

Sonoma-Marín Area Rail Transit District  
Special-Event Permit # 2021-SEP-XXX

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Date: 10/4/20XX

### SPECIAL-EVENT PERMIT

This Special Event Permit (“Permit”), dated \_\_\_\_\_, is made and entered into by and between the SONOMA-MARIN AREA RAIL TRANSIT DISTRICT, a public agency, (hereinafter called “SMART”), and \_\_\_\_\_ (hereinafter called “Permittee”), \_\_\_\_\_ (address). SMART and Permittee are sometimes collectively referred to herein as the "parties" and singularly, a "party."

1. **Permit.** Subject to the terms and conditions more particularly set forth herein, permission is hereby given to Permittee to enter upon Permitter's property located at \_\_\_\_\_, County of Sonoma, California, near Milepost \_\_\_\_\_, as described in the attached **Exhibit A** ("Premises").
2. **Purpose.** The permitted purpose of Permit shall be solely for the Bike MS: Waves to Wine 2-day fundraising cycling event raising funds to support programs and services that help people affected by multiple sclerosis, as described in the attached **Exhibit B**. If access routes are not specifically described in Permit exhibits, Permittee shall be entitled to use only the access route(s) designated by SMART. Permittee shall have no right or privilege in any respect whatsoever to use any other part of the property of SMART for any purpose whatsoever. No other uses shall be permitted.
3. **Term.** This Permit shall be effective on \_\_\_\_\_ at such time as the fees identified in Section 15 have been paid and shall automatically terminate on \_\_\_\_\_ unless extended by mutual written agreement.
4. **Protection of Traffic.** Depending on the event, Permittee may be required to hire a railroad approved EIC contractor, at Permittee's expense, for the duration of activity within SMART's right of way. Permittee may choose from any contractor on Permitter's approved list or submit an alternate EIC contractor for consideration. Permitter will reserve the right to approve or deny any alternate EIC contractor submissions. The EIC must be onsite during all activity in the railroad right of way. Depending on the event, one or more flaggers may also be required at Permittee's expense.
5. **Indemnity.** Permittee hereby agrees to assume all liability and obligation for, and to defend and indemnify and hold harmless SMART, its successors and assigns, any railroad company operating on Premises, and their respective directors, officers, employees, agents, and representatives from and against, any and all claims, demands, liability, actions, causes of action, damages, cost, and expense asserted by any person

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(whether or not a participant in Permittee's event or activity), firm or entity of any kind, direct or indirect, relating to or arising out of or in connection with the use, maintenance, operation or condition of SMART's property or facilities, by Permittee, its agents, employees, representatives, independent contractors and invitees.

This agreement to defend and indemnify includes (but is not limited to) claims, demands, liability, causes of action, damages, costs, and expenses, including attorney's fees:

- A. For personal injuries, mental or emotional distress, wrongful death, loss of consortium, loss of income, loss of earning power or capacity, any other pecuniary, economic, monetary, or financial damage of any kind, suffered by any person or entity whatsoever (hereinafter collectively "Injuries and Damages").
- B. For such Injuries and Damages suffered by any person or entity by reason of the relocation or redirection of activities from one location to another in order to accommodate Permittee's event or activity.
- C. Whether or not there is negligence or other fault (including fault based on strict liability or the dangerous condition of property) of any person, firm, or entity (including without limitation, SMART, its contractors, subcontractors, permittees, and licensees, members of the public, and any other person, firm, or entity, and the employees, agents, and representatives of any of the foregoing or of SMART, whether or not connected with or participating in the event for which this Permit is issued), and whether or not the fault or negligence of any such person, firm, or entity is or is claimed or alleged to be the sole negligence of such person, firm, or entity, or concurrent negligence or fault.

Permittee's duty to defend SMART shall include the duty to provide legal representation, at Permittee's sole expense, in any and all actions, suits, and other legal proceedings, and to pay any and all costs or expenses associated therewith, including, but not limited to, SMART's own labor and administrative costs and expenses.

6. **Insurance.** With respect to the rights granted hereunder, Permittee shall maintain and shall require all of its subcontractors to maintain insurance as described below:

6.1 **Commercial General Liability.** Commercial General Liability insurance, including liquor liability, covering bodily injury and property damage utilizing an occurrence policy form, in an amount no less than One Million Dollars (\$1,000,000) combined single limit for each occurrence. Said Commercial General Liability insurance policy shall either be endorsed with the following specific language or contain equivalent language in the policy:

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a. " Sonoma-Marín Area Rail Transit District, its officers and employees, is named as additional insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Agreement."

b. "The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability."

c. "The insurance provided herein is primary coverage to the Sonoma-Marín Area Rail Transit District with respect to any insurance or self-insurance programs maintained by the Sonoma-Marín Area Rail Transit District."

d. Said policy shall include a Railroads CG 24 17 endorsement removing the exclusion of coverage, if applicable, for bodily injury or property damage arising out of operations within 50 feet of any railroad property.

6.2 Documentation. The following documentation shall be submitted to SMART:

a. Properly executed Certificates of Insurance clearly evidencing all coverages, limits, and endorsements required above. Said Certificates shall be submitted prior to the execution of this Agreement.

b. Signed copies of the specified endorsements for each policy. Said endorsement copies shall be submitted within thirty (30) days of the execution of Permit.

c. Upon SMART's written request, certified copies of insurance policies. Said policy copies shall be submitted within thirty (30) days of SMART's request.

6.3 Policy Obligations. Permittee's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

6.4 Material Breach. If Permittee, for any reasons, fails to maintain insurance coverage which is required pursuant to this Permit, the same shall be deemed a material breach of this Permit. SMART, at its sole option, may terminate this Permit and obtain damages from Permittee resulting from said breach. Alternatively, SMART may purchase such required insurance coverage, and Permittee shall immediately reimburse SMART for any premium costs advanced

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by SMART for such insurance. These remedies shall be in addition to any other remedies available to the SMART.

7. Liability for Loss or Damage to SMART Property. Permittee shall be liable to SMART for any loss or damage to the Premises arising from or in connection with Permittee's performance hereunder or any of its officers, agents, and employees.
8. Non liability of SMART. In connection with this Permit, SMART, its officers, agents, and employees shall not be liable to Permittee for any loss or damage to Permittee or Permittee's property from any cause. Permittee expressly waives all claims against SMART, its officers, agents, and employees, unless such injury or damage is caused by or due to the negligence or willful misconduct of SMART, its officers, agents, and employees. PERMITTEE HEREBY AGREES TO ACCEPT THE PREMISES IN ITS "AS-IS" PHYSICAL CONDITION AND ITS "AS-IS" STATE OF REPAIR.
9. Waste; Nuisance. Permittee shall not commit, suffer, or permit the commission by others of: (i) any waste or nuisance on the Premises; (ii) any action or use of the Premises which interferes or conflicts with the use of the Premises by SMART or any authorized person; or (iii) any action on the Premises in violation of any laws or ordinances.
10. Compliance with Laws. Permittee agrees to fully comply with all Federal, State and local laws, rules regulations, and ordinances, and, prior to commencing any operations on SMART Property, Permittee shall provide SMART with evidence and written assurance that all necessary permits have been obtained.
11. Extent of Grant of Permit. This agreement and the Permit herein granted are valid only to the extent of SMART's jurisdiction as a land owner or tenant of the Premises. Acquisition of any other necessary permits or entitlements for use is the responsibility of Permittee. NOTHING CONTAINED IN THIS AGREEMENT SHALL BE CONSTRUED AS A RELINQUISHMENT OF ANY RIGHTS NOW HELD BY SMART.
12. Surrender. Upon the expiration or sooner termination of this Permit, Permittee, at its sole cost and expense, shall remove, revise, or relocate such of its structures and equipment as is designated by SMART, restore the Premises to its original condition, and vacate the Premises. Should Permittee neglect to restore the Premises to a condition satisfactory to SMART, SMART may perform such work or have the work performed and Permittee shall immediately reimburse SMART for all direct and indirect costs associated with such work upon receipt of a statement therefor. At Permittee's sole cost, shall maintain property in a neat, clean, and orderly condition at all times. No alterations of a lasting or permanent nature are authorized or permitted to SMART's property or facilities.
13. SMART Rules & Regulations. The rules and regulations attached hereto as **Exhibit C**,

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as well as such rules and regulations as may be adopted by SMART and provided to Permittee for the safety, care and cleanliness of the Premises and the preservation of good order thereon are hereby expressly made a part hereof, and Permittee hereby agrees to comply with them.

14. Relationship. The parties intend by this Permit to establish the relationship of licensor and licensee only, and do not intend to create a partnership, joint venture, joint enterprise, or any business relationship other than that of licensor and licensee. Permittee, its officers, agents, and employees shall act in an independent capacity and shall not represent themselves to be or be construed to be officers, agents, or employees of SMART.
15. Permit is Personal. The Permit herein granted is personal to Permittee and no right hereunder may be assigned, sublet, or otherwise transferred in whole or in part without the prior written consent of SMART, and any attempt to assign, sublet or transfer shall be of no force or effect whatsoever unless and until SMART shall have given its written consent thereto. SMART may withhold its consent for any reason.
16. Permit Fees. As compensation for use of Premises, Permittee shall pay the costs for review of Permit application, preparation of Permit, and any inspection of activity or construction authorized by this Permit, including but not limited to, expenses incurred by Permitter, which costs and expenses Permittee shall pay upon demand. Permittee shall pay to Permitter upon execution hereof the sum of Two Hundred Dollars per day (\$200.00/day), which is an estimate of such costs and expenses. Any additional costs for inspectors/safety monitors will be billed at the completion of work.
17. License Not a Lease. This Permit does not constitute a lease, but constitutes a mere revocable license and Permittee is limited to the use of the Premises expressly and specifically described above. Permittee disclaims any interest that when coupled with the Permit herein granted would render it irrevocable.
18. Inspection. SMART shall be permitted to enter and inspect the licensed Premises at any and all times.
19. Incorporation of Prior Agreements; Amendments. This Permit contains all the agreements of the parties with respect to any matter mentioned herein. No prior agreement or understanding pertaining to any such matter shall be effective. This Permit may be modified in writing only, signed by both parties.
20. Binding Effect; Choice of Law. This Permit shall be binding upon and inure to the benefit of the parties. This Permit shall be governed by the laws of the State of California and any action to enforce the terms of this Permit or for the breach thereof shall be brought and tried in the County of Sonoma.



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- 21. No Continuing Waiver. The waiver by SMART of any breach of any of the provisions of this Permit shall not constitute a continuing waiver of any subsequent breach of the same, or of any other provision of this Permit.
- 22. Termination by SMART. Failure to comply with the terms and conditions of this Permit shall entitle SMART, without waiver of any other remedies it may have in law or equity, to terminate this Permit without notice.

PERMITTEE HAS CAREFULLY READ AND CONSIDERED THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT AND HEREBY AGREES THAT PERMITTEE SHALL BE BOUND BY ALL SAID TERMS AND CONDITIONS.

Issued by:  
**SMART: SONOMA-MARIN AREA RAIL TRANSIT DISTRICT**  
5401 Old Redwood Highway, 2nd Floor  
Petaluma, CA 94954  
Attention: Real Estate Manager

\_\_\_\_\_  
Randy Friedland  
Real Estate Manager

\_\_\_\_\_  
Date

Accepted By:  
**(PERMITEE)**

By: \_\_\_\_\_ \*  
TITLE:

\_\_\_\_\_  
Date

*\*Who by his/her signature herein above represents that he/she has been duly vested with authority to sign this instrument on behalf of Permittee.*



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**EXHIBIT A**

SAMPLE



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**EXHIBIT B**

SAMPLE





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## EXHIBIT C

### RULES AND REGULATIONS

1. No permanent sign, placard, picture, advertisement, name or notice shall be inscribed, displayed, printed or affixed on or to any part of the outside or inside of the Premises without the written consent of SMART first had and obtained, and SMART shall have the right to remove any such sign, placard, picture, advertisement, name or notice without notice to and at the expense of Permittee.
2. Sidewalks, stairways, and driveways shall not be obstructed by Permittee or used for any purpose other than for ingress to and egress from the Premises.
3. Permittee shall not permit the consumption of alcoholic beverages on the Premises.
4. Permittee shall not use, keep or permit to be used or kept any foul or noxious gas or substance in the Premises, or permit or suffer the Premises to be occupied or used in a manner offensive or objectionable to the SMART by reason of noise, odors and/or vibrations, or interfere in any way with other occupants or those having business therein, nor shall any animals or birds be brought in or kept in or about the Premises. Disability assistance animals shall, however, be permitted in the Premises.
5. No cooking shall be done or permitted on the Premises by Permittee nor shall the Premises be used for the storage of merchandise, for washing clothes, for lodging, or for any improper, objectionable or immoral purposes.
6. Permittee shall not use, permit use, or keep in the Premises any kerosene, gasoline or inflammable or combustible fluid or other hazardous material, or use any method of heating or air conditioning other than that supplied by SMART, if any.
7. Permittee will make no changes to existing utilities (i.e. water, electrical) at the Premises.
8. SMART reserves the right to exclude or expel from the Premises any person who, in the judgment of SMART, is intoxicated or under the influence of liquor or drugs, or who shall in any manner do any act in violation of any of these rules and regulations or the Permit to which these rules and regulations are made a part.
9. Permittee will have a representative on Premises at all times during the term of this Permit. Permittee's on-Premises representative will have knowledge of this Permit and agrees to enforce its rules and regulations on behalf of SMART.