

## **NIAGARA REGION TRANSFER PAYMENT AGREEMENT**

**THE AGREEMENT** is effective as of the 1<sup>st</sup> day of January, 2018

### **BETWEEN:**

**The Regional Municipality of Niagara**

**("Niagara Region")**

**- and -**

**2021 Canada Games Host Society Inc.**

**(the "Recipient")**

### **CONSIDERATION**

Whereas, Niagara Region has entered into an Agreement To Undertake with the Canada Games Council dated March 30, 2017 regarding the hosting of the 2021 Canada Games.

And whereas, the Recipient has been established to plan, organize, manage, conduct and deliver all activities relating to the obligation of hosting the 2021 Canada Games.

And whereas, the Recipient will be entering into a Hosting Agreement with the Canada Games Council regarding the 2021 Canada Games.

And whereas, the Recipient has entered into a Transfer Payment Agreement with the Province of Ontario and will be entering into a Contribution Agreement with the Government of Canada.

And whereas Niagara Region's obligations arising from this Agreement are conditional upon the Recipient receiving minimum funding payments from the Provincial and Federal governments pursuant to the aforesaid Agreements.

In consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are expressly acknowledged, Niagara Region and the Recipient agree as follows:

## **1.0 ENTIRE AGREEMENT**

- 1.1 This Agreement, together with the Schedules attached hereto and any amending agreement entered into as provided for in section 2.1, constitutes the entire agreement between the Parties with respect to the subject matter contained in the Agreement and supersedes all prior oral or written representations and agreements.

## **2.0 AMENDING THE AGREEMENT**

- 2.1 The Agreement may only be amended by a written agreement duly executed by the Parties.

## **3.0 INTERPRETATION AND DEFINITIONS**

- 3.1 **Interpretation.** For the purposes of interpretation:

- (a) words in the singular include the plural and vice-versa;
- (b) words in one gender include all genders;
- (c) the headings do not form part of the Agreement; they are for reference only and will not affect the interpretation of the Agreement; and
- (d) any reference to dollars or currency will be in Canadian dollars and currency.

- 3.2 **Definitions.** In the Agreement, the following terms will have the following meanings:

**“Agreement”** means this agreement entered into between Niagara Region and the Recipient, the schedules attached hereto, and any amending agreement entered into pursuant to section 2.1.

**“Canada Games Hosting Standards”** means the 2021 Canada Games Hosting Standards published by the Canada Games Council that outline the requirements to host the 2021 Canada Games. The Hosting Agreement with the Canada Games Council will include adjustments to the Hosting Standards, including an amendment to Standard 10-M-04 which increases the CGC fee from \$880,000 to \$1,080,000, and the revocation of Standard 14-M-03.

**“Effective Date”** means January 1, 2018.

**“Expiry Date”** means December 31, 2022.

**“Funding Year”** means the period commencing on January 1 of each year and ending on the following December 31.

**“Funds”** means the money Niagara Region provides to the Recipient pursuant to the Agreement.

**“Indemnified Parties”** means Niagara Region, as well as Niagara Region’s councillors, agents, appointees, and employees.

**“Niagara Region’s Bid”** means the Bid Proposal and included Bid Budget approved by Niagara Region and submitted as Niagara Region’s bid proposal to the Canada Games Council.

**“Notice”** means any communication given or required to be given pursuant to the Agreement.

**“Parties”** means Niagara Region and the Recipient.

**“Party”** means either Niagara Region or the Recipient.

**“Project”** means the hosting of the 2021 Canada Games in general accordance with the Canada Games Hosting Standards.

**“Reports”** means the progress reports and final report described in Schedule “E” of the Ontario Transfer Payment Agreement between the Recipient and the Province of Ontario dated November 1, 2017 (a copy of which is attached to this Agreement as Schedule “C”).

#### **4.0 REPRESENTATIONS, WARRANTIES, AND COVENANTS**

**4.1 General.** The Recipient represents, warrants, and covenants that:

- (a) it is, and will continue to be, a validly existing legal entity with full power to fulfill its obligations under the Agreement; and
- (b) it has, and will continue to have, the experience and expertise necessary to carry out the Project in accordance with the requirements of this Agreement.

**4.2 Execution of Agreement.** The Recipient represents and warrants that it has the full power and authority to enter into the Agreement.

#### **5.0 TERM OF THE AGREEMENT**

**5.1 Term.** The term of the Agreement will commence on the Effective Date and will expire on the Expiry Date.

## **6.0 CONDITIONAL OBLIGATIONS**

**6.1 Other Funding.** Niagara Region's obligations pursuant to this Agreement are conditional upon:

- (a) payment by the Government of Canada of the sum of not less than \$10,350,000 towards the Project pursuant to a Contribution Agreement with the Recipient;
- (b) payment by the Province of Ontario of the sum of not less than \$10,350,000 towards the Project pursuant to the Transfer Payment Agreement with the Recipient dated November 1, 2017; and
- (c) Canada Games Council making a cash contribution of not less than \$290,000 and a value in kind contribution of not less than \$135,000 towards the Project pursuant to a Hosting Agreement with the Recipient.

And if any of these contributions are not made, Niagara Region may, subject to section 13.3, take one or more of the actions set out in section 13.2 of this Agreement.

## **7.0 FUNDS AND CARRYING OUT THE PROJECT**

**7.1 Funds Provided.** Niagara Region will:

- (a) be responsible for any financial deficit (capital and operating) associated with the Project;
- (b) subject to the Recipient's compliance with section 7.4(e), provide the Recipient with at least \$3 million (in cash) for capital expenditures for the Project which qualify for ten-year debenture financing;
- (c) provide the Recipient with \$4 million (in cash or value-in-kind) for operating expenditures for the purpose of carrying out the Project;
- (d) subject to the Recipient's compliance with section 7.4(e) to the extent approved legacy projects are capital in nature, provide the Recipient with an additional \$3.35 million in 2022 for legacy projects identified in the Legacy Plan produced by the Recipient as part of the Project, provided that: all or part of this amount would first be applied to any deficit referred to in section 7.1(a); this amount (or any remaining portion after it is applied to any deficit) is matched by funds from additional stakeholders; and, Niagara Region has provided appropriate approval for those projects funded by this amount (or any remaining portion after it is applied to any deficit);
- (e) provide the Funds to the Recipient in accordance with the payment plan attached to the Agreement as Schedule "A"; and

- (f) deposit the Funds into an account designated by the Recipient provided that the account resides at a Canadian financial institution and is in the name of the Recipient.

7.2 **Reimbursement by the Recipient.** The Recipient agrees to reimburse Niagara Region in the amount of \$320,000 for advances to the Funds for operating expenditures that were provided by Niagara Region prior to the Effective Date. The reimbursement (or offset) of this amount is to be done in accordance with the payment plan attached to the Agreement as Schedule "A".

7.3 **Use of Funds.** The Recipient will:

- (a) use the Funds only for the purpose of carrying out the Project in accordance with this Agreement.

7.4 **Recipient Obligations with respect to the Project.** The Recipient will:

- (a) undertake the Project in accordance with the commitments and plans set forth in Niagara Region's Bid as revised by the Recipient from time to time in accordance with the Canada Games Hosting Standards, the Hosting Agreement with the Canada Games Council and any supplemental funding commitments made by additional stakeholders;
- (b) in accordance with the Canada Games Hosting Standards, not approve a revised budget for undertaking the Project that projects a deficit unless otherwise agreed to in writing by Niagara Region;
- (c) use all commercially reasonable efforts to ensure the absence of a deficit in the completion of the Project while fulfilling the commitments contained herein. Without limiting the foregoing, the Recipient shall:
  - i. Obtain in an expeditious manner, legally binding commitments from owners of venues to be used for the Project;
  - ii. Seek out further sponsors to fund the uncommitted elements of the budget established by the Recipient for the Project;
  - iii. Comply with all Governance requirements contained within section A 2.3 of the Ontario Transfer Payment Agreement which are obligations of the Recipient incorporated into this Agreement by reference;
  - iv. Comply with the requirements respecting Acquisition of goods and services contained within section A 5.1 of the Ontario Transfer Payment Agreement which are obligations of the Recipient incorporated into this Agreement by reference;
  - v. Comply with the requirements respecting Conflicts of Interest contained within section A 6.0 of the Ontario Transfer Payment Agreement which are obligations of the Recipient incorporated into



this Agreement by reference;

- (d) collaborate with the Canada Games Council on the implementation of the Canada Games Council's transfer of knowledge program, and participate in the refinement and enhancement of that program from the 2017 and 2019 Canada Games;
- (e) With respect to the Funds committed by Niagara Region for capital expenditures in section 7.1(b) or for funding capital assets forming part of the Legacy Plan noted in section of 7.1 (d), provide Niagara Region by May 31, 2019 with the following information in relation to those capital works for which such Funds are to be used:
  - i. sufficient detail concerning the nature of such capital works;
  - ii. the gross budget and all sources of financing for such capital works;
  - iii. the useful life of such capital works; and
  - iv. such additional information as required by Niagara Region, acting reasonably, to permit Niagara Region to facilitate debenture financing for such funding;

in order to facilitate the capital funding payment described in Schedule "A" on July 1 2019;

- (f) use the transfer of knowledge tools developed for the Canada Games Council's transfer of knowledge program, including the business plan template, budget tools and other tools and file management systems as identified by the Canada Games Council throughout the Games Life-Cycle; and
- (g) Enter into such agreements as are reasonably required to carry out the Project including but not limited to a form of Hosting Agreement and Trade-marks Licensing Agreement with the Canada Games Council.

## **8.0 REPORTS AND RECORDS**

- 8.1 **Preparation and Submission.** The Recipient will submit to Niagara Region all Reports in accordance with the timelines and content requirements as provided for in Schedule "E" of the Ontario Transfer Payment Agreement between the Recipient and the Province of Ontario. The Recipient will also provide periodic update presentations to Regional Council upon invitation by Regional Council.
- 8.2 **Record Maintenance.** The Recipient will keep and maintain:
  - (a) all financial records (including invoices) relating to the Funds or

otherwise to the Project in a manner consistent with generally accepted accounting principles; and

- (b) all non-financial documents and records relating to the Funds or otherwise to the Project.

## **9.0 ACKNOWLEDGEMENT**

### **9.1 The Recipient acknowledges that:**

- (a) the Niagara Region is not responsible for carrying out the Project; and
- (b) the Niagara Region is bound by the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Niagara Region in connection with the Project or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

## **10.0 COMMUNICATIONS REQUIREMENTS**

- 10.1 **Acknowledge Support.** Unless otherwise directed by the Niagara Region, the Recipient will acknowledge the support of the Niagara Region for the Project in accordance with Schedule "B".

## **11.0 INDEMNITY**

- 11.1 **Indemnification.** Subject to the Niagara Region's responsibility for any deficit as set out in section 7.1(a) of the Agreement, the Recipient will indemnify and hold harmless the Indemnified Parties from and against any and all liability, loss, costs, damages, and expenses (including legal, expert and consultant fees), causes of action, actions, claims, demands, lawsuits, or other proceedings, by whomever made, sustained, incurred, brought, or prosecuted, in any way arising out of or in connection with the Project or otherwise in connection with the Agreement, unless, and to the extent, caused by the negligence or wilful misconduct of the Indemnified Parties.

## **12.0 INSURANCE**

- 12.1 **Recipient's Insurance.** The Recipient represents, warrants, and covenants that it has, and will maintain, at its own cost and expense, with insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, all the necessary and appropriate insurance that a prudent person carrying out a project similar to the Project would maintain, with limits and types of insurance at least equal or better than prescribed by the Canada Games Hosting Standards, and including commercial general liability insurance on an occurrence basis for third party bodily injury, personal injury, and property damage, to an inclusive limit of

not less than \$10 million per occurrence. The insurance policy will include the following:

- (a) the Indemnified Parties as additional insureds with respect to liability arising in the course of performance of the Recipient's obligations under, or otherwise in connection with, the Agreement;
- (b) a cross-liability clause;
- (c) contractual liability coverage; and
- (d) a 30-day written notice of cancellation.

**12.2 Proof of Insurance.** The Recipient will:

- (a) provide to the Niagara Region , either:
  - (i) certificates of insurance using Niagara Region's form of insurance Certificate; or
  - (ii) other proof that confirms the insurance coverage as provided for in section 12.1 and is acceptable to Niagara Region, acting reasonably; and
- (b) upon the request of Niagara Region, provide Niagara Region with a copy of any such insurance policy.

**13.0 EVENT OF DEFAULT, CORRECTIVE ACTION, AND TERMINATION FOR DEFAULT**

**13.1 Events of Default.** Each of the following events will constitute an Event of Default:

- (a) the Recipient commits any material breach of any representation, warranty, covenant, or other term of the Agreement;
- (b) the Recipient makes an assignment, proposal, compromise, or arrangement for the benefit of creditors, or a creditor makes an application for an order adjudging the Recipient bankrupt, or applies for the appointment of a receiver;
- (c) any of the contributions by the Province of Ontario, Government of Canada or Canada Games Council as set out in section 6.1 of the Agreement are not made; and
- (d) the Recipient ceases to operate.



13.2 **Consequences of Events of Default and Corrective Action.** If an Event of Default occurs, the Niagara Region may, subject to section 13.3, take one or more of the following actions:

- (a) initiate any action the Niagara Region considers necessary in order to facilitate the successful continuation or completion of the Project;
- (b) suspend the payment of Funds for such period as the Niagara Region determines appropriate;
- (c) cancel further instalments of Funds;
- (d) demand from the Recipient the payment of any Funds remaining in the possession or under the control of the Recipient; and
- (e) terminate the Agreement.

13.3 **Recipient Can Remedy.** Before taking any of the actions set out in section 13.2, the Niagara Region will provide the Recipient with Notice of the Event of Default and a reasonable opportunity to remedy the Event of Default.

#### 14.0 **NOTICE**

14.1 **Notice in Writing and Addressed.** Notice will be in writing, will be delivered by email or personal delivery, and will be addressed to the Niagara Region and the Recipient respectively as provided below, or as either Party later designates to the other by Notice.

Niagara Region: Carmen D'Angelo – [carmen.dangelo@niagararegion.ca](mailto:carmen.dangelo@niagararegion.ca)

Recipient: Wayne Parrish – [wparrish@2021canadagames.ca](mailto:wparrish@2021canadagames.ca)

#### 15.0 **SEVERABILITY OF PROVISIONS**

15.1 **Invalidity or Unenforceability of Any Provision.** The invalidity or unenforceability of any provision of the Agreement will not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision will be deemed to be severed.

#### 16.0 **WAIVER**

16.1 **Waiver Request.** Either Party may, in accordance with the Notice provision

set out in section 14.0, ask the other Party to waive an obligation under the Agreement.

16.2 **Waiver Applies.** Any waiver a Party grants in response to a request made pursuant to section 16.1 will:

- (a) be valid only if the Party granting the waiver provides it in writing; and
- (b) apply only to the specific obligation referred to in the waiver.

## 17.0 INDEPENDENT PARTIES

17.1 **Parties Independent.** The Recipient is not an agent, joint venturer, partner, or employee of the Niagara Region and the Recipient will not represent itself in any way that might be taken by a reasonable person to suggest that it is, or take any actions that could establish or imply such a relationship.

## 18.0 ASSIGNMENT OF AGREEMENT

18.1 **No Assignment.** The Recipient will not, without the prior written consent of the Niagara Region, assign any of its rights or obligations under the Agreement.

18.2 **Agreement Binding.** All rights and obligations contained in the Agreement will extend to and be binding on the Parties' respective heirs, executors, administrators, successors, and permitted assigns.

## 19.0 GOVERNING LAW

19.1 **Governing Law.** The Agreement and the rights, obligations, and relations of the Parties will be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement will be conducted in the courts of Ontario, which will have exclusive jurisdiction over such proceedings.

The Parties have executed the Agreement on the dates set out below.

**The Regional Municipality of Niagara**

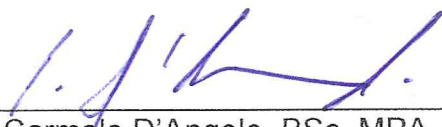
Aug 10/18  
Date

  
Name: Alan Caslin  
Title: Regional Chair

Aug 10, 2018  
Date

APPROVED FOR EXECUTION

  
LEGAL SERVICES

  
Name: Carmelo D'Angelo, BSc, MPA  
Title: Chief Administrative Officer

We have authority to bind Niagara Region.

**2021 Canada Games Host Society Inc.**

Aug. 7/2018  
Date

  
Name: Wayne Parrish  
Title: Chief Executive Officer

I have authority to bind the Recipient.

**SCHEDULE "A"**  
**FUNDING PAYMENT PLAN**

**Canada Summer Games**

**Cash Commitment Schedule - Niagara Region**

		<u>Operating</u>	<u>Capital</u>	<u>Total</u>	<u>Key Terms:</u>	
02-Jan	2018	\$ 350,000	\$ -	\$ 350,000		
Upon execution	2018	\$ 150,000	\$ -	\$ 150,000		
01-Sep	2018	\$ 180,000	\$ -	\$ 180,000		
01-Nov	2018	\$ 320,000	\$ -	\$ 320,000		
01-Nov	2018	\$ (320,000)			1)	reduced by \$320,000 2017 advance (Agreement section 7.2)
	2018	\$ 680,000	\$ -	\$ 680,000		
02-Jan	2019	\$ 250,000	\$ -	\$ 250,000		
01-Apr	2019	\$ 250,000	\$ -	\$ 250,000		
01-Jul	2019		\$ 3,000,000	\$ 3,000,000		
01-Sep	2019	\$ 250,000	\$ -	\$ 250,000	2)	Capital funding will be subject to requirement of section 7.4(d)
01-Nov	2019	\$ 250,000	\$ -	\$ 250,000		
	2019	\$ 1,000,000	\$ 3,000,000	\$ 4,000,000		
<i>(Note - Capital funding will be per project schedules)</i>						
02-Jan	2020	\$ 250,000	\$ -	\$ 250,000		
01-Apr	2020	\$ 250,000	\$ -	\$ 250,000		



01-Sep	2020	\$ 250,000	\$ -	\$ 250,000			
01-Nov	2020	\$ 250,000	\$ -	\$ 250,000			
	2020	\$ 1,000,000	\$ -	\$ 1,000,000			
(Note - Capital funding will be per project schedules)							
02-Jan	2021	\$ 250,000	\$ -	\$ 250,000			
01-Apr	2021	\$ 250,000	\$ -	\$ 250,000			
01-Sep	2021	\$ 250,000	\$ -	\$ 250,000			
01-Nov	2021	\$ 250,000	\$ -	\$ 250,000			
	2021	\$ 1,000,000	\$ -	\$ 1,000,000			
Q1	2022	\$ -	up to \$3,350,000			3)	subject section to 7.1(d)

Subject to compliance with the requirements and conditions precedent set forth in Section 7.1(d), \$3.35 million for legacy projects will be budgeted and targeted by Niagara Region to be payable to the Recipient early in 2022

## **SCHEDULE "B"**

### **ACKNOWLEDGEMENT OF FINANCIAL SUPPORT**

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Niagara Region and the Recipient's senior staff person responsible for marketing and communications will create and agree on a process to determine how to manage the requirements outlined in Schedule B, which include but are not limited to what materials, events, ceremonies, activities, announcements, speaking opportunities, releases, advertisements, event sites and projects are considered appropriate.

The Recipient will take reasonable steps to ensure that:

1. The Niagara Region 's support will be acknowledged in at least equal prominence as other funding parties, supporters and sponsors.
2. Online materials will link to an address provided by the Niagara Region .
3. The Niagara Region approves the Recipient's plan in relation to use of the Niagara Region Logo and acknowledgement of the Niagara Region's support.
4. The trademarked name "Niagara Region" and related Logo (hereinafter the "Wordmark") will be displayed as appropriate on printed materials, printed announcements, marketing materials, publications and media products.
5. The Niagara Region Wordmark is displayed on any promotional items related to the funded project if the logos of other government funding partners are to be displayed.
6. The Niagara Region Wordmark is displayed on staff and volunteer clothing in the same manner as other government funding partners.
7. Recipient social media accounts will be identified for the Niagara Region .
8. Niagara Region social media accounts will be followed by the Recipient.
9. The Niagara Region will work with the Host Society on accreditation as it relates to the Canada Games Council's policy on accreditation.
10. An invitation is issued to the Niagara Region's Regional Chair for appropriate events, ceremonies, and announcements.
11. The Canada Games Council provides Niagara Region with a speaking role in the Opening and/or Closing ceremonies.

12. A pre-approved quote from Niagara Region's Regional Chair is secured and included in appropriate media releases that refer to government funding sources for the Project.
13. The Niagara Region will be provided with the opportunity to participate in medal presentations with the number of opportunities at a minimum equal to that of other government funding partners and sponsors.
14. The Niagara Region's support is acknowledged in appropriate advertisements in any format except where this would infringe upon the rights of a specific sponsorship agreement.
15. The Niagara Region will be provided with the opportunity to provide a Regional Chair's message in any Games Official Program / Guide that is distributed to participants, media or the general public.
16. The Niagara Region will be provided authorization to use photographs and video created by the Recipient to promote the Canada Games in Niagara Region reports, publications, website and social media for the purposes of promoting the Games.
17. The Niagara Region's contribution is acknowledged on signage at appropriate event sites using the Wordmark in at least equal size and prominence of the logos or texts of any other government funding partner displayed on the signage. Reasonable steps will be taken to display the Wordmark within the sightlines of television / webcast. The Wordmark must be displayed at the venue entrance for spectator viewing.
18. The Niagara Region's contribution will be acknowledged at appropriate speaking opportunities and media events related to the Games.
19. The Niagara Region will be provided with a speaking role at any appropriate event or activity such as public and media events. Efforts must be made to provide the speaking opportunities one (1) month in advance.
20. The Niagara Region will be provided with an opportunity to provide a recorded video message or announcement at any appropriate event with the capability. The Recipient will provide the technical specifications to the Niagara Region one (1) month prior to the event.
21. The Niagara Region will be provided with the opportunity to execute an activation – including the ability to distribute promotional material(s) that do not infringe upon Recipient or vendor exclusivity - prior to or during the event in the form of a booth or kiosk. Any space provided will be equal in size and visibility to other government funding partners.

22. The Niagara Region's contribution will be acknowledged on signage at appropriate capital construction and renovation projects funded by the Niagara Region. The acknowledgement will appear during construction phase and be replaced by a permanent plaque to be procured by the Recipient that outlines the project has been made possible in part through funding from the Niagara Region. The Plaque design and location are to be pre-approved by the Niagara Region. If an unveiling ceremony is planned, the Niagara Region will be provided with a speaking role in the event. The timing of the event must be pre-approved by the Niagara Region.
23. The Recipient will consider a possible amendment to its Conflict of Interest Policy to address the potential for representatives of the Recipient to disparage, discourage, insult or make negative and/or inappropriate comments to any potential funding partner, sponsor, or government (municipal, provincial or federal) in order to advance another partner, sponsor or government.



SCHEDULE "C"  
REPORTING

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MILESTONES	MILESTONE COMPLETION DUE DATE
Upon execution of this Agreement.	
Upon submission and approval by the Province of Progress Report 1.0	April 20, 2018
Upon submission and approval by the Province of Progress Report2.0	April 1, 2019
Upon submission and approval by the Province of Progress Report 3.0	April 1, 2020
Upon submission and approval by the Province of Progress Report4.0	April 1, 2021
Upon submission and approval by the Province of the Project Final Report	October 1, 2021
Upon submission and approval by the Province of the Project Audited FinancialStatement	June 30, 2022

Report Descriptions:

The Progress Report will include a written description of the current status of Games planning in a format chosen by the Recipient (example- status update by Functional Area) and will include a note on any delays, risks, and adjustments to the project that may impact the delivery schedule. The financial section of the Progress Report will provide an update to the budget detailing spending to date, sponsorship revenue (including cash, value-in-kind and enhancements) and forecasted spending to the end of the Project. Because of the short period between the execution of this Agreement and the submission of Progress Report 1.0, Progress Report 1.0 will provide an update regarding any spending of part of the amount due upon execution of this Agreement.

The Final Report will include a list of the ways in which the Province's contribution to the

Games was recognized by the Recipient before, during and after the Games, a post-event economic impact study, key statistics from each functional area; key learnings, an updated budget, and other information that may be reasonably requested by the Province. A final audited financial statement will also be provided to the Province after the 2021-2022 fiscal year end.