



RIGHT OF ENTRY AGREEMENT

Executed Date: September 1, 2020
(Department will enter date)
Borough of Archbald Township
Lackawanna County
S.R. 1012

Agreement No.: 04M204
Federal ID No: 203378027

THIS RIGHT OF ENTRY AGREEMENT is made by and between the Commonwealth of Pennsylvania, acting through the Department of Transportation (hereinafter "Department")

and

DK & DK, LLC (hereinafter "Applicant"),

a limited liability company doing business in Pennsylvania with its office at:

224 Main Street

Archbald

Pennsylvania, 18403

WITNESSETH:

WHEREAS, Applicant owns, or owned, or is otherwise responsible for property located along State Route (S.R.) 1012 in Borough of Archbald Township, Lackawanna County, where liquids, materials or other substances may have been released that may have impacted soil or groundwater.

WHEREAS, Applicant wishes to conduct an environmental investigation or remediation, which may include the installation of groundwater monitoring wells and/or other devices, to determine the nature and extent of any impacts to soil or groundwater and conduct periodic monitoring and sampling of the well(s); and,

WHEREAS, Applicant has provided the Department with a work plan for the activities planned to investigate or remediate the possible impacts to soil or groundwater; and

WHEREAS, Applicant has requested that the Department permit Applicant, its employees, agents, representatives and contractors to enter the State highway right-of-

way for the purpose of performing the environmental investigation and sampling activities; and,

WHEREAS, the Department requires that such use of the State highway right-of-way be subject to a written right of entry; and,

WHEREAS, the parties agree that, to the best of their current knowledge, the Department has done nothing to cause the possible impacts to soil or groundwater, has no liability for any damages caused by the possible impacts, and is allowing the use of the State highway right-of-way by Applicant because Applicant has no other reasonable means of access to investigate the possible impacts.

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

1. Recitals. The above recitals are incorporated into and made an integral part of this Agreement.
2. Right of Entry. The Department shall grant Applicant, its employees, agents, representatives, and contractors a right of entry to the State highway right-of-way consistent with the terms and conditions of this Agreement. The Department shall be notified at least forty-eight (48) hours before Applicant begins any work within the right-of-way, and Applicant, its employees, agents, representatives, or contractors shall not interfere with Department operations.
3. Work Plan. All work within the State highway right-of-way shall be performed in accordance with the work plan provided to the Department. The work plan may be amended only upon written consent of the Department. For purposes of this paragraph written consent of the Department may be provided by the District Executive or such other Department employee as designated by the District Executive.
4. Traffic. Applicant shall develop a maintenance and protection of traffic plan in accordance with 67 Pa. Code Chapter 212 and shall take all appropriate measures to protect traffic while working within the State highway right-of-way.
5. Device Maintenance. Applicant shall, at its sole cost and expense, design and maintain all monitoring wells or other devices installed in the State highway right-of-way so that they are not a traffic hazard, to the satisfaction of the Department.
6. Term. The right of entry granted by the Department pursuant to this Agreement shall run for an initial term of one (1) year, commencing upon the date Applicant begins using the State highway right-of-way, with two automatic renewals for an additional year each upon Applicant's written notice. This term may be extended further only by written consent of the Department upon Applicant's written request. For purposes of this paragraph written consent of the Department may be provided by the District Executive or such other Department employee as designated by the District Executive.

7. Compliance with Law. Applicant shall comply with all federal, state, and local laws, regulations, and ordinances in the conduct of its operations within the State highway right-of-way.

8. Documentation. Applicant shall provide any and all non-privileged documentation requested by the Department regarding the construction, operation or maintenance of any part of its environmental investigation, including but not limited to all documentation related to compliance with federal, state, and local laws, regulations, and ordinances within seven (7) days of the request by the Department. Applicant shall permit the Department representatives to oversee the environmental investigation within the State highway right-of-way.

9. Notices of Violation. If Applicant is notified by any federal, state, or local agency that it is not in full compliance with any federal, state, or local law, regulation, or ordinance, associated with the construction, operation or maintenance of any part of its environmental investigation, Applicant shall immediately correct any such violation or deficiency and shall cease all operations until Applicant is in full compliance. Applicant shall provide the Department with written notice of any such notification.

10. Laboratory Results. Applicant, at no cost to the Department, shall promptly provide the Department with copies of all laboratory results and reports compiled by its employees, agents, representatives, or contractors relating to the environmental investigation that show the condition of the soil and the groundwater beneath the State highway right-of-way, the extent of any impacts to the soil or groundwater, or that detail any activity performed by Applicant under this Agreement.

11. Costs. All costs incurred with regard to any activities conducted by Applicant, its employees, agents, representatives, and contractors pursuant to this Agreement shall be borne solely by Applicant without contribution by the Department.

12. Insurance and Indemnification. A. Applicant and its contractor shall provide the Department with a certificate of insurance evidencing coverage of injury, death, or property damage from any or all causes which may arise out of its presence on the State highway right-of-way in the minimum amounts of two-hundred-fifty-thousand dollars (\$250,000.00) per person and one-million dollars (\$1,000,000.00) per occurrence. The Commonwealth of Pennsylvania and the Department shall be named as additional insureds on these policies.

B. Applicant or its contractor shall provide the Department with a certificate of insurance evidencing coverage for any environmental and pollution damage which may arise out of its presence on the State highway right-of-way in the minimum amount of one million dollars (\$1,000,000.00). The Commonwealth of Pennsylvania and the Department shall be named as additional insureds on this policy.

C. Applicant shall fully indemnify the Commonwealth from any and all liability, loss, or damage that the Commonwealth, its officers, agents and employees may suffer as a result of any and all claims, demands, costs, or judgments of any type

made against the Commonwealth as a result of granting this Agreement, including, but not limited to, fines, penalties, claims, demands, costs, or judgments arising from the presence of Applicant, its contractor(s) and/or their officers, agents, and employees or others on the State highway right-of-way 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. This provision is intended to include claims, demands, costs or judgments resulting from a negligent act or omission of the Commonwealth, its officers, agents, and employees with respect to this Agreement or the subject thereof unless such negligent act or omission is solely attributable to the Commonwealth. Applicant waives any immunity from liability to the Commonwealth from damages, contribution or indemnity provided by Section 303 of the Worker's Compensation Act, Act of June 2, 1915, P.L. 736, as amended, 77 P.S. §481. This indemnification is not limited by, but is in addition to, the security and insurance obligations contained in this Agreement. IT IS THE INTENT OF THIS PROVISION TO ABSOLUTELY ABSOLVE AND PROTECT THE COMMONWEALTH, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL LOSS BY REASON OF THIS AGREEMENT EXCEPT FOR THOSE ACTS OR OMISSIONS SOLELY ATTRIBUTABLE TO THE COMMONWEALTH.

D. Applicant agrees to defend (if requested) the Commonwealth, its officers, agents and employees, against any and all claims brought or actions filed against the Commonwealth, either as an original or an additional defendant, with respect to the subject of the indemnity contained herein, whether such fines, penalties, claims or actions are rightfully or wrongfully brought or filed. Applicant hereby waives any and all rights to join the Commonwealth as an additional defendant in any actions arising as a result of the grant of this Agreement.

E. Notwithstanding the foregoing provisions, Applicant agrees that the Department may, at its own expense, employ attorneys of its own selection to appear and defend any claims or actions on behalf of the Department.

F. Any insurance requirement imposed by this paragraph 12 may be satisfied by evidence of alternative coverage in a form acceptable to the Department. Applicant shall maintain, and cause its contractor to maintain, the insurance or alternative coverage required by this paragraph 12 until Applicant restores the State highway right-of-way pursuant to paragraph 15. Applicant and its contractor shall provide the Department with certificates of insurance evidencing continued coverage upon request.

13. Utilities. Applicant shall assume full responsibility for involved utility facilities as provided by Act of December 10, 1974 (P.L. 852, No. 287) (73 P.S. 176-182), as amended, concerning protection of the public health and safety by preventing excavation or demolition from damaging underground utility facilities.

14. Vehicles. Applicant shall be solely responsible for any vehicles left on the State highway right-of-way by Applicant, its employees, agents, representatives or contractors for any period of time during the term of this Agreement and shall be solely responsible for protecting said vehicles from any type of damage or theft.

15. Restoration of Right-of-Way. A. Upon termination of the right of entry granted by the Department pursuant to this Agreement and any extension thereof, Applicant shall restore the State highway right-of-way to its condition prior to entry, and shall ensure that any contamination and pollution is cleaned up in a manner satisfactory to the Pennsylvania Department of Environmental Protection.

B. If Applicant, its employees, agents, representatives, or contractors damage the State highway right-of-way (where damage means any change to the State highway right-of-way including but not limited to leaving any items on or in the State highway right-of-way, changing any contour of the State highway right-of-way, adding any material, pollutant, or contaminant to the State highway right-of-way by spillage, leaking or by any method), Applicant shall restore any affected portion of the State highway right-of-way to the condition in which Applicant found it at the commencement of Applicant's use of the State highway right-of-way within one (1) month after the termination of the right of entry granted by the Department pursuant to this Agreement. This requirement shall include closing, capping or otherwise removing any monitoring wells or other devices installed by Applicant from the State highway right-of-way in accordance with Pennsylvania Department of Environmental Protection regulations and guidance.

C. Applicant shall provide the Department with security in the amount of Three Thousand dollars (\$3,000.00) in the form of a money order from the United States Postal Service, a certified check with no expiration date, an irrevocable letter of credit, or other security in a form acceptable to the Department, to guarantee compliance with this Agreement and proper restoration of the State highway right-of-way. This security shall remain in force for two (2) years after the Department's acknowledgement of restoration of the State highway right-of-way. Other security acceptable to the Department may include a written statement from the Underground Storage Tank Indemnification Fund that Applicant has a claim for the site that is eligible for reimbursement at 100% of eligible expenses.

16. Enforcement Expense. Applicant agrees to reimburse the Department for any necessary expenses, attorneys' fees, or costs incurred in the enforcement of any part of this Agreement within ninety (90) days after receiving written notice that the Department has incurred them.

17. Property of Others. This Agreement shall not be considered to be authorization to Applicant or its contractors to encroach on the property of others. If Applicant must enter upon land situated outside the Department's right-of-way that is owned by a third party, Applicant shall, at its own expense, secure any necessary

authorization, release, or right of entry. Applicant shall be required to provide evidence of permission to enter upon an abutting or adjoining property owner's land, if requested by the Department.

18. Right to Know Law. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101 – 3104, applies to this Agreement. Therefore, this Agreement is subject to, and the Applicant shall comply with, the clause entitled Contract Provisions - Right to Know Law 8-K-1532, attached as Exhibit "A" and made a part of this Agreement. As used in this Agreement, the term "Contractor" refers to the Applicant.

19. Amendments and Modifications. This Agreement constitutes the entire Agreement between the parties and may not be modified or amended except in writing, and the rights and obligations hereunder may not be transferred or assigned without the prior written consent of the parties hereto.

20. Titles Not Controlling. Titles of paragraphs are for reference only, and shall not be used to construe the language in this Agreement.

21. Assignment. This Agreement may not be assigned by the Applicant, either in whole or in part, without written consent of the Commonwealth.

22. Severability. The provisions of this Agreement shall be severable. If any phrase, clause, sentence or provision of this Agreement is declared to be contrary to the Constitution of Pennsylvania or of the United States or of the laws of the Commonwealth the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby.

23. Applicable Law. This Agreement shall be interpreted and construed under the laws of the Commonwealth of Pennsylvania.

24. No Waiver. Any party may elect not to enforce its rights and remedies under this Agreement in the event of a breach by the other party or parties of any term or condition of this Agreement. In any event, the failure by any party to enforce its rights and remedies under this Agreement shall not be construed as a waiver of any subsequent breach of the same or any other term or condition of this Agreement.

25. Independence of the Parties. It is understood by and between the parties that nothing contained herein is intended or shall be construed to, in any respect, create or establish the relationship of partners between the Applicant and the Department, or as constituting the Department as the representative or general agent of the Applicant for any purpose whatsoever.

26. Third Party Beneficiary Rights. The parties to this Agreement understand that this Agreement does not create or intend to confer any rights in or on persons or entities not a party to this Agreement.

27. Notices. All notices and reports to the Department arising out of, or from, the provisions of this Agreement shall be in writing and given to the District Executive, or such other Department employee as designated by the District Executive, either by

regular mail, facsimile, e-mail or delivery in person at the address available on the Department website for the Engineering District in which the work is located. Notices and reports arising out of, or from, the provisions of this Agreement may be provided to Applicant through the Applicant's consultants or contractors, and receipt by such consultants or contractors shall be receipt by Applicant, unless Applicant notifies the Department otherwise.

28. Force Majeure. Neither party shall be liable for failure to perform under this Agreement if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party.

29. Integration and Merger. This Agreement, when executed, approved and delivered, shall constitute the final, complete and exclusive Agreement between the parties containing all the terms and conditions agreed on by the parties. All representations, understandings, promises and agreements pertaining to the subject matter of this Agreement made prior to or at the time this Agreement is executed are superseded by this Agreement unless specifically accepted by any other term or provision of this Agreement. There are no conditions precedent to the performance of this Agreement except as expressly set forth herein,

30. Effective Date. This Agreement shall not be valid, and no work shall commence, until it is fully executed and approved by both parties, the Office of General Counsel and the Office of Attorney General.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

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

ATTEST

BY _____
Name: _____ DATE _____
Title: _____

APPLICANT

BY Jeffrey Krentsky
Name: Jeffrey Krentsky DATE 4-28-2020
Title: MEMBER

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.

DO NOT WRITE BELOW THIS LINE - FOR COMMONWEALTH USE ONLY

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

BY Richard N. Roman
Name: Richard N. Roman, P.E. 06/01/202 DATE
Title: District Executive

APPROVED AS TO LEGALITY AND FORM

BY Kenda Gordon 8/11/20
for Chief Counsel Date

BY Panela J. Cross
Deputy General Counsel Date

Digitally signed by pcross@pa.gov
DN: cn=pcross@pa.gov
Date: 2020.08.19 09:00:59 -0400

BY David E. Stover
Deputy Attorney General Date

Digitally signed by David E. Stover
DN: cn=David E. Stover, ou=Office of Attorney General, ou=Legal Review Section,
email=dstover@attorneygeneral.gov, c=US
Date: 2020.09.07 16:42:44 -0400

~~FUNDS COMMENT DOC. NO.~~
~~CERTIFIED FUNDS AVAILABLE~~
~~UNDER SAP NO.~~
~~SAP COST CENTER~~
~~ACCOUNT~~

BY _____
for Comptroller Date _____

Exhibit A

Contract Provisions – Right to Know Law 8-K-1532

a. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, (“RTKL”) applies to this Contract. For the purpose of these provisions, the term “the Commonwealth” shall refer to the contracting Commonwealth agency.

b. If the Commonwealth needs the Contractor’s assistance in any matter arising out of the RTKL related to this Contract, it shall notify the Contractor using the legal contact information provided in this Contract. The Contractor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.

c. Upon written notification from the Commonwealth that it requires the Contractor’s assistance in responding to a request under the RTKL for information related to this Contract that may be in the Contractor’s possession, constituting, or alleged to constitute, a public record in accordance with the RTKL (“Requested Information”), the Contractor shall:

1. Provide the Commonwealth, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the Contractor’s possession arising out of this Contract that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and
2. Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Contract.

d. If the Contractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL, the Contractor must notify the Commonwealth and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL.

e. The Commonwealth will rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information within five (5) business days of receipt of written notification of the Commonwealth’s determination.

f. If the Contractor fails to provide the Requested Information within the time period required by these provisions, the Contractor shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth.

g. The Commonwealth will reimburse the Contractor for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.

h. The Contractor may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Contractor shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, the Contractor agrees to waive all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL.

i. The Contractor's duties relating to the RTKL are continuing duties that survive the expiration of this Contract and shall continue as long as the Contractor has Requested Information in its possession.



February 16, 2018

Robert A. Kretschmer
Permit Supervisor
Pennsylvania Department of Transportation
55 Keystone Industrial Park
Dunmore, PA 18512

RE: USTIF Claim #: 2016-0136(W)
Location: Quinn's Café Stop
(DK & DK LLC)
224 Main St
Archbald, PA 18403

Dear Mr. Kretschmer:

The Underground Storage Tank Indemnification Fund (Fund) reimburses eligible tank owners for eligible remediation expenses caused by a release of a regulated substance from an underground storage tank. The above site is eligible for reimbursement at 100% of eligible expenses.

Very truly yours,

A handwritten signature in black ink, appearing to read "H. Craig Wilson". The signature is fluid and cursive, written over a light gray background.

H. Craig Wilson, Claims Evaluator, II
Underground Storage Tank Indemnification Fund

cc: Kevin Cucura, P.M., LaBella Associates
Shane Marion, ICF



September 4, 2020

Lackawanna County
S.R. 1012, Borough of Archbald
Monitoring Well Agreement #04M204

QUINN'S CAFÉ STOP PROPERTY
(DK & DK LLC)
224 MAIN STREET
ARCHBALD, PA 18403

Dear Sir or Madam:

The Department has received and reviewed the Monitoring Well Right of Entry Agreement and found it acceptable.

The Department has executed the agreement and enclosed is a copy for your records. This letter is also your authorization to proceed with the work covered under this agreement.

Three (3) days prior to the start of any work in PennDOT Right of Way you are to contact Terry McHenry, of my staff, at 570.963.4055.

Very truly yours,

A handwritten signature in blue ink that reads "Alison L. Pevec".

Alison L. Pevec, P.E.
DISTRICT PERMITS ENGINEER

cc: Labella Associates, P.C.
Attn: Don Coleman, Senior Geologist
1000 Dunham Drive, Suite B
Dunmore, PA 18512