

**THE AGREEMENT BETWEEN THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION AND THE NEW YORK STATE THRUWAY AUTHORITY**

This Agreement is made as of this 1st day of February 2016, by and between the New York State Thruway Authority (the "Authority"), a public corporation organized and existing pursuant to the New York State Thruway Authority Act, Title 9, Article 2 of the Public Authorities Law, as amended (the "Act") with principal offices at 200 Southern Boulevard; Albany, New York 12201 and The People of the State of New York, acting by and through the New York State Department of Environmental Conservation (the "Department"), with principal offices at 625 Broadway, Albany, NY 12233 (the "Parties").

WITNESSETH:

WHEREAS, Section 353 of the Act establishes that responsibility for the construction, operation and maintenance of the New York State Thruway system lies with the Authority; and

WHEREAS, Section 1-101 of the Environmental Conservation Law broadly describes the environmental policy of the state, to be carried out by the Department to conserve, improve and protect the state's natural resources and to coordinate the environmental plans, functions, powers and programs of the state, in cooperation with the federal government, regions, local governments and other public and private organizations; and

WHEREAS, the State Environmental Quality Review Act ("SEQR"; Article 8 of the Environmental Conservation Law as implemented by Part 617 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR Part 617)), requires agencies proposing an action to consider its environmental impacts and to prepare or cause to be prepared an environmental impact statement if an action may have a potentially significant, adverse impact on the environment.;

WHEREAS, on August 7, 2015, the Authority received an application for a Use and Occupancy permit from Pilgrim Transportation of New York, Inc. ("Pilgrim") for the use of approximately 103.5 miles of the Thruway Mainline Right-of-Way south of Albany to construct, operate and maintain two petroleum pipelines immediately adjacent to one another (the "Project") to transport petroleum product between the Port of Albany, New York and Linden, New Jersey; and

WHEREAS, review of the Use and Occupancy permit application ("U&O Application") indicates there is the potential for significant adverse environmental impacts both within and outside of the Thruway Mainline Right-of-Way associated with the construction and operation of the Project, including, but not limited to, impacts to hundreds of acres of forest, regulated water bodies and wetlands which implicate the Department's permitting authority pursuant to the Environmental Conservation Law and the federal Clean Water Act and the requirements of SEQR;

WHEREAS, the New York State Department of Transportation's (NYSDOT) Accommodation Plan, as approved by the Federal Highway Administration (FHWA), does not allow for longitudinal installations by non-communication utilities on Federal highways. Pursuant to NYSDOT's Accommodation Plan, non-communication longitudinal utility installations, including petroleum pipelines, require an 'exception,' which must be approved by NYSDOT and FHWA. The New York State Department of Transportation is the Authority's liaison with the FHWA for longitudinal occupancies. The Authority coordinates the review process. Applications for longitudinal occupancies cannot adversely impact safety or the operation, maintenance, stability, or future expansion of the highway.

WHEREAS, approximately 3,000 other entities currently utilize portions of NYSTA's Thruway right of way, with the majority of uses being transverse uses of the right of way;

WHEREAS, on November 16, 2015, the Authority forwarded the U&O Application to SEQR potentially Involved Agencies (see 6 NYCRR §617.2[S]) requesting that these agencies indicate if they desire to become lead agency for the coordinated SEQR review of the Project; and

WHEREAS, numerous potential Involved Agencies expressed an interest that the Department be SEQR Lead Agency; and

WHEREAS, The Department has significant technical and legal experience and expertise in managing complex SEQR proceedings, directing the preparation of comprehensive, regional environmental impact statements (EISs) and managing input from a multitude of stakeholders and involved agencies.;

WHEREAS, on December 21, 2015, the Department recommended to the Authority that the Department and the Authority share co-lead agency status for the SEQR review of the Project on account of the unique set of circumstances discussed in that letter; and

WHEREAS, on December 21, 2015, the Authority agreed with the Department's recommendation on co-lead agency status and agreed that the Authority and Department should work closely with and coordinate with all potential Involved Agencies, to ensure that all environmental impacts associated with the Project are assessed in a transparent and comprehensive manner;

NOW, THEREFORE, the Authority and Department hereby agree as follows:

Article 1 - Purpose

The purpose of this Agreement is to provide a framework for conducting the SEQR review of the Project as co-lead agencies, including, but not limited to: coordinating communications to other involved, interested agencies and stakeholders; establishing a bookkeeping and fee reimbursement process with the applicant; and developing a dispute resolution process as between the Parties.

Article 2 – Term

This Agreement shall commence on the date set forth below as executed by the parties and end on December 31, 2017, or at such earlier time that the project SEQR process is deemed completed by the Parties.

Article 3 – Scope of Services

The Department will utilize and provide its legal and technical expertise to the Authority in managing complex SEQR permit proceedings, reviewing impacts to natural resources, and directing the preparation of EISs to assist the Authority in its review of the Project. The Authority will utilize its legal and technical expertise in State and Federal highway laws, regulations and policy to assist the Department in its review of the Project. Each agency shall be responsible for making final regulatory determinations on matters within their respective jurisdictions. Both the Department and the Authority will co-sign all pertinent SEQR documents, including, but not limited to, notices, scoping statements and findings.

The Department and Authority shall each identify project managers (“PMs”) within their respective offices to oversee the day to day management of the SEQR process and they shall be the primary point of contact for the Department and the Authority throughout the SEQR process. The PMs shall be responsible for the following:

- coordinating the efficient use of technical staff, both in-house and consultant, to review, prepare and edit SEQR documents;
- coordinating and participating in project meetings between the parties, the applicant, other involved and interested agencies, stakeholders and the general public;
- briefing the Parties’ respective executive staff and other departments, on such topics as scoping, impacts identification, alternatives, avoidance, minimization and mitigation measures, legal, accounting, real property, public information, etc.; and
- requesting information and documentation from the applicant for the Department and NYSTA to complete their regulatory reviews and make necessary determinations and preparing necessary project documents such as public notices and SEQR findings.

The Authority retains the right to procure the services of, and enter into agreements with, consultants to assist it with the review of the project. The Authority’s PM, working in cooperation with the Department, shall be responsible for assigning tasks to such consultants.

For services procured with fees collected pursuant to 6 NYCRR 617.13, to cover the actual costs associated with the SEQR process, the Department shall coordinate with the Authority’s project manager for such consultant services.

Article 4 – Executive Steering Committee

Section 4.1 - Members. The Executive Steering Committee (“ESC”) shall consist of the Executive Director of the Authority, or his/her duly authorized designee, and a designee of the Department. Authorized designees must be of sufficient title to make agency level policy decisions on behalf of the Authority and the Department and cannot be a subordinate to the designated PMs.

Section 4.2 - Purpose. The ESC shall be responsible for all major decisions concerning the SEQR review, including major decisions regarding schedule, scoping, public hearings, acceptance of the Draft and Final Environmental Impact Statements, any joint findings statement, and dispute resolution.

Section 4.3- Meetings. The ESC shall meet on a regular basis, to be determined by the ESC, but no less than once a month either in person or by teleconference to be briefed by the PMs on the status of the SEQR process and address other agenda items to be identified by the PMs consistent with Section 4.2 of this Agreement. The frequency of these meetings may be adjusted by the PMs as necessary and if the meetings occur less frequently than once per month the PMs will provide, on a monthly basis, written progress reports to the ESC, including but not limited to addressing milestones accomplished pursuant to the ESC’s schedule and next steps.

Section 4.4 - Dispute Resolution. In the event that any dispute between the Parties cannot be promptly resolved by the PMs, the PMs shall bring the dispute to the ESC to

review and resolve at the next scheduled ESC meeting. Either PM may request expedited review by the ESC in the event the Parties' disputed issue requires immediate ESC attention. The ESC shall confer on and decide matters brought to it for dispute resolution within a reasonable time, not to exceed 30 calendar days.

Article 5 – Funding and Record Keeping

The Parties shall seek reimbursement for their own internal staffing, administrative, indirect and overhead costs to the extent allowed under applicable laws and regulations. The Parties agree to maintain acceptable records for the purpose of fee and cost recovery from the applicant, as may be permissible, which the parties agree to coordinate and recover from the applicant pursuant to 6 NYCRR § 617.13.

The Authority shall retain the necessary technical consultant as set forth in Article 6 of this Agreement. The Authority shall seek reimbursement from the applicant of the reasonable and permissible consultant fees pursuant to 6 NYCRR § 617.13.

This Agreement does not preclude the Authority from entering into other reimbursement agreements with the applicant, as necessary to recover any and all other costs associated with the application, including but not limited to reviews associated with the potential use of Thruway Right of Way.

Article 6 – Consultant Contracts

The Parties shall cooperate on retaining a technical consultant to assist the Parties in preparation and review of SEQR documents. At the same time, the parties shall seek reimbursement for the preparation or review of the draft and final environmental impact statements pursuant to 6 NYCRR 617.13. Nothing within this Agreement shall prohibit either the Authority or Department from entering into a separate reimbursement agreement with the applicant for non SEQR related costs, fees and/or expenses. It is expected, at a minimum that the consultant will assist the Authority and the Department with respect to reviewing potentially significant impacts associated with the Project, such as, but not limited to, noise (Construction and Operation), Visual (construction and operation), socioeconomics, construction in protected habitat, stormwater erosion, and waterbody and wetland crossings. Additionally, it is anticipated that the consultant will assist the Authority and the Department with respect to compiling, reviewing and responding (if necessary) to public comments received throughout the EIS process.

Notwithstanding Article 3, the Authority reserves the right to consult with an environmental legal consultant on an as needed basis to assist it in assuring the Authority's compliance with the legal requirements of SEQR and other applicable laws.

Article 7 – Public Announcements, Communications and News Releases

The PMs shall coordinate with the Authority's and Department's Public Information Offices to develop mutually agreeable public announcements, including notices in the ENB, public communications and/or news releases. The Authority recognizes the Department's experience in conducting public meetings, hearings and open houses on major SEQR projects and agrees to cooperate and assist the Department's Public Information Office with these meetings.

Article 8 – Savings Clause

Nothing in this agreement is intended to limit the Department's authority under the Environmental Conservation Law or its implementing regulations and the Authority's authority under the Thruway Act.

Article 9 – Severability

If any part of this Agreement is determined to be invalid, illegal or unenforceable, such determination shall not affect the validity, legality or enforceability of any other part of this Agreement and the remaining parts of this Agreement shall be enforced as if such invalid, illegal or unenforceable part were not contained herein.

Article 10– Standard Clauses for all NYS Agreements

An Appendix A, and an Appendix A-1 standard New York State clauses for the Authority and the Department, respectively, are attached hereto and made a part hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by the Executive Director of the Authority or his duly authorized representative and by the Commissioner of the Department or his duly authorized representative as of the date herein above set forth.

NEW YORK STATE
THRUWAY AUTHORITY



Maria C. Lehman
Interim Executive Director

1/28/16

Date

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION



Thomas S. Berkman
Deputy Commissioner and General Counsel

2/1/16

Date