

## Memorandum of Understanding (MOU)

### 'Temporary Collection Event' for 'Municipal Hazardous and Special Waste'

THIS Memorandum of Understanding dated April 15, 2021

BETWEEN:

THE CORPORATION OF THE COUNTY OF BRUCE  
(the "County")

and

THE CORPORATION OF THE MUNICIPALITY OF KINCARDINE  
(the "Municipality")

(a) The County operates Municipal Hazardous and Special Waste (MHSW) collection days accessible to all County ratepayers in locations across the County on an annual basis;

(b) The County finds it desirable to partner with the Municipality in delivering this service by using property owned by the Municipality as a 'Temporary Collection Event';

(c) The County contracts the collection and management of MHSW with a Third Party Contractor registered to undertake the collection, sorting, recycling, and/or disposing of MHSW materials; and

(d) The County wishes to establish with the Municipality mutually agreeable rules for use of Municipal property as a Temporary Collection Event location;

In consideration of the mutual terms and covenants herein contained, the Parties covenant and agree as follows:

The parties agree:

#### 1. DEFINITIONS

1.1 In this Memorandum of Understanding the following definitions shall apply:

"Incident" means an occurrence or event, natural or human-caused that requires a response to protect life, property, or the environment. An Incident may include spills, gaseous release etc.

"Memorandum of Understanding" and "MOU" means this document, including any Annex attached to the Memorandum of Understanding.

"MFIPPA" means the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c M. 56 and regulations, as amended, or any successor provincial legislation that governs access to public information and the protection of personal information and privacy.

"Municipal Hazardous and Special Waste (MHSW)" means materials, items etc. designated by the County and may include, but not limited to, acids, aerosols, caustic materials, paints, pesticides, oxidizers, oil, pressurized containers, all in non-commercial volumes as determined by the County.

"Municipal Property" means lands owned or controlled by the Municipality.

"On-Site County Lead/Event Supervisor" means a County of Bruce staff person or delegate in charge of the Temporary MHSW Collection Event and responsible for liaison with the County Contractor.

"Temporary Collection Event" means Municipal Property designated by the Municipality as a temporary location where County ratepayers may drop off Municipal Hazardous and Special Waste on those days arranged by the County.

"Third Party Contractor" or "Contractor" means a registered Hazardous Waste Collector contractor providing services under this MOU as arranged or contracted by the County.

## **2. PURPOSE**

2.1 The purpose of this MOU is to establish terms for the use of Municipal Property for a Temporary Collection Event by the County.

## **3. BRUCE COUNTY OBLIGATIONS**

### 3.1 The County is responsible for:

- a) arranging, executing, and monitoring a contract for the provision of MHSW collection at a Temporary Collection Event;
- b) setting up site safety signage, directing traffic, addressing traffic cues and any vehicle accidents on Municipal Property during those times the Temporary Collection Event is operating;
- c) payment for all services rendered by the Contractor;
- d) establishing the types and volumes of MHSW to be accepted at a Temporary Collection Event;
- e) advertising the days and times on which MHSW will be collected and at what Municipal Property(ies);
- f) establishing the layout of the Temporary Collection Event in partnership with the Municipality and the Contractor;
- g) appointing an On-Site County Lead/Event Supervisor and notifying the Municipality of the appointment;
- h) the physical removal of MHSW materials that meet County specifications from a private vehicle attending the Temporary Collection Event. If the County does not have sufficient staff available, this may be the responsibility of the contractor;
- i) responding, including contacting local fire or Spill Action Centre etc., together with the Contractor, to any Incident directly related to the removal, collection, storage, or on-site movement of MHSW at the Temporary Collection Event;
- j) coordination with the County insurance provider and/or Contractor insurance provider and/or site remediation companies in the event of an Incident directly related to the removal, collection, storage or on-site movement of MHSW at the Temporary Collection Event;

k) ensuring those sections of the Municipal Property used specifically for the removal, collection, or storage of MHSW are returned to pre-event condition upon closure of the Temporary Collection Event;

l) ensuring washroom facilities are available on site for the Temporary Collection Event, whether the municipality provides access to their facility or the County provides a portable washroom on-site.

#### **4. MUNICIPAL OBLIGATIONS**

4.1 The Municipality is responsible for:

a) providing a location within the municipality that is easily accessible to a large volume of traffic and provides garage bays for the sorting of hazardous materials;

b) establishing the layout of the Temporary Collection Event in partnership with the County;

c) advertising the days on which MHSW will be collected and at what Municipal Property(ies) via the municipal web site and other social media where available;

d) appointing a representative of the Municipality who will be available on-site during those times the Temporary Collection Event is operating;

e) paying all expenses and charges related to Municipal staff time and materials required to fulfill the Municipal Obligations;

f) assisting the On-Site County Lead/Event Supervisor and/or Contractor with response to any incident directly related to the removal, collection, storage, or on-site movement of MHSW at the Temporary Collection Event;

g) If required, assisting the County in determining a suitable location for a portable washroom to be placed;

h) advising the County 60 days in advance of a Temporary Collection Event date of any municipal road construction/traffic issues that may impede the operation of the Temporary Collection Event.

## **5. EXPENSES AND CHARGES INCURRED**

5.1 In the event that the Municipality incurs costs associated specifically with the Temporary Collection Event and is of the opinion that these costs should be the responsibility of the County, the Municipality shall forward to the County within 90 days of incurring the expense details of the expense. The County shall review the submission and reply within 60 days.

5.2 In the case of disagreement between the County and the Municipality re: cost incurred; Section 13 Dispute Resolution of this MOU shall apply.

## **6. TERM OF THE MEMORANDUM OF UNDERSTANDING**

6.1 This MOU is continuous until terminated by either party as per Section 7.

## **7. TERMINATION**

7.1 Either party may terminate this MOU unilaterally for any reason providing that the party wishing to terminate provides not less than 60 days' written notice to the other party of its intent to terminate this MOU.

## **8. AMENDMENTS**

8.1 This MOU may be amended upon consent of the parties as evidenced in writing. Refusal shall be subject to Section 7 Termination or Section 13 Dispute Resolution.

## **9. FORCE MAJEURE**

9.1 Neither party shall be under any liability to the other because of any delay or default in carrying out its obligations hereunder which is due in whole or in part to an event of force majeure. A party who contends that its obligation is suspended, or its performance is excused by reason of force majeure must give prompt written notice to the other party specifying the condition or event constituting same in which case both parties' obligations pursuant to this MOU shall be suspended during such period. Upon cessation of such force majeure, such party shall give like notice and commence performance hereunder as promptly as reasonably practicable. For the purposes hereof, "force majeure" shall mean any cause beyond the reasonable

control of the party claiming the force majeure and which is affecting performance by such party but does not include a failure to make payments under this MOU.

## **10. INDEMNIFICATION**

10.1 Subject to force majeure, each party shall, from time to time and at all times hereafter, save, defend, keep harmless and fully indemnify the other party, its successors and assigns, from and against all actions, claims and demands whatsoever that may be brought against or made upon the other party, and against all loss, liability, judgments, claims, Costs (defined below), demands or expenses that the other party may sustain, suffer or be put to, resulting from or arising out of the first party's negligence or failure to exercise reasonable care, skill or diligence in the performance, non-performance or rendering of any work or service required to be performed or rendered by it, its agents, officials, employees or contract agencies or any of them in accordance with the provisions of this MOU. "Costs" mean costs awarded in accordance with the order of a court of competent jurisdiction, the order of a board, tribunal or arbitrator or costs negotiated in the settlement of a claim or action.

## **11. INSURANCE**

11.1 Each party shall, at its own expense during the term of this MOU, cause to be maintained:

a) Comprehensive General liability with limits of not less than \$5,000,000.00 per occurrence. Such coverage shall include (i) the other party as an additional insured, and (ii) a cross liability/severability of interest clause; and (iii) standard Non-Owned Automobile Liability coverage; and

b) Environmental Impairment Liability with limits of not less than \$2,000,000 per claim. Such coverage shall include (i) the other party as an additional insured, and (ii) a cross liability/severability of interest clause.

11.2 Each party shall provide evidence of insurance coverage upon request of the other party.

## **12. WORKPLACE SAFETY AND INSURANCE BOARD (WSIB)**

12.1 The parties must be in good standing with the Workplace Safety and Insurance Board (WSIB) during the term of this MOU and shall furnish the other party with a valid certificate of good standing, or a letter indicating the party is a Schedule 2 employer, from the WSIB upon request. Where the party is not required to be registered with the WSIB and is not covered by WSIB Optional Insurance, the party shall maintain Employers Liability Insurance in the amount of \$2,000,000.00 per occurrence.

### 13. DISPUTE RESOLUTION

13.1 The parties shall make every reasonable effort to settle any dispute that arises as a result of any claim or controversy evolving from this MOU by negotiation.

13.2 The parties agree that the dispute resolution process established in this MOU shall be applied to resolve all disputes between the parties that arise during the term of this MOU. The parties acknowledge that they wish to develop and foster a positive and cooperative relationship and therefore agree that subject to any termination rights of the parties as set out in this MOU:

a) In the event of a dispute between the parties in respect of a matter arising under this MOU, the authorized representatives of the parties shall, by telephone or in person, engage in good faith negotiations with a view to resolving the dispute;

b) The dispute shall, if necessary, proceed through a two-stage resolution process, through the parties' authorized representatives. In the event any matter referred to the authorized representative remains unresolved after a period of ten (10) business days from its referral, it shall be referred to the representatives at the next stage for settlement;

c) The representatives for the dispute resolution process are as follows:

For the County:

Stage 1 - Director, Transportation & Environmental Services Department

Stage 2 - CAO

For the Municipality:

Stage 1 - Director of Public Works, Adam Weishar

Stage 2 - CAO, Sharon Chambers

d) A party may, by written notice to the other party change, its authorized representatives for the purposes of this process, provided, however, that any of the replacements of such representatives shall have similar authority to those individuals they are replacing;

e) The parties agree that subject to any termination rights of the parties as set out in this MOU, the existence of a dispute shall not interfere with the performance by the parties of their respective obligations under this MOU and that each party shall continue to perform its obligations under this MOU pending resolution of the dispute under this Section.

#### 14. NOTICE

14.1 Any notice required to be given or served on either party under this MOU must be in writing and delivered personally, electronically, by facsimile transmission or by prepaid registered mail, addressed to the County or the Municipality respectively as set out below. Service of notice is effective on the next business day following the date of personal delivery, electronic delivery, and facsimile transmission or, in the case of a registered letter, on the third business day following the date of mailing.

To the County at:

County of Bruce  
30 Park Street, PO Box 398  
Walkerton, ON N0G 2V0  
Attention: Miguel Pelletier, Director  
Phone: (519) 881-2400  
Fax: (519) 507-3030  
Email: mpelletier@brucecounty.on.ca



To the Municipality at:

Municipality of Kincardine  
1475 Concession 5  
Kincardine, ON N2Z 2X6  
Attention: Adam Weishar, Director  
Phone: (519) 396-3468  
Fax: (519) 369-8288  
Email: aweishar@kincardine.ca

or to such other addresses as either party may from time to time designate by written notice to the other party.

## **15. ENTIRETY**

15.1 This MOU and the Annex attached form the entirety of the understanding between the parties and supersede any other understanding or agreement, collateral, oral or otherwise, regarding the use of Municipal Properties for a Temporary Collection Event, existing between the parties at the date of execution of this MOU. No supplement, modification, waiver, or termination of this MOU shall be binding unless executed in writing by the party to be bound. No waiver of any provision of this MOU shall be deemed to or shall constitute a waiver of any other provisions, whether or not similar, nor shall such waiver constitute a continuing waiver unless expressly provided.

## **16. CONFIDENTIALITY**

16.1 The County shall maintain the confidentiality of and shall not, except as required to carry out services, at any time during or following the term of this MOU, use, disclose, release, or permit the disclosure or release of any information disclosed by the Municipality or any information communicated to or acquired by the County during the course of providing services without obtaining the prior written consent of the Municipality.

16.2 The Municipality shall maintain the confidentiality of and shall not, except as required to carry out services, at any time during or following the term of this MOU, use, disclose, release, or permit the disclosure or release of any information disclosed by the County or any information communicated to or acquired by the

Municipality during the course of providing services without obtaining the prior written consent of the County.

16.3 The parties agree that any information collected or exchanged between the parties, pursuant to the terms of this MOU, is subject to the provisions of MFIPPA, as amended.

## **17. ASSIGNMENT AND SUBCONTRACTING**

17.1 The Municipality shall not assign or sub-contract this MOU in whole or in part, or any or all of its rights or obligations without the County's prior written consent, which consent will not be unreasonably withheld.

17.2 If the County consents to an assignment or subcontract, the assignment or subcontract will not release or relieve the Municipality from its obligation to the County or from the performance of services in accordance with this MOU.

## **18. COMPLIANCE**

18.1 Both parties shall comply with all legislation, regulations, bylaws, rules, orders, and other requirements enacted or imposed by federal, provincial, municipal, or other government bodies, agencies, tribunals, or other authorities which may be applicable to this MOU.

## **19. GOVERNING LAW**

19.1 This MOU is governed by the laws of Ontario and the applicable laws of Canada.

## **20. NATURE OF RELATIONSHIP**

20.1 Nothing in this MOU will be construed to imply a partnership between the parties. It is expressly understood that the parties are independent parties and no partnership of any kind is intended between the parties.

## **21. FURTHER ASSURANCES**

21.1 The parties agree that they will at their own expense from time to time, and at

all times, upon every reasonable request of the other, promptly make, do, execute and deliver or cause to be made, done, executed and delivered all such further acts, deeds or assurances as may be reasonably required for purposes of implementing the matters contemplated by this MOU and establishing and protecting the rights, interests and remedies intended to be created by this MOU.

## **22. SURVIVAL**

22.1 Sections 5, 10, and 13 of this MOU shall survive any termination or expiration of this MOU. If one or more of the provisions of this MOU for any reason shall be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this MOU and this MOU shall be construed as if such invalid, illegal or unenforceable provision and never been contained.

22.2 Notwithstanding Section 22.1, those provisions of this MOU that by their nature should survive the expiry or earlier termination of this MOU will survive termination or expiry of this MOU.

## **23. ANNEXES**

23.1 The following Annexes shall be incorporated in and form part of this MOU:

a) Annex A - Approved Municipal Properties / Temporary Collection Event locations.

## **24. COUNTERPARTS**

24.1 This MOU may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which taken together constitute an original understanding and will be effective when one or more counterparts have been signed by each of the parties.

## **25. SIGNATURES BY FAX/EMAIL**

25.1 The parties may sign this MOU by facsimile or electronic transmission and a facsimile or electronic copy has the same legally binding effect as an original.

This MOU is effective on the date stated in the introductory clause.

In Witness Whereof the parties hereto have executed this Agreement by their duly authorized representatives.

For the Municipality of Kincardine

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Deputy Mayor, Randy Roppel

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CAO, Sharon Chambers

We, together, have the authority to bind the Corporation.

For the County of Bruce



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Director, Miguel Pelletier

I have the authority to bind the Corporation

**Annex A**

**Approved Municipal Properties / Temporary Collection Event locations**

<b>Property Owner</b>	<b>Collection Event Location</b>
Town of Saugeen Shores	Southampton Works Yard, 429 Peel St., Southampton, ON
Municipality of Kincardine	Kincardine Public Works Yard, 140 Valentine Ave., Kincardine, ON
Municipality of Northern Bruce Peninsula	Eastnor Landfill Site, 1252 West Road, Lion's Head, ON
Municipality of Northern Bruce Peninsula	St Edmunds Landfill Site, 71 McArthur Road Tobermory, ON
Town of South Bruce Peninsula	Town of South Bruce Peninsula Works Garage 441048 Elm St., Wiarton, ON
Municipality of South Bruce	South Bruce Municipal Building, 169 Bruce Road 3, Mildmay, ON
Municipality of South Bruce	South Bruce Works Garage 25 Gordon Street, Teeswater
Town of South Bruce Peninsula	Amabel Works Yard, 413 Municipal Road, Sauble Beach