

# **FINAL CONFIRMED**

## **AGREEMENT**

**Regarding Roles and Responsibilities of the Parties  
listed below for the Delaware Estuary Program for the  
period of 2014 - 2021**

**THE STATE OF DELAWARE DEPARTMENT OF NATURAL RESOURCES  
AND ENVIRONMENTAL CONTROL**

**AND THE STATE OF NEW JERSEY DEPARTMENT OF ENVIRONMENTAL  
PROTECTION**

**AND THE COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION**

**AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,**

**AND THE PARTNERSHIP FOR THE DELAWARE ESTUARY, INC.**

**AND THE DELAWARE RIVER BASIN COMMISSION**

**AND THE CITY OF PHILADELPHIA PHILADELPHIA WATER DEPARTMENT**

This Agreement is entered into this **5th day of December, 2014**, by and among the States of Delaware, New Jersey, and the Commonwealth of Pennsylvania, along with the United States Environmental Protection Agency Regions 2 and 3 (EPA), the Partnership for the Delaware Estuary, Inc. (PDE) and its Board of Directors, the Delaware River Basin Commission (DRBC), and the City of Philadelphia, hereinafter collectively known as the "Parties".

Under Section 320 of the Clean Water Act, EPA is authorized to convene management conferences to protect water quality in estuaries of national significance. EPA convened a management conference to protect the Delaware Estuary, known as the Delaware Estuary Program. The Delaware Estuary Program is comprised of committees and groups which include, but are not limited to, a Steering Committee, Estuary Implementation Committee (EIC), Science and Technical Advisory Committee (STAC) led by PDE, and a Monitoring Advisory and

Coordination Committee and Toxics Advisory Committee led by DRBC. A primary purpose of the Delaware Estuary Program is to develop and subsequently implement a Comprehensive Conservation and Management Plan (CCMP) to protect the Delaware Estuary.

This Agreement outlines the Roles and Responsibilities of the key partners of the Delaware Estuary Program.

This Agreement supersedes the Memorandum of Understanding Regarding Roles and Responsibilities dated **December 6, 2007**.

The Parties to this Agreement set forth the following as elements of their understanding:

## **I. All Parties**

The Parties may provide support toward the implementation of the CCMP only to the extent authorized by law and consistent with federal and state regulations and policies on inter and intra governmental relations and limits on governmental participation in private fund-raising efforts. These efforts may include but are not limited to the following:

1. Serving as active members of the Steering Committee, EIC, STAC, and other relevant committees and work groups;
2. Fostering active partnerships among existing organizations to promote CCMP implementation;
3. Coordinating responsibilities, supporting efforts, and seeking resources to continue implementation of the CCMP;
4. Streamlining and identifying priority action areas to achieve on-the ground implementation activities to enhance the Estuary's resources;
5. Using indicators and measurable goals to track progress, assess program effectiveness, and guide strategies;
6. Coordinating each Parties' annual objectives and priorities to support CCMP implementation;
7. Identifying and providing resources to implement the CCMP Action Items; and
8. Each State is expected to serve as chair of the Steering Committee on a biennial rotating basis.

## **II. Roles and Responsibilities of the Steering Committee**

The Steering Committee is composed of the signatories of the Parties to this Agreement and organizations admitted by the Steering Committee. The Steering Committee may develop a process to admit additional organizations as members of the Steering Committee.

Where authorized by all applicable law, regulation, and other pertinent authorities, the roles and responsibilities of the Steering Committee but are not limited to the following:

1. Serving in a guidance capacity for the identification of potential resources for CCMP Action Item implementation;
2. Facilitating or resolving issues and potential conflicts that may arise during CCMP implementation;
3. Considering recommendation(s) for updates and amendments to the CCMP for approval as they arise;
4. Providing approval of and guidance for implementation of PDE's five year Strategic Plan;
5. Designating a representative within their organization to participate on the EIC;
6. Setting Delaware Estuary program policy; and
7. Convening at least one in-person meeting a year and holding at least one mid-year conference call.

### **III. Roles and Responsibilities of the Estuary Implementation Committee**

The EIC includes, at a minimum, the Executive Director of PDE and representatives designated by the Steering Committee Membership is open to all implementing bodies (i.e. federal, state, local, and non-governmental) tasked with implementation of CCMP Actions Items. These implementing bodies may seek membership on the EIC through nomination by one of the members. The EIC will determine by consensus whether to admit the new member.

The EIC will focus on the management, coordination and implementation of activities related to the CCMP. The Executive Director of PDE is to be the chair of the EIC. The EIC reports to the Steering Committee.

Where authorized by all applicable law, regulation, and other pertinent authorities, the roles and responsibilities of the EIC may include, but are not limited to the following:

1. Guiding the development and implementation of the PDE's five year Strategic Plan's Goals

- and Objectives;
2. Assisting PDE in preparing its annual CWA Section 320 work plan for the Environmental Protection Agency's NEP grant to PDE (EPA's role in this function does not constitute official Agency approval of a CWA § 320 grant budget. Any grant application submitted by PDE to EPA is subject to EPA's standard grant administrative and approval processes);
  3. Reviewing and approving the annual CWA section 320 workplan and identifying grant funding match support from non-federal sources. NEP budget approval is an EPA function. The EIC approves the PDE Workplan funded by the EPA CWA Section 320 funds. (EPA's role in this function does not constitute official Agency approval of a CWA § 320 grant budget. Any grant application submitted by PDE to EPA is subject to EPA's standard grant administrative and approval processes);
  4. Identifying and supporting funding for the five year Strategic Plan goals and objectives;
  5. Developing programmatic changes for Steering Committee review and approval;
  6. Providing direction to and fielding requests and recommendations from the STAC, and other committees;
  7. Securing relevant expertise when required;
  8. Striving to assure adequate staff time and participation on appropriate work groups and advisory committees;
  9. Ensuring and facilitating the coordination of individuals within agencies or organizations participating on related Delaware Estuary committees;
  10. Coordinating and implementing CCMP Actions Items within their respective agencies or organizations;
  11. Assisting PDE in preparing responses to information requests pertaining to the Delaware Estuary Program;
  12. Assisting PDE in preparing for the Program Evaluation as required (currently on a 5 year cycle);
  13. Providing data needed to meet requirements of the Government Performance Results Act (i.e. dollars leveraged, habitat acres restored);
  14. Convening quarterly meetings that will overlap with the PDE's Board of Directors' meetings when possible;

#### **IV. Roles and Responsibilities of the Partnership for the Delaware Estuary, Inc.**

PDE is expected to direct and manage all aspects of its organization, including the activities of the Delaware Estuary Program, on a daily basis. PDE's Executive Director reports to PDE's Board of Directors and is accountable to the Steering Committee.

The roles and responsibilities of PDE include, but are not limited to, the following:

1. Serving as the point of contact and representative of the Delaware Estuary Program;
2. Guiding and tracking the overall progress on CCMP implementation, including CCMP revisions and updates required by the EPA National Estuary Program Guidance and using indicators and measurable goals;
3. Developing five year Strategic Plan goals and objectives, PDE's annual budget and CWA Section 320 work plans in consultation with Advisory Committees, work groups and other identified implementing partners;
4. Identifying and recommending priorities and needs to the EIC for its consideration and recommendation to the Steering Committee;
5. Preparing and submitting the Program Evaluation as required (currently on a 5 year cycle), and PDE's annual CWA § 320 work plan, and grant application to EPA Region 3 with the approval of the EIC;
6. Administering the NEP and implementing CCMP actions in accordance with the approved CWA Section 320 work plan;
7. Providing all logistical support (i.e. location, agendas and minutes) for the Steering Committee, EIC, STAC, and other committee or work group meetings led by PDE;
8. Maintaining an archive of all Program Documents and Publications;
9. Maintaining and updating [www.DelawareEstuary.org](http://www.DelawareEstuary.org);
10. Identifying and pursuing resources to implement the CCMP; and
11. Responding to NEP grant-related information requests.

## **V. Roles and Responsibilities of the Partnership for the Delaware Estuary's Board of Directors**

As the fiduciary governing body of the PDE under law, the Board of Directors' roles and responsibilities with respect to the Delaware Estuary Program include but are not limited to:

1. Guiding development of and providing approval of and guidance for implementation of PDE's five year Strategic Plan;
2. Overseeing the administrative and programmatic operations including the PDE's budget, staffing and other activities outlined in the organization's bylaws;
3. Convening quarterly meetings, some of which will overlap with EIC meetings;
4. Convening additional committee meetings and calls as needed; and
5. Representing PDE on the EIC and Steering Committee and providing input into programmatic changes for Steering Committee consideration.

(Nothing herein should be construed to imply that the provisions of this Agreement supersede the Board's fiduciary and other responsibilities and duties toward PDE Inc., as required under applicable law or the provisions of any charter or bylaws and to the extent that anything herein

is inconsistent with such authorities, such authorities take precedence.)

## **VI. Roles and Responsibilities of the Science and Technical Advisory Committee**

The Science and Technical Advisory Committee (STAC) is composed of various representatives from academia, federal & state agencies, industry, non-profit organizations, and others from the scientific community.

In accordance with the April 2006 STAC Charter, the STAC provides the Parties and collaborating entities with objective, expert advice, and peer review for overall scientific and technical matters related to the Delaware Estuary Program's activities and goals, such as those specified in the CCMP and the Strategic Plan. The STAC works with the EIC to identify and prioritize science and technical needs within the Delaware Estuary and its watershed, and assists with the PDE's efforts to raise awareness and provide resources for addressing these needs. The STAC also facilitates communication among other specialized science and technical committees, and recommends forming and disbanding new STAC sub committees and technical work groups as needed.

Where authorized by all applicable law, regulation, and other pertinent authorities, the roles and responsibilities of the STAC may include, but are not limited to the following:

1. Maintaining broad-based scientific membership as provided under the STAC Charter;
2. Providing objective, expert advice and peer review for overall scientific and technical matters related to NEP activities and goals;
3. Identifying and prioritizing science and technical needs and assisting with raising awareness and resources for addressing these needs;
4. Establishing and overseeing priority-specific work groups to address needs that are not being met by other groups;
5. Meeting annually with the DRBC Monitoring Advisory and Coordinating Committee to assess monitoring plans and needs for the upcoming year; and
6. Leading other activities as defined in the April 2006 STAC Charter under Section 4 - Roles and Functions.

## **VII. Limitations**

This Agreement does not create any rights or benefits, substantive or procedural, enforceable by law or equity against any of the signatories, their agencies, or their officers or employees. Nothing herein shall be construed to require any of the aforementioned entities to obligate or expend funds on behalf of the goals, objectives, or roles or responsibilities set forth in this Agreement, or give rise to a claim for compensation for services performed to further the goals of this agreement. This Agreement, in and of itself, does not exempt any party to the Agreement from federal or state policies for competition for procurement contracts or financial assistance. Any obligations and expenditures of funds by any entity will be accomplished in accordance with all applicable law and will be subject to the availability of appropriations and such entity's discretion in making budgetary determinations. This Agreement does not alter the terms of any procurement contract or financial assistance agreement and any conflict between this Agreement and the terms of such instruments will be resolved by applying the terms of the procurement contract or financial assistance agreement.

The committees of the Delaware Estuary Program are not legal entities with powers to enter into contracts, incur liabilities, own or create intellectual property, or otherwise make legally binding commitments of the funds or other assets of EPA.

Access to all documents generated pursuant to the activities set forth in this Agreement that constitute agency records for purposes of the Freedom of Information Act ("FOIA"), 5 U.S.C. §552, shall be governed by the provisions of the FOIA.

Access to all records generated pursuant to the activities set forth in this Agreement that constitute public records under the laws of each of the member states and in possession of the member states shall be governed by the laws regulating access to public records in each of those states.

## **VIII. Effective Date**

This Agreement will become effective on the date when signed by the second of the two EPA Regional Administrators listed as signatories or their duly appointed representatives, and will remain in effect for seven years from the date of final signature.

## **IX. Termination and Modification**

This Agreement may be terminated or modified by the mutual written agreement of all parties

entering into this Agreement.

## **X. Signatures**

This Agreement may be executed in as many counterparts as may be deemed necessary and convenient and when so executed shall be deemed as an original; all such counterparts shall constitute but one and the same instrument.