

**STAFF REPORT:**

REPORT TO: Council

MEETING DATE October 31, 2011

REPORT NO.: PL.11.127

SUBJECT: Lease with the County of Grey
Emergency Medical Services
Station – Lease 796388 Grey
Road 19

PREPARED BY: John G. Metras Q.C. – Town
Solicitor

A. Recommendations

THAT Council receive Report. PL.11.127 and authorize the Mayor and Clerk to execute a Lease with the County of Grey for the the County of Grey Emergency Medical Services Station at 796388 Grey Road 19 (the EMS Station) in a final form approved by the Director of Engineering and Public Works, the Director of Planning and Building Services, the Director of Financial and Information Services and the Town Solicitor.

THAT the Town Solicitor or his designate is authorized to execute all documents necessary to register the lease in the Land Registry Office.

THAT Council approve the architectural elevations for the EMS Station (Attachment 1).

THAT the County be permitted to enter on the lands prior to approval of the proposed “Accepted for Construction” plans to undertake only clearing and grubbing of the lands.

B. Background

Town staff have been in discussions with County staff since 2009 with respect to the County leasing land from the Town for a the construction by the County of the EMS Station at the rear of the Fire station No. 2 property on Grey Road 19.

Town Council at its meeting of August 8, 2011 passed the following resolution granting site plan approval to the County for the EMS Station.

THAT Council receive Staff Report PL.11.79, EMS/Fire Hall Expansion Site Plan Approval, and that Council grant conditional site plan approval pursuant to Section 41 of the *Planning Act* for the proposed Fire Hall Expansion as depicted on Appendix “A” attached hereto subject to the Town’s Engineering & Public Works Department “Accepting for Construction” the design of the proposed works and that Council conditionally grant site plan approval pursuant to Section 41 of the *Planning Act* for the proposed County of Grey Emergency Medical Services Station as depicted on Appendix “A” subject to Town’s Engineering & Public Works Department “Accepting for Construction” the design of the proposed works and the County executing a lease agreement with the Corporation of the Town of The Blue Mountains

Staff Report PL.11.79 noted that the County had not provided architectural elevations of the EMS Station and that Council approval of these architectural elevations would be required prior to construction proceeding.

Staff has now received and reviewed the architectural elevations (Attachment 1) and are recommending that Council approve them.

Attached (Attachment 2) is the latest draft of the proposed lease with the County referred to in the above resolution for Council's consideration.

It is intended that the approved architectural elevations and that "Accepted for Construction" plans referred to in the above resolution for the design of the proposed works for the EMS Station will be include in the list of approved plans and drawings described in Schedule B to the lease.

We are waiting for the proposed "Accepted for Construction" plans to be finalized and a description of these drawings will be added to Schedule B to the lease when they are finalized.

In the interim we are prepared to recommend to Council that the County be permitted to enter on the lands prior to acceptance of the proposed "Accepted for Construction" plans to undertake only clearing and grubbing of the lands.

We have received a satisfactory insurance certificate from the County related to the construction of the EMS Station with the Town named as an additional insured on the policy.

The following is a summary of the major terms of the lease:

1. Term of the Lease – 99 years subject to early rights of termination by the County and the Town. On termination for any reason all buildings and improvements on the lands land would revert to the Town at no cost to the Town.
2. Leased Lands – Lands occupied by the EMS Station as shown in heavy outline on the attached Site Plan (Attachment 3) together with the right to use the existing driveway for access to the Lands.
3. Construction of the EMS Station – the EMS Station will be constructed in accordance with Section 3 of the lease, the approved Site Plan, approved Architectural Elevations and the Accepted for Construction plans.
4. Rent - \$1.00 for the term of the lease with the County paying, as additional rent, 50% of the cost of snow plowing, grass cutting, maintenance and repair of the access driveway and maintenance of the storm water management pond to be constructed by the County on Town lands.
5. Use of Lands- the Lands to be used only for the EMS. If the Lands cease to be so used, the County has the option of terminating the lease or, with the consent of the Town, using the Lands and buildings for another public use permitted by the Town's zoning by-law and compatible with the fire hall use.
6. Subletting – The County has the right to sublet the Lands to another ambulance provider if the County ceases to provide ambulance service.
7. Insurance – The County will provide a commercial general liability insurance policy in the amount of \$5 Million with the Town named as an additional insured.
8. Termination – The Town has the right to terminate the lease if a default is not remedied within a reasonable time specified by the Town. The County has the right to terminate at any time on six months or more notice.

C. The Blue Mountains' Strategic Plan

Managing growth to ensure the ongoing health and prosperity of the community.

D. Budget Impact

Nil

E. Attached

1. Architectural Elevations Drawings A3 and A4 prepared by Allen Hastings Limited
2. Draft Lease
- 3.. Site Plan

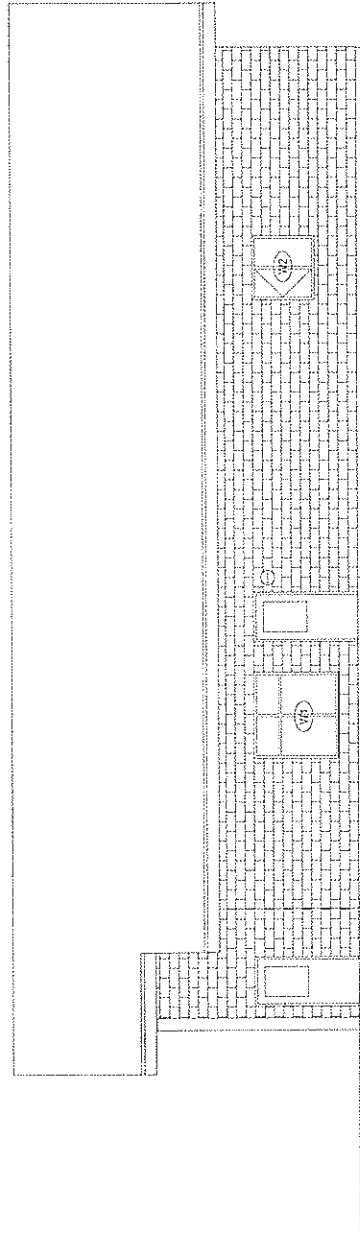
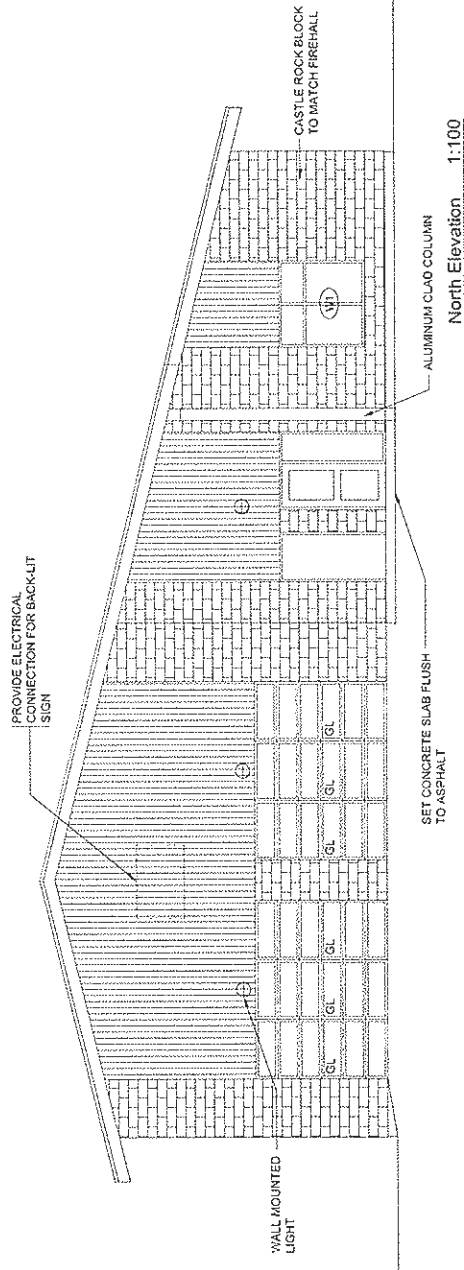
Respectfully submitted,

Signature

For more information, please contact:

Name: John G. Metras Q.C. Town Solicitor
Email Address: jmetras@thebluemountains.ca
Business Telephone with Extension: 519-599-3131 Ext 242

NOTES:
 MASONRY ASSUMED TO BE METRIC SIZE
 190x390x80 COURSING ASSUMED TO BE
 200 C/C JOINT JOINTS TO



ELEVATIONS

West Elevation 1:100

2	ISSUED FOR OWNER REVIEW	2011.10.27
1	SUBMITTED FOR RFP	2011.09.07

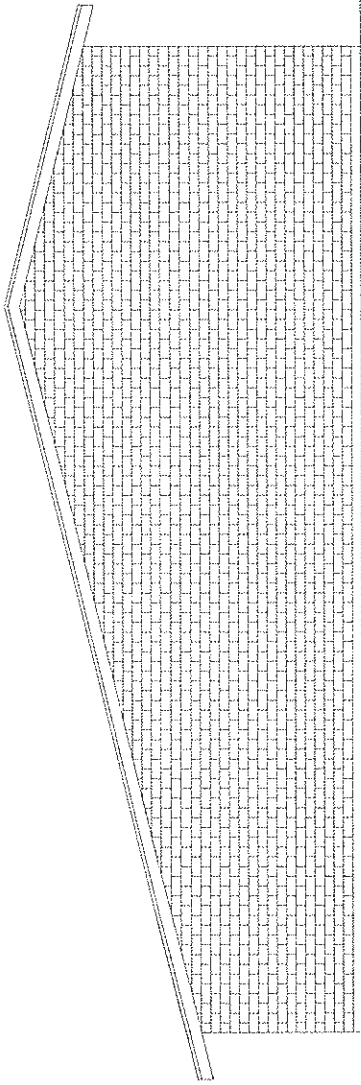
G.M. DIEMERT ARCHITECT INC.
 957 FOLKMAN AVENUE EAST
 GAIN SPUR, ONTARIO
 M4A 2K7 (416) 291-1975



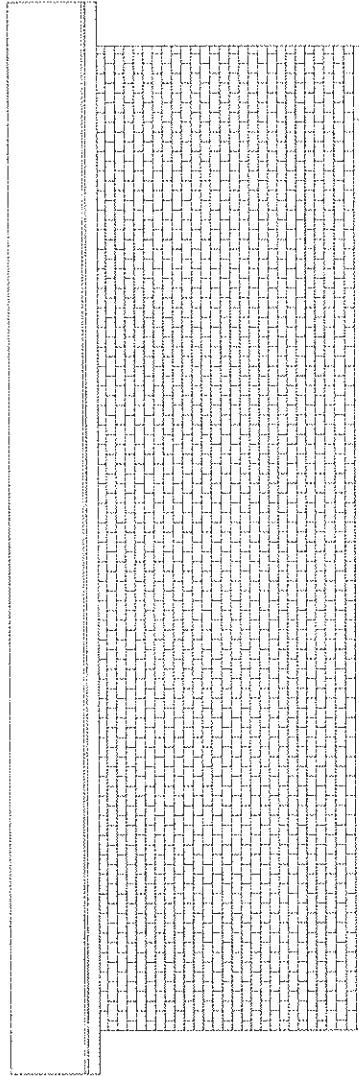
PROPOSED FOR:
 Blue Mountains
 Ambulance Base
 Blue Mountains, Ontario

Project No.

A3



South Elevation 1:100



East Elevation 1:100

2	ISSUED FOR OWNER REVIEW	2011.10.27
1	SUBMITTED FOR REF.	2011.09.07

G.M. DIEMERT ARCHITECT INC.
 167 FOURCH AVENUE EAST
 OWEN SOUND, ONTARIO
 N4K 2K7 (519)376-1975



PROPOSED REF.
 Blue Mountains
 Ambulance Base
 Blue Mountains, Ontario

ELEVATIONS

Project No.	A4
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THIS AGREEMENT made in triplicate this _____ day of November, 2011.

B E T W E E N:

THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS
(Hereinafter called the "Landlord")

OF THE FIRST PART

- and -

THE CORPORATION OF THE COUNTY OF GREY
(Hereinafter called the "Tenant")

OF THE SECOND PART

WHEREAS the Landlord is the registered owner of the Lands more particularly described Firstly on Schedule "A" attached hereto (the "Lands");

AND WHEREAS the Landlord has agreed to lease to the Tenant and the Tenant has agreed to lease from the Landlord the Lands for the purpose of constructing and operating an ambulance station;

AND WHEREAS the Lands are within an area designated as an area of Site Plan Control pursuant to the Landlord's Site Plan Control Area by-law passed pursuant to section 41(2) of the Planning Act and in force at the date of this lease;

AND WHEREAS the Tenant applied to the Landlord for site plan approval for the development of the Lands for an ambulance station;

AND WHEREAS the Landlord has given approval to the Site Plan pursuant to Section 41(4) of the Planning Act on the condition that the Tenant enter into this lease, which among other things, will satisfy the conditions to approval of the Site Plan

NOW THIS INDENTURE WITNESSES THAT,

1. Demise of Lands:

In consideration of the rents, covenants and agreements contained in this lease to be paid, observed and performed by the Tenant, the Landlord has demised and leased and by this Indenture demises and leases the Lands to the Tenant together with a non-exclusive right of access over other Lands owned by the Landlord which are described Secondly on Schedule "A" attached hereto (the "Access Lands").

2. Term of Lease

The term of this lease shall commence on November , 2011. The lease shall terminate upon the earlier of:

- a. the date specified in a written notice of termination provided by the Tenant to the Landlord provided such date shall be not less than 6 months subsequent to the date of such notice;

- b. the date specified in a written notice of termination provided by the Landlord to the Tenant;
- c. 99 years from the date of commencement of the term

Upon termination of this lease for any reason, the Landlord may enter into possession of the Lands and buildings constructed thereon and the Tenant shall peaceably surrender and yield to the Landlord, the possession of the Lands and all of the fixtures and improvements erected thereon in a well-maintained, fully operating condition with all related buildings, structures and improvements in a good state of repair (reasonable wear and tear excepted). At the termination of this lease for any reason, the Landlord will have and enjoy absolute title to the Lands and the buildings constructed thereon without compensation to the Tenant and free of any claim or encumbrance

3. Site Plan Approval and Construction of New Ambulance Station

3.1 Approved Site Plan

- a. The Landlord has approved the plans and drawings for the development of the Lands for the ambulance station described in Part 1 of Schedule "B" (collectively the "Site Plan") in accordance with the Section 41(4) of the Planning Act.
- b. The Tenant shall not commence construction of the ambulance station until the Landlord has approved the architectural elevations drawings for the ambulance station, which approval shall not be unreasonably withheld. The architectural elevations drawings, when approved, shall be deemed to be one of the Site Plans and all of the provisions of this lease shall apply to them.

3.2 Accepted Plans

- a. The Landlord has accepted the plans and drawings for the development of the Lands, including other lands owned by the Town, for the ambulance station described in Part 2 of Schedule "B" (the "Accepted Plans") which have been stamped "Accepted for Construction" by the Landlord.
- b. The Site Plan, which includes the approved the architectural elevations drawings, and the Accepted Plans are incorporated into and form part of this lease and shall have the same force and effect as if the information shown on them were contained in the body of this lease.

3.3 Construction of the New Ambulance Station

- a. In this lease the following term shall have the meaning set out below:
 - "Certificate of Completion" means a certificate issued by the Landlord stating that all of the Private Services have been installed in accordance with the Site Plan and the Accepted Plans and the requirements of this lease to its satisfaction;
 - "Certificate of Final Acceptance" means a certificate issued by the Landlord stating that all of the Public Works described therein have been installed in accordance with the Site Plan and the Accepted Plans and the requirements of this Agreement to its satisfaction, the Maintenance Period for the Public Works described in the certificate has expired and no other obligations under the lease remain outstanding with respect to the Public Works described in the certificate or any matters provided for in this lease, other than as may be specified in writing by the Landlord on the date of Final Acceptance;
 - "Certificate of Preliminary Acceptance" means a certificate issued by the Landlord stating that all of the Public Works described therein have been

installed in accordance with the Site Plan and the Accepted Plans and the requirements of this Agreement, to its satisfaction, other than as may be specified in writing by the Landlord on the date of Preliminary Acceptance, such that the Maintenance Period for the Public Works described in the certificate may commence;

“default” means any default by the Owner in the performance of its obligations under this lease, including the failure of the Owner to design, install, repair and maintain the Works in accordance with all of the requirements of this lease and the failure of the Owner to make any payments to the Town required by this lease when due;

"Final Acceptance" means the date on which the Landlord has issued a Certificate of Final Acceptance for the Public Works;

“Maintenance Period” means a minimum period of one (1) year following the date of Preliminary Acceptance of the Public Works and continuing until Final Acceptance;

“Public Works” means those Works shown on the Accepted Plans which are to be installed on lands owned by the Landlord and not included in this lease, and which Works will be owned, operated and maintained by the Landlord. The Public Works do not include the new sanitary sewer and water services shown on the Accepted Plans which provides sanitary and water services to the ambulance station.

"Preliminary Acceptance" means the date upon which the Landlord has issued a Certificate of Preliminary Acceptance and the Maintenance Period for the Public Works described in such certificate has commenced, pending the completion of all requirements noted in this lease;

“Private Services” means all of the Works which are to be installed on the Lands, and including the new sanitary sewer and water services shown on the Accepted Plans which provides sanitary and water services to the ambulance station, which are to be retained, owned, operated, maintained, repaired, reconstructed and replaced by the Tenant at their its own expense in accordance with the requirements of this lease;

“Works” means all of the buildings, structures, works, servicing, facilities, landscaping, fencing, matters and things shown on the Site Plan, the Accepted Plans or referred to in this Lease, all of which are required to be installed and done by the Tenant under the terms of this lease.

b. The Tenant shall construct the ambulance station at the Tenant’s cost and the Tenant shall be responsible for the design, tendering, and supervision of construction of the ambulance station. The Tenant covenants and agrees that the Lands shall be developed only in accordance with the Site Plan.

c. The Tenant further covenants and agrees, at its own expense, to install, do, provide, construct and complete in a good and workmanlike manner to the satisfaction of the Landlord all of the Works and other matters shown on the Site Plan and the Accepted Plans or referred to in this lease.

d. The Tenant represents and warrants to the Landlord that no deviations or changes shall be made to the Site Plan and Accepted Plans and no construction shall take place contrary to such plans, without the prior written approval of the Landlord, except such changes as may be required by the Landlord in order that said plans shall comply with all relevant provisions of the building or zoning or other by-law or laws of the Landlord, and all regulations or laws of any other governmental authority.

e. The Tenant .will provides a reasonable opportunity to the Landlord to

inspect the construction as it progresses.

f. the Tenant, as a condition to the Landlord issuing the certificates referred to in Section 3.3 a., will provide a certificate from its engineer, the Ainley Group, stating that all the Works have been installed and are functioning in strict accordance with the Town Standards, the Accepted Plans and the requirements of this Agreement and that the Lands have been graded in conformity with the Accepted Plans.

f. In the event that a construction lien is registered against the Lands described in Schedule "A" as a result of the construction activities of the Tenant, the Tenant shall cause the lien to be discharged and vacated and shall indemnify and hold the Landlord harmless with respect thereto.

4. Rent

The Tenant shall pay annual rent of \$1.00 during the term of this agreement. By signing this lease, the Landlord acknowledges payment of rent in advance for 99 years. The Tenant shall be responsible for and pay all costs related to its construction upon, use and occupancy of the Lands. In the event that any charge for such construction, use and occupancy is charged to the Landlord, the Tenant shall reimburse such amount to the Landlord upon demand. For the purpose of any default provisions herein, any such payment shall constitute additional rent.

5. Additional Rent

The Tenant covenants with the Landlord as follows:

- a. That during the said term, the Tenant will pay to the Landlord, the rent herein reserved plus additional rent as herein provided without deduction;
- b. That during the said term, the Tenant will pay to the Landlord, as additional rent, 50% of the cost of property repair and maintenance with respect to the driveway on the Access Lands, the repair, maintenance and cleaning of the storm water management pond shown on the Accepted Plans, snow removal, grass cutting and general grounds maintenance which work shall be completed by the Landlord. Snow removal shall be undertaken in accordance with the Landlord's Snow Removal Policy for Fire Station No. 2 in effect from time to time during the term of this lease. The Tenant acknowledges receipt of a copy the Landlord's current Snow Removal Policy for Fire Station No. 2, dated September 23, 201 which is in effect at the date of this lease.

6. Landlord's and Tenant's Obligation to Repair and Maintain the Lands and the Works

- a. The Tenant shall, once all the Works required to be provided, constructed or installed by it under the terms of this lease have been completed to the satisfaction of the Town in accordance with the Site Plan and the Accepted Plans in a good and workmanlike manner, maintain the Public Works until Final Acceptance of the Public Works and it shall maintain the Lands and improvements made thereon, including the Private Services during the term of this lease in the same condition as a careful owner would keep them, reasonable wear and tear, damage by fire, lightning and tempest excepted.
- b. The Landlord shall be responsible for the repair and maintenance of the Public Works after Final Acceptance of the Public Work at its cost subject to the provisions of Section 5 b.
- c. The Tenant shall be responsible, at its sole expense, for the repair, maintenance and replacement of the new sanitary sewer and water services shown on the Accepted Plans which provides sanitary and water

services to the ambulance station. The Landlord consents to the Tenant undertaking this work on the Landlord's lands provided that the Tenant restores, as far as practicable, the Landlord's lands to the condition existing immediately prior to the Tenant commencing the work.

- d. If the Tenant is in default of its this obligation to repair and maintain the Public Works or the Private Services in accordance with the provisions of this Lease, then the Landlord on demand, may require the Tenant to remedy the default, failing which the Landlord may remedy the default and recover the costs as additional rent from the Tenant.

7. Use and Operation

- a. During the term of the lease, the Lands and the building constructed by the Tenant shall be used and occupied only for the purpose of an ambulance station and ancillary uses, and for no other purpose without the express prior written consent of the Landlord;
- b. In the event that the Tenant ceases to use the said Lands as an ambulance station during the term of this lease, the Tenant may terminate this lease in accordance with Section 2 or alternatively, the Tenant, with the consent of the Landlord, may use the Lands and buildings constructed by the Tenant for another public use permitted by the Municipal Act and the Landlord's zoning by-law and compatible with the Landlord's use of its adjoining lands as a fire station.

8. Assignment and Sub-letting - Alternative Ambulance Operator

If the Tenant ceases to provide ambulance service and the Tenant is desirous of entering into an Agreement with a third party which will provide ambulance service, the Tenant shall so notify the Landlord, and upon the consent of the Landlord, which consent will not be unreasonably or arbitrarily withheld, the Tenant may sub-let the Lands and lease the building described herein to the said third party for the unexpired term, provided that the said assignment shall not in any way relieve the Tenant of its obligations to continue the payment of rent and additional rent as herein set out, and to perform the other obligations of the Tenant under this lease.

9. Tenant's Insurance and Indemnity of Landlord

- a. The Tenant shall obtain and maintain during the term of the lease, commercially reasonable insurance covering the risk of injury (including death) and damage to property incurred by any third party with minimum coverage of \$5 million and such policy shall name the Landlord as an additional insured.
- b. The Tenant shall indemnify the Landlord and save it harmless from and against any and all loss, claims, actions, damages, liabilities, costs and expenses in connection with loss of life, personal injury, damage to property or any other loss or injury whatsoever arising from or out of this agreement, or any occurrence in, on or upon the Lands or the occupancy or use by the Tenant of all or any part of the said Lands, or occasioned wholly or in part by any act or omission of the Tenant or by anyone permitted to be on the Lands by the Tenant, provided that the Tenant shall not be liable to indemnify the Landlord for any loss, damage or injury resulting from the negligent act or omission or tortious conduct of the Landlord or any person for whom the Landlord is responsible in law. If the Landlord is, without fault on its part, made a party to any litigation commenced by or against the Tenant, then the Tenant shall protect and indemnify and hold the Landlord harmless and shall pay all costs, expenses and reasonable legal fees incurred or paid by the Landlord in

connection with such litigation. Notwithstanding any other provisions of this agreement this indemnification shall survive any termination of the term hereof, with respect to any matters referred to in this paragraph and which occur during the term hereof.

10. Quiet Enjoyment

Provided the Tenant pays all rents, additional rents, and any other costs owing by the Tenant to the Landlord, and the Tenant performs all the Tenant's covenants contained in this agreement, the Tenant shall have quiet enjoyment of the Lands free from any hindrance by the Landlord or anyone claiming by or through the Landlord.

11. Tenant's Signage

The Tenant may erect or install suitable identification signs upon the face of the building forming part of the demised Lands, provided that such installations are in accordance with local municipal by-laws or federal or provincial regulations or statutes.

12. Landlord's Right of Re-entry

If the Tenant is in default in carrying out the terms hereof, the Landlord may require compliance with the same by providing written notice of the same to the Tenant specifying a reasonable period of time for compliance. If the Tenant fails to comply after such notice, the Landlord may terminate this Lease, re-enter the Lands, and also recover any balance owing hereunder from the Tenant, for rent, additional rent, or any other expenses or costs, or damages, or an Order for specific performance hereof, or any other relief which might be awarded by a Court of competent jurisdiction, plus the Landlord's costs on a total indemnity basis for so doing.

13. Damage by Fire, Lightning and Tempest

If during the term hereof, the Lands or buildings shall be damaged by fire, lightning, tempest, impact of aircraft, acts of god or the Queen's enemies, riots, insurrections, explosions or other cause, the Tenant shall have the option to either terminate this lease or alternatively, the Tenant may reconstruct the ambulance station in a good and workmanlike condition, provided that any and all payments for rent, additional rent, or other charges owing by the Tenant to the Landlord hereunder, shall continue to be made by the Tenant to the Landlord **when due.**

14. Failure by Tenant to Perform

If the Tenant shall fail to perform any of the covenants or obligations of the Tenant under this agreement, the Landlord may from time to time in its discretion perform or procure performance of any such covenants or obligations, and for such purposes may enter the demised Lands and carry out such work upon the demised Lands as the Landlord may consider requisite or necessary, and the Tenant may be charged for the same as if rent.

15. Notice to Landlord

Any notice, request or demand herein provided for or given hereunder if given by the Tenant to the Landlord shall be sufficiently given if mailed by registered mail postage prepaid, addressed to the Landlord at:

The Town of the Blue Mountains
32 Mill, P.O. Box 310
Thornbury, Ontario
N0H 2P0
Attention: Clerk

16. Notice to Tenant

Any notice provided for or given hereunder if given by the Landlord to the Tenant shall be sufficiently given if mailed as aforesaid addressed to the Tenant at:

The Corporation of the County of Grey
595 - 9th Avenue East
Owen Sound, Ontario N4K 3E3
Attention: Clerk

17. Heirs, Successors, Assigns

Save as herein provided, this agreement shall enure to the benefit of and be binding on the respective heirs, executors, administrators and permitted assigns of each of the parties.

18. Severability

If one or more clauses or paragraphs in this agreement are illegal or unenforceable in whole or in part, it or they shall be considered separate and severable from the agreement, and the remaining provisions of the agreement shall remain in full force and effect and shall be binding on the parties as though the clauses or paragraphs or parts in question have never been included.

19. Entire Agreement

The parties acknowledge that there are no covenants, representations, warranties, agreements or conditions express or implied, collateral or otherwise forming part of, or in any way effecting or relating to this agreement save as expressly set out or imported by reference in this agreement, and it constitutes the entire agreement between the Landlord and the Tenant with respect to the Lands. No amendment, alteration or addition to this agreement will be binding on the Landlord or Tenant unless it is in writing and signed by both parties.

IN WITNESS WHEREOF THE PARTIES hereto hereunto set their hand and seal and corporate seal attested by the hands of the proper officers duly authorized in that behalf.

**THE CORPORATION OF THE TOWN OF THE
BLUE MOUNTAINS**

Per:

Mayor

Clerk

**THE CORPORATION OF THE COUNTY OF
GREY**

Per:

Warden

Clerk

DRAFT

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Schedule "A"

Legal Descriptions

Firstly – The Leased Lands

Reference plan to be provided by the Tenant

Secondly – The Access Lands

Reference plan to be provided by the Tenant

DRAFT

SCHEDULE "B"

PART 1 DESCRIPTION OF THE SITE PLAN

Site Plan

Identified as Drawing No.:
Prepared by:
Project
Dated:
Revised Date:
Approved by the Town:

Building Elevations – to be approved prior to commencement of construction of the ambulance station

Identified as Drawing No's: A3 and A4
Prepared by: Allen Hastings Limited – General Contractors
Project: Blue Mountains Ambulance Base - Elevations
Dated: October 27, 2011
Approved by the Town:

(Copies of these Plans are on file with the Town Clerks Office and may be viewed during normal office hours)

PART 2 DESCRIPTION OF THE ACCEPTED PLANS

General Site Servicing Plan

Identified as Drawing No.:
Prepared by:
Project
Dated:
Revised Date:
Accepted for Construction by the Town:

Grading and Drainage Plan

Identified as Drawing No.:
Prepared by:
Project
Dated:
Revised Date: April 7, 2011
Accepted for Construction by the Town:

Landscape Plan

Identified as Drawing
Prepared by:
Project
Dated:
Revised

Accepted for Construction by the Town:

Other Plans (Describe)

Identified as Drawing

Prepared by:

Project

Dated:

Revised

Accepted for Construction by the Town:

(Copies of these Plans are on file with the Town Clerks Office and may be viewed during normal office hours)

DRAFT

