

MEMORANDUM OF AGREEMENT
CE2022_BDN_09 (hereinafter called “the MOA”)
Reference number: 415000

BETWEEN: **HER MAJESTY THE QUEEN IN RIGHT OF CANADA**, as represented by the Minister of Canadian Heritage (hereinafter called “the Minister”) and including any person duly authorized to represent him.

AND: **CITY OF FREDERICTON**, a local government by virtue of the *Local Governance Act*, SNB 2017, c. 18, having its head office in the City of Fredericton, in the County of York and Province of New Brunswick (hereinafter called the “Organization”).

(The “Minister” and the “Organization” are called individually a “Party” or collectively the “Parties”)

WHEREAS the Minister is responsible for the Program entitled “Capital Celebrations and Program Operations” (hereinafter called the “Program”);

AND WHEREAS one of the objects and purposes of the Program is to organize a winter festival in the National Capital Region (hereinafter called “Winterlude”);

AND WHEREAS the 44th edition of Winterlude will take place from Friday, February 4th to Monday, February 21st 2022; and

AND WHEREAS one of the objects and purposes of the Program is to organize a National Ice-Carving Championship (hereinafter called “the Competition”)

AND WHEREAS the National Ice-Carving Championship will be held on Saturday, February 5th and Sunday February 6th in different provinces;

AND WHEREAS Canadians will be called upon to vote for the winning sculpture through the Winterlude website from February 11 until February 21, 2022; and

AND WHEREAS the Organization wishes to participate in Winterlude 2022 by organizing and promoting the Winterlude National Ice-Carving Championship in their community (hereinafter called individually the “Activity” or collectively the “Activities”).

THEREFORE, in consideration of their respective obligations set out below, the Parties agree to the following:

1. OBLIGATIONS OF THE MINISTER

1.1 The Minister agrees to fulfill the obligations set out in Annex A of this MOA.

2. OBLIGATIONS OF THE ORGANIZATION

2.1 The Organization agrees to fulfill the obligations set out in Annex B of this MOA.

3. TERM

3.1 The present MOA will take effect on the date when all Parties will have signed-and will cease, subject to its termination on a prior date, four (4) months after the signature of the present MOA.

3.2 All obligations of the Organization therein shall, expressly or by their nature, survive termination or expiry of this MOA, until and unless they are fulfilled or by their nature expire.

4. INSURANCE

- 4.1 The Organization must have and maintain in effect throughout the duration of this MOA a comprehensive public liability policy that provides a minimum coverage of two million dollars (\$2,000,000) per occurrence and that is otherwise satisfactory to the Minister.
- 4.2 The Minister reserves the right to cancel this MOA at any time if the Minister has not received a copy of the certificate of insurance naming Her Majesty the Queen in Right of Canada as additional insured on the policy **by January 5, 2022** and/or prior to the performance of any other obligation under this MOA, in which event the MOA shall be null and void; and
- 4.3 If the Organization is a self-insured government body, the Organization hereby undertakes that it will provide the Minister with protection equivalent to that outlined under the present heading.

5. INTELLECTUAL PROPERTY RIGHTS

- 5.1 The Minister shall retain the copyright in every original literary, dramatic, musical and artistic work as well as in all choreographic work furnished to the Organization pursuant to and for the purposes of this MOA.
- 5.2 The Organization shall retain the copyright in every original literary, dramatic, musical and artistic work as well as in all choreographic work furnished to the Minister pursuant to and for the purposes of this MOA.
- 5.3 The Organization hereby grants to the Minister the right to use its name, photos and/or Logo to promote the Organization's participation in Winterlude.

6. NOTICE

- 6.1 Any notice, information or document required under this MOA shall be deemed given if it is delivered, sent by facsimile or mail. Any notice delivered in person shall be deemed to have been received upon delivery; any notice sent by facsimile shall be deemed to have been received one working day after it is sent; any notice that is mailed shall be deemed to have been received eight (8) working days after being mailed.
- 6.2 All notices must be sent to the following addresses:

To the Minister:

Claudine Plouffe
 Content and Broadcast Coordinator,
 Broadcast and New Media
 Major Events, Commemorations and
 Capital Experience Branch
 Department of Canadian Heritage
 15 Eddy Street, 11th floor
 Gatineau QC, K1A 0M5
claudine.plouffe@pch.gc.ca

To the Organization:

Mary Ellen Hudson
 Travel Trade and Travel Media
 Tourisme Fredericton Tourism

 371 Queen St, Suite 101
 Fredericton, NB E3B 1B1
 (506) 292-0843 |
maryellen.hudson@fredericton.ca

7. DESCRIPTION OF THE MOA

- 7.1 This MOA, including the following annexes that form an integral part of this MOA and subsequent amendments to them, constitutes the entire MOA between the Parties and supersedes all previous MOAs, documents, representations, negotiations, understandings and undertakings related to its subject matter. The Organization acknowledges having read the MOA and agrees with the contents.

- Annex A OBLIGATIONS OF THE MINISTER
- Annex B OBLIGATIONS OF THE ORGANIZATION
- Annex C GENERAL TERMS AND CONDITIONS
- Annex D USE OF WINTERLUDE OFFICIAL MARKS
- Annex E PHOTOGRAPHIES TO SUBMIT FOR THE PUBLIC VOTING COMPONENT
- Annex F SIGNAGE ELEMENTS TO BE PRODUCED
- Annex G INFRASTRUCTURE/EQUIPMENT REQUIREMENTS FOR THE WINTERLUDE NATIONAL ICE-CARVING COMPETITION

IN WITNESS WHEREOF, the Parties have signed this MOA through duly authorized representatives.

The Minister

The Organization

Joelle Theriault
Manager, Contracting and
Materiel Management
Chief Financial Officer Branch
Canadian Heritage

Kate Rogers
Mayor

Jennifer Lawson
City Clerk

ANNEX A – OBLIGATIONS OF THE MINISTER

- A1. The Minister agrees to provide the following benefits to the Organization:
- a) use of the Official Winterlude Partner Logo (in accordance with the conditions set out in Annex D);
 - b) link to the Organization’s website from the Winterlude National Ice-Carving Championship webpage;
 - c) Canadian Heritage social media platform (in English and French) will “like” and/or follow the Organization’s social media pages, if applicable;
- A2. The Minister agrees to:
- a) create and manage the content of the National Ice-Carving Championship on the Winterlude website (online December 2021);
 - b) organize a media launch to promote Winterlude and the Championship;
 - c) coordinate all media advertising buys for the overall event;
 - d) create media interest in the National Ice-Carving Championship by promoting participating communities across Canada;
 - e) organize and deliver a marketing campaign to promote the National Ice-Carving Championship across the nation;
 - f) develop an engaging social media campaign in collaboration with the Organization (cross-promotion, likes and shares);
 - g) develop and provide the Organization with an online communication toolbox which may contain:
 - i. use of official branding;
 - ii. series of key messages for social media;
 - iii. access to logos, graphic design and other marketing tactics to be defined by both parties;
 - h) organize regular meetings with the Organization to determine production requirements, promotional options and deadlines; and
 - i) ensure that Canadians can vote for their favorite sculpture by creating and managing a voting webpage where all sculptures will be showcased from February 11, 2022 to February 21, 2022.
- A3. The Minister agrees to contribute an amount not exceeding **\$45,000.00** plus applicable taxes towards the organization of the National Ice-Carving Championship by the Organization.
- A4. **PAYMENT**
- a) The Organization will submit an invoice to the Minister no later than March 1, 2022 for all of the Organization’s expenses related to the organization of the Activity as noted in clause A3.
 - b) The invoice will be sent to the Minister’s representative noted under clause 6.2 of the MOA.
 - c) The Minister will pay the Organization the amount in clause A3 within a period of thirty (30) days from the date on which the Minister receives an invoice from the Organization.

ANNEX B – OBLIGATIONS OF THE ORGANIZATION

- B1. The Organization shall provide the following services and goods in respect to the Activity:
- a) Organize, supervise and deliver all aspects of the Activity including the coordination of all requirements such as human resources, displays, materials, and equipment;
 - b) Ensure the provision of 16 blocks of Clinebell quality ice in the size of 40 inch X 10 inch X 20 inch;
 - c) Find an iconic site where the Activity will take place. The site should measure a minimum of 20 feet by 20 feet;
 - d) Hire a professional photographer to capture specific photos (Annex E) to be submitted to the Minister by 5:00pm (AST) on February 7, 2022;
 - e) Ensure that all permits/approvals are obtained for the selected site;
 - f) Provide all necessary equipment to deliver the competition (Annex G);
 - g) Ensure the proper visibility and branding of the National Ice-Carving Championship by having signage elements produced (Annex F);
 - h) Ensure the maintenance and safety of the site at all times (including the clearing of snow and ice);
 - i) Ensure security of the site during the National Ice-Carving Championship;
 - a. if the Organization decides to keep the sculpture beyond the National Ice-Carving Championship (beyond February 6th 2022), the Organization is responsible of ensuring the security of the site at its own cost. In all cases, the sculpture will have to be demolished on February 22nd 2022 at the latest.
 - j) Ensure that the site can accommodate public viewing during and after the Championship in a safe manner and as per local COVID-19 guidelines;
 - k) Provide lodging (if required), meals and a rest area for the carver during the Activity; and
 - l) Provide proof of comprehensive public liability insurance with a minimum coverage of two million dollars (\$2,000,000.00) – as stipulated in clause 4 of this MOA.
- B2. The Organization agrees to make every effort to inform the Minister of any changes or developments to its Activity as they occur.
- B3. The Organization agrees to follow all federal, provincial and municipal guidelines in regard to the COVID-19 situation in their province;
- B4. The Organization shall be solely responsible for the provision of all security services, including obtaining materials and equipment required to ensure public safety at the Activity as well as security of material and equipment located in the Organization's Area.
- B5. During the hours of operation of the Activity and for the carving component of it, the Organization shall ensure that persons certified in first-aid are available to provide first-aid services to carvers and that all necessary first-aid supplies are available at all times.
- B6. The Organization acknowledges that the Minister will be primarily responsible for seeking sponsors for Winterlude and the National Ice-Carving Championship.
- B7. The Organization shall share information and photos of the Activity, if applicable, by connecting with:
- @Capital_Exp / @Vivezlacapitale on Twitter;
 - @CapitalExperience / @Vivezlacapitale on Facebook
 - @Canada_Cap / @o_canadiana on Instagram; and
 - Canadian Heritage / Patrimoine canadien on YouTube
- B8. The Organization agrees to participate in the promotion campaign organized by Patrimoine canadien/Canadian Heritage (“PCH”) which may include cross-promotion on each organizations social media platforms by promoting their participation in the Competition on their digital and social media platforms;
- B9. The Organization agrees to develop a social media campaign to promote their participation in the National Ice-Carving Championship on their digital platforms. This may include but is not limited to, publishing a newsletter, working with content creators, embedding a link or button on its website to entice visitation to the Winterlude Public Voting website, to promote their community’s participation in the National Ice-Carving Championship or any other tactics agreed by both parties;
- B10. The Organization shall provide post Winterlude feedback to review the successes and weaknesses of the Activity by February 21, 2022.

ANNEX C - GENERAL TERMS AND CONDITIONS

C1. LAWS AND PERMITS

C1.1 Except as may be otherwise provided, each Party shall, solely with respect to its obligations hereunder, at its sole cost, respect and comply with all applicable federal, provincial and municipal laws and regulations, including but not limited to laws and regulations regarding occupational health and safety, and shall obtain all necessary permits, authorizations, licences and approvals.

C1.2 This MOA shall be governed by and interpreted in accordance with the applicable laws of the Province of residence of the Organization's or main place of business.

C1.3 Any person lobbying on behalf of the Organization shall be registered pursuant to the *Lobbying Act*, R.S. 1985, c. 44 (4th Supp.).

C2. ACCESS TO INFORMATION

Records created by a Party and submitted to the other Party in relation to this MOA, are subject to disclosure and confidentiality obligations under the *Access to Information Act*, R.S. 1985, c. A-1 and the *Right to Information and Protection of Privacy Act*, S.N.B. 2009, c. R-10.6, as amended.

C3. NO PARTNERSHIP / JOINT VENTURE / AGENCY

Even though the Organization is represented as being a partner of the Minister in carrying out the Activity during Winterlude, the Parties acknowledge that this representation does not constitute an association for the purpose of establishing a legal partnership or joint venture and does not create an agency relationship between the Parties.

C4. DISPUTE RESOLUTION

The Parties acknowledge and agree that if a dispute arises concerning the application or interpretation of the Agreement, the Parties shall attempt to resolve the matter through good faith negotiations, more specifically, the dispute will be referred to their representatives set out above under Clause 6.2 of the MOA or their delegates, who will use their best efforts to resolve the matter amicably.

C5. DEFAULT AND REMEDIES

C5.1 The Minister may terminate this MOA if the Organization fails to perform or complete any of the Organization's obligations under this MOA. The termination will take effect immediately upon receipt by the Organization of a written notice of termination or at such other later time as the Minister may provide.

C5.2 The Minister may, without notice to the Organization, immediately terminate this MOA if:

C5.2.1 required to do so for reasons of safety or security; or

C5.2.2 the Organization:

- (i) becomes bankrupt;
- (ii) has a receiving order made against it;
- (iii) makes an assignment for the benefit of its creditors;
- (iv) takes the benefit of a statute for the time being in force relating to bankruptcy or insolvent debtors or any other statute having a similar effect; or
- (v) is subject to an order made or resolution passed for the winding-up of the Organization.

C5.3 The Organization shall have no claim for damages for loss of profit, loss of business or business opportunity, funding, sponsorship, clientele or otherwise by reason of or directly or indirectly arising out of or in connection with any action taken or notice given by the Minister under the provisions of sections C5.1 and C5.2.

C6. LIABILITY

The Minister, their employees and agents shall not be held liable for any injury including death to any person, or for any loss or damage to property of the Organization or for any obligation the Organization incurred in carrying out this MOA.

C7. INDEMNIFICATION

C7.1 The Organization shall indemnify the Minister, their employees and agents from and against all legal suits, claims, damages, losses, costs and expenses which they or either of them may incur or suffer arising out of this MOA. The Minister, their employees and agents shall not claim indemnification if the injury, loss or damage has been caused by the Minister or her employees or agents.

C7.2 The indemnity given by the Organization pursuant to section C7.1 shall survive the expiry or early termination of this MOA.

C8. ASSIGNMENT

The Organization shall not assign, transfer or otherwise dispose of this MOA or any part of this MOA or any benefit or interest in or under this MOA without the prior written consent of the Minister, which consent may be withheld at the entire discretion of the Minister.

C9. WAIVER OF TERM OR CONDITION

A waiver by any Party of any term or condition of this MOA shall be in writing. Any such waiver shall not in itself constitute a waiver of such term or condition with respect to a subsequent breach of the same term or condition or of any other term or condition.

C10. CANCELLATION

Failure on the part of either party to comply with the terms and conditions of this MOA due to *force majeure* will not be deemed a breach (partial or otherwise) of the MOA and will not render the said party liable to any obligation as a result. *Force majeure* is taken to mean an event that occurs independently of the intentions of the Artist or of PCH and which renders staging of the performance as contracted impossible or impractical. Examples of *force majeure* are: fire, flood, riot or crowd movement, lock-out or strike or other labour conflict, pandemic, epidemic, significant interruption, change of government, suspension or breakdown of the necessary transportation or technical facilities, war, terrorist attack, emergency or natural disaster.

C11. TIME IS OF THE ESSENCE

Time is of the essence of this MOA.

C12. AUTHORITY AND CONSENT

The Parties acknowledge having the power and authority to enter into and execute this MOA and to fulfil all of the obligations set out in this MOA.

C13. SEVERABILITY

The Parties acknowledge and agree that if any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such determination shall not impair or affect the validity, legality or enforceability of the remaining provisions hereof, and each provision is hereby declared to be separate, severable and distinct.

ANNEX D - USE OF WINTERLUDE OFFICIAL MARKS

D1. The Organization shall have the right to use the following official marks (hereinafter called the “Official Marks”) for the sole purpose of promoting its Activity, from the execution of this MOA by both Parties until February 21, 2022;

D1.1 City of Fredericton (hereinafter called the “Name”).

D1.2 Official Winterlude Partner Logo / Partenaire officiel du Bal de Neige (hereinafter called the “Logo”).



D2. The Organization shall use the Official Marks in accordance with the following terms and conditions:

D2.1 the Name shall not be part of the title of the Activity unless the Organization has obtained the express written permission of the Minister;

D2.2 the Logo shall not be part of any application unless the Organization has obtained the express written permission of the Minister;

D2.3 the Official Marks shall not be used for merchandising or for any commercial purposes without the express written permission of the Minister;

D2.4 the Official Marks shall not be modified or altered; and

D2.5 the Official Marks shall not be used in a manner that may confuse, mislead or deceive the public, or harm the reputation of or reflect unfavourably the Minister or Winterlude.

ANNEX E – PHOTOGRAPHS TO SUBMIT FOR THE PUBLIC VOTING COMPONENT

Canadians will be invited to view a photo carousel for each sculpture on the Winterlude website and vote for their favorite sculptures. To ensure fairness in the representation of each province on the Winterlude website, each host organization must provide specific photos of their sculptors / sculptures.

The photos must be taken by a professional photographer on February 6 after the Championship has ended (after 4PM, local time).

The sculpture must be properly lit and surrounding areas must be clean (ie. no tools in the shot, no ice on the ground, etc).

The following pictures must be sent to the Minister by **Monday February 7, 2022 4:00 PM EST** (as per Annex B, B1 d)

Shot list

1. Front view of the ice sculpture
2. Front view of the ice sculpture with the carvers
3. Back view of the ice sculpture
4. Side view of the ice sculpture 1
5. Side view of the ice sculpture 2
6. Close shot of the ice sculpture details

Technical requirements:

- Use a lens between 35-50mm to avoid too much distortion
- Use a 24 Megapixel or larger camera
- Use a tripod, for a long exposure to capture the work
- Recommended shutter aperture between F8-F11
- Use an iso between 400-800
- Format to submit photos: JPEG
- Do not over-saturate the image in post-production
- If possible, take the photo (s) during the Blue Hour

Rights

PCH must obtain written confirmation transferring to it the rights to use the photos submitted for the National Ice Carving Championship. PCH must be allowed to do anything that it would be able to do if it were owner of the Intellectual Property rights, other than exploit it commercially and transfer or assign ownership of it. PCH's rights to use the photos are non-exclusive, perpetual, irrevocable, worldwide, fully-paid and royalty-free.

Additional pictures

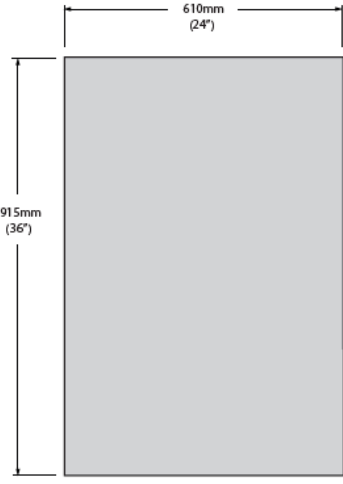
The Minister may request more pictures to be submitted in a separate batch (after the main pictures have been uploaded on the public voting website).

These could include:

- Establishing shot of the area
- Waist-shot portrait of the carver
- Carver prepping his/her tools
- Carver in action: Stacking/assembling
- Carver in action: Using chainsaw
- Carver in action: Finishing phase – Carving small details
- Carver in front of his/her sculpture holding a Canadian flag

ANNEX F –SIGNAGE ELEMENTS TO BE PRODUCED

1. Sandwich board panel (Qty: 4)

Canada	Date: 2/1/2013 Approved: # UH: (mm print) Scale: 1:1	Date: 3 June 2013 Date: # Scale: 1:1	Revision: 01 - 10/14/12 FABRICATION SPECIFICATIONS: SANDWICH BOARD PANEL (A-FRAME) - 24" x 36" (4mm COROPLAST)	<p>FABRICATION SPECIFICATIONS: SANDWICH BOARD PANEL (A-FRAME) - 24" x 36" (4mm COROPLAST)</p> <p>MATERIAL: • 4mm thick white Coroplast</p> <p>GRAPHIC APPLICATION: • Direct print on one side using Coroplast compatible, UV stable, exterior grade inks. • Minimum 600 dpi. • Colours must match specifications in provided art file.</p> <p>DURABILITY: • All graphic reproduction methods and materials used must sustain use for 5 annual 5 week installation periods, in an outdoor summer and/or winter environment.</p>	
Date:	Drawing	Page: 1 of 1			

2. Free-standing Teardrop banners (Qty: 2)

- a. Medium size (approx. W: 38" – H: 115")
- b. Double-sided print
- c. Heavy-duty outdoor base option recommended.



**Artwork files will be shared with the Organization to proceed with the production of the items.*

ANNEX G – INFRASTRUCTURE/EQUIPMENT REQUIREMENTS FOR THE WINTERLUDE NATIONAL ICE-CARVING CHAMPIONSHIP

MANDATORY	NOTES
Iconic Carving Spot	20 X 20 carving area with safety/crowd control infrastructure (<u>i.e.</u> barricades, fencing, stanchions...)
16 Ice Blocks	Ice Blocks must be of <u>Clinebell</u> quality and measure 40X10X20 inches
Electric Chainsaws	2 electrical chainsaws with different size blades
Grinder	4 ½ inch disc grinder and ¼ inch die grinder
1 - Clothing iron	Household type
Access to water	A bucket must be <u>filled with water at all times</u>
Electricity	North American <u>standards</u> : 120 volts, 60 hertz – Generators are not recommended
Work lights to carve after dark and lights to illuminate the sculpture for final shooting	The minimum requirement to illuminate the ice sculpture for <u>photographies</u> is: <ul style="list-style-type: none"> - 3 or 4 LED lights, neutral white (4K-6K kelvin) of 120w minimum each.
Extension cords	2 extension cords (various length)
Scaffolding	Baker style scaffolding
Stepladder	<u>6 foot</u> stepladder
1 Table (wood/plastic)	For tools and equipment
Tarp/isolating material	One (1) 12X12 tarp to protect ice sculpture in case of freezing rain. Cool shield bubble wrap is permitted.
2 - five gallons buckets for water/snow	For water/snow. Can be plastic garbage pails.
Shovel	Carver’s area should always be free of ice and/or snow debris
A 4'x4' piece of plywood	To be used as cutting surface
*** Propane torch	This piece of equipment is permitted but not mandatory
Safety Equipment	Eye protection, chaps, gloves
Material Lift	SL-12 or equivalent to lift/stack blocks
1 - Sandwich board frame (A-frame)	To support 24” x 36” coroplast panels

PROVINCE OF NEW BRUNSWICK

COUNTY OF YORK

AFFIDAVIT OF CORPORATE EXECUTION

I, Jennifer Lawson, of the City of Fredericton, in the County of York and Province of New Brunswick, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the City Clerk of the City of Fredericton, one of the parties named in the foregoing instrument and as such I have personal knowledge of the matters herein deposed to.
2. The seal affixed to the foregoing instrument purporting to be the seal of the City of Fredericton is the Corporate Seal of the City of Fredericton and was so affixed by order of the City Council.
3. The signature "Kate Rogers" subscribed to the foregoing instrument is the signature of Kate Rogers, the Mayor of the City of Fredericton, and the signature "Jennifer Lawson" subscribed thereto is my signature.
4. The Mayor and City Clerk are the officers of the City of Fredericton duly authorized to execute the foregoing instrument.

SWORN TO BEFORE ME at the)
City of Fredericton, in the County)
of York and Province of New)
Brunswick, this ____ day of)
December, 2021.)
)
)
)
)
_____)
A Commissioner of Oaths)
Being a Solicitor)

Jennifer Lawson Murray