

**THE CORPORATION OF THE  
MUNICIPALITY OF TEMAGAMI**

**BY-LAW NO. 17-1335**

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**Being a by-law to authorize the execution of Maintenance and Repair Agreements with  
Omge for the Helipads at Snake Lake and at the Marten River Fire Hall.**

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**WHEREAS** under Section 10(2) of the Municipal Act, 2001, S.O., 2001, c.25, as amended, a municipality may pass by-laws respecting the health, safety and well-being of persons;

**AND WHEREAS** under Section 9 of the Municipal Act, 2001, S.O., 2001, c.25, as amended, a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other act;

**AND WHEREAS** the Council of the Corporation of the Municipality of Temagami passed By-law 14-1175 on the 20<sup>th</sup> day of February 2014 to enter into agreements with Omge, provider of air ambulance services, for the maintenance and repair of the helipads at Snake Lake and at the Marten River Fire Hall for the period ending March 31<sup>st</sup> 2017; and now deems it desirable to renew those agreements for an additional three years;

**NOW THEREFORE the Council of the Corporation of the Municipality of Temagami hereby enacts as follows:**

1. That the Mayor and Clerk are hereby authorized and directed to execute the agreements attached hereto as Schedule "A" and Schedule "B" and forming part of this by-law.
2. That the Clerk of the Municipality of Temagami is hereby authorized to make minor modifications or corrections of a grammatical or typographical nature to the by-law and schedule, after the passage of this by-law, where such modifications or corrections do not alter the intent of the by-law.
3. That this bylaw shall come into force and take effect upon the final passing thereof.

TAKEN AS READ A FIRST time on this 6<sup>th</sup> day of April 2017;

READ A SECOND AND THIRD time and finally passed this 6<sup>th</sup> day of April 2017.

  
\_\_\_\_\_  
Mayor

  
\_\_\_\_\_  
Clerk



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Thursday, March 02, 2017

Municipality of Temagami (the “Operator”)  
Elain Gunnell  
Clerk  
7 Lakeshore Drive  
P.O. Box 220  
Temagami, Ontario P0H2H0

Operator of the [R1461 Temagami (Snake  
Lake)] helipad located at:  
47.07000° / -79.77972° (the “Property”)

Dear Ms. Gunnell:

**Re; Company-Approved Helipad Agreement (the “Agreement”)**

---

This letter agreement (the “Agreement”) sets out the terms and conditions of the use, operation and maintenance of the Helipad, Surrounding Area and Easement, each as defined below. We trust that this Agreement reflects the understanding between yourself and Ornge. If so, please have an authorized signatory execute **two copies** of this Agreement by signing in the space provided at the end of the document and return one copy to the following address:

Ornge  
5310 Explorer Drive  
Mississauga, Ontario  
L4W5H8  
Attention: Helipad Program

By way of background:

- A. The Operator owns, leases or otherwise has a legal right of ownership or control over the Property that includes the Helipad, Surrounding Area and Easement Lands, as defined below (collectively, the “Subject Lands”);
- B. Ornge, along with its subsidiaries and affiliates (collectively referred to as “Ornge” in this Agreement), provides ambulance services to the people of Ontario, under an agreement with the Ministry of Health and Long-Term Care, using helicopters and using land ambulance vehicles which Ornge operates or which are operated by third parties who coordinate with Ornge (collectively, the “Services”);
- C. Ornge seeks the right to use the Operator’s Subject Lands in order to provide the Services;
- D. The Operator has agreed to provide and grant to and in favour of Ornge the right to use the Subject Lands in connection with the Services and to ensure that the Subject Lands are available in safe, secure and effective condition such that Ornge may use the Subject Lands when the need arises, all subject to and in accordance with the terms of this Agreement.

**NOW THEREFORE**, Ornge and the Operator hereby agree as follows:

**DESCRIPTION OF SUBJECT LANDS**

1. Schedule A to this Agreement illustrates the location and boundaries of the Helipad, Surrounding Area and Easement Lands on the Property.
2. For the purposes of this Agreement:
  - (a) the **Helipad** comprises Final Approach and Take-Off area (“**FATO**”) and the Touch Down and Lift-Off Area (“**TLOF**”) as depicted in Schedule A;
  - (b) the **Surrounding Area** comprises the land immediately surrounding the Helipad that is 100 feet or more radius from the center of the Helipad, as well as an area ten feet wide and running the full length of the lead-in cones/lights if the pad is so equipped, as depicted in Schedule A; and
  - (c) the **Easement Lands** comprise the land connecting the Helipad and Surrounding Area to the public road as depicted in Schedule A.

**REPRESENTATIONS OF THE OPERATOR**

3. The Operator represents and warrants to Ornge that:
  - (a) the Operator owns, leases or otherwise has a legal right of ownership or control over the Subject Lands to the extent sufficient to legally grant and provide to and in favour of Ornge the right to use the Subject Lands in connection with the Services and has, to the extent required, obtained any consents required from any third parties to grant such rights;
  - (b) the Operator has all the necessary power, authority and capacity to enter into this Agreement and to carry out its obligations under this Agreement;
  - (c) the TLOF is made of concrete, asphalt, sod or coarse gravel such that it is capable of bearing the static and dynamic weight of Ornge’s helicopter (approximately 6,800 kilograms);
  - (d) the FATO is made of either concrete, asphalt, sod or coarse gravel and will be kept free from dust, loose dirt, sand, and similar material that could create significant amounts of dust when a helicopter lands or takes off which can result in both safety and maintenance issues in helicopters; and



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- (e) the TLOF and FATO comply, and will at all times during the term of this Agreement comply, with subsection 305.29 of the Canadian Aviation Regulations.

#### **GRANT OF RIGHTS TO USE SUBJECT LANDS**

- 4. Subject to the terms of this Agreement, the Operator hereby grants to and in favour of Ornge (and its employees, contractors, agents and other third parties working in cooperation with Ornge, including without limitation third party land ambulance service providers (collectively “**Ambulance Personnel**”) the following rights and interests in and to the Subject Lands, which the parties hereby acknowledge, confirm and agree constitute rights and interests in and to the Subject Lands:
  - (a) an exclusive right to use and occupy the Helipad and Surrounding Area from time to time and at all times for the purposes of providing the Services, including: (i) causing helicopters to land and take off from the Helipad; (ii) providing space for land ambulances to park while delivering patients to, or receiving patients from, an air ambulance; (iii) transferring patients between air ambulances and land ambulances and providing care to such patients during such transfers; (iv) installing, inspecting and maintaining Navigation Equipment (as defined in Section 10 below); (v) verifying that the Operator is carrying out its obligations under this Agreement and that the Subject Lands are suitable for the foregoing uses; and (vi) other activities related or ancillary to the provision of the Services; and
  - (b) an exclusive easement in gross or right and interest in the nature of an easement in gross in, on, upon, along, over and across the Easement Lands, for the benefit of Ornge and the Ambulance Personnel (together with its and their respective vehicles, supplies, equipment and machinery) for the purposes of ingress to and egress from the Helipad and the Surrounding Area in connection with the provision of the Services.

#### **MAINTENANCE AND REPAIR OF SUBJECT LANDS**

- 5. The Operator will ensure that the Helipad, Surrounding Area and Easement Lands are available for the purposes set out in Section 4, on a twenty-four hours per day, seven days per week basis.
- 6. The Operator will, at all times and as necessary, undertake all reasonable maintenance and repair of the Subject Lands to meet the availability commitment set out in Section 5 and otherwise to enable Ornge to provide a safe take-off and landing site for air ambulances.
- 7. Without limiting the generality of Section 6, the Operator will:



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- (a) promptly clear the Subject Lands of all debris, vehicles, obstacles and unsecured objects that may in any way preclude or limit full access to, or use of, the Subject Lands as contemplated by this Agreement;
  - (b) promptly clear all ice from the Subject Lands, so that no accumulation of ice occurs, provided that no salt may be used to remove such ice but urea may be used;
  - (c) promptly clear snow (including any drifts or piles) greater than two inches deep from the Subject Lands during and after a snowfall, so that no accumulation in excess of two inches occurs;
  - (d) promptly clear or water down dust, loose dirt, sand, and similar material that could create significant amounts of dust when a helicopter lands or takes off;
  - (e) promptly clear the Helipad of any objects or debris which could, if struck by a helicopter or any moving part of a helicopter, cause a safety incident. This includes structures such as fences, gazebos, sheds, outhouses, etc.;
  - (f) promptly clear the Easement Lands of vehicles or other obstacles that may in any way precluded or limit access to the Helipad and Surrounding Area as contemplated by this Agreement;
  - (g) routinely cut any grass or other vegetative ground cover such that the height thereof does not exceed six inches on the Helipad;
  - (h) routinely cut any grass or other vegetative ground cover so that neither blocks or impedes the visibility of the Navigational Equipment; and
  - (i) trim any grass, bushes, trees or vegetative ground cover on the Subject Lands as directed by Ornge from time to time.
8. The Operator will not make any changes to the Subject Lands (other than maintenance in accordance with this Agreement) without the prior written consent of Ornge.
9. The Operator will not knowingly do (or fail to do) anything that would impede the use of the Subject Lands by Ornge and Ambulance Personnel as contemplated by this Agreement or that could endanger the safety of Ambulance Personnel or patients.

#### NAVIGATION EQUIPMENT

10. Ornge may, where necessary, supply navigational equipment, which may include solar/battery powered lights and reflective cones (the “**Navigational Equipment**”) and will install such Navigational Equipment on the Subject Lands, substantially as illustrated in Schedule A.



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11. All Navigational Equipment will remain the property of Ornge at all times. Ornge may retake possession of Navigation Equipment at any time without notice.
12. The Operator will maintain the Navigational Equipment (for example, by changing dead batteries) and take reasonable measures to ensure that the Navigational Equipment is not damaged or stolen.
13. The Operator will be responsible for reimbursing Ornge for the cost of repairing or replacing any Navigational Equipment that is damaged or stolen while in the possession of the Operator.

### **MONITORING, NOTIFICATION AND INSPECTIONS**

14. The Operator will regularly inspect the Subject Lands to ensure that they are maintained to the standard set out in this Agreement and are available for use in accordance with the requirements of this Agreement. Such inspections will be carried out at least every week, or more frequently as may be reasonably necessary in the event of inclement weather such as snow, heavy rains, high winds, or electrical storms.
15. The Operator will immediately notify the Ornge Communications Centre (“OCC”) at 1-800-387-4672 if any of the following adverse conditions arise:
  - (a) the Helipad is not available for the receipt and transport of patients (which for clarity should only be in situations that are beyond the reasonable control of the Operator);
  - (b) access to the Helipad or Surrounding Area, or passage over the Easement Lands, is impeded in any way, including for planned outages (for example, construction);
  - (c) if any hazard exists which could reasonably be expected to compromise the safe access and use of the Helipad, Surrounding Area or Easement Lands by Ornge or Ambulance Personnel;
  - (d) any Navigational Equipment is not working, is visibly damaged, or is stolen or missing; or
  - (e) the occurrence of any event of Force Majeure (as defined in Section 39).

When providing notice of any of the adverse conditions described in this Section 15, the Operator will provide reasonable detail about the nature of the adverse conditions and the Operator’s reasonable estimate of the period of time for which it expects the adverse conditions to continue. For clarity, notifications given under Section 15 will be provided by telephone notwithstanding the general notification provisions set out in Section 37 of this Agreement.



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16. The telephone number of the OCC set out in Section 15 is confidential. The Operator will keep this telephone number confidential. The Operator will not use or disclose this telephone number to any other person or organization, except in accordance with this Agreement or with the prior written consent of Ornge.
17. The Operator will permit Ornge to inspect the Subject Lands to ensure compliance by the Operator with this Agreement. Ornge will endeavor to conduct inspections at reasonable times and on reasonable notice to Operator, provided that Ornge reserves the right to conduct inspections at any time and on no notice given the emergency nature of the Services that will be undertaken on the Subject Lands.

## **RISK MANAGEMENT**

18. Ornge will confirm in writing whether or not the operation of the Helipad and Surrounding Area is covered by insurance policies that are made available to Ornge by the Ministry of Health and Long-Term Care.
19. To the best of its ability, Ornge will notify the Operator if the insurance policies described in Section 18 are revoked or otherwise lapse.
20. The Operator will defend, indemnify and hold harmless Ornge and its members, directors, officers, employees, contractors and from and against: (a) any personal injury or damage to tangible property; and (b) any and all claims, actions, judgments, costs, damages, expenses (including reasonable legal expenses), losses or liabilities incurred or suffered by an indemnified party, in each case to the extent caused by the negligence or willful act or omission of the Operator or by the material breach of a representation, warranty or covenant of the Operator under this Agreement.
21. Ornge will defend, indemnify and hold harmless the Operator and its members, directors, officers, employees, contractors and from and against: (a) any personal injury or damage to tangible property; and (b) any and all claims, actions, judgments, costs, damages, expenses (including reasonable legal expenses), losses or liabilities incurred or suffered by an indemnified party, in each case to the extent caused by the negligence or willful act or omission of Ornge or by the material breach of a representation, warranty or covenant of Ornge under this Agreement.
22. In no event will Ornge be liable to the Operator for any indirect, special, incidental, exemplary, punitive or consequential damages, or lost revenue, profits or business, whether based on breach of contract, tort (including negligence) or otherwise, arising from or related to this Agreement or the use of the Subject Lands as contemplated in this Agreement, regardless of whether Ornge has been advised, knew or should have known of the possibility of such damages.

## **TERM AND TERMINATION**



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23. This Agreement will commence on the date that it is fully executed by the parties (the **“Commencement Date”**), and will continue for a term of 3 years after the Commencement Date, unless terminated earlier.
24. Ornge may terminate this Agreement by giving written notice of default to the Operator if the Operator breaches any of its representations, warranties or obligations under this Agreement and fails to remedy such default within the cure period specified in the notice of default (or within 20 days of the date of the notice if no such cure period is specified), provided that Ornge may terminate immediately upon notice for the following events of default:
  - (a) any revocation of insurance as required under Section 19, or a lapse of such insurance;
  - (b) any willful breach of this Agreement or intentional misrepresentation by the Operator under this Agreement; and
  - (c) any fraudulent act or omission of the Operator.
25. Ornge may terminate this Agreement at any time, for any reason and without any cost, damages or penalty to the terminating party, upon giving at least 10 days' written notice to the Operator. Where Ornge gives such notice, this Agreement will terminate on the date set out in the notice, which date shall not be less than 10 days from the date on which notice is given.
26. In the event the Agreement is terminated or expires, the Operator will return to Ornge any property that was provided to the Operator by or on behalf of Ornge, including without limitation any Navigation Equipment.

## **COSTS AND EXPENSES**

27. After Ornge's annual inspection of the Subject Lands, Ornge will pay to the Operator \$3,500 CAD (“Fee”) for the maintenance and repair of the Subject Lands.
28. The Operator will ensure that the Fee is only spent on costs incurred for the maintenance and repair of the Subject Lands. The Operator will retain invoices, receipts and other financial documentation to demonstrate the use of the Fee, and the Operator will provide such financial documentation to Ornge upon Ornge's reasonable request.

## **MISCELLANEOUS**

### *Governing Law*

29. This Agreement will be governed by, and interpreted and enforced in accordance with the laws of the Province of Ontario. Each party irrevocably submits to the exclusive





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jurisdiction of the courts of Ontario with respect to any matter arising under or related to this Agreement.

#### *Independent Parties*

30. The Operator is not an agent, partner, officer, employee or servant of Ornge or of Her Majesty the Queen in Right of the Province of Ontario (as represented by the Ministry of Health and Long-Term Care) (the “**Ministry**”). The Operator acknowledges and agrees that it is, and shall be at all times an independent contractor for purposes of this Agreement. The Operator is not in any way authorized to make a promise, agreement or contract on behalf of Ornge or the Ministry.
31. All personnel assisting the Operator in fulfilling its obligations under this Agreement shall be employees or subcontractors of the Operator and shall not, for any purpose, be deemed to be the employees of Ornge or the Ministry.

#### *Audit Rights*

32. Upon Ornge’s reasonable request, the Operator will provide to Ornge any information or documents that Ornge requires for the purposes of administering, enforcing, overseeing, planning, analyzing, investigating or inspecting any aspect of this Agreement or the Subject Lands.
33. Ornge may disclose the Operator’s information or documents to the Ministry of Health and Long-Term Care (which provides the Operator’s insurance as described in Section 18), Transport Canada (which oversees civil aviation including helipads) and to others as permitted or required by law.

#### *Assignment and Subcontractors*

34. Subject to Section 35, the Operator will not assign this Agreement or any or all of its rights or obligations under the Agreement without the prior written consent of Ornge, which consent may not be arbitrarily withheld. Any purported assignment done without such consent shall be of no force and effect and, in such circumstance and will constitute an event of default for the purposes of Section 24.
35. The Operator may, without the consent of Ornge, subcontract any portion of its duties under this Agreement provided that Ornge may, in its sole discretion, continue to deal with the Operator, rather than the subcontractor, in respect of the work performed by the subcontractor and the Operator shall report to Ornge regarding the work performed by the subcontractor. The Operator shall enter into a written contract with the subcontractor on terms that do not compromise the nature, scope and quality of services to be provided under this Agreement, and that do not impair the rights accorded to Ornge under this Agreement. The Operator shall at all times be held fully responsible for the acts and omissions of each such subcontractor and its directors, officers, employees, independent



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contractors, subcontractors, shareholders, members, partners, agents or other representatives, and their successors and assigns.

36. Ornge may assign this Agreement or any or all of its rights or obligations under this Agreement without the consent of the Operator. The Operator will be bound by any such assignment.

*Notice*

37. Subject to Section 15, any notice or other communication that is required to be given or that may be given by either party to this Agreement to the other party will be in writing and given by personal delivery or by registered mail, courier or email to the addresses listed below. Any notice given by personal delivery or email will be conclusively deemed to have been given on the day of actual delivery of the notice; if given by registered mail, on the third day following the deposit of the notice in the mail; if by courier, on the second day after delivery of the notice to the courier.

For all **operational and non-legal**  
matters/notices to Ornge:  
Ornge  
5310 Explorer Drive  
Mississauga, Ontario L4W 5H8  
Attention: Helipad Program  
helipadsupport@ornge.ca

For all **legal** matters/notices to Ornge:  
Ornge  
5310 Explorer Drive  
Mississauga, Ontario L4W 5H8  
Phone: (647) 428-2005  
Attention: Legal Department  
legal@ornge.ca

*Amendments*

38. This Agreement may be amended, modified or supplemented only by a written agreement signed by each party.

*Force Majeure*

39. If, as a result of an event of Force Majeure, the Operator fails to perform or comply with any of its obligations under this Agreement, such failure shall not constitute a default or breach of this Agreement. Dates and times by which the Operator is required to render performance under this Agreement shall be postponed automatically to the extent and for the period of time that the Operator is prevented from meeting them by causes beyond its control which are not avoidable by the exercise of reasonable foresight. Such causes (each such cause, an event of “**Force Majeure**”) shall include but not be limited to acts of God, acts of war, riots, fire, or other causes or contingencies beyond the control of, and occurring not as a result of the negligence or misconduct of, the Operator, but shall not include epidemics or other public health emergencies, inclement weather, financial distress or difficulty, strikes, labour disruptions, or lock outs. The Operator shall resume



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its obligations under this Agreement when the event of Force Majeure has ended. Notwithstanding the foregoing, if performance of a material obligation is prevented or delayed for more than 120 days by reason of an event of Force Majeure, Ornge may on notice treat the delay as an event of default for the purposes of Section 24.

#### *Whistleblowing*

40. Concerns regarding Ornge's business practices or ethical conduct may be forwarded to <https://ornge.grantthomtoncare.ca>.

#### *Entire Agreement*

41. This Agreement constitutes the entire agreement between the parties relating to the subject matter of the Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, express or implied, between the parties. There are no representations, warranties, conditions, other agreements or acknowledgements, whether direct or collateral, express or implied, other than those expressed herein that induced any party to enter into this Agreement or in which reliance is placed by any party, except as specifically set forth in this Agreement. Without limiting the foregoing, Ornge makes no, and disclaims any, representations about the frequency with which it will use the Helipad.

#### *Severability*

42. The invalidity of any particular provision or portion of any particular provision of this Agreement shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid provision or portion of any particular provision were omitted.

#### *Parties Bound*

43. This Agreement will enure to the benefit of and be binding upon the parties and their respective heirs, executors, administrators, agents, successors, and permitted assigns.

#### *Independent Legal Advice*

44. The Operator acknowledges that:
- (a) this Agreement has been prepared solely by legal counsel for Ornge and that such legal counsel does not act for the Operator in any manner with respect to this Agreement; and
  - (b) the Operator has been advised to, and has the right to, obtain independent legal advice before executing the Agreement.



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By executing the Agreement, the Operator confirms that it has either sought independent legal advice or waived its opportunity to do so, and that it understands and intends to be bound in all respect by this Agreement.

*Spousal Consent*

45. The Operator warrants that spousal consent is not necessary to this transaction under the provisions of the *Family Law Act*, R.S.O. 1990 unless the Operator's spouse has executed the consent provided below.



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Yours truly,

**ORNGE**

By:

*Robert Giguere*  
Robert Giguere

Chief Operating Officer and Deputy Chief Executive Officer, Ornge

Signed on

\_\_\_\_\_, 20\_\_

**ACCEPTED AND AGREED TO BY THE OPERATOR:**

**IN WITNESS WHEREOF** the following party has  
executed this Agreement:

Signed on

April 7<sup>th</sup>, 2014

in the presence of:

*Candice Beland*  
Witness signature

(M16g) BEDARD  
Print name

) **Municipality of Temagami**

) By:

) *Lorie Hunter*

) Name: Lorie Hunter

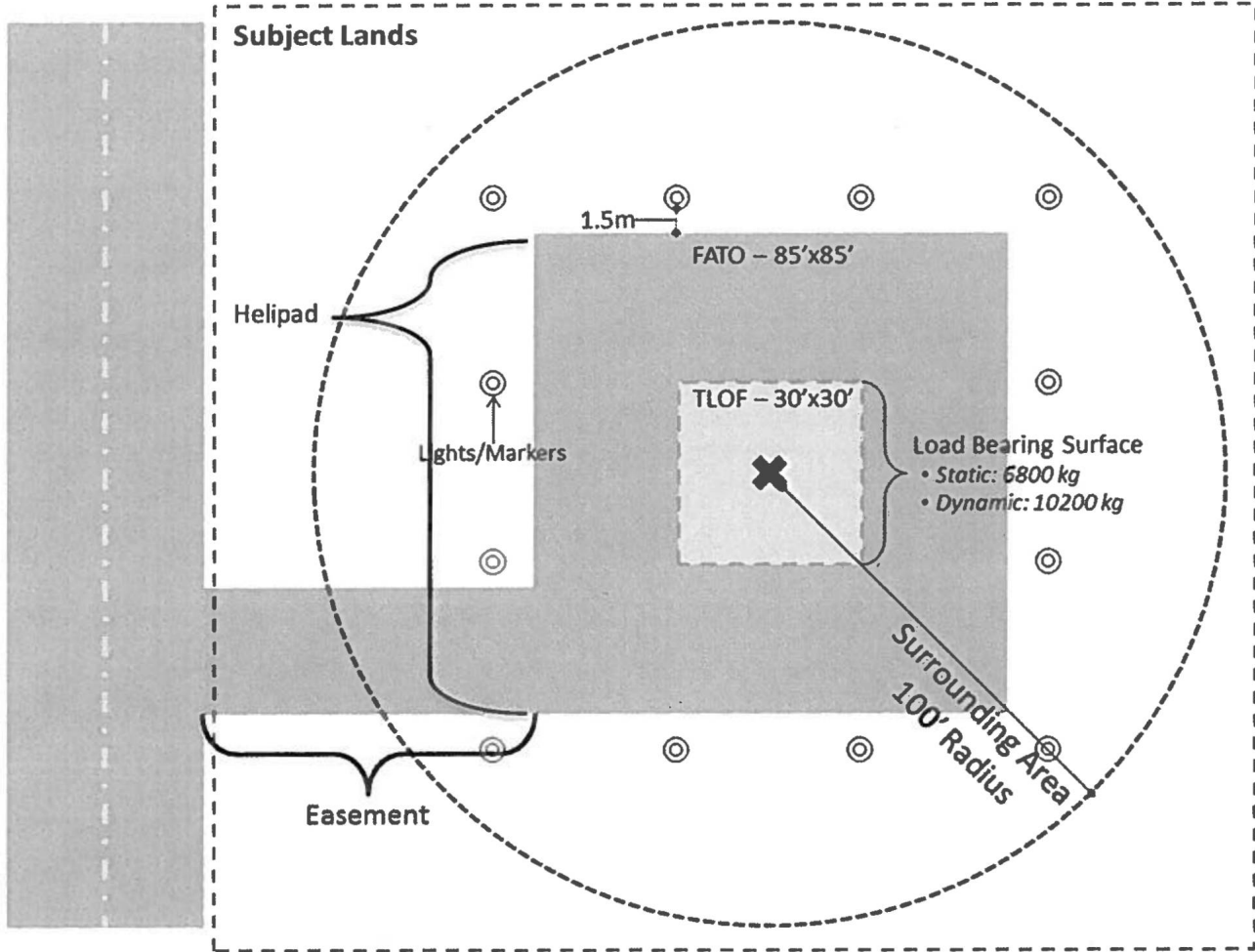
) Title: Mayor

) *Elaine Gunnell*

) Name: Elaine Gunnell  
Municipal Clerk.

**SCHEDULE A - DESCRIPTION OF SUBJECT LANDS**

**\* NOT TO SCALE \***





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Thursday, March 02, 2017

Municipality of Temagami (the “Operator”) Operator of the [R121 / Marten River]

Elain Gunnell

Clerk

7 Lakeshore Drive

P.O. Box 220

Temagami, Ontario P0H2H0

helipad located at:

46.73500° I-79.80250° (the “Property”)

Dear Ms. Gunnell:

**Re: Company-Approved Helipad Agreement (the “Agreement”)**

---

This letter agreement (the “Agreement”) sets out the terms and conditions of the use, operation and maintenance of the Helipad, Surrounding Area and Easement, each as defined below. We trust that this Agreement reflects the understanding between yourself and Ornge. If so, please have an authorized signatory execute **two copies** of this Agreement by signing in the space provided at the end of the document and return one copy to the following address:

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By way of background:

- A. The Operator owns, leases or otherwise has a legal right of ownership or control over the Property that includes the Helipad, Surrounding Area and Easement Lands, as defined below (collectively, the “**Subject Lands**”);
- B. Ornge, along with its subsidiaries and affiliates (collectively referred to as “**Ornge**” in this Agreement), provides ambulance services to the people of Ontario, under an agreement with the Ministry of Health and Long-Term Care, using helicopters and using land ambulance vehicles which Ornge operates or which are operated by third parties who coordinate with Ornge (collectively, the “**Services**”);
- C. Ornge seeks the right to use the Operator’s Subject Lands in order to provide the Services;
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**NOW THEREFORE**, Ornge and the Operator hereby agree as follows:

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  - (c) the **Easement Lands** comprise the land connecting the Helipad and Surrounding Area to the public road as depicted in Schedule A.

**REPRESENTATIONS OF THE OPERATOR**

3. The Operator represents and warrants to Ornge that:
  - (a) the Operator owns, leases or otherwise has a legal right of ownership or control over the Subject Lands to the extent sufficient to legally grant and provide to and in favour of Ornge the right to use the Subject Lands in connection with the Services and has, to the extent required, obtained any consents required from any third parties to grant such rights;
  - (b) the Operator has all the necessary power, authority and capacity to enter into this Agreement and to carry out its obligations under this Agreement;
  - (c) the TLOF is made of concrete, asphalt, sod or coarse gravel such that it is capable of bearing the static and dynamic weight of Ornge’s helicopter (approximately 6,800 kilograms);
  - (d) the FATO is made of either concrete, asphalt, sod or coarse gravel and will be kept free from dust, loose dirt, sand, and similar material that could create significant amounts of dust when a helicopter lands or takes off which can result in both safety and maintenance issues in helicopters; and





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- (e) the TLOF and FATO comply, and will at all times during the term of this Agreement comply, with subsection 305.29 of the Canadian Aviation Regulations.

#### **GRANT OF RIGHTS TO USE SUBJECT LANDS**

4. Subject to the terms of this Agreement, the Operator hereby grants to and in favour of Ornge (and its employees, contractors, agents and other third parties working in cooperation with Ornge, including without limitation third party land ambulance service providers (collectively “**Ambulance Personnel**”) the following rights and interests in and to the Subject Lands, which the parties hereby acknowledge, confirm and agree constitute rights and interests in and to the Subject Lands:
- (a) an exclusive right to use and occupy the Helipad and Surrounding Area from time to time and at all times for the purposes of providing the Services, including: (i) causing helicopters to land and take off from the Helipad; (ii) providing space for land ambulances to park while delivering patients to, or receiving patients from, an air ambulance; (iii) transferring patients between air ambulances and land ambulances and providing care to such patients during such transfers; (iv) installing, inspecting and maintaining Navigation Equipment (as defined in Section 10 below); (v) verifying that the Operator is carrying out its obligations under this Agreement and that the Subject Lands are suitable for the foregoing uses; and (vi) other activities related or ancillary to the provision of the Services; and
- (b) an exclusive easement in gross or right and interest in the nature of an easement in gross in, on, upon, along, over and across the Easement Lands, for the benefit of Ornge and the Ambulance Personnel (together with its and their respective vehicles, supplies, equipment and machinery) for the purposes of ingress to and egress from the Helipad and the Surrounding Area in connection with the provision of the Services.

#### **MAINTENANCE AND REPAIR OF SUBJECT LANDS**

5. The Operator will ensure that the Helipad, Surrounding Area and Easement Lands are available for the purposes set out in Section 4, on a twenty-four hours per day, seven days per week basis.
6. The Operator will, at all times and as necessary, undertake all reasonable maintenance and repair of the Subject Lands to meet the availability commitment set out in Section 5 and otherwise to enable Ornge to provide a safe take-off and landing site for air ambulances.
7. Without limiting the generality of Section 6, the Operator will:



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Ornge  
5310 Explorer Drive  
Mississauga, Ontario L4W SH8

1.800.251.6543  
647.428.2005 tel  
647.428.20006 fax

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- (a) promptly clear the Subject Lands of all debris, vehicles, obstacles and unsecured objects that may in any way preclude or limit full access to, or use of, the Subject Lands as contemplated by this Agreement;
  - (b) promptly clear all ice from the Subject Lands, so that no accumulation of ice occurs, provided that no salt may be used to remove such ice but urea may be used;
  - (c) promptly clear snow (including any drifts or piles) greater than two inches deep from the Subject Lands during and after a snowfall, so that no accumulation in excess of two inches occurs;
  - (d) promptly clear or water down dust, loose dirt, sand, and similar material that could create significant amounts of dust when a helicopter lands or takes off;
  - (e) promptly clear the Helipad of any objects or debris which could, if struck by a helicopter or any moving part of a helicopter, cause a safety incident. This includes structures such as fences, gazebos, sheds, outhouses, etc.;
  - (f) promptly clear the Easement Lands of vehicles or other obstacles that may in any way precluded or limit access to the Helipad and Surrounding Area as contemplated by this Agreement;
  - (g) routinely cut any grass or other vegetative ground cover such that the height thereof does not exceed six inches on the Helipad;
  - (h) routinely cut any grass or other vegetative ground cover so that neither blocks or impedes the visibility of the Navigational Equipment; and
  - (i) trim any grass, bushes, trees or vegetative ground cover on the Subject Lands as directed by Ornge from time to time.
8. The Operator will not make any changes to the Subject Lands (other than maintenance in accordance with this Agreement) without the prior written consent of Ornge.
9. The Operator will not knowingly do (or fail to do) anything that would impede the use of the Subject Lands by Ornge and Ambulance Personnel as contemplated by this Agreement or that could endanger the safety of Ambulance Personnel or patients.

## NAVIGATION EQUIPMENT

10. Ornge may, where necessary, supply navigational equipment, which may include solar/battery powered lights and reflective cones (the “**Navigational Equipment**”) and will install such Navigational Equipment on the Subject Lands, substantially as illustrated in Schedule A.



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11. All Navigational Equipment will remain the property of Ornge at all times. Ornge may retake possession of Navigation Equipment at any time without notice.
12. The Operator will maintain the Navigational Equipment (for example, by changing dead batteries) and take reasonable measures to ensure that the Navigational Equipment is not damaged or stolen.
13. The Operator will be responsible for reimbursing Ornge for the cost of repairing or replacing any Navigational Equipment that is damaged or stolen while in the possession of the Operator.

### **MONITORING, NOTIFICATION AND INSPECTIONS**

14. The Operator will regularly inspect the Subject Lands to ensure that they are maintained to the standard set out in this Agreement and are available for use in accordance with the requirements of this Agreement. Such inspections will be carried out at least every week, or more frequently as may be reasonably necessary in the event of inclement weather such as snow, heavy rains, high winds, or electrical storms.
15. The Operator will immediately notify the Ornge Communications Centre (“OCC”) at 1-800-387-4672 if any of the following adverse conditions arise:
  - (a) the Helipad is not available for the receipt and transport of patients (which for clarity should only be in situations that are beyond the reasonable control of the Operator);
  - (b) access to the Helipad or Surrounding Area, or passage over the Easement Lands, is impeded in any way, including for planned outages (for example, construction);
  - (c) if any hazard exists which could reasonably be expected to compromise the safe access and use of the Helipad, Surrounding Area or Easement Lands by Ornge or Ambulance Personnel;
  - (d) any Navigational Equipment is not working, is visibly damaged, or is stolen or missing; or
  - (e) the occurrence of any event of Force Majeure (as defined in Section 39).

When providing notice of any of the adverse conditions described in this Section 15, the Operator will provide reasonable detail about the nature of the adverse conditions and the Operator’s reasonable estimate of the period of time for which it expects the adverse conditions to continue. For clarity, notifications given under Section 15 will be provided by telephone notwithstanding the general notification provisions set out in Section 37 of this Agreement.



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16. The telephone number of the OCC set out in Section 15 is confidential. The Operator will keep this telephone number confidential. The Operator will not use or disclose this telephone number to any other person or organization, except in accordance with this Agreement or with the prior written consent of Ornge.
17. The Operator will permit Ornge to inspect the Subject Lands to ensure compliance by the Operator with this Agreement. Ornge will endeavor to conduct inspections at reasonable times and on reasonable notice to Operator, provided that Ornge reserves the right to conduct inspections at any time and on no notice given the emergency nature of the Services that will be undertaken on the Subject Lands.

## **RISK MANAGEMENT**

18. Ornge will confirm in writing whether or not the operation of the Helipad and Surrounding Area is covered by insurance policies that are made available to Ornge by the Ministry of Health and Long-Term Care.
19. To the best of its ability, Ornge will notify the Operator if the insurance policies described in Section 18 are revoked or otherwise lapse.
20. The Operator will defend, indemnify and hold harmless Ornge and its members, directors, officers, employees, contractors and from and against: (a) any personal injury or damage to tangible property; and (b) any and all claims, actions, judgments, costs, damages, expenses (including reasonable legal expenses), losses or liabilities incurred or suffered by an indemnified party, in each case to the extent caused by the negligence or willful act or omission of the Operator or by the material breach of a representation, warranty or covenant of the Operator under this Agreement.
21. Ornge will defend, indemnify and hold harmless the Operator and its members, directors, officers, employees, contractors and from and against: (a) any personal injury or damage to tangible property; and (b) any and all claims, actions, judgments, costs, damages, expenses (including reasonable legal expenses), losses or liabilities incurred or suffered by an indemnified party, in each case to the extent caused by the negligence or willful act or omission of Ornge or by the material breach of a representation, warranty or covenant of Ornge under this Agreement.
22. In no event will Ornge be liable to the Operator for any indirect, special, incidental, exemplary, punitive or consequential damages, or lost revenue, profits or business, whether based on breach of contract, tort (including negligence) or otherwise, arising from or related to this Agreement or the use of the Subject Lands as contemplated in this Agreement, regardless of whether Ornge has been advised, knew or should have known of the possibility of such damages.

## **TERM AND TERMINATION**



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23. This Agreement will commence on the date that it is fully executed by the parties (the “**Commencement Date**”), and will continue for a term of 3 years after the Commencement Date, unless terminated earlier.
24. Ornge may terminate this Agreement by giving written notice of default to the Operator if the Operator breaches any of its representations, warranties or obligations under this Agreement and fails to remedy such default within the cure period specified in the notice of default (or within 20 days of the date of the notice if no such cure period is specified), provided that Ornge may terminate immediately upon notice for the following events of default:
  - (a) any revocation of insurance as required under Section 19, or a lapse of such insurance;
  - (b) any willful breach of this Agreement or intentional misrepresentation by the Operator under this Agreement; and
  - (c) any fraudulent act or omission of the Operator.
25. Ornge may terminate this Agreement at any time, for any reason and without any cost, damages or penalty to the terminating party, upon giving at least 10 days’ written notice to the Operator. Where Ornge gives such notice, this Agreement will terminate on the date set out in the notice, which date shall not be less than 10 days from the date on which notice is given.
26. In the event the Agreement is terminated or expires, the Operator will return to Ornge any property that was provided to the Operator by or on behalf of Ornge, including without limitation any Navigation Equipment.

## **COSTS AND EXPENSES**

27. After Ornge’s annual inspection of the Subject Lands, Ornge will pay to the Operator \$3,500 CAD (“**Fee**”) for the maintenance and repair of the Subject Lands.
28. The Operator will ensure that the Fee is only spent on costs incurred for the maintenance and repair of the Subject Lands. The Operator will retain invoices, receipts and other financial documentation to demonstrate the use of the Fee, and the Operator will provide such financial documentation to Ornge upon Ornge’s reasonable request.

## **MISCELLANEOUS**

### *Governing Law*

29. This Agreement will be governed by, and interpreted and enforced in accordance with the laws of the Province of Ontario. Each party irrevocably submits to the exclusive



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jurisdiction of the courts of Ontario with respect to any matter arising under or related to this Agreement.

#### *Independent Parties*

30. The Operator is not an agent, partner, officer, employee or servant of Ornge or of Her Majesty the Queen in Right of the Province of Ontario (as represented by the Ministry of Health and Long-Term Care) (the “**Ministry**”). The Operator acknowledges and agrees that it is, and shall be at all times an independent contractor for purposes of this Agreement. The Operator is not in any way authorized to make a promise, agreement or contract on behalf of Ornge or the Ministry.
31. AU personnel assisting the Operator in fulfilUng its obligations under this Agreement shaU be employees or subcontractors of the Operator and shall not, for any purpose, be deemed to be the employees of Ornge or the Ministry.

#### *Audit Rights*

32. Upon Ornge’s reasonable request, the Operator will provide to Ornge any information or documents that Ornge requires for the purposes of administrating, enforcing, overseeing, planning, analyzing, investigating or inspecting any aspect of this Agreement or the Subject Lands.
33. Ornge may disclose the Operator’s information or documents to the Ministry of Health and Long-Term Care (which provides the Operator’s insurance as described in Section 18), Transport Canada (which oversees civil aviation including helipads) and to others as permitted or required by law.

#### *Assignment and Subcontractors*

34. Subject to Section 35, the Operator wiU not assign this Agreement or any or all of its rights or obligations under the Agreement without the prior written consent of Ornge, which consent may not be arbitrarily withheld. Any purported assignment done without such consent shall be of no force and effect and, in such circumstance and will constitute an event of default for the purposes of Section 24.
35. The Operator may, without the consent of Ornge, subcontract any portion of its duties under this Agreement provided that Ornge may, in its sole discretion, continue to deal with the Operator, rather than the subcontractor, in respect of the work performed by the subcontractor and the Operator shall report to Ornge regarding the work performed by the subcontractor. The Operator shall enter into a written contract with the subcontractor on terms that do not compromise the nature, scope and quality of services to be provided under this Agreement, and that do not impair the rights accorded to Ornge under this Agreement. The Operator shall at all times be held fully responsible for the acts and omissions of each such subcontractor and its directors, officers, employees, independent



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contractors, subcontractors, shareholders, members, partners, agents or other representatives, and their successors and assigns.

36. Ornge may assign this Agreement or any or all of its rights or obligations under this Agreement without the consent of the Operator. The Operator will be bound by any such assignment.

#### *Notice*

37. Subject to Section 15, any notice or other communication that is required to be given or that may be given by either party to this Agreement to the other party will be in writing and given by personal delivery or by registered mail, courier or email to the addresses listed below. Any notice given by personal delivery or email will be conclusively deemed to have been given on the day of actual delivery of the notice; if given by registered mail, on the third day following the deposit of the notice in the mail; if by courier, on the second day after delivery of the notice to the courier.

For all **operational and non-legal** matters/notices to Ornge:  
Ornge  
5310 Explorer Drive  
Mississauga, Ontario L4W 5H8  
Attention: Helipad Program  
[helipadsupport@ornge.ca](mailto:helipadsupport@ornge.ca)

For all **legal** matters/notices to Ornge:  
Ornge  
5310 Explorer Drive  
Mississauga, Ontario L4W 5H8  
Phone: (647) 428-2005  
Attention: Legal Department  
[legal@ornge.ca](mailto:legal@ornge.ca)

#### *Amendments*

38. This Agreement may be amended, modified or supplemented only by a written agreement signed by each party.

#### *Force Majeure*

39. If, as a result of an event of Force Majeure, the Operator fails to perform or comply with any of its obligations under this Agreement, such failure shall not constitute a default or breach of this Agreement. Dates and times by which the Operator is required to render performance under this Agreement shall be postponed automatically to the extent and for the period of time that the Operator is prevented from meeting them by causes beyond its control which are not avoidable by the exercise of reasonable foresight. Such causes (each such cause, an event of “**Force Majeure**”) shall include but not be limited to acts of God, acts of war, riots, fire, or other causes or contingencies beyond the control of, and occurring not as a result of the negligence or misconduct of, the Operator, but shall not include epidemics or other public health emergencies, inclement weather, financial distress or difficulty, strikes, labour disruptions, or lock outs. The Operator shall resume



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its obligations under this Agreement when the event of Force Majeure has ended. Notwithstanding the foregoing, if performance of a material obligation is prevented or delayed for more than 120 days by reason of an event of Force Majeure, Ornge may on notice treat the delay as an event of default for the purposes of Section 24.

#### *Whistleblowing*

40. Concerns regarding Ornge's business practices or ethical conduct may be forwarded to <https://ornge.grantthorntoncare.ca>.

#### *Entire Agreement*

41. This Agreement constitutes the entire agreement between the parties relating to the subject matter of the Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, express or implied, between the parties. There are no representations, warranties, conditions, other agreements or acknowledgements, whether direct or collateral, express or implied, other than those expressed herein that induced any party to enter into this Agreement or in which reliance is placed by any party, except as specifically set forth in this Agreement. Without limiting the foregoing, Ornge makes no, and disclaims any, representations about the frequency with which it will use the Helipad.

#### *Severability*

42. The invalidity of any particular provision or portion of any particular provision of this Agreement shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid provision or portion of any particular provision were omitted.

#### *Parties Bound*

43. This Agreement will enure to the benefit of and be binding upon the parties and their respective heirs, executors, administrators, agents, successors, and permitted assigns.

#### *Independent Legal Advice*

44. The Operator acknowledges that:
- (a) this Agreement has been prepared solely by legal counsel for Ornge and that such legal counsel does not act for the Operator in any manner with respect to this Agreement; and
  - (b) the Operator has been advised to, and has the right to, obtain independent legal advice before executing the Agreement.





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By executing the Agreement, the Operator confirms that it has either sought independent legal advice or waived its opportunity to do so, and that it understands and intends to be bound in all respect by this Agreement.

*Spousal Consent*

45. The Operator warrants that spousal consent is not necessary to this transaction under the provisions of the *Family Law Act*, R.S.O. 1990 unless the Operator's spouse has executed the consent provided below.



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Yours truly,  
**ORNGE**

By:

Robert Giguere  
Chief Operating Officer and Deputy Chief Executive Officer, Ornge

Signed on

\_\_\_\_\_, 20\_\_

**ACCEPTED AND AGREED TO BY THE OPERATOR:**

IN WITNESS WHEREOF the following party has  
executed this Agreement:

Signed on

fibril y\* 20^4-,  
in the presence of:

  
Witness signature

CBMM@EDARD  
Print name

c^ . ca

) **Municipality of Temagami**

) By:

)  
)   
) \_\_\_\_\_

Name: Lorie Hunter  
Title: Mayor

)  
)   
) \_\_\_\_\_

Name: Elaine Gunnell  
Title: Municipal Clerk

### SCHEDULE A - DESCRIPTION OF SUBJECT LANDS

\* NOT TO SCALE \*

