SUP Crossing Agreement

[Trail Sponsor]

Federal ID No.: \_\_\_\_\_\_\_\_\_

PENNDOT Agreement No.: \_\_\_\_\_\_\_\_\_\_\_\_

Shared Use Path Crossing Agreement

(Master Agreement – PENNDOT and [Trail Sponsor])

THIS Agreement, made and entered into this \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, by and between the Department of Transportation, an executive agency of the Commonwealth of Pennsylvania, acting through its proper officials (“PENNDOT”),

a n d

[Trail Sponsor], having an address of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Shared Use Path Group”).

W I T N E S S E T H:

WHEREAS, PENNDOT has jurisdiction and control over State-designated highways throughout the Commonwealth; and,

WHEREAS, the Shared Use Path Group is currently maintaining or constructing a Shared Use Path or Shared Use Paths for public use and enjoyment that will cross a State-designated highway or highways; and,

WHEREAS, certain minimum conditions and standards are appropriate in relation to the intersection of Shared Use Paths and State-designated highways for the safety of both motorists and Shared Use Path users; and,

WHEREAS, the Shared Use Path Group and PENNDOT are willing to work together to ensure the safe and effective coordination and movement of Shared Use Path users and motor vehicle traffic at Shared Use Path/highway crossings as indicated in this Agreement.

NOW, THEREFORE, intending to be legally bound, the parties to this Agreement hereby agree to the following:

1. DEFINITIONS - The following words and terms shall have the following meanings in this Agreement, unless the context clearly indicates otherwise:
   1. Crossing - any at-grade intersection of a Shared Use Path and a Highway.
   2. Divided Highway – A highway divided into two or more roadways and so constructed as to impede vehicular traffic between the roadways by providing an intervening space, physical barrier, or clearly indicated dividing section.
   3. Existing Crossing – A crossing maintained by the Shared Use Path Group that is in existence on the effective date of this Agreement.
   4. Shared Use Path – Any paved or unpaved trail located outside of highway right-of-way and physically separated from motorized vehicular traffic by an open space or barrier, designed, built, cleared, marked and maintained for use by pedestrians, pedacyclists, wheelchair users, and other non-motorized users, but not for use by any all-terrain vehicles or snowmobiles.
   5. Shared Use Path delineators - Flexible posts designed to designate the location of a Shared Use Path and guide Shared Use Path users.
   6. Shared Use Path markings – Paint, tape or adhesive labels designed to designate the location of a Shared Use Path and guide Shared Use Path users.
   7. Shared Use Path signs – Signs erected on a Shared Use Path to provide information to Shared Use Path users.
   8. Highway - A roadway on the system of State highways, including the entire width between right-of-way lines, over which PENNDOT has jurisdiction.
   9. Highway markings - Lines painted on the cartway of a Highway to control pedestrian traffic.
   10. Highway signs – Signs, signals, markings and devices placed or erected for the purpose of regulating, warning or guiding traffic.
   11. Limited access highway – A highway to which owners or occupants of abutting lands and other persons have no right of access except at points and in the manner determined by PENNDOT.
   12. Shared Use Path sight distance - The distance required by a Shared Use Path user to determine if it is safe to proceed to cross the travel lanes of the highway at a Crossing, measured as set forth in Paragraph 10, below.
   13. Stopping sight distance – The distance required by a driver traveling at a given speed to stop the vehicle after an object on the roadway becomes visible to the driver, measured as set forth in Paragraph 10, below.
2. SCOPE – This Agreement is applicable to all at-grade crossings of State highways created or maintained by the Shared Use Path Group in \_\_\_\_\_\_\_\_\_\_\_\_ [District/County]. This Agreement does not apply to separated grade crossings such as bridges or tunnels, footpaths-only crossings, or longitudinal occupancies of a Highway by a Shared Use Path except for very limited lengths approved as part of a Crossing Plan necessary to connect non-parallel crossing points.
3. CROSSING NOTIFICATION PROCEDURES –
   1. When proposing to create or relocate a Crossing, the Shared Use Path Group will provide the applicable PENNDOT Engineering District with a proposed plan (Crossing Plan) depicting the Crossing intersection. The Shared Use Path Group will provide written notice to the appropriate Department Engineering Office of any proposed reconstruction of the Crossing.
   2. The Crossing Plan shall include:
      * 1. Name of Shared Use Path.
        2. Name, address, and contact information of the Shared Use Path Group.
        3. State Route number and common name of the State highways that will be crossed.
        4. Segment and offset location of each Crossing. This information is available from the appropriate District office. Location must be field measured from official markers. If the Shared Use Path Group is unable to obtain the Segment and Offset for the location, locating the Crossing by latitude and longitude is acceptable.
        5. Measurements of sight distances at each Crossing as set forth in Paragraph 10, below.
        6. A brief narrative description of the Shared Use Path use, including marking procedures.
        7. Any and all proposed signs, roadway markings and any proposed audible or flashing warning devices to be placed on the Shared Use Path approaches and within the Highway.
           1. PENNDOT may determine that advance warning signs must be placed at the Shared Use Path approaches to certain Crossings.
           2. To the extent that advance warning signs are determined by PENNDOT to be necessary at a Crossing, PENNDOT will direct the Shared Use Path Group to include such signs in a revised or supplemental Crossing Plan.
        8. Any proposed drainage facilities to be placed within the Shared Use Path approaches and within the Highway.
        9. Any proposed vegetation removal, trimming, etc. proposed within the Highway.
        10. The following statement: “\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the [CEO, Manager, Director, Chairman, President, etc.] of the [Trail Sponsor] the has read, understands, and will ensure that [Trail Sponsor] will comply with the provisions and limitations of the Shared Use Path Crossing Agreement between PENNDOT and [Trail Sponsor] dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_.
   3. Appropriate PENNDOT personnel will provide assistance and guidance to the Shared Use Path Group in generating the Crossing Plan, as necessary.
   4. PENNDOT will review the Crossing Plan and accept or suggest modifications to the plan. If negative traffic safety conditions are identified, PENNDOT may take one of the following actions:
      1. Make changes to the Crossing plan to mitigate such negative traffic safety conditions.
      2. Require the Shared Use Path Group to make changes to the Crossing Plan to mitigate such negative traffic safety conditions; or
      3. Require the Shared Use Path Group to conduct a traffic safety study to analyze the Crossing and traffic safety conditions and suggest possible solutions. *See* Exhibit A (describing the required traffic safety study), attached hereto and incorporated herein by reference.
   5. When it accepts a Crossing Plan, either without or with modifications, PENNDOT will provide the Shared Use Path Group with written approval of the Crossing Plan and authorize creation of the Crossing consistent with the provisions of this Agreement.
   6. The Shared Use Path Group shall notify PENNDOT when construction of the Crossing is completed.
4. RECORD OF CROSSINGS - PENNDOT will maintain a record of the Crossings approved and opened under this Agreement, along with other Shared Use Path Crossings, reasonably available for public inspection and public use.
5. CROSSING RESPONSIBILITY; PENNDOT – PENNDOT will maintain the Highway and facilities located thereon, including but not limited to, Highway signs and Highway markings, if any, as depicted on the approved Crossing Plan.
6. CROSSING RESPONSIBILITY; SHARED USE PATH GROUP - The Shared Use Path Group will maintain the Shared Use Path and Shared Use Path signs, markings and delineators, if any, as depicted on the approved Crossing Plan. The Shared Use Path Group will do so in such a manner as to safely accommodate the proposed Shared Use Path and any usage incident to the operation of the Shared Use Path. In addition, the Shared Use Path Group shall keep the Highway free of all material which may be deposited onto the Highway during the performance of any and all work related to the construction, maintenance and use of the Shared Use Path.
7. LIMITATIONS - The following limitations apply to the Shared Use Path Group:
   1. No Shared Use Path may cross a limited access highway at-grade. In the event a Shared Use Path must cross a limited access highway, a separated grade crossing must be created and will be governed by a separate agreement with PENNDOT.
   2. No Shared Use Path will cross a divided highway, except at places where existing non-motorized traffic crosses the median, and only where non-motorized crossing has not been prohibited by placement of official signs.
   3. No excavation work within the Highway will be required or performed by the Shared Use Path Group to establish or maintain the Crossing.
   4. The Shared Use Path Group will not remove or alter any Highway facilities without written notice to, and written approval from, the appropriate Department District Engineering Office.
   5. No parking or trailhead area will be allowed at a Crossing without the issuance of a separate Highway Occupancy Permit by PENNDOT.
   6. No utility or utility facility will be allowed at a Crossing without the issuance of a separate Highway Occupancy Permit by PENNDOT to the utility. In the event a non-carrier public utility or any wireless telecommunications company requests permission from the Shared Use Path Group to place, bury, or otherwise affix any facilities upon, in or adjacent to a Crossing, the Shared Use Path Group will notify PENNDOT so that PENNDOT can ensure that the utility complies with 67 Pa. Code § 459 *et seq*., in regard to any facilities within a Highway.
   7. No motor vehicular use of a Shared Use Path within a Crossing is allowed, except where the Shared Use Path Group has included on the approved Crossing Plan a design for a removable barricade for the purpose of allowing limited motor vehicle access. The types of motor vehicles allowed to access the Shared Use Path via the removable barricade(s) are limited to the following: Local, State and Federal law enforcement vehicles, fire department, ambulance and other emergency response vehicles, non-carrier public utility vehicles and Shared Use Path Group maintenance vehicles.
   8. Vegetation, such as tall grass or weeds, overhanging branches, or small saplings, may be cleared to open the Shared Use Path route only as set forth on the Crossing Plan. Vegetation may be cleared only by hand, or by hand-carried or hand-pushed equipment, provided no excavation work is performed. Ornamental vegetation planted for highway beautification purposes may not be cut, mowed, or trimmed except as specifically set forth in an approved Crossing Plan.
   9. No objects may be placed over, nor cuts made in, guiderail or fencing placed by PENNDOT, except as specifically set forth in an approved Crossing Plan.
   10. In certain cases, a queuing area may be necessary at certain crossings in order to accommodate a high volume of Shared Use Path users who may have to wait for a gap in traffic to cross the highway. To the extent that a queuing area would require any modification or alteration of the adjacent PENNDOT right of way, the cost of such work shall be the responsibility of the Shared Use Path Group, whether or not the actual work is performed by PENNDOT or the Shared Use Path Group.
8. SIGNS, MARKINGS, AND DELINEATORS – Shared Use Path signs, delineators, and markings and Highway signs and markings may only be placed within Crossings in accordance with the Crossing Plan and the following guidelines:
   1. Shared Use Path and Highway Signs – Shared Use Path and Highway Signs will be placed within Crossings in a manner that will not endanger the traveling public. Signs placed within Crossings will be of a breakaway construction in conformance with PENNDOT’s Traffic Control Signing Standards (TC-8700).
   2. Shared Use Path Markings – Shared Use Path markings will not be placed within Crossings unless absolutely necessary. If used, the following criteria will apply:
      1. Only paint, tape, or adhesive labels in the recreational Shared Use Path’s characteristic color scheme will be used.
      2. No high reflectivity paint, tape, or labels will be used.
      3. Marks will not exceed six inches in any dimension.
      4. No more than two sets of marks will be placed on any single object.
      5. Marks will be placed at intervals no closer than required to allow a Shared Use Path user located at one mark to just see the next mark along the Shared Use Path.
      6. No marks will be placed on PENNDOT sign posts.
      7. No marks will be placed on pavement.
      8. No marks will be placed on the face of guiderail girders. Marks may be placed on guiderail mounting posts below or behind the girders.
      9. No marks will be placed on decorative bridge rail nor on decorative light poles.
      10. If objects not placed by PENNDOT are present within the Crossing, such as trees or utility poles, these other objects may be marked if permission is gained from the object owner. Indeed, if available and permitted, such other objects will be marked in preference to any object placed within the Highway by PENNDOT. However, the Shared Use Path Group assumes sole responsibility for coordinating marking procedures with the objects’ owners. For instance, no trees will be marked without permission of the abutting or underlying property owner.
   3. Highway markings – Highway markings will only be made in accordance with Section 11.9 (“Unsignalized Midblock Crosswalks”) of PENNDOT Publication 46, entitled “Traffic Engineering Manual.”
   4. Delineators - Delineators will not be placed within Crossings unless absolutely necessary and only where no existing objects are available to be marked. If used, delineators shall be placed no closer than ten feet behind guiderail or ten feet behind the edge of improved shoulders if no guiderail exists. In addition, delineators should be placed only beyond typical roadside mowing limits evident at the Crossing. Delineators shall be placed by hand methods not involving excavation work. Delineators shall not extend more than 54 inches above grade. High reflectivity delineators are not permitted. The preferred type of flexible post delineator is the Carsonite brand or its equivalent.
   5. Outside the Crossing - The Shared Use Path Group reserves its right to place Shared Use Path signs, markings, and delineators in areas of the Shared Use Path outside of the Highway at its discretion.
9. DRAINAGE - No drainage facilities associated with a Shared Use Path, whether within a Crossing or not, may discharge water or any other substance onto a Highway without first obtaining a Highway Occupancy Permit from PENNDOT. No drainage facilities associated with a Shared Use Path may alter the existing drainage pattern or the existing flow of drainage water in the area of a Crossing. All Shared Use Paths shall accommodate, when and where necessary, drainage facilities needed for proper roadway drainage.
10. CROSSING SIGHT DISTANCES – Sight distance shall be measured as follows:
    1. Sight distance shall be measured by the following formula: d = 1.47V(tg), where d = crossing sight distance required along the highway; V = design speed (mi/hr) of the highway to be crossed; and, tg = time required for pedestrians to cross the highway. This includes two (2) seconds for perception-reaction time plus the time it takes a pedestrian to walk across the highway. The time to walk across the highway is determined by dividing the highway distance to be crossed measured in feet (not including the shoulder) by the walking speed of the pedestrian which is assumed to be 3.5 feet per second.
    2. Stopping sight distance shall be measured as defined in the most current edition of PENNDOT Design Manual Part 2, Chapter 2.17.
11. CONSTRUCTION - The Shared Use Path Group will be responsible for the completion of all work shown on a Crossing Plan except PENNDOT will erect all Highway signs and make all Highway markings. The construction shall be performed consistent with the Crossing Plan.
12. TRAFFIC CONTROL - Where any work is being performed in a Crossing, the Shared Use Path Group will implement proper maintenance and protection of traffic in accordance with PENNDOT Publication 213, entitled “Work Zone Traffic Control,” or its successor. PENNDOT will provide guidance to the Shared Use Path Group in complying with this Publication.
13. LIABILITY - Compliance with this Agreement, Notification of a Crossing, and the use of Crossings do not require or commit PENNDOT to accept any liability to any party for safe passage along or across a Shared Use Path or Crossing, nor for maintaining a Shared Use Path or Crossing. The Shared Use Path Group, by establishing and maintaining a Crossing, assumes all liability and waives no defense to liability as provided by law. PENNDOT assumes no liability and waives no defense to liability as provided by law, either to the Shared Use Path Group or to any third party.
14. EXISTING CROSSINGS - Unless altered, Existing Crossings may remain in place without further approval, but are subject to all the terms and conditions of this Agreement except as inconsistent with the terms of this paragraph. In the event PENNDOT determines an Existing Crossing may be dangerous due to a traffic accident or accidents at the Existing Crossing or the lack of adequate sight distance at the Existing Crossing, PENNDOT may require the Shared Use Path Group to follow the Shared Use Path notification procedures set forth above, subject to the following procedures:
    1. PENNDOT may require the Shared Use Path Group to temporarily cease use of the Existing Crossing. If so notified in writing by PENNDOT, the Shared Use Path Group will barricade and prevent further use of the Existing Crossing until further notice from PENNDOT.
    2. When it accepts a Crossing Plan, either without or with modifications, PENNDOT will provide the Shared Use Path Group with written approval of the Crossing Plan and authorization to perform any alterations required to the Existing Crossing under the Crossing Plan.
    3. The Shared Use Path Group shall notify PENNDOT when any required alterations to the Crossing are completed, at which time PENNDOT will provide the Shared Use Path Group with approval to use the Existing Crossing consistent with the provisions of this Agreement.
15. APPLICABLE RULES AND REGULATIONS - All work authorized by this Agreement, and approved by PENNDOT, shall be subject to all applicable Federal, State and local laws, rules, and regulations.
16. INDEMNITY - The Shared Use Path Group agrees to indemnify fully and, if requested, defend the PENNDOT from any and all liability, loss or damage to persons or property which the PENNDOT, its officers, agents and employees individually may suffer as a result of any and all claims, demands, costs, or judgments of any type arising against it or them directly as a result of this Agreement, including, but not limited to, claims, demands, costs or judgment of any type arising as a result of any and all activities of Shared Use Path Group, its agents, employees, or others at the subject Crossing(s) or any work or other actions taken by any of them pursuant to or in violation of this Agreement, or as a result of any failure of any of them to conform to all pertinent statutes, ordinances, regulations or other requirements of any governmental authority in connection with this Agreement, or as a result of claims arising from the planning, design, and construction authorized by this Agreement, if any, or any portion thereof, whether sounding in tort or otherwise. Property damage, as used in this paragraph, shall include, but not be limited to, consequential damages, damages arising from de facto or inverse taking, special damages for displacement, damages for the preemption, destruction, alteration, blocking or diversion of facilities, interference with access; and any other damages that may be claimed or awarded within the purview of the Eminent Domain Code of 2006, as amended and/or eminent domain case law of the Commonwealth of Pennsylvania and claimed, awarded or entered against the PENNDOT.
17. STANDARD COMMONWEALTH CONTRACTING PROVISIONS - The Shared Use Path Group shall comply, and shall cause its consultant(s) and contractor(s), if any, to comply with the following standard Commonwealth contracting provisions:
    1. Contractor Integrity Provisions, attached hereto and incorporated herein as Exhibit “B.”
    2. Contractor Responsibility Provisions, attached hereto and incorporated herein as Exhibit “C.”
    3. Provisions Concerning the Americans with Disabilities Act, attached hereto and incorporated herein as Exhibit “D.”
    4. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101—3104, applies to this Contract/Agreement. Therefore, this Contract/Agreement is subject to, and the Shared Use Path Group shall comply with, the clause entitled Contract Provisions – Right to Know Law 8-K-1532, attached as Exhibit “E” and made a part of this Contract/Agreement. As used in this Contract/Agreement, the term “Contractor” refers to the Shared Use Path Group.
18. COMMUNICATION - The parties agree to communicate openly to discuss pertinent matters. The parties further agree to meet at an appropriate decision-making level if deemed necessary.
19. NOTICES – In the event notice is required under this Agreement, said notice shall be served upon the Shared Use Path Group at:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

and upon PENNDOT at Commonwealth of Pennsylvania, Department of Transportation, Bureau of Highway Safety and Traffic Engineering, Attention Statewide Bicycle / Pedestrian Coordinator, 400 North Street, 7th Floor, Harrisburg, PA 17120, or at such other address as may be supplied by one party to the other in writing.

1. MODIFICATION - This Agreement may be modified only by a written amendment executed by the parties and duly approved by the Commonwealth.
2. TERM OF AGREEMENT – This Agreement shall begin on the date first above written and extend until terminated
3. TERMINATION – In the event of breach by the Shared Use Path Group, this Agreement may be terminated by PENNDOT upon ninety (90) days written notice to the Shared Use Path Group. If the Shared Use Path Group cures the breach, the termination will be withdrawn. The Shared Use Path Group may terminate this Agreement for any reason upon ninety (90) days written notice to PENNDOT. Whether termination is by PENNDOT or the Shared Use Path Group, the Shared Use Path Group shall barricade the entry into all Crossings and remove any Shared Use Path signs, markings or delineators located within any Crossing. This duty to barricade and remove shall survive termination of the Agreement.
4. COMPLIANCE – This Agreement shall be binding upon the Shared Use Path Group, its agents, contractors and successors. The Shared Use Path Group will ensure its employees, agents and contractors comply with the terms of this Agreement.
5. PENNSYLVANIA LAW - This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Pennsylvania.
6. ASSIGNMENT - This Agreement cannot be assigned or transferred by the Shared Use Path Group without PENNDOT's approval in writing. In the event it is assigned or transferred, this Agreement shall be binding upon the assigns.
7. SEPARABILITY - In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement and the Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
8. NECESSARY APPROVALS - This Agreement shall be effective only after full execution and approval by PENNDOT and other required Commonwealth officials.
9. MERGER - Upon execution and approval by all necessary officials as required by law, this Agreement constitutes the entire understanding between the parties to it and completely expresses their intent. All prior or contemporaneous agreements are merged into this document. No amendment or modification of this document shall be valid unless it is in writing and duly executed and approved by the parties.
10. RIGHTS RESERVED - PENNDOT, in executing this Agreement, waives none of its powers or rights to require the future change in operation, removal, relocation, or proper maintenance of any Crossing.
11. EXISTING OCCUPANCY - PENNDOT, in executing this Agreement, waives none of its powers or rights to grant a co-existing occupancy of the Crossing.

IN WITNESS WHEREOF, the parties have executed this Agreement the date first above written.

[Trail Sponsor]

Attested By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ BY\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: Date: Title: Date:

***If a Corporation, the President or Vice-president must sign and the Secretary, Treasurer, Assistant Secretary or Assistant Treasurer must attest; if a sole proprietorship, only the owner must sign; if a partnership, only one partner need sign; if a limited partnership, only the general partner must sign.***  ***If a Municipality, Authority or other entity, please attach a resolution.***

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**DO NOT WRITE BELOW THIS LINE--FOR COMMONWEALTH USE ONLY**

COMMONWEALTH OF PENNSYLVANIA

DEPARTMENT OF TRANSPORTATION

BY\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Deputy Secretary of Date

Transportation

APPROVED AS TO LEGALITY PRELIMINARILY APPROVED:

AND FORM:

BY\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ BY\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

for Chief Counsel Date Assistant Counsel Date

BY\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Deputy Attorney Date

General

BY\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Deputy General Date

Counsel CERTIFIED FUNDS AVAILABLE UNDER

SAP NO.

SAP COST CENTER

GL. ACCOUNT

AMOUNT

BY\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

for Comptroller                                    Date