



Sponsorship Agreement

City of San José Community Energy Department

AGREEMENT (*the “Agreement”*) made as of this 30th day of August, 2021, by and between Christmas In The Park, Inc., (“CITP”) a California not-for-profit corporation formed under the Internal Revenue Code Section 501 (c)(3)(*the “Association”*), with an address at 171 Branham Lane, Suite 10-234, San José, CA 95136 and City of San José, a municipal corporation (*the “Sponsor”*), with an address at 88 S. 4th St, San José, CA 95113.

WHEREAS, the Association and Sponsor entered into an agreement for Sponsorship considerations for the Christmas in the Park Events (*the “Events”*): Walk-Thru Event (*the “Walk-Thru Event”*), from Friday, November 26, 2021 through January 2, 2022, and Drive-Thru Event (*the “Drive-Thru Event”*), from Friday, November 26, 2021 through January 9, 2022, unless this Agreement is sooner terminated by either party, as provided below; and

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto, each intending to be legally bound hereby, agree as follows:

1. TERM

- (a) The term of this Agreement will commence on August __, 2021 and will continue through January 9, 2022 (*the “Term”*).

2. THE EVENT

As set forth herein, Sponsor and the Association agree to a sponsorship package for the Event.

3. THE ASSOCIATION’S RIGHTS AND OBLIGATIONS

The Association will produce and coordinate the Walk-Thru Event, to be held in San José, California from November 26, 2021 through January 2, 2022 and the Drive-Thru Event also held in San José, California from November 26, 2021 through January 9, 2022.

A. THE ASSOCIATION MUST PROVIDE THE FOLLOWING SERVICES AND PROMOTIONAL CONSIDERATION TO THE SPONSOR:

- (a) The Association must place the Sponsor’s Logo on all marketing promotions including signage, tickets, web site, print ads, social media sites, drive-thru event tickets, various outreach materials and other promotions etc.
- (b) The Association has designated San José Clean Energy as the presenting sponsor of every nightly tree lighting at the Walk-Thru Event, including the opening night tree lighting.
 1. Signs will be built and installed by the Association and placed at the base of the park’s main holiday tree identifying the park as “Powered by San José Clean Energy” or other mutually agreed upon wording.
 - a. Sponsor and Association will collaborate and agree on the look and design of the sign.
 2. Sponsor will be the Official Sponsor of the tree lighting show every hour on the hour from 5:00 p.m. to 11:00 p.m., every night.



- (c) The Association will be the presenting sponsor 1 (one) new custom sign and lighted animation created for Walk-Thru Event and the 1 (one) custom created display from 2020 at the Drive-Thru Event. The new Walk-Thru Event display will be agreed upon by both parties.
 - 1. The new custom sign and lighted animation will be placed on two sides of the Association's all-new 65' tall walk-through Christmas tree.
 - 2. The Sponsor may change the display themes to meet their marketing and communication needs.
 - 3. The Association will provide a designer to produce the above display, which is included in the sponsorship fee.
 - 4. The Association will store the 2020 and 2021 custom displays at CITP Warehouse, 1661 Senter Rd., along with other CITP displays.
 - 5. The Association must provide signage in front of the Sponsor display with Sponsor name and logo as presenting sponsor of the display
 - a. The Sponsor will design the signage.
 - b. Any printing of signage is included in the sponsorship fee.
- (d) The Sponsor will receive a tree to decorate in the Sponsor Tree section of the park.
 - 1. Any Sponsor partners will receive a tree to decorate in the Sponsor Tree section of the park, so long as the Sponsor and Association agree.
- (e) The Sponsor will receive permission to use artwork featuring the Association's mascot Blinky in logo and messages. Artwork must be approved by the Association.
- (f) The Association will provide opportunities for the Sponsor to provide logo, story content or environmental message inclusion in the Christmas Connection Newsletter, an e-newsletter sent out monthly to Association subscribers and weekly during the Events.
- (g) The Association will provide Facebook and other social media platforms and/or web page link from the Association site to the Sponsor site(s).
- (h) Artwork for all signage must be approved by Sponsor and Association.
- (i) Deadlines for artwork and content messaging are to be agreed upon by the Association and the Sponsor so that the Association can meet their production deadlines.
- (j) The Association will notify the Sponsor of additional product and cross-promotional opportunities at the Association's events and will receive first right of refusal to participate, subject to the Association's guidelines.

B. THE SPONSOR WILL PROVIDE:

- (a) The Sponsor will promote the Event and Sponsor's participation in the Event on their social media channels.
- (b) The Sponsor will provide collaboration and project development with Community Energy Department staff.

C. The Association reserves the right to approve any and all changes, communications tactics, messaging and third-party sponsors not specifically identified in this Agreement. In addition, the Sponsor acknowledges and understands the Event is a holiday-oriented, family event and will collaboratively develop and implement their sponsorship in a manner that does not change or alter the event.

D. During the Term of this Agreement, the Association will provide Sponsor use of the Event name and logo. Sponsor's use of the Event logo, including, but not limited to, use in any print or broadcast media,



shall be mutually agreed upon, with approval not to be unreasonably withheld, provided, however, that once a particular use has been approved, substantially similar uses of the logo need not be submitted for additional approvals.

- E. During the Term of this Agreement, the Sponsor will provide the Association use of the Sponsor name and logo. The Association's use of the Sponsor logo, including, but not limited to, use in any print or broadcast media, shall be mutually agreed upon, with approval not to be unreasonably withheld, provided, however, that once a particular use has been approved, substantially similar uses of the logo need not be submitted for additional approvals.
- F. Sponsor acknowledges that the Association cannot guarantee the inclusion of Sponsor in all print, radio or television advertising paid for or provided by third party sponsors, but the Association agrees to use best efforts to include recognition of Sponsor.
- G. Sponsor will be recognized during the Event as outlined above. Sponsor acknowledges however, that it is ultimately the responsibility of Sponsor to promote its name and involvement in the Event.
- H. During the Term of this Agreement, Sponsor shall provide the following services in support of the parties' joint efforts to produce a first-class Event.
 - (a) Promotion of event on Sponsor's social media channels with a link to the Christmas in the Park web site.
- I. Sponsor further consents to the use of any photographs, videotapes, broadcasts, recordings or other records of Sponsors' participation in the Event without any compensation to Sponsor, provided Sponsor is able to obtain releases, waivers and publicity releases from its employees, contractors, vendors, volunteers and any other identifiable individuals who participate in the Event and or Event-related activities on behalf of Sponsor.

4. SPONSORSHIP AND ADVERTISING FEE

Sponsor will pay Association a sponsorship fee of \$20,000.00 on or before (September 30, 2021). This Agreement must be signed and returned to the addressed below on or before (August 31, 2021).

5. EVENT REVIEW, BRANDING AND PROGRAM PROTECTION

The Association acknowledges that the Sponsor cannot enter into a long-term sponsorship agreement. The Association and Sponsor agree to meet in February 2022 to review the 2021 Events and discuss the 2022 Events as part of the Sponsor's budgeting process.

6. INSURANCE REQUIREMENTS

The Association agrees to have and maintain the policies set forth in Exhibit A, entitled "INSURANCE," which is attached to this Agreement as Exhibit A and incorporated herein. All policies, endorsements, certificates or binders shall be subject to approval by the Sponsor's Director of Human Resources or the Director's authorized designee ("Risk Manager"). These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. The Association agrees to provide the City with a copy of said policies, certificates or endorsements before work commences under this Agreement.



7. LIMITATION OF LIABILITY

Each party acknowledges that in no event will it be liable to the other party for any lost profits or consequential or special damages resulting from the other party's failure to perform under the terms of this Agreement. The City's remedy in the event the Association fails to perform its obligations under this Agreement will be, in addition to any other remedies at law or in equity, refund of the sponsorship and advertising fee identified in Section 4 of this Agreement.

8. DESIGNATED FUND

Any obligations and liabilities under this Agreement are special limited obligations of the City's Department of Energy payable solely from the Designated Fund (defined as the San Jose Energy Operating Fund established pursuant to City of San Jose Municipal Code, Title 4, Part 63, Section 4.80.4050 et seq.) ("Designated Fund").

9. RULES

Sponsor and the Association, on their behalf and on behalf of their respective employees, contractors, vendors, volunteers and participants, agree to follow all reasonable documented rules with regard to participation in the Event or any Event – related activity and that all such rules shall be applied in a non-discriminatory manner.

10. ASSIGNMENT

This Agreement cannot be assigned by either party without the other party's prior written consent, which may not be unreasonably withheld or delayed.

11. GOVERNING LAW

California law will govern this Agreement, both as to interpretation and performance. Venue for any action to interpret or enforce this Agreement must be in Santa Clara County, California.

12. MODIFICATION, AMENDMENT, WAIVER

No modification, amendment, or waiver of any provision of this Agreement will be effective unless approved in writing by both parties. The failure of either party at any time to enforce any of the provisions of this Agreement will not be construed as a waiver of such provision and will not affect the right of such party thereafter to enforce each and every provision of this Agreement in accordance with the terms set forth herein.

13. SEVERABILITY

If any term or condition of this Agreement is found to be illegal or unenforceable by a court of competent jurisdiction, all other terms and conditions in this Agreement will remain in full force and effect providing that the parties' intent in entering into this Agreement can still be fulfilled.

14. NOTICES

Any notice, consent, or waiver given in connection with this Agreement must be in writing to be effective and shall be deemed to have been given upon (i) receipt of electronic confirmation of delivery by facsimile; (ii) hand delivery to the receiving party; (iii) the second day if delivered by a recognized overnight courier system; (iv) the third day after sending via first class mail; or (v) one day following transmission via electronic mail.



Notices to Sponsor shall be sent to:

Raul Hernandez
City of San José, Community Energy Department
200 E. Santa Clara St.
San José, CA 95113
(408) 477-5190
E-Mail: raul.hernandez@sanjoseca.gov

Notices to the Association shall be sent to:

Jason Minsky
Christmas in the Park, Inc.
171 Branham Ln., Suite 10-234
San José, CA 95136
(408) 297-9627
E-Mail: jason@christmasinthepark.com
Facsimile: (408) 286-3682

14. ENTIRE AGREEMENT

This Agreement and the attached Exhibit(s), if any, constitute the entire Agreement of the parties and may not be modified except in writing, signed by both parties. No other proposals, oral or written statements, not incorporated herein, constitute a part of this Agreement. Nothing in this Agreement is intended to modify or supersede the Agreement Between the City of San Jose and Christmas in the Park, Inc. for the Promotion and Production of Christmas in the Park (Production Agreement). To the extent that any provisions of this Agreement conflict with the Production Agreement, the terms of the Production Agreement control. Christmas in the Park, Inc. shall provide the Sponsor with no less than thirty (30) calendar days prior written notice of its intention to cancel term of this Agreement.

CITY OF SAN JOSE, a Municipal Corporation:

SIGNATURE: × Sarah Zarate
Sarah Zarate (8/30/2021)
Email: sarah.zarate@sanjoseca.gov

Sarah Zarate
Director, City Manager's Office

APPROVED AS TO FORM:

× Lynne E. Lampros
Lynne Lampros (8/25/2021)
Email: lynne.lampros@sanjoseca.gov

Lynne Lampros
[Sr.] Deputy City Attorney

FOR CHRISTMAS IN THE PARK, INC.:

SIGNATURE: × Jason Minsky
jason@christmasinthepark.com (8/25/2021)
Email: jason@christmasinthepark.com

JASON MINSKY, EXECUTIVE DIRECTOR

**Return original to: Christmas in the Park, Inc., 171 Branham Ln., Ste. 10-234, San José, CA 95136*



EXHIBIT A

INSURANCE REQUIREMENTS

ASSOCIATION, at ASSOCIATION'S sole cost and expense, shall procure and maintain for the duration of the AGREEMENT (or for such longer periods as may be specified below) insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the work hereunder by the ASSOCIATION, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the ASSOCIATION'S bid.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage "occurrence" form CG 0001; and
2. The coverage provided by Insurance Services Office form number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.
4. Property, casualty insurance or self-insurance for all personal property, contents or materials of LICENSEE, its licensees, contractors or materials men or subcontractors stored at, on or about the Access Area.
5. Inland marine insurance of self-insurance for all personal property, contents or materials of LICENSEE, its licensees, contractors, or subcontractors for property that is transported by SPONSOR or onto or off of the Access Area.

There shall be no endorsements reducing the scope of coverage required above unless approved by the SPONSOR's Risk Manager.

B. Minimum Limits of Insurance

ASSOCIATION shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.



2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.
4. Property casualty insurance or a program of self-insurance in an amount not less than one hundred percent (100%) of the actual replacement value of any materials, property, or stored items on or behalf of, by or through LICENSEE at the Access Area (without any deduction being made for depreciation) against all perils as are embraced and covered by all-risk endorsements approve for use in the State of California.
5. Inland marine insurance of self-insurance in an amount not less than one-hundred percent (100%) of the actual replacement value on a scheduled or blanket policy for all property in transit including loading and unloading of property.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by, the SPONSOR. At the option of the SPONSOR, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the SPONSOR, its officials, employees, agents and contractors; or the ASSOCIATION shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the SPONSOR.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverages

- a. The SPONSOR, its officials, employees, agents and contractors are to be covered as additional insureds as respects: liability arising out of activities performed by, or on behalf of, the ASSOCIATION; products and completed operations of the ASSOCIATION; premises owned, leased or used by the ASSOCIATION; or automobiles owned, leased, hired or borrowed by the ASSOCIATION. The coverage shall contain no special limitations on the scope of protection afforded to the SPONSOR, its officials, employees, agents and contractors.
- b. The ASSOCIATION's insurance coverage shall be primary insurance as respects the SPONSOR, its officials, employees, agents and contractors. Any insurance or self-insurance maintained by the SPONSOR, its officials, employees, agents or contractors shall be excess of the contractor's insurance and shall not contribute with it.



- c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the SPONSOR, its officials, employees, agents, or contractors.
 - d. Coverage shall state that the ASSOCIATION's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - e. Coverage shall contain a waiver of subrogation in favor of the SPONSOR, its officials, employees, agents and contractors.
2. Workers' Compensation and Employers Liability; Property & Casualty; and Inland Marine Insurance

Coverage shall be endorsed to state carrier waives its rights of subrogation against the SPONSOR, its officials, agents and contractors.

3. All coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the SPONSOR; except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium.

E. Acceptability of Insurance

Insurance is to be placed with insurers acceptable to the SPONSOR's Risk Manager.

F. Verification of Coverage

ASSOCIATION shall furnish the SPONSOR with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Copies of all the required ENDORSEMENTS shall be attached to the CERTIFICATE OF INSURANCE which shall be provided by the ASSOCIATION's insurance company as evidence of the stipulated coverages.

Proof of insurance shall be either emailed in pdf format to: Riskmgmt@sanjoseca.gov, or mailed to the following postal address (or any subsequent email or postal address as may be directed in writing by the Risk Manager):



City of San José - Finance
Risk Management
200 East Santa Clara St.
San José, CA 95113-1905

G. Subcontractors

ASSOCIATION shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.