

# THE CORPORATION OF THE MUNICIPALITY OF TEMAGAMI

BY-LAW NO. 11-1025

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**Being a by-law to authorize the Mayor and Clerk to execute a Contractor Services Agreement with Ontario Northland Transportation Commission (ONTC) for the Dream Catcher Express 2011.**

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**WHEREAS** under Section 8 of the Municipal Act, 2001, S.O., 2001, c.25, as amended, the powers of a municipality under this or any other Act shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues.

**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;

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

1. That the Mayor and the Chief Administrative Officer are hereby authorized and directed to execute the agreement attached hereto as Schedule "A" to this bylaw.
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 final passing thereof.

READ a first time on this 1<sup>st</sup> day of September, 2011.

READ a second time on this 1<sup>st</sup> day of September, 2011.

READ a third and final time on this 1<sup>st</sup> day of September, 2011. , 2011

  
\_\_\_\_\_  
Mayor

  
\_\_\_\_\_  
Clerk

3502-

6MI?

19 September 2011

The Municipality of Temagami  
PO Box 220  
Temagami, ON POH 2H0

Dear Sir/Madam:

**RE: Dream Catcher Express - Contractor Services Agreement  
Our File Number: 7517-1044**

Please find enclosed the duplicate executed copy of the above captioned agreement for your retention. The original document has been filed in our Legal Department as agreement number 10782 and a copy is on file in our Passenger Services Division.

Thank you for your co-operation in this regard.

Yours very truly,

Mr. Dale W. Proctor

Legal Assistant

Direct Fax Line: (705) 472-1051

Voice Mail Extension: 353

E-mail: [dale.proctor@ontarionorthland.ca](mailto:dale.proctor@ontarionorthland.ca)

DWP/krd

c.c. M. Carson



File incoming  Other

Mayor

Council  10A

CAO

Building 0

Finance DS DC

Ec Dev OS DC

Parks & Rec OS 0\*

Planning OS DC

Public Wks OS DC

PPP 0

Social Services D

Bylaw book - attach to 11-1025

THIS AGREEMENT made in duplicate this 19<sup>th</sup> day of September 2011

**BETWEEN:**

**ONTARIO NORTHLAND TRANSPORTATION COMMISSION**

(hereinafter referred to as "ONTC")

**OF THE FIRST PART**

**AND:**

**THE CORPORATION OF THE MUNICIPALITY OF TEMAGAMI**

(hereinafter referred to as the "Contractor")

**OF THE SECOND PART**

**DREAM CATCHER EXPRESS - CONTRACTOR SERVICES AGREEMENT**

**WHEREAS** ONTC is operating the Dream Catcher Express fall colour excursion train on September 23, 24, 25, 30 and October 1 and 2, 2011;

**AND WHEREAS** ONTC's Dream Catcher Express excursion package offers options for day trips to several tourist attractions in the Temagami area;

**AND WHEREAS** the Contractor operates the Temagami Fire Tower and Interpretive Centre;

**AND WHEREAS** the Contractor has agreed to provide access to the Temagami Fire Tower and Interpretive Centre together with golf cart transportation as a part of the package options in ONTC's Dream Catcher Express excursion train tour.

**IN CONSIDERATION OF** the recitals and the provisions contained in this Agreement, the parties agree as follows:

**1. TERM**

The term of this Agreement shall be for a period of six days comprising September 23, 24, 25, 30 and October 1 and 2, 2011, subject to the provisions for termination hereinafter contained.

**2. CONSIDERATION**

- (a) ONTC shall pay to the Contractor, in arrears, within 30 days of receipt of invoice, the sum of \$3.00 per passenger who access the Fire Tower and Interpretive Centre, plus applicable taxes.

- (b) The Contractor agrees that children under two years of ages shall be admitted free of charge. The Contractor further agrees to provide ONTC with complimentary services for those passengers it has provided complimentary travel to (e.g. tour group leaders, drivers, media representatives).
- (c) This invoice is to be forwarded to ONTC, attention of Michelle Carson, Manager of Sales and Passenger Services, 555 Oak Street East, North Bay ON P1B 8L3.
- (d) Invoices must be accompanied by the tickets collected from all passengers who access the Fire Tower and Interpretive Centre, where applicable.
- (e) Payment of any amounts due under this Agreement shall be made by ONTC to the Contractor at the address set out for notice in paragraph 8 or at such other address and to such other person as the Contractor may direct ONTC In writing.

3. **OBLIGATIONS OF THE CONTRACTOR**

- (a) In conjunction with the arrival of the Dream Catcher Express in Temagami, the Contractor shall provide the following services (the "Services"):
- Provide access to the Temagami Fire Tower and Interpretive Centre at no extra charge.
  - The Contractor will also make available one golf cart with driver to transport Individuals from the Interpretive Centre to the Fire Tower lookout.
- (b) The Contractor shall make full and complete compensation for any damage caused to ONTC's physical property or that of any other user of ONTC's property by the Contractor's act or omission or that of any of its officers, employees, servants, agents, contractors or invitees or those for whom it is at law responsible or for damage attributable to the equipment owned or operated by the Contractor, its officers, employees, servants, agents, contractors or invitees or those for whom It is at law responsible.
- (c) The Contractor shall make full and complete compensation for any property damage, bodily injury or death to any person caused by the Contractor's act or omission or that of any of its officers, employees, servants, agents, contractors or invitees or those for whom it is at law responsible or for bodily injury or death attributable to the equipment owned or operated by the Contractor, its officers, employees, servants, agents, contractors or invitees or those for whom it is at law responsible.
- (d) The Contractor agrees to Indemnify ONTC and save it harmless from and against any and all actions, suits, claims, damage, costs, liability and expenses (including the effect of any applicable environmental legislation) which may arise by reason of the exercise of the obligations contained herein by the Contractor or as a result of any breach of the terms of this Agreement by the Contractor or by any act or omission of the Contractor or those for whom the Contractor is at law responsible, Including all legal costs and expenses reasonably incurred by ONTC in connection with the defence or settlement of any such claim.

- (e) The Contractor shall waive against ONTC, its officers, employees, agents, or contractors any claims of any kind whether directly or indirectly arising out of or connected with the existence of this Agreement and for any injury to or death of any person or for any loss of or damage to any property belonging to the Contractor or its employees, servants, agents, invitees, contractors or visitors.

4. INSURANCE

The Contractor shall provide and maintain general liability insurance. The policy shall have a limit of not less than \$2 Million dollars per occurrence and shall include ONTC as an additional insured. Such insurance shall contain cross liability coverage and preclude subrogation claims by the insurer against ONTC. The Contractor agrees to provide proof of such insurance to ONTC, upon request, in the form of a certificate of insurance.

5. TERMINATION

If the Contractor is in default or breach in respect of any conditions or provisions of this Agreement ONTC may in its sole discretion terminate this Agreement forthwith.

6. ASSIGNMENT

The rights contained in this Agreement may not be transferred, assigned or disposed of in any manner whatsoever without ONTC's prior written consent.

7. RELATIONSHIP

Nothing in this Agreement constitutes the Contractor or any personnel of the Contractor an employee, agent or servant of ONTC, for the greater certainty of the relationship of the Contractor to ONTC is that of independent contractor. ONTC shall not be liable for the acts, omissions, neglect or default of the Contractor or its personnel in connection with this Agreement or the performance or non-performance of services provided.

8. NOTICE

Any notice required by this Contract Agreement shall be in writing and shall be deemed to have been sufficiently given when personally delivered, telefaxed or sent by prepaid registered post to ONTC to:

Michelle Carson, Manager of Sales and Passenger Services  
555 Oak Street East,  
North Bay ONP1B8L3

And addressed to the Contractor to:

PO Box 220  
Temagami ON POH 2H0

Any notice made or given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery thereof, or if made or given by telefax, on the first business day following the transmittal thereof, or, if sent by prepaid registered post, on the third business day following the day of mailing thereof except in the case of the interruption or anticipated interruption in the mail service in which case such notice shall be given by personal delivery or telefax.

**9- CONFIDENTIALITY**

The Contractor will not disclose, nor shall it permit any person employed by it to disclose (except for the proper performance of the Services) any information of a private or confidential nature gained by it in the performance of the Services.

**10. SUCCESSORS**

Subject to paragraph 6, this Agreement and the covenants, provisions and obligations herein contained shall enure to the benefit of and be binding upon the Contractor, its successors and assigns.

**IN WITNESS WHEREOF** the said parties hereto have signed these presents and affixed their respective seals under the hands of their respective officers duly authorized in that behalf.

**SIGNED, SEALED and DELIVERED**

in the presence of:

**ONTARIO NORTHLAND  
TRANSPORTATION COMMISSION**

per

\_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

**THE CORPORATION OF THE  
MUNICIPALITY OF TEMAGAMI**

per

\_\_\_\_\_  
Name: John Hodgson

Title: Mayor

\_\_\_\_\_  
Name: Elaine Gunnell

Title: Municipal Clerk