable, room and window air conditioners
- Portable dehumidifiers
- Clothes washers and dryers
- Ranges, built-in ovens and surface cooking units
- Built-in and over the range microwave ovens
- Range hoods and downdrafts
- Dishwashers
- Food waste disposers and trash compactors
- Electric water dispensers

The stewardship program relies on the metal and other secondary markets to collect and process end-of-life (EOL) major appliances in BC. Unlike many other EOL consumer durable goods, major household appliances have a financial value at their EOL largely due to their significant metal composition. As such, collectors, processors and recyclers can earn revenues from these components and generate profits using various market instruments. Known as a “market-driven” system, this system is comprised of a variety of collectors (retailers, municipalities and private waste management companies) who collect EOL major appliances, and then channel those products into scrap metal consolidators and processors who subsequently process and breakdown the appliances for sale to North American steel mills and other secondary markets. The inherent value in EOL major appliances creates a natural market-driven system for the collection and processing of these products at their EOL, which has been in place for decades. In its most recent plan submission, MARR has committed to enhance the performance of the current system by providing incentives for the management and collection of Ozone Depleting Substances (ODS) from products within the product category through a network of approved collectors, and to reasonable and free consumer access to collection facilities. This is

accomplished by providing incentives for administrative costs and transportation costs as required by region on a cost recovery basis.

1.2 FORTHCOMING CHANGES

MARR currently pays the costs of ODS recovery on a cost recovery basis. Collectors source service providers that meet both the MARR processing standard and all current regulatory requirements and MARR reimburses the collector for the costs incurred in the handling of ODS for all products covered in the stewardship plan.

The MARR collector, Greater Vancouver Sewerage and Drainage District and in co-operation with Metro Vancouver member municipalities, community recycling organizations and/or waste management contractors (collectively referred to as “Metro Vancouver”) will require that the service contract for ODS removal at all contracted sites be held between MARR and the selected service provider.

1.3 GENERAL

This Negotiated Request for Proposals (“NRFP”) is issued by MARR in respect of the Operational Services set out briefly in the NRFP Schedule 1 - Scope of Work.

The purpose of this NRFP Process is to select a partner or partners with whom MARR intends to enter into a service agreement to provide the Operational Services.

In this NRFP, parties that submit documents in response to this NRFP are referred to as “Respondents” and their submissions are referred to as “Proposals”. Each team member, if any, constituting a Respondent’s team is referred to as a “Respondent Team Member”. The entity (entities) that is (are) selected by MARR to enter into the final agreement (the “Final Agreement”) is (are) referred to as the “Successful Respondent” (Respondents).

Where a Respondent has obligations to conduct itself in accordance with requirements set out in the NRFP Documents or where the Respondent’s rights or remedies have been limited by the NRFP Documents, such obligations and limitations apply to the Respondent itself, any members of the Respondent’s team, and any of their respective employees, consultants, advisors and representatives. For clarity, the Respondent is obliged to ensure that the Respondent Team Members, and the employees, consultants, advisors and representatives of the Respondent and the Respondent Team Members comply with the requirements imposed on the Respondent pursuant to the NRFP Documents.

The procurement process to select a Successful Respondent (Respondents) shall commence with the issuance of this NRFP and, except as provided in Section 8.1, the procurement process shall terminate either,

- (a) on the cancellation or discontinuation of this NRFP Process by MARR, if such cancellation or discontinuation occurs; or
- (b) on the execution of a Final Agreement by the Successful Respondent (Respondents) and MARR,

whichever is first. The procurement process from the issuance of this NRFP until the end of the procurement process as set out in this NRFP is referred to as the “NRFP Process”.

1.4 RESPONDENT REPRESENTATIVES AND COMMUNICATION

All correspondence from MARR to a Respondent will be sent to either,

- (a) the person to whom the NRFP Documents were originally provided; or
- (b) the person identified, in the Respondent’s Proposal, to receive information and notices on behalf of the Respondent, (the “Respondent Representative”).

Each Respondent is solely responsible to ensure that all contact information of the Respondent Representative is accurate and updated at all times during the NRFP Process. Respondents may update or revise their Respondent Representatives’ information by notifying the Contact Person, in writing.

2. THE NRFP DOCUMENTS

2.1 THE NRFP DOCUMENTS

The NRFP Documents (the “NRFP Documents”) are:

- (a) this NRFP.
- (b) Schedule 1 – Scope of Work.
- (c) Schedule 2 – NRFP Format
- (d) Schedule 3 – Draft ODS Service Contract
- (e) Addenda to the NRFP Documents.

Subject to NRFP Section 2, the NRFP Documents shall be read as a whole. The Schedules and Addenda, if any, constitute an integral part of this NRFP and are incorporated by reference. For greater clarity, background information documents are not NRFP Documents.

2.2 CONFLICTS OR INCONSISTENCIES IN DOCUMENTS

Conflicts or Inconsistencies in Documents

For the purpose of the NRFP Process, if there are any conflicts or inconsistencies among the terms and conditions of the documents comprising NRFP Documents the following shall apply:

- (a) in respect of matters of interpretation related to the NRFP Process and all competitive procurement process matters, this NRFP shall prevail over the Schedules to this NRFP; and
- (b) in respect of all matters of interpretation of the nature of Operational Services and the Draft Operational Services Agreement, the Draft Operational Services Agreement shall prevail over this NRFP and all other Schedules to this NRFP; and
- (c) for the purpose of resolving conflicts or inconsistencies among the documents that constitute the Draft Operational Services Agreement, the provisions of the Draft Operational Services shall prevail over this NRFP and all other Schedules to this NRFP

Respondent Review of Documents and Information

Despite NRFP Section 2, if the Respondent believes that there is any term or condition in any NRFP Document that is ambiguous, or that conflicts or is inconsistent with any other term or condition in the NRFP Documents, the Respondent shall notify MARR of that ambiguity, conflict or inconsistency in accordance with NRFP Section 3.2 and, for greater clarity, by the deadline set out in the NRFP Data Sheet for the submission of questions.

It is the Respondent's obligation to seek clarification from MARR of any matter it considers to be unclear in accordance with NRFP Section 3.2. MARR is not responsible in any way whatsoever for any misunderstanding by the Respondent of the NRFP Documents, background information provided by MARR, responses to questions, or any other type of information provided by, or communications made by MARR.

2.3 DISTRIBUTION OF NRFP DOCUMENTS TO RESPONDENTS

MARR will circulate this NRFP and all other NRFP Documents, including Addenda, as set out in the NRFP Data Sheet.

2.4 RESPONDENT INVESTIGATIONS

Each Respondent and each of its Respondent Team Members is solely responsible, at its own cost and expense, to carry out its own independent research, due diligence or to perform any other investigations, including seeking independent advice, considered necessary by the Respondent to satisfy itself as to all existing conditions affecting the Operational Services or the Draft

Operational Services Agreement. The Respondents' and Respondent Team Members' obligations set out in this section apply irrespective of any background information provided by MARR or information contained in the NRFP Documents or in responses to questions.

MARR does not represent or warrant the accuracy or completeness of any information set out in the NRFP Documents or made available to Respondents or Respondent Team Members. Respondents and Respondent Team Members shall make such independent assessments as they consider necessary to verify and confirm the accuracy and completeness of all such information as any use of or reliance by Respondents and Respondent Team Members on any and all such information shall be at the Respondents' and Respondent Team Members' sole risk and without recourse against MARR.

3. THE NRFP PROCESS

3.1 NRFP PROCESS TIMETABLE

The deadline for the submission of Proposals (the "Submission Deadline") and the general timetable for the NRFP Process (the "Timetable") are set out in the NRFP Data Sheet.

MARR may amend the Timetable in its sole discretion:

- (a) at any time prior to the Submission Deadline for events that are to occur prior to or on the Submission Deadline, including the Submission Deadline itself; and
- (b) at any time in the NRFP Process for events that are to occur after the Submission Deadline.

3.2 RESPONDENT QUESTIONS

Contact Person

The Respondents shall submit all questions and other communications regarding the NRFP Documents, the NRFP Process and their Proposals to the contact person named in the NRFP Data Sheet (the "Contact Person") electronically at the coordinates listed in the NRFP Data Sheet.

Submitting Questions

Respondents shall submit questions in accordance with the deadlines set out in the Timetable, in the form set out in the NRFP Data Sheet and the following:

- (a) Respondents may categorize their questions as follows:

- a. questions that are of general application and that would apply to other Respondents (“General Questions”); and
 - b. questions that the Respondent considers to be commercially sensitive or confidential to that particular Respondent (“Confidential Questions”).
- (b) if MARR disagrees with the Respondent’s categorization of a question as a Confidential Question, MARR will give the Respondent an opportunity to either categorize the question as a General Question or to withdraw the question;
- (c) if MARR determines, in its sole discretion, that a Confidential Question, even if it is withdrawn by a Respondent, is of general application or would provide a significant clarification of the NRFP Documents or NRFP Process to Respondents, MARR may issue a clarification to Respondents that deals with the same subject matter as the withdrawn Confidential Question; and
- (d) if MARR agrees with the Respondent’s categorization of a Confidential Question, then MARR will provide a response to that question to only the Respondent that submitted the question.

Responses to questions prepared and circulated by MARR are not NRFP Documents and do not amend the NRFP Documents. Only a response to a question that has been incorporated into or issued as an Addendum will modify or amend the NRFP Documents and, otherwise, responses to questions will have no force or effect whatsoever and shall not be relied upon by any Respondent.

MARR may, in its sole discretion, distribute responses to questions of a minor or administrative nature to only the Respondent who submitted the minor or administrative question.

3.3 COMMUNICATIONS RESTRICTIONS

Prohibited Contacts

Respondents and Respondent Team Members and all of their respective Advisors, employees and representatives are prohibited from engaging in any effort to influence the outcome of the NRFP Process.

Without limiting the generality of NRFP Section 3, neither Respondents or Respondent Team Members or any of their respective Advisors, employees or representatives shall contact or attempt to contact, either directly or indirectly, at any time during the NRFP Process, any of the following persons or organizations on matters related to the NRFP Process, the NRFP Documents, or their Proposals:

- (a) MARR;
- (b) any member of the Evaluation Committee;

- (c) any member of the MARR Board or the organizations represented by a member of the MARR Board; or
- (d) any directors, officers, employees, agents, representatives, advisors or consultants of any entity listed in NRFP Sections 3.

If a Respondent or a Respondent Team Member or any of their respective Advisors, employees or representatives, in the opinion of MARR, contravenes NRFP Section 3, MARR may, in its sole discretion disqualify the Respondent or impose conditions on the Respondent's continued participation in the NRFP Process that MARR considers, in its sole discretion, to be appropriate.

For clarity, MARR is not obliged to take any of the actions set out in NRFP Section 3.

Media Releases, Public Disclosures and Public Announcements

A Respondent shall not, and shall ensure that its Advisors, employees, representatives and Respondent Team Members, and their respective Advisors, employees and representatives do not, issue or disseminate any media release, public announcement or public disclosure (whether for publication in the press, on the radio, television, internet or any other medium) that relates to the NRFP Process, the NRFP Documents or the Operational Services or any matters related thereto, without the prior written consent of MARR.

For the purpose of greater clarity, NRFP Section 3 does not prohibit disclosures necessary to permit the Respondent to discuss the Operational Services with prospective subcontractors, but such disclosure is permitted only to the extent necessary to solicit those subcontractors' participation in the NRFP Process.

Restrictions on Communications between Respondents – No Collusion

A Respondent shall not discuss or communicate, directly or indirectly, with any other Respondent, any information whatsoever regarding the preparation of its own Proposal or the Proposal of the other Respondent. Respondents shall prepare and submit Proposals independently and without any connection, knowledge, comparison of information or arrangement, direct or indirect, with any other Respondent.

3.4 MEETINGS WITH RESPONDENTS

Respondents Meeting(s)

MARR may, in its sole discretion, convene Respondent's meetings (each, a "Respondents Meeting") as set out in the NRFP Data Sheet. While attendance at a Respondents Meeting is not

mandatory, Respondents are strongly encouraged to attend. A Respondent's failure to attend a Respondents Meeting is at the Respondent's sole risk.

No statement, consent, waiver, acceptance, approval or anything else said or done in any Respondents Meetings by MARR or any of their respective Advisors, employees or representatives shall amend or waive any provision of the NRFP Documents or be binding on MARR or be relied upon in any way by Respondents, Respondent Team Members or their Advisors, except when and only to the extent expressly confirmed in an Addendum to the NRFP Documents issued in accordance with NRFP Section 3.6.

3.5 CHANGES TO RESPONDENTS AND RESPONDENT TEAM MEMBERS

If, following submission of a Proposal, the Respondent wishes to change its team, subcontractors or named individuals, the Respondent is prohibited from changing its team, subcontractors or named individuals without the prior written consent of MARR.

3.6 ADDENDA/CHANGES TO THE NRFP DOCUMENTS

MARR may, in its sole discretion, amend or supplement the NRFP Documents prior to the Submission Deadline. MARR shall issue changes to the NRFP Documents by Addenda only. No other statement, whether oral or written, made by MARR or its Advisors, employees or representatives, including, for clarity, the Contact Person, or any other person, shall amend the NRFP Documents. The approximate final date that MARR will issue an Addendum in respect of the Draft Services Agreement is set out in the Timetable. MARR may issue other Addenda at any time.

The Respondent is solely responsible to ensure that it has received all Addenda issued by MARR. Respondents may, in writing, seek confirmation of the number of Addenda issued under this NRFP from the Contact Person.

Any reference to any one or all of the NRFP Documents in the NRFP Documents includes any amendments to the NRFP Documents made in accordance with this NRFP Section 3.6.

3.7 CONFIDENTIALITY AND INTELLECTUAL PROPERTY MATTERS

Confidentiality

All information, of any kind whatsoever and in any format, supplied by MARR to the Respondents during the NRFP Process and any information derived from such information ("Confidential Information"),

- (a) is the property of MARR and must be treated as confidential;
- (b) is not to be used for any purpose whatsoever other than replying to this NRFP and the fulfillment of the Successful Respondent's obligations under any subsequent Final Agreement;
- (c) shall not be disclosed to any third party without prior written authorization from MARR; and
- (d) shall be returned by the Respondents to MARR no later than ten calendar days after a written request from MARR for the return of such Confidential Information.
- (e) MARR may provide the Proposals to any person involved in the review and evaluation of the Proposals on behalf of MARR and MARR may,
 - a. make copies of the Proposal; and
 - b. retain the Proposal.

MARR may disclose any information with respect to the Respondents, the Respondent Team Members, the Proposals and the NRFP Process as required by Applicable Law.

The Respondent shall not require MARR or any of its representatives to sign a confidentiality agreement in respect of any step taken or information provided as part of this NRFP Process.

Notwithstanding NRFP Section 8, the provisions of this NRFP Section 3 shall be binding and shall survive any cancellation of this NRFP and the conclusion of the NRFP Process.

Ownership of Proposals

All Proposals submitted before the Submission Deadline shall become the property of MARR and will not be returned to the Respondent. For clarity, this NRFP Section 3 applies to Proposals that are withdrawn after the Submission Deadline and are no longer under consideration in the NRFP Process.

3.8 CONFLICT OF INTEREST AND INELIGIBLE PERSONS

Respondents and Respondent Team Members and each of their Advisors shall disclose any potential, perceived or actual conflict of interest of the Respondent ("Conflict of Interest") to the Contact Person and in its Proposal Submission Form, in accordance with this NRFP Section 3. MARR may, in its sole discretion, waive any Conflict of Interest or may impose conditions on a Respondent that require the management, mitigation and /or minimization of the Conflict of Interest.

Upon discovery of a Conflict of Interest, Respondents shall promptly disclose the Conflict of Interest in a written statement to the Contact Person. If MARR discovers a Respondent's failure

to disclose a Conflict of Interest, MARR may disqualify the Respondent or terminate any Final Agreement awarded to the Respondent pursuant to this NRFP Process.

If, in the sole discretion of MARR, a Respondent is determined to have a Conflict of Interest that, in MARR's sole discretion, cannot be managed, mitigated or minimized, MARR may, in addition to any other remedies available at law or in equity, disqualify the Proposal submitted by the Respondent.

As a result of their involvement in the subject matter of this NRFP , the persons named in the NRFP Data Sheet as "Ineligible Persons", their employees, and any of their subcontractors, advisors, consultants or representatives engaged in respect of the subject matter of this NRFP and, except with the prior written consent of MARR, any person controlled by, that controls or that is under common control with the Ineligible Persons (each an "Ineligible Person's Affiliate") are not eligible to participate as a member or advisor to any Respondent in this NRFP Process.

3.9 RESPONDENT COSTS

The Respondent and the Respondent Team Members shall bear all costs and expenses of any kind whatsoever incurred by them relating to any aspect of their participation in this NRFP Process.

MARR are not liable to pay any costs or expenses of any kind whatsoever of any Respondent or to reimburse or compensate a Respondent for costs or expenses of any kind whatsoever in respect of its participation in the NRFP Process under any circumstances, regardless of the outcome of the NRFP Process.

4. PREPARATION, SUBMISSION, WITHDRAWAL AND MODIFICATION OF THE PROPOSAL

4.1 FORMAT AND CONTENT OF THE PROPOSAL

Respondents shall prepare their Proposal in accordance with and in the content and format requirements set out in Schedule 4 to the NRFP.

4.2 SUBMISSION OF PROPOSALS

Each Respondent shall submit its Proposal on or before the Submission Deadline. Each Respondent shall submit its Proposal in the format, either in hard copy or electronically, required by MARR as set out in the NRFP Data Sheet. For the purposes of the NRFP Process, the

determination of whether a Proposal is submitted on or before the Submission Deadline shall be based on:

- (a) for Proposals submitted in hard copy, the time and date stamp the Respondent must ensure it receives from MARR at the address for submission set out in the NRFP Data Sheet; and
- (b) for Proposals submitted electronically, the time and date stamp that the Proposal is received by the MARR Contact Person.

For clarity, the time and date of an electronic submission is solely determined by the time and date the Proposal is received by MARR in accordance with NRFP Section 4.2(b) and without consideration as to the time or date it was sent by the Respondent. A Proposal received after the Submission Deadline, may or may not be considered by MARR and/or the Evaluation Committee, in the sole discretion of MARR and/or the Evaluation Committee.

It is the sole responsibility of the Respondent to ensure that the Proposal is received by MARR on or before the Submission Deadline and, for hard copy submission, to ensure it receives a date and time stamp receipt from MARR confirming the timely delivery of the Proposal.

In accordance with the Draft Operational Services Agreement attached as Schedule 3 to this NRFP, Respondents should prepare their Proposals assuming that the key terms and conditions set out in the Draft Operational Services Agreement will be required in any Final Agreement. In any negotiation, the Respondent will be considered to have taken these key terms and conditions into account in its Proposal and in its pricing.

MARR may, in its sole discretion, decline to enter into negotiations or may cease negotiations, irrespective of the Respondent's ranking in the evaluation process, with any Respondent if it becomes apparent that a Respondent has not prepared its Proposal taking into account the terms and conditions of the Draft Operational Services Agreement in accordance with NRFP Section 4.2.

4.3 WITHDRAWAL OF PROPOSALS

A Respondent may withdraw its Proposal at any time by giving written notice to the Contact Person. If a Respondent withdraws its Proposal after the Submission Deadline, MARR may, in its sole discretion, impose an evaluation penalty on the Respondent in any or all future MARR competitive procurement processes.

If a Respondent withdraws or attempts to amend its pricing after the Submission Deadline, MARR may, in its sole discretion, cease to consider the Respondent's Proposal any further in the NRFP Process and may, as applicable, cease any negotiations with the Respondent. If a Respondent withdraws or attempts to amend its pricing after the Submission Deadline, MARR may, in its sole discretion, impose an evaluation penalty on the Respondent in any or all future MARR competitive procurement processes.

4.4 AMENDMENT OF PROPOSAL

Respondents may amend their Proposals after submission but only if the Proposal is resubmitted on or before the Submission Deadline in accordance with the following:

- (a) the Respondent shall withdraw its original Proposal by notifying the Contact Person in writing before the Submission Deadline; and
- (b) the Respondent shall submit a revised replacement Proposal in accordance with the NRFP Documents and on or before the Submission Deadline in accordance with the requirements of NRFP Section 4.1.

5. EVALUATION, CLARIFICATION AND VERIFICATION OF PROPOSALS

5.1 EVALUATION COMMITTEE AND ADVISORS

MARR will establish an evaluation committee (the “Evaluation Committee”) for the purpose of evaluating Proposals in accordance with the NRFP Documents. MARR, in its sole discretion, will determine the size, structure and composition of the Evaluation Committee and any sub-committees of the Evaluation Committee. The Evaluation Committee may be assisted by and receive advice from any of the MARR Advisors and any other employees or representatives of MARR in any manner determined necessary or desirable by MARR.

If a member of the Evaluation Committee or, if applicable, an evaluation sub-committee becomes unable to continue serving on the Evaluation Committee or sub-committee before the completion of a step in the evaluation process, the evaluation comments and scores of that individual, in respect of the uncompleted steps in the evaluation process only, shall be ignored. For clarity, if an Evaluation Committee or sub-committee member becomes unable to continue serving on the Evaluation Committee or a sub-committee after the full completion of a step in the evaluation process, the results of the completed steps of the evaluation process are unaffected and remain valid. Whether or not an Evaluation Committee or sub-committee member, in these circumstances, is replaced is in the sole discretion of MARR.

5.2 MARR’S CLARIFICATION AND VERIFICATION OF PROPOSALS

MARR may:

- (a) require the Respondent to clarify or verify the contents of its Proposal or any statement made by the Respondent;

- (b) require the Respondent to submit supplementary documentation clarifying or verifying any matters contained in its Respondent; and
- (c) seek a Respondent 's acknowledgement of MARR's interpretation of the Proposal or any part of the Proposal.

MARR is not obliged to seek clarification or verification of any aspect of a Proposal or any statement by a Respondent, including an ambiguity in a Proposal or in a statement made by a Respondent.

Any written information received by MARR from a Respondent pursuant to a request for clarification or verification from MARR as part of the NRFP Process may, in MARR's sole discretion, be considered as an integral part of the applicable Proposal.

5.3 EVALUATION PROCESS

Compliance of Proposals

Respondents are strongly encouraged to prepare and submit their Proposals in accordance with the requirements of the NRFP Documents.

Unless the NRFP Documents explicitly state that a Respondent will or may be disqualified for a particular failure to comply with the requirements of the NRFP Documents, Respondents will not be disqualified for failing to comply with the requirements for the format or content of their Proposals or, for clarity, with Schedule 4 of the NRFP. However, Respondents are likely to be penalized in the evaluation of their Proposals if they fail to comply with the requirements of the NRFP Documents.

For clarity, the use of the terms "shall" or "must" in the NRFP Documents does not supersede the approach to compliance set out in this NRFP Section 5 and is not intended to indicate that a failure to comply with the applicable requirement will result in disqualification.

Evaluation of Proposals

The Respondents' Proposals will be reviewed and evaluated by the Evaluation Committee on the basis of the evaluation criteria set out in the NRFP Data Sheet (together, the "Evaluation Criteria" and each, an "Evaluation Criterion").

MARR and/or the Evaluation Committee may, in its sole discretion, discontinue the evaluation of, and application of the Evaluation Criteria to, any Proposal if MARR and/or the Evaluation Committee consider(s), having undertaken a preliminary review of the Submission, that the

Respondent or Proposal, as compared to all Proposals received, is not in contention to be chosen as a Successful Respondent.

MARR may require that Respondents receive a pre-established minimum passing score before being eligible to be considered further in the NRFP Process (including being eligible for an interview, presentation, site visit or demonstration (each a "Visit")). If MARR intends to require a minimum passing score in this NRFP Process, the required minimum passing score and any related requirements are set out in the NRFP Data Sheet. Failure to achieve a minimum passing score may prevent a Respondent from being eligible to be considered further in the NRFP Process.

MARR may, in its sole discretion, establish a short-list of Respondents. If MARR intends to establish a short-list, the process for establishing a short-list will be set out in the NRFP Data Sheet and only those Respondents that meet the requirements set out in the NRFP Data Sheet will be eligible to be considered further in the NRFP Process.

Interviews, Presentations, Site Visits and Demonstrations

MARR, may in its sole discretion and based on the Respondents' scores after the evaluation of the Proposals, conduct Visits for some or all of the Respondents or require some or all of the Respondents to prepare and conduct oral presentations of the applicable Respondent's Proposal, and MARR may, in its sole discretion,

- (a) determine the number of Respondents to be asked to participate in a Visit;
- (b) determine the content and length of the Visits; and
- (c) request that specific individuals from the Respondent or the Respondent Team Members be present at the Visit.

Respondents will not be permitted to add to or alter their Proposals through the Visit process.

Whether MARR intends to conduct Visits as well as any rules that apply to the scoring of Visits and oral presentations are set out in the NRFP Data Sheet. Instructions and a specific list of questions about each Respondent's Proposal may be provided in advance to those Respondents selected for a Visit.

Final Respondent Ranking

The Respondent ranking based on NRFP Section 5 and if applicable, NRFP Section 5.3 shall be the Final Respondent Ranking.

6. GENERAL EVALUATION AND DISQUALIFICATION PROVISIONS

MARR's Evaluation Discretion

MARR intends to reserve a high level of discretion in the evaluation of Proposals and intends to select a service provider, with whom MARR believes it is most likely to be able to successfully provide the contracted service. In its selection of (a) service provider, MARR intends to apply evaluation criteria that are both subjective and objective and that may or may not be disclosed to the Respondents.

Respondent's Past Performance and Publicly Available Information

MARR may, in its sole discretion, consider:

- (a) any instances of poor performance by a Respondent that MARR has experienced; and
- (b) any publicly available information about a Respondent that is, in MARR's sole discretion, credible information,

in its evaluation of Proposals.

Disqualification

MARR may, in its sole discretion, disqualify a Respondent or reverse its decision to identify a Respondent as a Negotiations Respondent or a Successful Respondent at any time prior to the execution of the Final Agreement, if

- (a) the Respondent fails to cooperate in any attempt by MARR to clarify or verify any information provided by the Respondent;
- (b) the Respondent contravenes NRFP Sections 3.3;
- (c) the Respondent fails to comply with Applicable Law;
- (d) the Respondent's Proposal contains false or misleading information or a misrepresentation;
- (e) in the opinion of MARR, acting reasonably, the Respondent or any of its representatives directly or indirectly colluded with one or more other Respondents or their representatives in the preparation or submission of the Respondent's Proposal or otherwise contravened NRFP Section 3.3; or
- (f) the Respondent has committed a material breach of any existing agreement between the Respondent and MARR.

7. COMPETITION, NEGOTIATIONS AND THE IDENTIFICATION OF A SUCCESSFUL RESPONDENT

7.1 EVALUATION RESULTS AND THE IDENTIFICATION OF A SUCCESSFUL RESPONDENT OR NEGOTIATIONS RESPONDENTS

At the end of the evaluation process, MARR may identify one or more Respondent(s) with whom it wishes to enter into negotiations (each a “Negotiations Respondent”). Negotiations may, in the sole discretion of MARR, be carried out in sequence (starting with the highest ranked Respondent) or in parallel. Negotiations are intended to lead to the identification of one (or more) of the Negotiations Respondents as the Successful Respondent (Respondents), if the negotiations with one (or more) of the Negotiations Respondents can be concluded successfully.

It is currently MARR’s intention to award all of the Operational Services to one Successful Respondent. However, there is a possibility that MARR may choose to award only certain components of the Operational Services to a single Successful Respondent depending on the nature of the response to this NRFP. Respondents are therefore required to structure their Proposals, and in particular their pricing, in a manner that addresses each category of the Operational Services separately.

MARR may, in its sole discretion, choose the form of negotiations and impose time limits on negotiations with any Negotiation Respondent. In the event that any Negotiations Respondent is unable to successfully complete negotiations with MARR, then MARR may, in MARR’s sole discretion, commence negotiations with an alternate Respondent or Respondents.

Negotiations in this NRFP Process may include negotiations with respect to price, payment, change to the scope of the Operational Services, business synergies between MARR and a Respondent, and other terms and conditions that, MARR, in its sole discretion, wishes to raise for negotiation. Negotiations may proceed on new and different terms and conditions than those set out in the Draft Operational Services Agreement (including a change to the Operational Services set out in the Draft Operational Services Agreement), without offering other Respondents either an opportunity to negotiate or the opportunity to amend their Proposals.

7.2 MARR AUTHORIZATION AND APPROVALS

The Successful Respondent acknowledges and agrees that the entering into of the Final Agreement by MARR is conditional on and subject to MARR obtaining any necessary authorizations and approvals required in connection with the Operational Services.

7.3 NOTIFICATION IF SUCCESSFUL OR NOT

The successful and unsuccessful Respondents shall be notified by MARR in writing as to their success or failure on the NRFP Process.

7.4 DEBRIEFING OF RESPONDENTS

Except as set out in the NRFP Data Sheet, MARR shall, at the request of a Respondent, carry out information sessions with the unsuccessful Respondent(s) to explain MARR's evaluation of the Respondent's Proposal (the "Debriefing Sessions").

The scheduling of the Debriefing Sessions shall be determined by MARR. Unless otherwise determined by MARR, Debriefing Sessions shall not be held until after the execution of the Final Agreement.

The successful Respondent may request a debriefing which MARR may provide at its convenience.

8. GENERAL LEGAL MATTERS AND RIGHT TO ACCEPT OR REJECT

8.1 GENERAL RIGHTS OF MARR

MARR may, in its sole discretion:

- (a) reject any or all of the Proposals;
- (b) accept any Proposal;
- (c) accept any aspect of one (or more) Proposal(s) related to a specific component of the Operational Services;
- (d) if only one Proposal is received, elect to accept or reject it;
- (e) elect to discontinue the NRFP Process at any time before the end of the NRFP Process, including after the identification of (a) Successful Respondent(s), but before execution of the Final Agreement;
- (f) alter the Timetable, the NRFP Process or any other aspect of this NRFP; and
- (g) cancel this NRFP Process and subsequently advertise or call for new submission(s) for the same or different subject matter of these NRFP Documents with the same or different participants.

MARR shall not be liable for any expense, cost, loss or damage incurred or suffered by any Respondent or any of its representatives or any person connected with any one of them, as a result of any action taken by MARR in accordance with NRFP Section 8.1.

8.2 LAWS AND REGULATIONS, ATTORNMENT AND LIMIT ON LIABILITY

Applicable Law

This NRFP and the Final Agreement shall be governed and construed in accordance with the law of British Columbia. For greater clarity, the Respondent agrees that,

- (a) any action or proceeding relating to this NRFP Process shall be brought in any court of competent jurisdiction in the Province of British Columbia and for that purpose the Respondent irrevocably and unconditionally attorns and submits to the jurisdiction of that British Columbia court;
- (b) it irrevocably waives any right to and shall not oppose any British Columbia action or proceeding relating to this NRFP Process on any jurisdictional basis; and
- (c) it shall not oppose the enforcement against it, in any other jurisdiction, of any judgement or order duly obtained from a British Columbia court as contemplated by this NRFP Section 8.2.

No Contract Created by this NRFP

This document is a negotiated request for proposals in respect of the Operational Services and is not a tender. Neither the NRFP Documents nor the submission of any Proposal in response to the NRFP Documents shall, in any way whatsoever, create a binding agreement between MARR and any Respondent. For clarity, these NRFP Documents are not intended to be an offer to enter into a binding contract with Respondents (often referred to as “Contract A”) and no agreement of any kind shall exist between the Successful Respondent and MARR until a Final Agreement, if any, has been formally executed by the Successful Respondent and MARR.

Notwithstanding any other provision of the NRFP, MARR may, in its sole discretion, accept or reject any or all Proposals. MARR may accept any Proposal in whole or in part. There is no express or implied term of this NRFP that the lowest priced Proposal or the highest ranked Proposal will be identified as the Successful Respondent.

Limit on Liability

Notwithstanding that in accordance with NRFP Section 8.2, this NRFP is not a tender and is not intended to create “Contract A”, the Respondent and all other entities participating in this NRFP Process agree that if MARR is found to be liable, in any way whatsoever, for any act or omission in respect of this NRFP Process, the total liability of MARR to any Respondent or any other entity

participating in this NRFP Process, and the aggregate amount of damages recoverable against MARR for any matter relating to or arising from any act or omission by MARR, whether based upon an action or claim in contract, warranty, equity, negligence, intended conduct or otherwise, including any action or claim arising from the acts or omissions, negligent or otherwise, of MARR, shall be no greater than the Respondent's cost of preparing its Proposal or the liability cap amount, if any, set out in the NRFP Data Sheet, whichever is less.

9. DEFINITIONS

9.1 GENERAL

Unless otherwise defined in this NRFP, capitalized terms and expressions used in this NRFP have the meaning given to them in the Draft Operational Services Agreement. In this NRFP, the singular shall include the plural and the plural shall include the singular, except where the context otherwise requires.

All references in this NRFP to MARR's "discretion" or "sole discretion" means in the sole and absolute discretion of MARR.

9.2 NRFP DEFINITIONS

Whenever used in the NRFP:

- (a) "Addendum" means a written addendum to the NRFP Documents issued by MARR as set out in NRFP Section 3.6;
- (b) "Advisors" means any person or firm retained to provide professional advice to any one of MARR, a Respondent, a Respondent Team Member as applicable;
- (c) "Applicable Law" is defined in NRFP Section 8;
- (d) "Confidential Information" is defined in NRFP Section 3.7;
- (e) "Confidential Question" is defined in NRFP Section 3.2;
- (f) "Conflict of Interest" is defined in NRFP Section 3.8;
- (g) "Contact Person" is defined in NRFP Section 3.2;
- (h) "Contract A" is defined in NRFP Section 8.2;
- (i) "Debriefing Sessions" is defined in NRFP Section 7.4;

- (j) "Draft Operational Services Agreement" means the Draft Operational Services Agreement attached as Schedule 3 to this NRFP;
- (k) "Evaluation Committee" is defined in NRFP Section 5.1;
- (l) "Evaluation Criteria" is defined in NRFP Section 5.3;
- (m) "Final Agreement" is defined in NRFP Section 1.3;
- (n) "General Questions" is defined in NRFP Section 3.2;
- (o) "includes" and "including" means "includes without limitation" and "including without limitation" respectively;
- (p) "Ineligible Persons" is defined in NRFP Section 3.8;
- (q) "Ineligible Person's Affiliate" is defined in NRFP Section 3.8;
- (r) "Negotiations Respondent" is defined in NRFP Section 7.1;
- (s) "NRFP" is defined in NRFP Section 1.3;
- (t) "NRFP Data Sheet" is defined in NRFP Section 1.3;
- (u) "NRFP Documents" is defined in NRFP Section 2.1;
- (v) "NRFP Number" is defined in NRFP Section 1.3;
- (w) "NRFP Process" is defined in NRFP Section 1.3;
- (x) "Operational Services" is defined in NRFP Section 1.3;
- (y) "Proposals" is defined in NRFP Section 1.3;
- (z) "Respondents" is defined in NRFP Section 1.3;
- (aa) "Respondent Representative" is defined in NRFP Section 1.4;
- (bb) "Respondent Team Member" is defined in NRFP Section 1.3;
- (cc) "Submission Deadline" is defined in NRFP Section 3.1;
- (dd) "Submission Requirements" means all of the submission requirements set out in the NRFP Documents, including the proposal content specified in Schedule 4 to the NRFP;

- (ee) "Successful Respondent" is defined in NRFP Section 1.3;
- (ff) "Timetable" is defined in NRFP Section 3.1;
- (gg) "Visit" is defined in NRFP Section 5.3.

SCHEDULE 1 DESCRIPTION OF WORK

1.1 DESCRIPTION OF WORK

The work includes the removal and safe handling of ODS gases in accordance with the requirement as stated herein and the current British Columbia Ministry of Environmental Ozone Depleting Substances (“ODS”) and Other Halocarbons Regulation (“ODS Regulation”) and MARR Stewardship Plan. The term of agreement is for a 5 Year period commencing January 2, 2022. Based on historical annual quantities of units processed in Appendix A MARR estimates that it is reasonable to assume a similar number of units will require servicing per year for each of the next five years. This estimate does not constitute any guarantee that the amount of work to be done under the term of agreement will correspond even approximately to the estimate. The actual expenditure shall be restricted to the actual number of units processed by the service provider.

Services include:

- (a) Recover all gasses, and all other controlled refrigerants listed in the ODS Regulation, from refrigeration and air conditioning appliances covered by the MARR stewardship plan and received at the designated collection sites.
- (b) Mark each appliance processed so that the appliances can then be safely recycled.
- (c) Recycle or dispose of recovered CFCs and all other controlled refrigerants at a recognized reclaiming facility in accordance with the ODS Regulation and the MARR processing standard.
- (d) Report units collected in accordance with the current MARR policies and submit itemized invoices for services on a monthly basis.

1.2 MANDATORY QUALIFICATIONS

The successful Contractor must meet the requirements of an Approved Person, per the definition provided in the ODS Regulation and the MARR Stewardship Plan (e.g., have appropriate credentials and have successfully completed an approved environmental awareness training course for ODS control).

1.3 COLLECTION SITES

Various sites have been established as MARR Collection sites as contracted with Metro Vancouver, member municipalities, community recycling organizations and waste management contractors. MARR may add or

delete collection sites as required. MARR cannot guarantee continued participation of collection sites that are not operated by Metro Vancouver. The current locations where ODS gas recovery is performed are listed as follows:

1. North Shore Recycling and Waste Centre (Metro Vancouver Depot);
2. Langley Residential Recycling and Waste Centre (Metro Vancouver Depot);
3. Coquitlam Recycling and Waste Centre (Metro Vancouver Depot);
4. Vancouver Zero Waste Centre;
5. Vancouver Landfill;
6. Burnaby Eco Depot;
7. North Surrey Recycling and Waste Centre (Metro Vancouver Depot);
8. Richmond Recycling Depot;

1.4 AUDITING

MARR reserves the right to inspect the service providers work at any time during the term of the contract. MARR also reserves the right to inspect all permits, licenses, and other governmental approvals prior to and during the term of the contract.

1.5 INVOICING AND PAYMENTS

The Contractor shall submit invoices and supporting documentation at the end of each month. The supporting documentation shall consist of the following:

- (a) Copies of all log sheets (checked and initialed by the site operators) as required by MARR;
- (b) Monthly summary indicating, for each site visited, the total number of units serviced, the total weight of ODS gasses collected and the type of refrigerants recovered.
- (c) Refrigerant reclamation forms, chain of custody forms, or other certificates or records from an authorized Refrigerant Reclaiming company for ODS reclaimed as required by MARR.

The MARR shall make payment within 30 days of receipt of invoice.

Payments to the service provider shall be based on the number of appliances processed.

SCHEDULE 2 NRFP FORMAT AND WEIGHTINGS

Each Proposal should be arranged in the format described in the table below. For evaluation purposes, the relevant weightings are identified in the column on the right.

	Relevant Weightings:
Title Page	n/a
Showing NRFP number, closing date and time, Proponent name, address, telephone number, fax number, GST number, contact person and their e-mail address.	
Letter of Introduction	n/a
One page, introducing the Proponent and signed by the person(s) authorized to sign on behalf of and to bind the Proponent to statements made in response to this NRFP.	
Table of Contents (optional)	n/a
Include page numbers.	
Section 1: Executive Summary	n/a
One-to-two-page summary of the key features of the Proposal.	

	Relevant Weighting:
Section 2: Project Firm Qualifications & Experience	65% (Section 2 + Section 3 + Section 4)
Corporate Qualifications & Experience: Provide relevant corporate expertise, experience, on projects of similar size, scope and nature to the work. If applicable, please list relevant sub-Contractors, and suppliers including their roles, expertise, experience, reference and the Proponent's history with each.	

	Relevant Weighting:
<p>Section 3: Project Staff Qualifications & Experience</p> <p>Staff Qualifications: Provide sufficient information to understand and evaluate roles, qualifications, etc. of the proposed project staff.</p> <p>Staff Experience: Provide evidence of relevant experience of the proposed project staff on projects of similar size, scope and nature to the work.</p> <p>Briefly list the type of work the company specializes in, the number of projects and volume of similar work completed by company in the last three (3) years.</p> <p>Briefly demonstrate your corporate safety performance for projects involving similar inspection or regulatory functions. List your British Columbia Workers' Compensation Board Assessment Rating(s) for the three most recent years and the associated employee hours worked in the Province of British Columbia. If more than one rating, list the most appropriate for the work described in this NRFP.</p>	

	Relevant Weighting:
<p>Section 4: Project Methodology, Work Plan, Tasks, Schedule:</p> <p>Project Understanding: Demonstrate your understanding of the Scope of Services. Describe and discuss your team’s approach to address potential concerns or obstacles and highlighting the key benefits of your approach.</p> <p>Project Methodology/Work Plan: Clearly describe your project methodology and provide a work plan to address the Scope of Services through a series of tasks or work activities.</p> <p>Project Management: Describe your approach to project management for this project including quality control and assurance, cost control, schedule control, coordination of engineering disciplines, communications and reporting.</p> <p>Adequacy of Resources: Appropriateness, balance and adequacy of allocation of resources/hours, and seniority/experience assigned for services and deliverables.</p>	

Section 5: Fees, Rates, Charges and Other Commercial Considerations	Relevant Weightings:
<p>Provide pricing in Canadian Dollars as a fee per unit. For evaluation purposes, please use the annual quantities prescribed in Appendix – A</p> <p>Briefly demonstrate your corporate safety performance for projects involving similar inspection or regulatory functions. List your British Columbia Workers' Compensation Board Assessment Rating(s) for the three most recent years and the associated employee hours worked in the Province of British Columbia. If more than one rating, list the most appropriate for the work described in this NRFP.</p> <p>Other Items: While not covered by the MARR program respondents must be able to service ammonia appliances and other non-MARR ODS containing appliances and provide pricing per unit for evaluation purposes. The respondent will be required to invoice the local government directly for servicing of ammonia and non-MARR appliances. Briefly describe your experience with handling ammonia refrigerants and any other considerations you wish.</p>	<p>35% (Section 5)</p>

SCHEDULE 3 DRAFT ODS SERVICE CONTRACT

MARR COLLECTION SERVICES AGREEMENT

Between:

Collector Legal Name: _____ (“Collector”)

DBA: _____

Business Number: _____

Address: _____

Email: _____ Phone: _____

And:

Major Appliance Recycling Roundtable (“MARR”)

Email: operations@marrbc.ca

Preamble

A. MARR manages a stewardship program for end-of-life major household appliances in British Columbia (the “BC Major Appliances Stewardship Plan”) approved by the Ministry of Environment & Climate Change Strategy on August 7, 2018 and regulated pursuant to the Recycling Regulation (B.C. Reg. 449/2004) made under the *Environmental Management Act* (British Columbia), as amended.

B. MARR and Collector wish to enter into this Agreement to set out the terms and conditions under which the Collector will remove, handle and transport mercury switches from major household appliances for and on behalf of MARR.

NOW THEREFORE, in consideration of the agreements and mutual covenants of the parties herein contained, the parties hereby agree as follows:

Section 1. DEFINITIONS

1.1 In this Agreement, the following capitalized terms will have the following meaning unless otherwise defined elsewhere in this Agreement:

“**Applicable Law**” means, in respect of any person, property, transaction, event or other matter, any present or future law, statute, regulation, code, ordinance, principle of common law or equity, municipal by-law, treaty or order, domestic or foreign, applicable to that person, property, transaction, event or other matter and, whether or not having the force of law, all applicable requirements, requests, official directives, rules, consents, approvals, authorizations, guidelines, and policies of any Governmental Entity having or purporting to have authority over that person, property, transaction, event or other matter and regarded by such Governmental Entity as requiring compliance, and includes without limitation, *Environmental Management Act (British Columbia)*, *Canadian Environmental Protection Act, 1999*, *Transportation of Dangerous Goods Act, 1992 (Canada)*, *Hazardous Products Act (Canada)*, *Transport of Dangerous Goods (British Columbia)*.

“**Governmental Entity**” means any domestic or foreign government, including any federal, provincial, state, territorial or municipal government, and any government department, body, ministry, agency, tribunal, commission, board, court, bureau or other authority exercising or purporting to exercise executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, government.

“ODS” means ozone depleting substances as defined under the *Ozone Depleting Substances and Other Halocarbons Regulation (B.C. Reg. 387/99 as amended)*.

Section 2. TERM

2.1 The term of this Agreement will commence on _____, 20__ and shall continue for a one-year period (the “**Term**”). The Term will automatically renew every year on the anniversary of the commencement date, unless otherwise terminated in accordance with Section 8.

Section 3. COLLECTION SERVICES

3.1 MARR hereby engages Collector and Collector hereby agrees to perform the following services, as and when directed by MARR (the “**Services**”):

- (a) Remove ODS from major appliances located at such sites as approved by MARR from time to time (the “**Collection Sites**”);
- (b) Collect and store the ODS in tanks that are fit and suitable for this purpose;
- (c) Deliver the ODS to processing facilities (“**Processing Facilities**”) in accordance with instructions by MARR; and
- (d) Document all removal efforts in the forms required by MARR and report to MARR with respect to the ODS removed and collected in accordance with this Agreement;

all in compliance with Applicable Law and Safety Laws and Policies.

3.2 In providing the Services, the Collector will contact MARR on a regular basis to schedule its attendance at the Collection Sites, and the Collector will schedule the availability of and dispatching of such transportation to perform the Services at the Collector’s cost, in accordance with such schedules and as directed by MARR.

Section 4. PERFORMANCE OF SERVICES

Collector hereby covenants agrees that it will:

- (a) perform the Services in a diligent, timely and reasonable manner.
- (b) document and report on all ODS removed from major household appliances at the Collection Sites and delivered to the Processing Facilities in accordance with MARR’s guidelines and reporting templates as provided to the Collector.
- (c) submit all reporting and supporting documentation as required by MARR as a precondition for receiving compensation.
- (d) provide all personnel and personal protective and safety equipment required to perform the Services.
- (e) comply with all laws and regulations related to health and safety, workers’ compensation, occupational health and safety, and other relevant safety regulations, policies and procedures, work practices, permits, licences, authorizations, emergency response procedures, including in respect of ODS removal and collection, and any site specific policies, procedures, instructions and rules related to a Collection Site and the Processing Facilities, as prescribed by Applicable Law (“**Safety Laws and Policies**”).
- (f) comply with all licensing requirements, certifications, and other qualifications relative to its personnel required to provide the Services. Collector shall ensure that its personnel are duly trained, qualified and experienced in their respective capacities, and that such personnel shall

perform the Services in a safe, efficient and reliable manner and in compliance with Applicable Laws.

- (g) will have complete control and responsibility for the safety and health of its personnel while engaged in the provision of the Services, including at the Collection Site and the Processing Facilities, and will take all necessary precautions to prevent the occurrence of any injury to all persons or damage to any property during the performance of such Services.
- (h) supply its own transportation in order to perform the Services as required under this Agreement.

Section 5. COMPENSATION

- 5.1 MARR will compensate the Collector according to the rates set out in Schedule A. Rates may be adjusted from time to time by MARR. Without restricting any right of set-off given by law, MARR may set-off, against any amount payable to Collector under this Agreement, any amount payable to MARR by Collector under this Agreement. MARR may, when making a payment pursuant to this Agreement, deduct from the amount payable to Collector any such amount payable to MARR by Collector which, by virtue of the right of set-off, may be retained by MARR.
- 5.2 MARR shall process Collector's supporting documentation and will issue payment within 30 days of receipt of complete documentation.
- 5.3 If the supporting documentation is not in compliance with this Agreement, MARR will notify Collector and will provide direction to Collector to rectify the non-compliance. MARR reserves right to withhold payment on claims pending resolution of any non-compliance. No compensation will be issued until the properly completed documentation is received by MARR.
- 5.4 MARR shall have sole discretion in determining whether the Collector is eligible to receive compensation for the ODS collected.
- 5.5 The Collector agrees to accept payment by electronic funds transfer and will provide its bank account information to MARR for this purpose.
- 5.6 MARR will have no responsibility to pay and the Collector will forfeit the right to claim for, any claim in respect of a calendar year for which complete documentation is not received by MARR within three (3) months of the end of that calendar year.

Section 6. AUDIT

- 6.1 Collector shall permit MARR, its agents and representatives, upon reasonable notice, access to Collector's records associated with the Services. A representative of the Collector may attend such audit with MARR's representative.
- 6.2 Where results of the audit determine the Collector is not in compliance with terms of this Agreement, the Collector will remedy the deficiency within 30 days and provide sufficient evidence to MARR that the deficiency has been remedied satisfactorily.

Section 7. REPRESENTATIONS AND WARRANTIES

- 7.1 Collector represents and warrants to MARR that:
 - (a) The Collector is an incorporated and/or an otherwise validly existing business or municipality under the laws of British Columbia and is a corporation or other entity in good standing and qualified to carry on business in British Columbia. The Collector has the corporate power, capacity and authority to carry on its business and to enter into and complete this Agreement;
 - (b) None of the Collector and its directors, officers, employees, or persons acting on behalf of the Collector is a person or entity identified by the Government of Canada's Criminal Code list of terrorist entities ("**Restricted Persons**"). There are no pending or threatened, claims or any legal

action against, or investigation by any Governmental Entity of the Collector in connection with respect to any dealings with Restricted Persons.

- (c) The Collector complies, and shall at all times comply, with all Applicable Law for the operation of the Collector's business and to perform its obligations under this Agreement;
- (d) The Collector has, and shall maintain at its own costs all permits, licences, regulatory approvals, authorizations and certificates required by Applicable Law to operate its business and to perform its obligations under this Agreement;
- (e) The Collector shall ensure that its employees, officers, directors, subcontractors and agents are qualified and trained to perform the obligations of the Collector under this Agreement;
- (f) The Collector's equipment is fit for the standard of care required to perform the Collector's obligations under this Agreement;
- (g) The Collector shall be responsible for and at its own expense provide, supply, operate, maintain and repair all equipment, tools, transportation necessary to perform the Services; and
- (h) The Collector is an independent contractor supplying services to, and not a subcontractor of MARR, and that the Collector shall be responsible for and shall maintain in good standing coverage as required under the *Workers Compensation Act* (British Columbia) and regulations thereto.

Section 8. TERMINATION

- 8.1 Either party may terminate the Agreement at any time with 90 days' written notice to the other party.
- 8.2 At any time, by giving notice in writing to Collector, MARR may terminate for convenience this Agreement. Once such a notice of termination for convenience is given, Collector must comply with the requirements of the termination notice. The termination will take effect immediately or, as the case may be, at the time specified in the termination notice.
- 8.3 In addition to all its other rights and remedies, MARR may terminate this Agreement automatically and immediately if Collector:
 - (a) is in default with any of its contractual obligations pursuant to this Agreement;
 - (b) fails to obtain and keep in good standing at all times the permits required to perform its obligations pursuant to this Agreement;
 - (c) does not comply with the Applicable Law or Safety Laws and Policies;
 - (d) intentionally or fraudulently makes a misrepresentation with respect to a fact or condition or in a report required pursuant to this Agreement;
 - (e) engages or has engaged in fraudulent, hazardous or misleading commercial practices or has acted in a manner that MARR deems reasonably likely to harm its reputation; or
 - (f) makes an assignment for the benefit of its creditors, is subject to bankruptcy or insolvency proceedings that are not discontinued within thirty (30) days or a receiver is named to its property.
- 8.4 Upon the expiration or termination of this Agreement for any reason, each party will be released from all obligations to the other arising after the date of expiration or termination, except for those obligations which by their nature survive such termination or expiration.
- 8.5 MARR may suspend, at any time and for any reason whatsoever, any part of the Services, including all remaining Services to be performed, by giving notice to the Collector specifying the part of the Services to be suspended and the effective date of suspension. The Collector shall cease the suspended part of the

Services on the effective date of suspension but shall continue to perform any part of the Services that is not suspended. The Collector shall resume any or all of the suspended Services on the date or dates fixed in MARR's notice(s) to the Collector. MARR will not be liable to the Collector for any wages, costs, expenses or damages whatsoever including loss of profits or anticipated profits incurred or accruing during the period of such suspension.

Section 9. INSURANCE AND INDEMNIFICATION

- 9.1 The Collector will obtain and maintain in force during the Term the following insurance:
- (a) Worker's Compensation insurance as required to comply at all times with the applicable requirements of the *Workers' Compensation Act* (British Columbia);
 - (b) motor vehicle liability insurance covering all of the Collector's licensed vehicles, whether owned or leased with a minimum liability limit for bodily injury, death and property damage of \$2,000,000 inclusive;
 - (c) comprehensive general liability insurance with a minimum liability limit of \$2,000,000 inclusive, covering bodily injury or death of any one or more persons in any one occurrence and loss to or destruction of property (including the property of MARR and for loss of use thereof) including coverage in respect of (i) contractual liability; (ii) non-owned automobile liability; (iii) contingent employer's liability; and (iv) owner's and contractor's liability.
- 9.2 The Collector will cause MARR to be added as an additional insured to such insurance policies subject to a cross-liability or severability of interest's clause. The Collector will cause these policies to provide that they may not be cancelled, lapse or materially altered except on not less than 30 days written notice to MARR. Before commencing the Services, the Collector will provide proof to MARR of the insurance policies referred to above in the form of detailed certificates of insurance.
- 9.3 The Collector shall indemnify, defend and hold harmless MARR and its employees, officers, directors, agents, subcontractors and customers, against any and all claims, liabilities, suits, actions, damages, costs, losses, obligations, judgments, charges, fines and expenses of any nature whatsoever (including legal fees) arising from:
- (a) Any negligent or wilful act or omission by the Collector and its employees, officers, directors, agents and subcontractors in performance of the Services under this Agreement;
 - (b) Any breach by the Collector of any term or condition of this Agreement.

Section 10. DISPUTE RESOLUTION

- 10.1 The parties shall make all reasonable attempts to resolve a dispute between them by amicable negotiations and agree to provide, on a "without prejudice" basis, frank, candid and timely disclosure of relevant facts, information and documents to facilitate these negotiations. If the parties have been unable to resolve a dispute, both parties may agree to the appointment of a mediator upon such terms and conditions acceptable to both parties.
- 10.2 If the dispute has not been resolved within fifteen (15) calendar days after a mediator was appointed pursuant to this Section 10, or within such further period agreed to by the parties, the mediator shall terminate the mediated negotiations by giving a written notice to that effect.
- 10.3 Either party may submit an unresolved dispute to arbitration pursuant to the provisions of the *Arbitration Act* (British Columbia).

Section 11. CONFIDENTIALITY

- 11.1 Any and all information provided or given by a party to the other party in connection with the performance of this Agreement, including but not limited to information about a party's business organization, financial standing, product development direction, customer information and other similar business and technical trade secret information, shall be deemed to be confidential and proprietary information of such party, with the exception of information that is in the public domain other than as a result of actions of the other party (the "**Confidential Information**"). Each party shall use the other party's Confidential Information only as required to perform its obligations hereunder. Neither party shall disclose or otherwise make the other party's Confidential Information available to third parties and shall safeguard and be responsible for and hold in the strictest confidence all Confidential Information as it would its own confidential information.
- 11.2 Notwithstanding section 12.1, MARR acknowledges that the Collector is subject to the provisions of the *Freedom of Information and Protection of Privacy Act* (British Columbia) and associated regulations ("**FIPPA**") and agrees that the Collector's non-disclosure obligations under this Agreement are subject to the provisions of that legislation, as the same may be amended or replaced from time to time, provided the Collector gives MARR prior written notice, if permitted by law. The Collector shall satisfy and comply with all applicable privacy legislation and any other statute or regulation applicable to the Confidential Information, including without limitation FIPPA.
- 11.3 The provisions of this Article 11 survive termination of this Agreement.

Section 12. FORCE MAJEURE

- 12.1 "**Force Majeure**" means any contingency beyond the reasonable control of a party, including acts of God, fires, floods, wars, sabotage, civil unrest, accidents, labour disputes (other than those with the employees of the party claiming Force Majeure), whether valid or invalid, except that lack of funds or credit shall not constitute a Force Majeure;
- 12.2 Neither party shall be responsible or liable for any delay or failure to perform due to Force Majeure if the affected party:
- (a) Notifies the other party as soon as practicable in the circumstances of the nature and anticipated duration of the Force Majeure Event as well as the steps it intends to take to overcome the Force Majeure event; and
 - (b) Takes all reasonable steps to prevent and minimize the delay or failure to perform.
- 12.3 If the Force Majeure event persists for 30 days or more, either party may, by written notice to the other party, terminate this Agreement.

Section 13. GENERAL

- 13.1 This Agreement and all Schedules attached hereto, which are incorporated herein by this reference, contain the entire agreement between the parties and supersede any prior agreement. Neither party shall be bound by any warranty or agreement not included in this Agreement and, in particular, no warranty of a party not expressed in this Agreement shall be implied. This Agreement may not be changed, modified, amended, or discharged, except by an agreement in writing.
- 13.2 The legal relationship of the parties to each other shall be that of independent contractor and in particular does not create a partnership, joint venture, or an employer-employee relationship between them or between MARR and the employees of Collector and of other persons rendering services to Collector. Further neither party shall have the right or authority to bind or obligate the other party for any purpose whatsoever. Each of the parties expressly disclaims any intention to create a partnership or joint venture.
- 13.3 Collector may not assign its rights and obligations under this Agreement without the prior written consent of MARR. Any assignment or transfer without such written consent will be null and void.

- 13.4 The parties shall execute and deliver all other appropriate supplemental agreements and other instruments, and take any other action necessary or appropriate to carry out fully the intent and purpose of this Agreement.
- 13.5 The failure of a party to insist on the strict performance of any terms of this Agreement, or the exercise any term, right, or remedy contained in this Agreement, shall not be construed as a waiver or a relinquishment by that party for the future of that term, right or remedy.
- 13.6 If any term, provision, condition or covenant of this Agreement, or the application thereof to any person or circumstance, shall be held to be invalid or unenforceable to any extent in any jurisdiction, then the remainder of this Agreement and the application of such term, provision, condition or covenant in any other jurisdiction or to persons or circumstances other than those as to whom or which it is held to be invalid or unenforceable, shall not be affected thereby, and each term, provision, condition and covenant of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 13.7 All notices, demands and payments required or permitted to be given must be in writing and may be delivered personally, sent by facsimile, sent by email, or by first-class prepaid registered mail to the addresses as follows:
- (a) MARR:
 - 100-4259 Canada Way
 - Burnaby, British Columbia
 - V5G 4Y2
 - Attention: Michael Zarbl
 - Email: mzarbl@marrbccollab.ca and/or operations@marrbc.ca
 - (i) Collector:
 -
 - Attention: ●
 - Fax: ●
 - Email: ●
- or to other such addresses as may from time to time be provided in writing by the parties and will be deemed to have been received (a) if delivered, at the time of delivery; (b) if given by facsimile or email, at the time of the transmission; and (c) if given by mail, on the third day after the mailing of the letter.
- 13.8 This Agreement shall be construed under and interpreted in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein.
- 13.9 This Agreement may be executed in counterparts, and each executed counterpart shall be considered an original. All executed counterparts taken together shall constitute the agreement. Counterparts may be executed either in original, faxed form or electronic transmission and the parties adopt any signature received by a receiving fax machine or contained in an electronic transmission as original signatures of the parties.

APPENDIX A HISTORIC VOLUMES

2019

Site	ODS Units
Burnaby Eco-Centre	2659
Coquitlam Recycling and Waste Centre	3231
Langley Recycling and Waste Centre	1318
North Shore Recycling and Waste Centre	4221
North Surrey Recycling and Waste Centre	170
Richmond Recycling Depot	2206
Vancouver Landfill	1474
Vancouver Zero Waste Centre	3509
Grand Total	18788

2020

Site	ODS Units
Burnaby Eco-Centre	3161
Coquitlam Recycling and Waste Centre	5215
Langley Recycling and Waste Centre	1532
North Shore Recycling and Waste Centre	3827
North Surrey Recycling and Waste Centre	2388
Richmond Recycling Depot	2402
Vancouver Landfill	1754
Vancouver Zero Waste Centre	4057
Grand Total	24336

2021 (Jan-June)

Site	ODS Units
Burnaby Eco-Centre	1684
Coquitlam Recycling and Waste Centre	2304
Langley Recycling and Waste Centre	589
North Shore Recycling and Waste Centre	1497
North Surrey Recycling and Waste Centre	981
Richmond Recycling Depot	1015
Grand Total	8070

Ammonia Units (all sites)

Month	2017	2018	2019	2020
January		26		55
February				
March	83		74	
April		48		43
May	54		48	52
June				
July			45	70
August	63	126		
September	40			
October			101	74
November	53			
December			9	72
TOTAL	293	200	277	366