

Rioux, Luke MUNI:EX

From: COVID Tourism Recovery TACS:EX
Sent: July 16, 2021 2:42 PM
To: 'sfrost@pne.ca'
Subject: BC Major Anchor Attractions - Funding Notification

July 16, 2021

Ref: 044_Pacif

Shelley Frost, Pacific National Exhibition, 2901 East Hastings Street, Vancouver, BC V5K 5J1

Dear Shelley Frost,

Re: B.C. Major Anchor Attraction Program

It is my pleasure to confidentially inform you that your application for funding under the B.C. Major Anchor Attraction Program – Urban stream has been approved, subject to the terms of the attached contribution agreement, in the amount of \$1,000,000.00.

By receiving this letter, you are required to keep this approval confidential until such time as a public announcement has been made by the Ministry. Until then, there should be no public communications regarding this notification outside of your organization.

Attached to this letter is a contribution agreement requiring your signature. Please note that this approval is conditional until such time that the contribution agreement is executed by both parties identified on the agreement. The signed agreement must be returned to COVID.Tourism.Recovery@gov.bc.ca no later than noon on July 21st, 2021.

Please ensure any communications, events or milestone celebrations associated with this initiative is done in collaboration with the Province. All future public information material pertaining to this funding must prominently indicate that funding was provided by the Province of British Columbia. Please contact Government Communication and Public Engagement at Chris.Harbord@gov.bc.ca 10 days prior to any communication activities taking place.

Congratulations, and should you have any questions regarding the above, please do not hesitate to contact Covid Tourism Recovery at COVID.Tourism.Recovery@gov.bc.ca

Sincerely,

Salman Azam
Assistant Deputy Minister
Tourism Sector Strategy
Minister of Tourism, Arts, Culture and Sport

CONTRIBUTION AGREEMENT

THIS AGREEMENT dated for reference the 12th day of **July, 2021** (the "Reference Date")

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, represented by the Minister of Tourism, Arts, Culture and Sport

(the "Province")

OF THE FIRST PART

AND:

Pacific National Exhibition (PNE)

(the "Recipient")

OF THE SECOND PART

WHEREAS:

The Province wishes to make available to the Recipient Grant Funding through the British Columbia Major Anchor Attractions Program (BCMAA) on the terms and conditions set out in this Agreement.

NOW THEREFORE, in consideration of the premises, and other good and valuable consideration (the receipt and sufficiency of which is acknowledged by each of the parties), the parties agree as follows:

DEFINITIONS

1.01 In this Agreement:

- (a) **"Authorized Representative"** means the signatory or signatories to this Agreement on behalf of the Recipient;
- (b) **"Commencement Date"** means the date identified as such in Schedule "A";
- (c) **"Event of Default"** means any of the events described in paragraph 11.01;
- (d) **"Grant Funding"** means the amount of grant funding set out in paragraph 2.01;
- (e) **"Term"** means the period in paragraph 3.01.

PAYMENT

2.01

Provided the Recipient has, in the opinion of the Province met the Eligibility Criteria and has agreed to be bound by the

Stipulations, the Province will make a financial contribution toward the Eligible Project Costs of the Recipient equal to **One Million Dollars (\$1,000,000)** Canadian being the maximum amount of contribution funding approved by the Province. Any unspent funding must be returned to the Province on or before **February 28, 2022**.

- 2.02 Any portion of the aforementioned financial contribution that is paid to the Recipient under this Agreement and not expended at the end of the Term may, at the sole discretion of the Province, become immediately due and payable and must be returned by the Recipient to the Province by payment to the Minister of Finance.

TERM OF AGREEMENT

- 3.01 The term of this Agreement will begin on the Commencement Date and will end on February 28, 2022.

REPRESENTATIONS AND WARRANTIES

- 4.01 The Recipient represents and warrants to the Province, with the intent and understanding that the Province will rely thereon in entering into this Agreement, that on execution of this Agreement and at all times thereafter:
- (a) all information statements, documents and reports furnished or submitted by the Recipient to the Province in connection with or pursuant to this Agreement are true and correct to the best of the Recipient's knowledge;
 - (b) the Recipient has no knowledge of any fact that materially adversely affects, or so far as it can foresee might materially adversely affect, the Recipient's properties, assets, financial condition, business or other operations, or its ability to fulfill its obligations under this Agreement other than as has been disclosed by the Recipient;
 - (c) the Recipient is not in breach of, or in default under, any law, statute or regulation applicable to or binding on it that may affect its eligibility for funding;
 - (d) the Authorized Representative is duly authorized to act on behalf of and bind the Recipient;
 - (e) the Recipient has full power and capacity to execute and deliver this Agreement and to perform all obligations of the Recipient under this Agreement; and,
 - (f) this Agreement is binding upon and enforceable against the Recipient in accordance with its terms.

- 4.02 All statements contained in any certificate, application or other document delivered by or on behalf of the Recipient to the Province under this Agreement, or in connection with any of the transactions contemplated hereby, will be deemed to be representations and warranties by the Recipient under this Agreement.
- 4.03 All representations, warranties, covenants and agreements made herein, and all certificates, applications or other documents delivered by or on behalf of the Recipient, are material and will conclusively be deemed to have been relied upon by the Province and will continue in full force and effect during the continuation of this Agreement.

RELATIONSHIP

- 5.01 No partnership, joint venture, agency or other legal entity will be created by, or will be deemed to be created by, this Agreement or any actions of the parties pursuant to this Agreement.
- 5.02 The Recipient is an independent entity and is not the servant, employee or agent of the Province.
- 5.03 The Recipient will not in any manner whatsoever commit or purport to commit the Province for the payment of money to any person.

RECIPIENT'S OBLIGATIONS

- 6.01 The Recipient will:
- (a) expend funds provided to the Recipient in accordance with the terms of this Agreement;
 - (b) observe, abide by and comply with all laws, by-laws, orders, directions, rules and regulations of any competent government including of the Province of British Columbia or any branch or agency thereof directly or indirectly applicable to the Recipient or this Agreement;
 - (c) if requested by the Province, provide evidence satisfactory to the Province that the representations and warranties set forth in paragraph 4.01 are true and;
 - (d) file all tax, corporate information, if applicable, and other returns required to be filed by the laws of British Columbia or Canada, and will comply with all workers' compensation legislation and other similar legislation to which the Recipient may be subject, and will pay all taxes, fees and assessments calculated to be due by the Recipient under those laws;
 - (e) co-operate with the Province in making such public announcements regarding the Program and the details of this Agreement as the Province sees fit; and

- (f) continue its business or other operations for a period of not less than one year from receipt of the Grant Funding unless financial circumstances beyond the reasonable control of the Recipient make its continued business or other operations no longer viable.

RECORDS

7.01 The Recipient will:

- (a) establish and maintain accurate books of account and records for a period of 3 years, including the invoices, documents, statements and reports referenced in this Agreement, in relation to the Program in a manner acceptable to the Province (including supporting documentation of all expenditures related to the Program);
- (b) permit the Province at any time or times during normal business hours, to copy or audit, or both, any or all of the books of account and records (including supporting documents) referred to in subparagraph (a) of this paragraph; and
- (c) provide to the Province a report of relating to the Program and expenditures made on or in connection with the Program.

STATEMENTS AND ACCOUNTING

8.01 By February 28, 2022, the Recipient will submit to the Province:

- (a) **Final Report** executed by an Authorized Representative, in a form established by the Province and as more particularly described in Schedule "A"; and
- (b) **Summary of Expenditures**, in a form and content satisfactory to the Province, supported by invoices and verifying documentation, information, statements, reports, and explanations, as applicable, substantiating that such items constitute eligible costs as set out in Schedule "B", such statement to be certified true and correct by the Authorized Representative.

APPROPRIATION

9.01 Notwithstanding any other provision of this Agreement, the payment of money by the Province to the Recipient pursuant to this Agreement is subject to:

- (a) there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act* (British Columbia) (the "FAA"), to enable the Province in any fiscal year when any payment of money by the Province falls due pursuant to this Agreement, to make that payment; and

- (b) Treasury Board, as defined in the FAA, not having controlled or limited, pursuant to the FAA, expenditure under any appropriation referred to in subparagraph (a) of this paragraph.

CONFIDENTIALITY

10.01 Subject to the laws of British Columbia and Canada, the Recipient will treat as confidential all information or material supplied to or obtained by the Recipient from the Province as a result of this Agreement and will not permit the publication, release or disclosure of the same without the prior written consent of the Province or except if such disclosure is necessary to enable the Recipient to fulfill its obligations under this Agreement.

DEFAULT

11.01 Any of the following events will constitute an Event of Default, namely

- (a) the Recipient fails to comply with any provision of this Agreement;
- (b) any representation, certification, or warranty made by the Recipient in pursuant to, as a result of or in connection with this Agreement is untrue or incorrect;
- (c) any information, statement, certificate, report or other information or document furnished or submitted by or on behalf of the Recipient pursuant to, as a result of or in connection with this Agreement is untrue or incorrect;
- (d) the Recipient ceases to operate before the end of the term of this Agreement;
- (e) a change occurs with respect to any one or more, including all, of the properties, assets, financial condition, business or other operations of the Recipient which, in the opinion of the Province, materially adversely affects the ability of the Recipient to fulfill its obligations under this Agreement;
- (f) an order is made or a resolution is passed or a petition filed for the liquidation or winding up of the Recipient;
- (g) the Recipient becomes insolvent or commits an act of bankruptcy or makes an assignment for the benefit of its creditors or otherwise acknowledges its insolvency;
- (h) a bankruptcy petition is filed or presented against, or a proposal under the *Bankruptcy and Insolvency Act* (Canada) is made by, the Recipient;
- (i) a receiver or receiver-manager of any property of the Recipient is appointed; or,

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- (j) the Recipient permits any sum which is not disputed by the Recipient to be due by it to remain unpaid after legal proceedings have been commenced to enforce payment thereof.
- 11.02 Upon the occurrence of any Event of Default and at any time thereafter the Province may, notwithstanding any other provision of this Agreement, at its complete discretion and exercisable by written notice to the Recipient:
 - (a) declare all monies paid under this Agreement to be due and payable by the Recipient to the Province and such monies will immediately become due and payable without presentment, demand, protest or any other notice of any kind to the Recipient, all of which are hereby expressly waived; and
 - (b) terminate this Agreement.
- 11.03 Any rights, powers and remedies conferred on the Province under this Agreement or under any statute or law are not intended to be exclusive and each shall be cumulative and in addition to and not in substitution for every other right, power and remedy existing or available to the Province under this Agreement, any other agreement, at law or in equity.
- 11.04 The exercise by the Province of any right, power, or remedy will not preclude the simultaneous or later exercise by the Province of any other right, power or remedy.

INDEMNITY

- 12.01 The Recipient will at all times indemnify and save harmless Her Majesty the Queen in Right of the Province of British Columbia ("the Province"), as represented by the Minister of Tourism, Arts, Culture and Sport ("the Minister"), and the employees, servants, and agents of the Minister and the Province, from and against all claims, actions, causes of action, demands, losses, damages, costs, liabilities, expenses, fines, fees, penalties, assessments and levies, made against or incurred, suffered or sustained by any of them, at any time or times (whether such interest, fines or costs are court ordered or otherwise and whether before or after the expiration or termination of this Agreement) where the same or any of them are sustained in any way in connection with, pursuant to or as a result of this Agreement, which indemnity will survive the expiration or sooner termination of this Agreement.

ASSIGNMENT AND SUBCONTRACTING

- 13.01 The Recipient will not, without the prior written consent of the Province, assign or in any way transfer, whether directly or indirectly, this Agreement or any part of this Agreement including any right or rights of the Recipient under this Agreement.

NOTICES

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- 14.01 Any notice, consent, waiver, statement, other document or payment and any or all of the material that either party may desire or be required to give or deliver to the other will be conclusively deemed validly given or delivered to and received by the addressee, if delivered personally on the date of delivery, if delivered electronically through a means previously agreed to in writing by the Parties, through their respective duly authorized representatives, on the date of delivery, or, if mailed, on the fifth business day after the mailing of the same in Canada by prepaid post addressed, if to the Province:

Ministry of Tourism, Arts, Culture and Sport
Attn: BC Major Anchor Attractions Program
PO Box 9812 Stn Prov Govt
Victoria, BC V8W 9W1
COVID.Tourism.Recovery@gov.bc.ca

and if to the Recipient:

Attn: President & CEO
Shelley Frost
2901 East Hastings Street
Vancouver, BC V5K-5J1
sfrost@pne.ca

- 15.02 Either Party must give written notice to the other party of any change of address of the party giving such notice, and after the giving of such notice the address therein specified will, for purposes of paragraph 18.01, be conclusively deemed to be the address of the party giving such notice.
- 16.03 Any notice, report, direction or other document transmitted by facsimile transmission from either party will be conclusively deemed validly given to and received by the intended recipient when so transmitted to the facsimile numbers the parties so advise.

NON-WAIVER

- 17.01 No term or condition of this Agreement and no breach by the Recipient of any such term or condition will be deemed to have been waived unless such waiver is in writing signed on behalf of the Province by a duly authorized representative of the Province.
- 17.02 The written waiver by the Province of any breach by the Recipient of any term or condition of the Agreement will not be deemed a waiver of such term or condition or of any subsequent breach by the Recipient of the same or any other term or condition of this Agreement.

INSURANCE

- 18.01 The Recipient will, without limiting its obligations or liabilities herein, purchase and maintain insurances with insurers licensed in Canada with coverage of a type, and in amounts, that any similar business, acting reasonably, would

procure for an organization of the scope, size and exposure of the Recipient, during the term of this Agreement.

18.02 The Recipient shall require and ensure that its consultants, contractors and subcontractors maintain insurances comparable to those required above.

18.03 Upon request by the Province, the Recipient will deliver a certified copy of the policies of insurance applicable under this Agreement. No review or approval of any insurance policy by the Province derogates from or diminishes the Province's rights or the Recipient's liability under this Agreement.

ENTIRE AGREEMENT

19.01 This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement.

FURTHER ACTS AND ASSURANCES

20.01 Each of the parties will, upon the reasonable request of the other, make, do, execute or cause to be made, done or executed all further and other lawful acts, deeds, things, devices, documents, instruments and assurances whatever for the better or more perfect and absolute performance of the terms and conditions of this Agreement.

TIME OF ESSENCE

21.01 Time will be of the essence of this Agreement.

SURVIVAL OF PROVISIONS

22.01 All of the provisions of this Agreement in favour of the Province and all of the rights and remedies of the Province, whether at law or in equity, will survive any expiration or sooner termination of this Agreement.

INTERPRETATION

23.01 This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia.

23.02 The headings appearing in this Agreement have been inserted for reference and as a matter of convenience and in no way define, limit or enlarge the scope of any provision of this Agreement.

23.03 Any reference to a statute in this Agreement, whether or not that statute has been defined, includes all regulations at any time made under or pursuant to that statute and any amendments to that statute.

23.04 In this Agreement wherever the singular or neuter is used it will be construed as if the plural or masculine or feminine, as the case may be, had been used where the context so requires.

- 23.05 The Schedules to this Agreement are an integral part of this Agreement as if set out at length in the body of this Agreement.
- 23.06 No amendment or modification to this Agreement will be effective unless it is in writing and duly executed on behalf of each party.
- 23.07 If any provision of this Agreement or the application to any person or circumstances is invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to any other person or circumstance will not be affected or impaired thereby and will be enforceable to the extent permitted by law.
- 23.08 All dollar amounts expressed in this Agreement refer to lawful currency of Canada.
- 23.09 Unless the context otherwise indicates, any reference to this Agreement means this instrument and all of the Schedules attached to it, and any reference to any paragraph or subparagraph by number is a reference to the appropriate paragraph or subparagraph in this Agreement.
- 23.10 Nothing in this Agreement operates as a consent, permit, approval or authorization by the Government of the Province of British Columbia or by any ministry, branch or agency thereof, to or for anything related to the Program that by law the Recipient is required to obtain unless it is expressly stated in this Agreement to be such a consent, permit, approval or authorization.
- 23.11 This Agreement may be executed in counterparts by each party under this Agreement signing the original or PDF copy of the Agreement and deliver it to the other party by email, courier or post, or such other method agreed by the parties.

SUCCESSORS AND ASSIGNS

- 24.01 This Agreement will continue for the benefit of and be binding upon both the Recipient and its successors and permitted assigns, and the Province and its assigns.

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EFFECTIVE DATE

25.01 Notwithstanding the date of execution or delivery of this Agreement, this Agreement is effective as of the Reference Date.

IN WITNESS WHEREOF the parties hereto have executed this Agreement by their duly authorized representatives or officers as follows:

Signed on behalf of Her MAJESTY THE QUEEN)
IN THE RIGHT OF THE PROVINCE OF BRITISH)
COLUMBIA,)
by a duly authorized representative of the)
Minister of Tourism, Arts, Culture and Sport)

Name:

Title:

Date: _____, 2021

Signed on behalf of the **Pacific National Exhibition (PNE)**

Authorized Representative

Name:

Title:

Date: _____, 2021

SCHEDULE "A"

COMMENCEMENT DATE

1. The Commencement Date of this Agreement is **July 12, 2021**.

REPORTING REQUIREMENTS and Stipulations:

The Recipient must meet the following stipulations in order to retain the funding received under this Agreement:

1. The Recipient will submit to the Province a final report in a form established by the Province, which will include a description of how the Recipient has expended the funding. The final report will be due on February 28, 2022.

The final report will also include updated financial forecasts, description of any changes to operating hours, visitor volumes during the period of the Agreement, and a funding impact statement.

The Province will provide to the Recipient a template for the final report no later than September 1, 2021.

2. Use the funding solely for the purpose identified in section B.1 of Schedule B.

SCHEDULE “B”

Provided the Recipient has, in the opinion of the Province met the Eligibility Criteria and has agreed to be bound by the Stipulations, the Province will make a financial contribution toward the Eligible Project Costs of the Recipient equal to **One Million Dollars (\$1,000,000)** Canadian being the maximum amount of contribution funding approved by the Province. Any unspent funding must be returned to the Province on or before **February 28, 2022**.

1. ELIGIBLE COSTS

- (a) Funds must be used only to cover costs essential to the operation of the Recipient. Eligible costs may include:
- Payroll costs
 - Rent payments
 - Utility payments
 - Capital expenditures related to COVID-19 adaptations
 - Expenses related to restarting or ramping up business or other operations to prepare for easing of provincial health orders and guidelines
 - Scheduled mortgage payments (not including prepayment of principal)
 - Worker protection expenditures, including premiums and personal protective equipment
 - Expenses related to equipment or infrastructure to support safety of workers and visitors
 - Other ordinary and necessary business expenses, including maintenance costs and vehicle lease payments
 - Administrative costs (including fees and licensing)
 - Operating leases in effect as of February 15, 2020
 - Insurance payments
 - Up to 25% of funding received from the BCMAA program may be used to repay debt originated after February 15, 2020, aside from debt owed to the federal government (such as through a COVID-19 loan program)
 - Payment of municipal property taxes.
- (b) The Recipient will make best efforts to recall to work available and willing workforce giving priority to those who were laid off as a result of the Covid-19 pandemic on the same terms of employment in respect of length of service, seniority, and benefits as applied at the time of layoff and, without limiting the foregoing, the Recipient will not reduce the level of wages, vacation pay or other compensation in place at the time of layoff.

2. INELIGIBLE COSTS

Funds must not be used for:

- Compensation above regular base pay, such as executive bonuses
- Purchasing real estate
- Making payments on debt incurred before February 15, 2020
- Making payments to reduce the amount of any financial obligation owed to any government where such financial obligation arose as a result of any grant, loan or other financial assistance provided by that government to the Recipient
- Making investments or loans
- Capital expenditures unrelated to COVID-19 adaptations other than for the replacement or substantial repair of capital assets of the Recipient necessary to maintain the business or other operations of the Recipient
- Payment of federal or provincial taxes
- Payment of shareholder loans, dividends and inter-company or related party transfers/payments or payments for business or other operations outside of BC
- Compensation for services performed by persons not dealing at arms length with the Recipient in an amount that exceeds fair market value for the services performed

CONTRIBUTION AGREEMENT

THIS AGREEMENT dated for reference the 12th day of **July, 2021** (the "Reference Date")

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, represented by the Minister of Tourism, Arts, Culture and Sport

(the "Province")

OF THE FIRST PART

AND:

Pacific National Exhibition (PNE)

(the "Recipient")

OF THE SECOND PART

WHEREAS:

The Province wishes to make available to the Recipient Grant Funding through the British Columbia Major Anchor Attractions Program (BCMAA) on the terms and conditions set out in this Agreement.

NOW THEREFORE, in consideration of the premises, and other good and valuable consideration (the receipt and sufficiency of which is acknowledged by each of the parties), the parties agree as follows:

DEFINITIONS

1.01 In this Agreement:

- (a) **"Authorized Representative"** means the signatory or signatories to this Agreement on behalf of the Recipient;
- (b) **"Commencement Date"** means the date identified as such in Schedule "A";
- (c) **"Event of Default"** means any of the events described in paragraph 11.01;
- (d) **"Grant Funding"** means the amount of grant funding set out in paragraph 2.01;
- (e) **"Term"** means the period in paragraph 3.01.

PAYMENT

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Provided the Recipient has, in the opinion of the Province met the Eligibility Criteria and has agreed to be bound by the

Stipulations, the Province will make a financial contribution toward the Eligible Project Costs of the Recipient equal to **One Million Dollars (\$1,000,000)** Canadian being the maximum amount of contribution funding approved by the Province. Any unspent funding must be returned to the Province on or before **February 28, 2022**.

- 2.02 Any portion of the aforementioned financial contribution that is paid to the Recipient under this Agreement and not expended at the end of the Term may, at the sole discretion of the Province, become immediately due and payable and must be returned by the Recipient to the Province by payment to the Minister of Finance.

TERM OF AGREEMENT

- 3.01 The term of this Agreement will begin on the Commencement Date and will end on February 28, 2022.

REPRESENTATIONS AND WARRANTIES

- 4.01 The Recipient represents and warrants to the Province, with the intent and understanding that the Province will rely thereon in entering into this Agreement, that on execution of this Agreement and at all times thereafter:
- (a) all information statements, documents and reports furnished or submitted by the Recipient to the Province in connection with or pursuant to this Agreement are true and correct to the best of the Recipient's knowledge;
 - (b) the Recipient has no knowledge of any fact that materially adversely affects, or so far as it can foresee might materially adversely affect, the Recipient's properties, assets, financial condition, business or other operations, or its ability to fulfill its obligations under this Agreement other than as has been disclosed by the Recipient;
 - (c) the Recipient is not in breach of, or in default under, any law, statute or regulation applicable to or binding on it that may affect its eligibility for funding;
 - (d) the Authorized Representative is duly authorized to act on behalf of and bind the Recipient;
 - (e) the Recipient has full power and capacity to execute and deliver this Agreement and to perform all obligations of the Recipient under this Agreement; and,
 - (f) this Agreement is binding upon and enforceable against the Recipient in accordance with its terms.

- 4.02 All statements contained in any certificate, application or other document delivered by or on behalf of the Recipient to the Province under this Agreement, or in connection with any of the transactions contemplated hereby, will be deemed to be representations and warranties by the Recipient under this Agreement.
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RELATIONSHIP

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- 5.02 The Recipient is an independent entity and is not the servant, employee or agent of the Province.
- 5.03 The Recipient will not in any manner whatsoever commit or purport to commit the Province for the payment of money to any person.

RECIPIENT'S OBLIGATIONS

- 6.01 The Recipient will:
- (a) expend funds provided to the Recipient in accordance with the terms of this Agreement;
 - (b) observe, abide by and comply with all laws, by-laws, orders, directions, rules and regulations of any competent government including of the Province of British Columbia or any branch or agency thereof directly or indirectly applicable to the Recipient or this Agreement;
 - (c) if requested by the Province, provide evidence satisfactory to the Province that the representations and warranties set forth in paragraph 4.01 are true and;
 - (d) file all tax, corporate information, if applicable, and other returns required to be filed by the laws of British Columbia or Canada, and will comply with all workers' compensation legislation and other similar legislation to which the Recipient may be subject, and will pay all taxes, fees and assessments calculated to be due by the Recipient under those laws;
 - (e) co-operate with the Province in making such public announcements regarding the Program and the details of this Agreement as the Province sees fit; and

- (f) continue its business or other operations for a period of not less than one year from receipt of the Grant Funding unless financial circumstances beyond the reasonable control of the Recipient make its continued business or other operations no longer viable.

RECORDS

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- (a) establish and maintain accurate books of account and records for a period of 3 years, including the invoices, documents, statements and reports referenced in this Agreement, in relation to the Program in a manner acceptable to the Province (including supporting documentation of all expenditures related to the Program);
- (b) permit the Province at any time or times during normal business hours, to copy or audit, or both, any or all of the books of account and records (including supporting documents) referred to in subparagraph (a) of this paragraph; and
- (c) provide to the Province a report of relating to the Program and expenditures made on or in connection with the Program.

STATEMENTS AND ACCOUNTING

8.01 By February 28, 2022, the Recipient will submit to the Province:

- (a) **Final Report** executed by an Authorized Representative, in a form established by the Province and as more particularly described in Schedule "A"; and
- (b) **Summary of Expenditures**, in a form and content satisfactory to the Province, supported by invoices and verifying documentation, information, statements, reports, and explanations, as applicable, substantiating that such items constitute eligible costs as set out in Schedule "B", such statement to be certified true and correct by the Authorized Representative.

APPROPRIATION

9.01 Notwithstanding any other provision of this Agreement, the payment of money by the Province to the Recipient pursuant to this Agreement is subject to:

- (a) there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act* (British Columbia) (the "FAA"), to enable the Province in any fiscal year when any payment of money by the Province falls due pursuant to this Agreement, to make that payment; and

- (b) Treasury Board, as defined in the FAA, not having controlled or limited, pursuant to the FAA, expenditure under any appropriation referred to in subparagraph (a) of this paragraph.

CONFIDENTIALITY

10.01 Subject to the laws of British Columbia and Canada, the Recipient will treat as confidential all information or material supplied to or obtained by the Recipient from the Province as a result of this Agreement and will not permit the publication, release or disclosure of the same without the prior written consent of the Province or except if such disclosure is necessary to enable the Recipient to fulfill its obligations under this Agreement.

DEFAULT

11.01 Any of the following events will constitute an Event of Default, namely

- (a) the Recipient fails to comply with any provision of this Agreement;
- (b) any representation, certification, or warranty made by the Recipient in pursuant to, as a result of or in connection with this Agreement is untrue or incorrect;
- (c) any information, statement, certificate, report or other information or document furnished or submitted by or on behalf of the Recipient pursuant to, as a result of or in connection with this Agreement is untrue or incorrect;
- (d) the Recipient ceases to operate before the end of the term of this Agreement;
- (e) a change occurs with respect to any one or more, including all, of the properties, assets, financial condition, business or other operations of the Recipient which, in the opinion of the Province, materially adversely affects the ability of the Recipient to fulfill its obligations under this Agreement;
- (f) an order is made or a resolution is passed or a petition filed for the liquidation or winding up of the Recipient;
- (g) the Recipient becomes insolvent or commits an act of bankruptcy or makes an assignment for the benefit of its creditors or otherwise acknowledges its insolvency;
- (h) a bankruptcy petition is filed or presented against, or a proposal under the *Bankruptcy and Insolvency Act* (Canada) is made by, the Recipient;
- (i) a receiver or receiver-manager of any property of the Recipient is appointed; or,

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- (j) the Recipient permits any sum which is not disputed by the Recipient to be due by it to remain unpaid after legal proceedings have been commenced to enforce payment thereof.
- 11.02 Upon the occurrence of any Event of Default and at any time thereafter the Province may, notwithstanding any other provision of this Agreement, at its complete discretion and exercisable by written notice to the Recipient:
 - (a) declare all monies paid under this Agreement to be due and payable by the Recipient to the Province and such monies will immediately become due and payable without presentment, demand, protest or any other notice of any kind to the Recipient, all of which are hereby expressly waived; and
 - (b) terminate this Agreement.
- 11.03 Any rights, powers and remedies conferred on the Province under this Agreement or under any statute or law are not intended to be exclusive and each shall be cumulative and in addition to and not in substitution for every other right, power and remedy existing or available to the Province under this Agreement, any other agreement, at law or in equity.
- 11.04 The exercise by the Province of any right, power, or remedy will not preclude the simultaneous or later exercise by the Province of any other right, power or remedy.

INDEMNITY

- 12.01 The Recipient will at all times indemnify and save harmless Her Majesty the Queen in Right of the Province of British Columbia ("the Province"), as represented by the Minister of Tourism, Arts, Culture and Sport ("the Minister"), and the employees, servants, and agents of the Minister and the Province, from and against all claims, actions, causes of action, demands, losses, damages, costs, liabilities, expenses, fines, fees, penalties, assessments and levies, made against or incurred, suffered or sustained by any of them, at any time or times (whether such interest, fines or costs are court ordered or otherwise and whether before or after the expiration or termination of this Agreement) where the same or any of them are sustained in any way in connection with, pursuant to or as a result of this Agreement, which indemnity will survive the expiration or sooner termination of this Agreement.

ASSIGNMENT AND SUBCONTRACTING

- 13.01 The Recipient will not, without the prior written consent of the Province, assign or in any way transfer, whether directly or indirectly, this Agreement or any part of this Agreement including any right or rights of the Recipient under this Agreement.

NOTICES

#044_Pacif

- 14.01 Any notice, consent, waiver, statement, other document or payment and any or all of the material that either party may desire or be required to give or deliver to the other will be conclusively deemed validly given or delivered to and received by the addressee, if delivered personally on the date of delivery, if delivered electronically through a means previously agreed to in writing by the Parties, through their respective duly authorized representatives, on the date of delivery, or, if mailed, on the fifth business day after the mailing of the same in Canada by prepaid post addressed, if to the Province:

Ministry of Tourism, Arts, Culture and Sport
Attn: BC Major Anchor Attractions Program
PO Box 9812 Stn Prov Govt
Victoria, BC V8W 9W1
COVID.Tourism.Recovery@gov.bc.ca

and if to the Recipient:

Attn: President & CEO
Shelley Frost
2901 East Hastings Street
Vancouver, BC V5K-5J1
sfrost@pne.ca

- 15.02 Either Party must give written notice to the other party of any change of address of the party giving such notice, and after the giving of such notice the address therein specified will, for purposes of paragraph 18.01, be conclusively deemed to be the address of the party giving such notice.
- 16.03 Any notice, report, direction or other document transmitted by facsimile transmission from either party will be conclusively deemed validly given to and received by the intended recipient when so transmitted to the facsimile numbers the parties so advise.

NON-WAIVER

- 17.01 No term or condition of this Agreement and no breach by the Recipient of any such term or condition will be deemed to have been waived unless such waiver is in writing signed on behalf of the Province by a duly authorized representative of the Province.
- 17.02 The written waiver by the Province of any breach by the Recipient of any term or condition of the Agreement will not be deemed a waiver of such term or condition or of any subsequent breach by the Recipient of the same or any other term or condition of this Agreement.

INSURANCE

- 18.01 The Recipient will, without limiting its obligations or liabilities herein, purchase and maintain insurances with insurers licensed in Canada with coverage of a type, and in amounts, that any similar business, acting reasonably, would

procure for an organization of the scope, size and exposure of the Recipient, during the term of this Agreement.

18.02 The Recipient shall require and ensure that its consultants, contractors and subcontractors maintain insurances comparable to those required above.

18.03 Upon request by the Province, the Recipient will deliver a certified copy of the policies of insurance applicable under this Agreement. No review or approval of any insurance policy by the Province derogates from or diminishes the Province's rights or the Recipient's liability under this Agreement.

ENTIRE AGREEMENT

19.01 This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement.

FURTHER ACTS AND ASSURANCES

20.01 Each of the parties will, upon the reasonable request of the other, make, do, execute or cause to be made, done or executed all further and other lawful acts, deeds, things, devices, documents, instruments and assurances whatever for the better or more perfect and absolute performance of the terms and conditions of this Agreement.

TIME OF ESSENCE

21.01 Time will be of the essence of this Agreement.

SURVIVAL OF PROVISIONS

22.01 All of the provisions of this Agreement in favour of the Province and all of the rights and remedies of the Province, whether at law or in equity, will survive any expiration or sooner termination of this Agreement.

INTERPRETATION

23.01 This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia.

23.02 The headings appearing in this Agreement have been inserted for reference and as a matter of convenience and in no way define, limit or enlarge the scope of any provision of this Agreement.

23.03 Any reference to a statute in this Agreement, whether or not that statute has been defined, includes all regulations at any time made under or pursuant to that statute and any amendments to that statute.

23.04 In this Agreement wherever the singular or neuter is used it will be construed as if the plural or masculine or feminine, as the case may be, had been used where the context so requires.

- 23.05 The Schedules to this Agreement are an integral part of this Agreement as if set out at length in the body of this Agreement.
- 23.06 No amendment or modification to this Agreement will be effective unless it is in writing and duly executed on behalf of each party.
- 23.07 If any provision of this Agreement or the application to any person or circumstances is invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to any other person or circumstance will not be affected or impaired thereby and will be enforceable to the extent permitted by law.
- 23.08 All dollar amounts expressed in this Agreement refer to lawful currency of Canada.
- 23.09 Unless the context otherwise indicates, any reference to this Agreement means this instrument and all of the Schedules attached to it, and any reference to any paragraph or subparagraph by number is a reference to the appropriate paragraph or subparagraph in this Agreement.
- 23.10 Nothing in this Agreement operates as a consent, permit, approval or authorization by the Government of the Province of British Columbia or by any ministry, branch or agency thereof, to or for anything related to the Program that by law the Recipient is required to obtain unless it is expressly stated in this Agreement to be such a consent, permit, approval or authorization.
- 23.11 This Agreement may be executed in counterparts by each party under this Agreement signing the original or PDF copy of the Agreement and deliver it to the other party by email, courier or post, or such other method agreed by the parties.

SUCCESSORS AND ASSIGNS

- 24.01 This Agreement will continue for the benefit of and be binding upon both the Recipient and its successors and permitted assigns, and the Province and its assigns.

EFFECTIVE DATE

25.01 Notwithstanding the date of execution or delivery of this Agreement, this Agreement is effective as of the Reference Date.

IN WITNESS WHEREOF the parties hereto have executed this Agreement by their duly authorized representatives or officers as follows:

Signed on behalf of Her MAJESTY THE QUEEN)
IN THE RIGHT OF THE PROVINCE OF BRITISH)
COLUMBIA,)
by a duly authorized representative of the)
Minister of Tourism, Arts, Culture and Sport)



Name: Salman Azam

Title: Assistant Deputy Minister

Date: July 22, 2021

Signed on behalf of the **Pacific National Exhibition (PNE)**



Authorized Representative

Name: David Crawford

Title: Vice President, Finance

Date: 21 July, 2021

SCHEDULE "A"

COMMENCEMENT DATE

1. The Commencement Date of this Agreement is **July 12, 2021**.

REPORTING REQUIREMENTS and Stipulations:

The Recipient must meet the following stipulations in order to retain the funding received under this Agreement:

1. The Recipient will submit to the Province a final report in a form established by the Province, which will include a description of how the Recipient has expended the funding. The final report will be due on February 28, 2022.

The final report will also include updated financial forecasts, description of any changes to operating hours, visitor volumes during the period of the Agreement, and a funding impact statement.

The Province will provide to the Recipient a template for the final report no later than September 1, 2021.

2. Use the funding solely for the purpose identified in section B.1 of Schedule B.

SCHEDULE “B”

Provided the Recipient has, in the opinion of the Province met the Eligibility Criteria and has agreed to be bound by the Stipulations, the Province will make a financial contribution toward the Eligible Project Costs of the Recipient equal to **One Million Dollars (\$1,000,000)** Canadian being the maximum amount of contribution funding approved by the Province. Any unspent funding must be returned to the Province on or before **February 28, 2022**.

1. ELIGIBLE COSTS

- (a) Funds must be used only to cover costs essential to the operation of the Recipient. Eligible costs may include:
- Payroll costs
 - Rent payments
 - Utility payments
 - Capital expenditures related to COVID-19 adaptations
 - Expenses related to restarting or ramping up business or other operations to prepare for easing of provincial health orders and guidelines
 - Scheduled mortgage payments (not including prepayment of principal)
 - Worker protection expenditures, including premiums and personal protective equipment
 - Expenses related to equipment or infrastructure to support safety of workers and visitors
 - Other ordinary and necessary business expenses, including maintenance costs and vehicle lease payments
 - Administrative costs (including fees and licensing)
 - Operating leases in effect as of February 15, 2020
 - Insurance payments
 - Up to 25% of funding received from the BCMAA program may be used to repay debt originated after February 15, 2020, aside from debt owed to the federal government (such as through a COVID-19 loan program)
 - Payment of municipal property taxes.
- (b) The Recipient will make best efforts to recall to work available and willing workforce giving priority to those who were laid off as a result of the Covid-19 pandemic on the same terms of employment in respect of length of service, seniority, and benefits as applied at the time of layoff and, without limiting the foregoing, the Recipient will not reduce the level of wages, vacation pay or other compensation in place at the time of layoff.

2. INELIGIBLE COSTS

Funds must not be used for:

- Compensation above regular base pay, such as executive bonuses
- Purchasing real estate
- Making payments on debt incurred before February 15, 2020
- Making payments to reduce the amount of any financial obligation owed to any government where such financial obligation arose as a result of any grant, loan or other financial assistance provided by that government to the Recipient
- Making investments or loans
- Capital expenditures unrelated to COVID-19 adaptations other than for the replacement or substantial repair of capital assets of the Recipient necessary to maintain the business or other operations of the Recipient
- Payment of federal or provincial taxes
- Payment of shareholder loans, dividends and inter-company or related party transfers/payments or payments for business or other operations outside of BC
- Compensation for services performed by persons not dealing at arms length with the Recipient in an amount that exceeds fair market value for the services performed

Program Contact Information: TACS - Tourism, Arts, Culture and Sport

COVID.Tourism.Recovery@gov.bc.ca

www.gov.bc.ca/attractions-grant

APPLICANTS MUST COMPLETE ALL SECTIONS OF THE FORM, UNLESS OTHERWISE SPECIFIED

SECTION A – APPLICANT CONTACT INFORMATION

LEGAL NAME OF APPLICANT ORGANIZATION

Pacific National Exhibition (PNE)

PRIMARY CONTACT NAME

David Crawford

PRIMARY CONTACT TITLE

Vice President, Finance

PRIMARY CONTACT PHONE NUMBER

s.22

PRIMARY CONTACT EMAIL ADDRESS

dcrawford@pne.ca

HEAD OF THE APPLICANT ORGANIZATION'S NAME

Shelley Frost

HEAD OF THE APPLICANT ORGANIZATION'S TITLE

President and CEO

HEAD OF THE APPLICANT ORGANIZATION'S PHONE NUMBER

s.22

HEAD OF THE APPLICANT ORGANIZATION'S EMAIL ADDRESS

sfrost@pne.ca

APPLICANT ORGANIZATION'S OPERATING LOCATION

2901 East Hastings Street, Vancouver, BC, V5K 5J1

APPLICANT ORGANIZATION'S BUSINESS MAILING ADDRESS

2901 East Hastings Street, Vancouver, BC, V5K 5J1

APPLICANT ORGANIZATION'S WEBSITE ADDRESS

www.pne.ca

SECTION B – APPLICANT INFORMATION

APPLICANT ORGANIZATION TYPE

1. Indicate whether your organization is:

☒ not-for-profit

☐ business

2. Select which type of eligible entity your organization represents (according to the definitions in the Program Guidelines):

☒ Stream 1: Major Anchor Attractions in Urban Areas

☐ Stream 2: Major Anchor Attractions in Rural Areas

☐ Stream 3: Tour Bus Company

ELIGIBILITY CRITERIA – Confirm your eligibility by checking each box

Ownership or control is based in British Columbia (*select one*):

☒ **BUSINESS:** Majority share (at least 51%) of the Applicant Organization is owned by one or more B.C. residents.

☐ **NOT-FOR-PROFIT:** Majority control (at least 51%) of the Applicant Organization is exercised by B.C. residents.

SECTION B – APPLICANT INFORMATION (*continued*)**ELIGIBILITY CRITERIA – Confirm your eligibility by checking each box**

- ☒ The Applicant Organization has applied for, received funding from, or otherwise taken advantage of all other available municipal, provincial and federal COVID-19 relief programs of which the applicant is aware while remaining in operation and can demonstrate ongoing need for support to remain open and operational at minimal levels.
- ☒ The Applicant Organization is market-ready in accordance with Destination BC's standards, available here: https://www.destinationbc.ca/content/uploads/2018/06/Are-You-Travel-Trade-Ready-Standards_Self-Assessment.pdf
- ☒ The Applicant Organization's sole or primary operations are located and conducted in B.C.
- ☒ The Applicant Organization is not presently in default of payment of any tax obligations that arose prior to the 2020 tax year.
- ☒ The Applicant Organization is registered to carry on business or operations in B.C. as required by law.
- ☒ The Applicant Organization is currently operating (or if it is not because of seasonal or other reasons, it is within the definition of an "eligible entity" as set out in the Program Guidelines).
- ☒ The Applicant Organization had at least a 30% reduction in revenue (on an annualized basis) during the period of April 1, 2020 – March 31, 2021 compared with the period April 1, 2019 – March 31, 2020.

Tour Bus Companies only:

- ☐ The business can demonstrate that it has an ongoing relationship with and supports one or more tourism attractions.

COVID-19 IMPACTS DESCRIPTION – Two to three sentences for each question

3. Briefly describe how the COVID-19 pandemic has impacted your organization (financially and otherwise):
The PNE operates a variety of year round events and attractions - Playland Amusement Park, PNE Fair and a variety of year round events and activities. Most event and attraction days are concentrated during the summer months. In a normal year (ie: s.21
4. Briefly describe what operational changes your organization has implemented to pivot to a domestic (B.C.-based) market (leave blank if not applicable):
The PNE worked tirelessly with Vancouver Coastal Health to build a safe operating model under which we could open Playland for a reduced number of days and with significantly reduced capacity in 2020. Playland operated for 36 operating days under these COVID restrictions between July 4th and October 24th. A normal operation year would be 100 operating days. The PNE
5. Briefly describe what your organization has done to mitigate the financial impacts of COVID-19 (e.g. utilizing internal surplus and contingency funds; operational shifts; new revenue streams) and what additional sources of liquidity have been explored/obtained:
s.21
6. Briefly describe your organization's **current** financial position:
s.21
7. Briefly describe your organization's financial position **prior** to COVID-19 (April 1, 2019 – March 31, 2020):
s.21
8. Is your organization at risk of having to close/cease operations in the next 3-6 months if additional funding is not received?
s.21

SECTION C – ORGANIZATION DETAILS

9. General operational information:

	Prior to COVID-19 January 1, 2019 – December 31, 2019	During COVID-19 January 1, 2020 – December 31, 2020
Total number of visitors	S.21	
Full days in operation		
Total number of workers employed for at least four months in a calendar year, including part-time, seasonal and contractors		

10. Financial information snapshot: Information provided below will be verified in supporting documents submitted as part of the application (see Program Guidelines for details on which documents **must** accompany the application).

	Prior to COVID-19 April 1, 2019 – March 31, 2020	During COVID-19 April 1, 2020 – March 31, 2021
Total Revenues (including all sources of funds i.e., municipal, provincial and federal relief funds, grants, fundraising initiatives, donations etc.)	S.21	
Unrestricted Reserves or contingencies (could be used for operational costs if necessary)		
Regular operating funding received from government sources (municipal, provincial and federal)		
Total Expenditures		
Net Pressures		

11. Municipal, provincial and federal COVID-19 relief funding received: Information below should match the attached financial statements. The information in this section includes **all** sources of COVID-19 relief funding including grants, subsidies. Example: CERS, CERB, CEWS, RRRF etc.

	Name of Program / Grant	Total amount of Funds Received April 1, 2020 – March 31, 2021
MUNICIPAL	none	
	PNE recieved \$550k annually from City of Van as cost recovery on community ice programs and utilities	
	This is NOT however COVID recovery related	
PROVINCIAL	none	
FEDERAL	S.21	S.21

SECTION C – ORGANIZATION DETAILS (*continued*)

12. Use of funds: If grant funding was provided to your organization, please provide a brief description of how you would use the funds. Please refer to the Program Guidelines for a listing of eligible use of funds.

As a result of the size and scope of PNE operations, 110 acre campus and 8 major venues, s.21

s.21

If you receive BCMAA grant funding, do you agree to make best efforts to recall to work the available and willing workforce giving priority to those who were laid off as a result of the COVID-19 pandemic on the same terms of employment in respect of length of service, seniority, and benefits as applied at the time of layoff and, without limiting the foregoing, not reduce the level of wages, vacation pay or other compensation in place at the time of layoff?

☒ YES

☐ NO

SECTION D – APPLICANT ATTESTATION

The Applicant Organization is advised that (a) information collected is subject to the *Freedom of Information and Protection of Privacy Act*, and (b) the *Income Tax Act*, (Canada) may apply to grant funds received by the Applicant Organization. The Applicant Organization is responsible for obtaining appropriate legal, accounting and other professional advice with respect to any obligations under this or other legislation.

The Applicant Organization expects to continue operations into the future and does not currently have plans to terminate operations. YES ☒ NO ☐

On behalf of Pacific National Exhibition, I Shelley Frost certify
(Organization Name) (Head of Organization Name and Title)

that the information contained in this application form is to the best of my knowledge, correct and complete.

Electronic Signature:



Date: 04-Jun-2021

SUBMIT

SAVE

PRINT

RESET

COVID-19 IMPACTS DESCRIPTION – Two to three sentences for each question

3. Briefly describe how the COVID-19 pandemic has impacted your organization (financially and otherwise):

The PNE operates a variety of year round events and attractions - Playland Amusement Park, PNE Fair and a variety of year round events and activities. Most event and attraction days are concentrated during the summer months^{s.21}

s.21

4. Briefly describe what operational changes your organization has implemented to pivot to a domestic (B.C.-based) market (leave blank if not applicable):

The PNE worked tirelessly with Vancouver Coastal Health to build a safe operating model under which we could open Playland for a reduced number of days and with significantly reduced capacity in 2020. Playland operated for 36 operating days under these COVID restrictions between July 1st and October 31st. A normal operating year would be 120 operating days. The PNE also immediately began planning local micro events such as Party-In-A-Box, the mini-donut drive-thru event, Canada Day drive-thru event, Fathers day drive-thru and BC day drive-thru. In August, the PNE produced a COVID-safe drive-thru Fair (with significant reduced capacity of 30,000 cars vs 750,000 people) and a family themed drive-through event in October called 'Tricks and Treats'. The PNE launched WinterLights (a new seasonal drive-thru experience in December and early January) and created and sold tickets for a new Winter Lottery only available to BC residents. All events were messaged as opportunities for safe, local fun for families going through COVID. We also expanded our ticketing services to other local orgs since our ticketing system had the capability for full contact tracing.

Briefly describe what your organization has done to mitigate the financial impacts of COVID-19 (e.g. utilizing internal surplus and contingency funds; operational shifts; new revenue streams) and what additional sources of liquidity have been explored/obtained:

s.21

6. Briefly describe your organization's **current** financial position:

s.21

7. Briefly describe your organization's financial position **prior** to COVID-19 (April 1, 2019 – March 31, 2020):

s.21

8. Is your organization at risk of having to close/cease operations in the next 3-6 months if additional funding is not received?

s.21

