

## **Guidelines Governing the Practice and Procedure for Administering the Delaware New Jobs Infrastructure Fund**

### **Section 1: Authorization**

State economic development officials pursue economic development opportunities that, if realized, would have significant impact on Delaware's future economic health and competitiveness. Such situations frequently require expeditious action and the need to enhance Delaware's infrastructure that are beyond the capacity of existing Delaware economic development programs. To meet these challenges, pursuant to Section 39 (b)(1) of Senate Bill 130, the Fiscal Year 2012 Bond and Capital Improvements Act, the Delaware New Jobs Infrastructure Fund (the "Fund") was established to provide economic assistance for renovation, construction or any other type of improvements to roads, utilities and related infrastructure in order to attract new businesses to Delaware, or for the expansion of existing Delaware businesses, when such an economic development opportunity would create a significant number of direct, permanent, quality, full-time jobs. Specific projects, amounts and terms shall be approved by a majority of the Infrastructure Investment Committee, comprised of the Director of the Delaware Economic Development Office, the Secretary of the Delaware Department of Transportation, the Co-Chairs of the Joint Committee on Capital Improvement and a member of the private sector who shall be appointed by the Governor (the "Committee"). The General Assembly appropriated \$40,000,000 to the Fund in the Fiscal Year 2012 Final Bond and Capital Improvement Act. In addition, the General Assembly authorized the issuance of bonds, to which the state shall pledge its full faith and credit, such bonds to be issued in such principal amount as necessary to provide proceeds to the State in the amount of \$15,000,000, which shall be disbursed in such manner and under such restrictions as outlined in these Guidelines.

### **Section 2: Purpose**

The purpose of these Guidelines is to establish the practice and procedure for the administration of the Fund. The Guidelines contain procedures governing the process for applying to the Committee for economic assistance under the Fund, pre-closing and post-closing procedures and criteria for the Committee's approval or disapproval of an application for economic assistance under the Fund. The Guidelines shall be adopted by the Committee and are subject to modification at the Committee's discretion.

### **Section 3: Definitions**

The following words and terms, unless the context clearly indicates a different meaning, shall have the following respective meanings:

"Application" means an application made to the Committee on such form or forms, together with all relevant attachments, as the Committee may, in its sole discretion, require in connection with administration of the Fund.

"Applicant" means any person, including individuals, firms, partnerships, trusts, public or private corporations, or other legal entities, for which a Project is undertaken or proposed to be undertaken.

"Final Approval" means the final approval of an Application by a majority of the members of the Committee.

"Infrastructure" for purposes of these Guidelines, shall include but not be limited to the following:

- Any Project that would construct, maintain, extend or enhance any water, sewer, storm water management system, dam, levee, solid waste disposal facility, and hazardous waste facility;
- Any Project for energy transmission, energy efficiency enhancement for buildings, public housing, and schools, renewable energy, and energy storage; or
- Any Project for the construction, maintenance, or enhancement of highways, roads, bridges, transit and intermodal systems, inland waterways, land stabilization and related infrastructure, commercial ports, airports, high speed rail and freight rail systems.

“Project” means the specific intended use of the proceeds from the Fund.

“Public Sponsor” shall mean the State of Delaware or any agency or instrumentality thereof, or any County, municipality, local political subdivision, instrumentality, agency, body politic, utility district, or similar entity within the State of Delaware.

## **Section 4: Infrastructure Grants**

### 4.1 Grant Description

4.1.1 The Committee is empowered to make financial assistance in the form of grants to Applicants (a “Grant”).

4.1.2 Proceeds of a Grant can be used for renovation, construction or any other type of improvements to roads, utilities and related infrastructure

### 4.2 Eligibility Standards

4.2.1 To be eligible for a Grant, a Project must have at least one Public Sponsor and the Project must serve a public purpose along with expanding employment in the State. Also, the Applicant must be able to demonstrate to the satisfaction of the Committee that financial assistance from the State is necessary to effectuate the outcome of the Project.

4.2.2 The following projects do not qualify for a Grant:

4.2.2.1 Projects which do not attract, expand or retain employment opportunities;

4.2.2.2 Projects located outside the State;

4.2.2.3 Speculative real estate ventures;

4.2.2.4 Equipment other than that which is directly infrastructure-related to the funded activity. Such permissible equipment may include, but not be limited to, piping, pumps, motors, converters, electrical devices, meters, gauges and monitoring equipment; or

4.2.2.5 Refinancing of existing debt.

### 4.3 Project Approval Standards

4.3.1 Findings. - As a precondition to approving a Grant, the Committee shall find that the Project would create a significant number of direct, permanent, quality, full-time jobs, and would serve a public purpose by enhancing the infrastructure needs of the State. The Committee shall apply the following standards, where applicable, in making such findings and determinations:

4.3.1.1 Employment Standard. - The Committee will review information concerning the Applicant as submitted in an Application. As a condition precedent to making a Grant, the Committee shall determine that the Applicant intends to provide gainful employment within the State. The standards to be considered by the Committee will include, but not

be limited to, the number of permanent, quality, full-time jobs created as a result of the Project, the wage scale applicable to persons to be employed as a result of the Project, the economic situation in the State at the time of filing of the Application, the effect of the Project on the tax base of the State and/or the county or municipality in which the Project is to be located, and the expected impact that the Project will have on the development of new or expanded economic activity within the State.

4.3.1.2 In determining whether the Project will assist in creating "direct, permanent, quality full-time jobs" in the State, the Applicant shall demonstrate to the Committee that the Applicant, operator or principal user thereof has the capability to operate and maintain such Project efficiently and that the Applicant has not been convicted of a major labor law violation or of a violation involving moral turpitude by any agency or court of the federal government or agency or court of any state in the 2-year period immediately prior to the approval of the Applicant's Application. In this regard, the Committee may, in its discretion, rely on a sworn affidavit of the Applicant or an officer of the Applicant or an opinion of counsel of the Applicant to such effect. If an Applicant has been convicted of such a violation, the Committee, in its sole discretion, may decline to consider the Application. If requested by the Committee, similar proof shall be obtained from any operator or principal user of the Project.

4.3.1.3 Financial Stability and Economic Sustainability. – The Applicant shall demonstrate to the Committee that it possesses financial stability and can also demonstrate that the Project is economically sustainable.

4.3.1.4 Public Purpose Standard. - When applying the "public purpose standard", the Committee shall take into consideration whether the Project will enhance the infrastructure of the state, such that it would have a significant impact on Delaware's future economic health and competitiveness. Factors to be considered by the Committee shall include, but not be limited to, whether the infrastructure improvements will benefit more than the Applicant, whether the infrastructure improvements will help attract additional economic development to the area where the Project is being built, whether the Project would have otherwise required the use of State monies to be completed.

4.3.2 Clawback Provision – The Committee shall determine, in its sole discretion, appropriate clawback provisions for each Applicant under which the Applicant may be required to repay some or all of the Grant.

4.3.3 Post-Grant Period – Annual Reporting – Unless waived or amended by the Committee in its sole discretion, the Applicant shall, for a period of five (5) years following the award of Grant, submit to the Delaware Economic Development Office, on an annual basis, financial statements in a form acceptable to the Committee, a progress report on the status of the project, including, but not limited to, the number of permanent, quality, full-time jobs created or saved as a result of the Project and the wage scale applicable to such persons, any economic impact of the funding (such as sales, costs, etc.) and any other information required by the Committee. Each applicant shall report to the Delaware Economic Development Office no later than June 30 of each of the years for which the report is required.

## **Section 5: Application Procedure**

5.1 To apply for financial assistance, an Applicant must submit a completed Application concerning the Project to the Committee for review. Each Application must include the written certification of at least one Public Sponsor that the Project will serve a public purpose by

enhancing the infrastructure needs of the State. No application will be reviewed by the Committee until it is complete to the satisfaction of the Committee.

5.2 Applicants may obtain Application forms by contacting the Delaware Economic Development Office, 99 Kings Highway, Dover, DE 19901. Phone (302) 739-4271 / Fax (302) 739-5749.

## **Section 6: Approval Process**

6.1 The Committee shall use its reasonable best efforts to complete its review of the Application for preliminary approval or disapproval within thirty (30) days from the date it deems an Application complete.

6.2 If a majority of the Committee determines that a Project has substantial economic development content, is in the public interest, and that the Committee's financial support would represent a prudent use of the Fund, then the Committee shall adopt a resolution authorizing the issuance of the requested financial assistance. Final Approval will be binding on the Committee provided, however, that the Committee may withdraw Final Approval at any time prior to the disbursement of financial assistance, if it determines that (1) the Applicant's circumstances have changed adversely since the date of Final Approval or since completion of the Application, if such adverse change did not come to the Committee's attention prior to Final Approval or (2) the Application contained a statement that was materially false or failed to include information necessary to prevent the Application from being materially false.

6.3 Final Approval will be effective for a period not to exceed one (1) year, and all funds committed for a Project must be completely dispersed by the Committee within that time. The Committee, in its sole discretion, may make limitations or grant extensions with respect to this one-year period.

6.4 The Applicant shall be issued a commitment letter outlining the terms and conditions of the Final Approval. When the commitment letter has been accepted by the Applicant and returned to the Committee, and all required documentation is prepared in form and content satisfactory to the Committee, a closing is scheduled and financial assistance is made available to the Applicant.

# Delaware Infrastructure Investment Committee

## Delaware New Jobs Infrastructure Fund

### Grant Application

**Instructions:** This application is designed to be completed electronically, then printed, signed and notarized. Please make all efforts to complete the application electronically, although it will be accepted if completed by hand. Return one original plus eight (8) copies, including exhibits, to The New Jobs Infrastructure Fund, c/o Delaware Economic Development Authority, Attention: Bernice Whaley, 99 Kings Highway, Dover, DE 19901. This application is not a commitment for funds, nor does it obligate the State of Delaware or any State agency to lend any form of financial assistance.

### General Information

Legal Name of Applicant (Business)	Delaware Business License & Type	Tax I.D. or SS# for an Individual Request
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D/B/A (if applicable)	Date Business Established (mm/yyyy)	NAICS Code <sup>1</sup>
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<input type="checkbox"/> Sole Proprietorship	<input type="checkbox"/> General Partnership	<input type="checkbox"/> Limited Partnership	<input type="checkbox"/> S-Corp	<input type="checkbox"/> C-Corp	<input type="checkbox"/> LLC	<input type="checkbox"/> Individual Business Request
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Applicant's Billing Address	Business Phone #
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Applicant's Street Address (if different)	Applicant's Fax #
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Business Description	State of Incorporation
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Primary Project Contact, Email & Phone Number	Title	Amount of Financing Requested \$
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Number of Applicant's Permanent Delaware-Based Full-time Jobs  
(These numbers must coincide with the Employment Impact section on Page 3)

Presently on Site	To Be Maintained	To Be Created	To Be Relocated to Delaware	TOTAL
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<sup>1</sup> A North American Industry Classification System (NAICS) Code is a 6 digit number assigned to your business by the Delaware Department of Labor. NAICS Codes replaced SIC codes. A NAICS code is also referred to as the Principal Business Activity or Principal Product or Service code on your federal income tax return.

# Project Information

## Management & Ownership

(Show 100% ownership. If more space is necessary, ignore here and attach a complete list formatted like below as "Exhibit: Management & Ownership – 1")

Name	SS# or Tax ID#	% Ownership	Address (if different from applicants)	Guarantor?	Spouse Guarantor?
		%			
		%			
		%			
		%			
		%			
		%			
		%			

**Has the applicant or any person listed above:**

<input type="checkbox"/> Yes	<input type="checkbox"/> No	Been the subject of, or a party to, any formal or informal inspection, inquiry, investigation, administrative proceeding, criminal prosecution or civil litigation by any federal or state agency administering, or private person seeking relief under, state or federal statutes, regulations or rules governing collective bargaining, hours of labor, working conditions, industrial hygiene and safety, minimum wage standards, discrimination in wages, child labor, unemployment insurance, workers' compensation or other labor law matters?
<input type="checkbox"/> Yes	<input type="checkbox"/> No	Been the subject of or a party to any formal or informal inspection, inquiry, investigation, administrative proceedings, criminal prosecution or civil litigation by any federal or state agency administering, or private person seeking relief under, state or federal environmental statutes or regulations?
<input type="checkbox"/> Yes	<input type="checkbox"/> No	Been the subject of, or a party to, any formal or informal inspection, inquiry, investigation, administrative proceeding, criminal prosecution or civil litigation by any state or federal law enforcement, regulatory or administrative agency for the criminal or civil violation of any federal or state statute, regulation, rule or the terms of any license or permit issued by a federal or state agency, including the failure to hold such a license or permit?
<input type="checkbox"/> Yes	<input type="checkbox"/> No	Been the defendant in any civil litigation in which any type of fraud, misrepresentation, unfair or deceptive trade practices were alleged?
<input type="checkbox"/> Yes	<input type="checkbox"/> No	Been debarred or suspended from contracting with any state or federal agency or from receiving financial assistance from any state or federal agency?
<input type="checkbox"/> Yes	<input type="checkbox"/> No	Been denied any license or permit or had any license or permit revoked or suspended by any federal, state or local agency or governmental body?
<input type="checkbox"/> Yes	<input type="checkbox"/> No	Been convicted of a crime?
<input type="checkbox"/> Yes	<input type="checkbox"/> No	Filed a voluntary petition in bankruptcy or had an involuntary petition in bankruptcy filed against the Applicant, in any bankruptcy court, or been subject to any other state or federal insolvency or receivership proceedings?

If the answer to any question above is "yes," furnish details on a separate page and attach as: "Exhibit: Management & Ownership – 2"

**A. Location of Proposed Project**

Street Address Municipality Zip Code County

<input type="checkbox"/> Yes	<input type="checkbox"/> No	If applicant is not the owner of the project site, does the applicant lease the project site or any buildings on the site? If "yes", when does the lease expire? /
<input type="checkbox"/> Yes	<input type="checkbox"/> No	Is there a relationship legally or by virtue of common control between the applicant or proposed occupant of the project, and the present owner of the property? If "yes", describe briefly here:

**B. Employment Standard**

Please provide a detailed description of how the project will create a significant number of direct, permanent, quality, full-time jobs:

**Employment Impact**

Indicate the number of Delaware-based full-time people that will be employed by the applicant or its related affiliate at the end of the first, second, and third year period after the project has been funded. All projections should be accurate, conservative, and achievable since employment projections may become a part of the financing agreements with the Committee. Include existing, new, and relocated jobs.

Type of Employment	Number of Full-Time Employees One Year After Funding	Number of Full-Time Employees Two Years After Funding	Number of Full-Time Employees Three+ Years After Funding
Professional or Managerial			
Engineering or Skilled Labor			
Unskilled & Semi-Skilled			
<b>TOTALS</b>			

Provide job titles that correspond to the newly created or relocated jobs as a result of the Infrastructure Fund grant, together with estimated annual wages for each title. If more space is necessary, ignore here and please attach a complete list as "Exhibit: Employment Impact"

Will you be attaching a separate list:  Yes  No

Job Titles	Job Type	# of Jobs	Estimated Minimum Wages	Benefits Included
			\$	
			\$	
			\$	
			\$	
			\$	

**C. Financial Stability and Economic Sustainability**

In addition to providing Exhibit C as detailed in the Exhibit List on Page 7, please describe how the Project will be economically sustainable:

## **D. Public Purpose**

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In addition to providing Exhibit E as detailed in the Exhibit List on Page 7, please provide a detailed description of how the project will serve a public purpose by enhancing the infrastructure needs of the State. Please include whether the infrastructure improvements will benefit more than the Applicant, whether the infrastructure improvements will attract additional economic development to the area where the Project is being constructed, and whether the Project would have otherwise required the use of State monies to be completed:



**E. Source and Use of Funds for Public Purpose**

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	Funded by Infrastructure Grant	Funded by Applicant
Construct, maintain, extend or enhance any water, sewer, storm water system	\$ _____	\$ _____
Construct, maintain, extend or enhance any dam and/or levee	\$ _____	\$ _____
Construct, maintain, extend or enhance any solid waste and/or hazardous waste facility	\$ _____	\$ _____
Construct, maintain, extend or enhance any energy transmission lines, energy and/or efficiency enhancements for buildings	\$ _____	\$ _____
Construct, maintain, extend or enhance any public housing and/or schools	\$ _____	\$ _____
Construct, maintain, extend or enhance any renewable energy and/or energy storage	\$ _____	\$ _____
Construct, maintain, extend or enhance any highway, and/or road, and/or bridge	\$ _____	\$ _____
Construct, maintain, extend or enhance any transit and/or intermodal system	\$ _____	\$ _____
Construct, maintain, extend or enhance any inland waterways	\$ _____	\$ _____
Construct, maintain, extend or enhance any land stabilization and or related infrastructure	\$ _____	\$ _____
Construct, maintain, extend or enhance any commercial ports and/or airports	\$ _____	\$ _____
Construct, maintain, extend or enhance any high speed rail and/or freight rail system	\$ _____	\$ _____
Other (Specify):	\$ _____	\$ _____
Total Infrastructure Costs	\$ _____	\$ _____
Total Project Costs	\$ _____	\$ _____

# Certifications and Notarization To Applicants

**CERTIFICATION** -- Eligibility for financial assistance from the Delaware New Jobs Infrastructure Fund is determined by the information presented in this application and in the required exhibits and attachments. Any change in the status of the proposed project from the facts presented herein could disqualify the project, including but not limited to, the commencement of construction or the acquisition of assets such as land or equipment. Please contact the Committee, c/o DEDO, before taking any action which would change the status of the project as reported herein.

To the extent permitted by Delaware's Freedom of Information Act, 29 Del. C. Ch. 50, all information contained in this application or obtained by the Committee in investigating or considering this application will be kept confidential, except for disclosure to the Committee, to the staff and attorneys of the DEDO, and except for disclosures made at the public hearing of the Committee and in any published notice of such hearing. If a grant is made for your project, confidentiality may also be affected by any information reporting and other requirements imposed on the Committee by the Internal Revenue Code. A copy of the DEDO FOIA regulation is provided with this application.

I, the undersigned, being duly sworn upon my oath say:

1. The Applicant as listed in section 1-A is the recipient of the funds. The undersigned is authorized to bind the applicant and any other recipient of Grant funds pursuant to this application.
2. The Applicant hereby agrees, if this application is approved, to comply with all federal, state, and local laws affecting the grant to be issued and the operation of the proposed project. As part of this agreement, the Applicant agrees to use its best efforts in good faith to meet all employment projections set forth herein and to give the first opportunity of employment to qualified Delaware residents for all unskilled and semi-skilled workers employed by the Applicant. The Applicant agrees to report to the Authority, no later than June 30 of the year following the start of its operation of the project, the total number of its unskilled and semi-skilled employees and the number of its unskilled and semi-skilled employees who were residents of Delaware at the time of their employment.
3. The Applicant hereby acknowledges and agrees that the Committee reserves the right to and may disclose any information contained in this application and its supporting documents to the staff and attorneys of the Committee and DEDO, at any public hearing held on this application, in any published notice of such hearing, and that this application is subject to the Delaware Freedom of Information Act.
4. The Applicant hereby agrees that any officers, employees, agents or attorneys of the Delaware Economic Development Office ("DEDO") may have access to and copy any and all information in any form pertaining to Applicant, including, but not limited to, tax returns and information from tax returns as used in 30 Del. C. §368, in the custody of any State of Delaware, or other State, department, agency, instrumentality, division, office, board, bureau, council, commission, committee, panel or "public body," as that term is defined in the Delaware Freedom of Information Act, 29 Del. C. § 10002(a), including, but not limited to, the Departments of Finance, State, Labor, and Natural Resources and Environmental Control of the State of Delaware, the United States Environmental Protection Agency, the United States Department of Labor, the National Labor Relations Board or any other agency of the federal government having custody of information deemed pertinent by DEDO or DEDO staff or attorneys in evaluating Applicant's application for assistance.
5. This application, with all attachments & exhibits, is the product of diligent and reasonable investigation that I have either overseen or been personally involved.
6. I have carefully read this application, including all attachments and exhibits, and the information contained in this application, including all attachments and exhibits, is true, accurate and complete to the best of my information and belief. These representations are made in support of a request for government funds.
7. I understand that if I have intentionally made a false statement in this application, or someone else has made a false statement herein that I know or believe to be false, I am subject to criminal prosecution.
8. I understand the Committee may also require the following:
 

A. Appraisals on real property and/or machinery and equipment. (Appraisers acceptable to the Authority).	D. Accounts payable aging.
B. An environmental analysis - Phase I.	E. Bank loan exception letters.
C. Accounts receivable aging.	F. Financial information to be prepared by a CPA acceptable to the Committee.
	G. Additional information as determined by DEDO or the Committee.
9. I understand that no funds will be used for refinancing existing debt.
10. I understand that no funds may be used for equipment other than that which is directly infrastructure-related.
11. I understand that no funds may be used for speculative real estate ventures.

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Name of Applicant (Business)

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Signature of the Representative of the Applicant

Title

Date Signed

/ /

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## Notary Information

State of \_\_\_\_\_

County of \_\_\_\_\_

Signed and sworn to (or affirmed) before me on: / / 20\_\_\_\_ by \_\_\_\_\_

**(Representative of Applicant, not Notary)**

[SEAL]

\_\_\_\_\_  
(Name of Notary Public)

My Commission Expires: \_\_\_\_\_

## EXHIBITS REQUIRED

This application will not be considered complete unless the following items are submitted with the application form.

### A. "If yes" or "If Necessary" exhibits from application:

- |                                   |                             |                                     |
|-----------------------------------|-----------------------------|-------------------------------------|
| <input type="checkbox"/> Attached | <input type="checkbox"/> NA | Exhibit: Management & Ownership – 1 |
| <input type="checkbox"/> Attached | <input type="checkbox"/> NA | Exhibit: Management & Ownership – 2 |
| <input type="checkbox"/> Attached | <input type="checkbox"/> NA | Exhibit: Employment Impact          |

### B. Certificate of Good Standing\* and Business License:

- |                                   |                                     |   |
|-----------------------------------|-------------------------------------|---|
| <input type="checkbox"/> Attached | <input type="checkbox"/> In Process | An original Certificate of Good Standing issued by the Division of Corporations of the Delaware Secretary of State's office within the thirty-day period before the date of the application |
| <input type="checkbox"/> Attached | <input type="checkbox"/> In Process | A copy of the business license issued by the Division of Revenue of the Delaware Department of Finance.   |

\* Certificate of Good Standing is not available for sole proprietorships or some general partnerships, but is for all other entities.

### C. Financial information\*:

- |                                   |                             |   |
|-----------------------------------|-----------------------------|---|
| <input type="checkbox"/> Attached | <input type="checkbox"/> NA | Three most recent years of financial statements and as much of the current year as is available, (but not more than three months old). Include as "Exhibit: Financial Statements" |
|                                   |                             | or  |
| <input type="checkbox"/> Attached | <input type="checkbox"/> NA | Three most recent years of tax returns. Include as "Exhibit: Tax Returns"   |
| <input type="checkbox"/> Attached | <input type="checkbox"/> NA | Completed copy of "Project Source & Use of Funds" form that follows   |

\* All requested exhibits are required unless specifically told otherwise by the Committee. If the applicant is a new entity with less than two years of financial statements, provide personal financial statements and tax returns of each principal (or the parent company) for the past three years.

### D. Certificate of Incorporation, Corporate Bylaws, Certificate of Formation and Limited Liability Operating Agreement\*:

- |                                   |                                     |  |
|-----------------------------------|-------------------------------------|--|
| <input type="checkbox"/> Attached | <input type="checkbox"/> In process | An original Certificate of Incorporation issued by the Division of Corporations of the Delaware Secretary of State's office within the thirty-day period before the date of the application. |
| <input type="checkbox"/> Attached | <input type="checkbox"/> In process | A copy of the corporation's bylaws, if applicable.   |
| <input type="checkbox"/> Attached | <input type="checkbox"/> In process | An original Certificate of Formation issued by the Division of Corporation of the Delaware Secretary of State's office within the thirty-day period before the date of the application.      |
| <input type="checkbox"/> Attached | <input type="checkbox"/> In process | A copy of the original signed and executed limited liability company operating agreement.  |

\*Certificate of Incorporation and Corporate Bylaws apply to Delaware corporations; Certificate of Formation and Limited Liability Operating Agreement apply to Delaware limited liability companies. Corporations are not required to have bylaws; in this event, please submit a copy of the Articles of Incorporation.

### E. Public Sponsor Certification

- |                                   |                                     |   |
|-----------------------------------|-------------------------------------|---|
| <input type="checkbox"/> Attached | <input type="checkbox"/> In process | Written certification of at least one (1) Public Sponsor stating that the Project will serve a public purpose by enhancing the infrastructure needs of the State. |
|-----------------------------------|-------------------------------------|---|