MEMORANDUM

TO: Members of the Authority

FROM: Timothy Sullivan
Chief Executive Officer

DATE: January 23, 2025

SUBJECT: Agenda for Board Meeting of the Authority January 23, 2025

Notice of Public Meeting

Roll Call

Aspire

New Program - Rules

Public Comment

Adjournment

To: Members of the Authority

From: Tim Sullivan
Chief Executive Officer

Date: January 23, 2025

RE: Aspire Program- Product #312056
Bayfront Partners 32 Urban Renewal, L.P., ("Applicant")
Greater Bergen Community Action, Inc., ("Co-Applicant")

Request

Issuance of tax credits from the Aspire program ("the Program") for a residential project located in Jersey City, New Jersey, Hudson County up to 60% of the total project cost ("eligible costs"), not to exceed $64,226,368.

Aspire Program Background

The New Jersey Economic Recovery Act of 2020, N.J.S.A. 34:1B-322, et seq., provides that the "authority shall administer the program to encourage redevelopment projects through the provision of incentive awards to reimburse developers for certain project financing gap costs." N.J.S.A. 34:1B-324. As authorized by recently enacted revisions, P.L. 2023, c. 98 ("Chapter 98"), this application is proceeding under the act and rules in effect immediately prior to Chapter 98 (respectively, "Former Act" and "Former Rules," and the Former Rules remain promulgated as N.J.A.C. 19:31-23.1 et seq.). However, Chapter 98 also allows for projects to proceed under the Former Act and Former Rules while benefitting from increases to project award caps contained in these revisions. Such projects would also be reviewed using the Chapter 98 definition of "reasonable and appropriate return on investment," which requires both a deferred developer fee and a cash flow internal return on investment analysis for residential projects with Low-Income Housing Tax Credits and returns on equity other than federal or local grants. To do so, an applicant would need to provide a complete application to the Authority, a statement in writing electing to proceed under this option and obtain all applicable approvals under the Municipal Land Use Law prior to November 4th, 2023. This Applicant has provided a complete application and received Final Major Site Plan Approval from the City of Jersey City on November 15, 2022.

Accordingly, this application was evaluated to determine eligibility in accordance with the Former Act and the Former Rules with the exception of the new project award cap and "reasonable and appropriate return on investment" definition. To meet basic eligibility requirements, developers of residential projects must demonstrate (1) that without the incentive award, the Redevelopment Project is not economically feasible, (2) that a project financing gap exists after the developer has contributed an equity participation of at least 20 percent of the total development cost, and (3) the project meets specific cost thresholds, depending on where the project is located.

The Program provides tax credits for ten years (the "Eligibility Period"). The amount of tax credits a real estate development project or "Redevelopment Project," receives is generally a percentage of the project's costs and is subject to a statutory cap determined by project location and other aspects of each project.

Project Description

The proposed Project known as Bayfront Promenade entails the new construction of a mixed-income, residential development located on a 1.49-acre vacant lot in Jersey City, Hudson County. The Project site is the portion of the Bayfront Site located on the west side of Route 440, east of the Hackensack River and north of Kellogg Street.

The Project will include 210 residential units representing 268,960 square feet with an additional 10,670 square feet of commercial/retail space within a 6-story mid-rise building consisting of studios, one, two and three-bedroom apartment units. The residential mix includes 136 market rate units and 74 affordable units making the development 35% affordable. The Project will also include various amenities and 52 structured parking spaces for resident use.

Project Ownership

The Project site will be purchased at financial closing by way of a Purchase and Sale Agreement effective as of July 25, 2024, between Jersey City Redevelopment Agency and Applicant for the sum of $3,948,000. The Applicant, has two Affiliates, Bayfront Partners 32 Commercial L.P., and Bayfront Partners 32 Residential B L.P.

The Applicant is the borrower for the Project with Bayfront Development Partners, LLC, as its the general partner (.01%) which is owned 50% by Omni Bayfront Jersey City LLC and 50% by Pennrose Holdings, LLC.

To obtain debt financing through the New Jersey Housing Mortgage and Finance Agency (the "NJHMFA"), the ownership of the Project will be separated into (3) separate condominium units that will be owned by three (3) separate limited liability companies. Bayfront Development Partners, LLC will be the managing member of each LLC. The three condominiums are as follows:

1. Condo Regime 1 - Bayfront Partners 32 Commercial L.P.- Commercial spaces & parking;
2. Condo Regime 2 - Bayfront Partners 32 Urban Renewal, L.P.- Affordable & Market Rate for 105 units;
3. Condo Regime 3 - Bayfront Partners 32 Residential B L.P. -Affordable & Market Rate for 105 units.

Bayfront Partners 32 Commercial L.P. to be renamed Bayfront Partners 32 Urban Renewal Commercial L.P. upon receipt of Urban Renewal status. And Bayfront Partners 32 Residential B L.P. to be renamed Bayfront Partners 32 Residential Urban Renewal B L.P. upon receipt of Urban Renewal status.

With respect to Condo Regime 2 and Condo Regime 3, at the close of permanent financing, a Low-Income Housing tax credit investor member (99.99%), anticipated to be Affiliate of R4, LLC, will be admitted as the limited partner. The general partner (.01%) will be Bayfront Development Partners LLC.

The entities Bayfront Partners 32 Commercial L.P., Bayfront Partners 32 Urban Renewal, L.P., and Bayfront Partners 32 Residential B L.P. are affiliated as evidenced by the developer with an opinion of counsel.

Lead Development Entity`

As a Joint Venture with ownership and oversight responsibilities evenly shared among two entities, the Project's Lead Development Entities are as follows: Pennrose Holdings LLC, which is owned and controlled by Pennrose LLC, and Paths Development LLC ("Paths"), which is owned and controlled by Nuveen, a subsidiary of Teachers Insurance Annuity Association of America (TIAA) which later formed Paths. As background, on May 5, 2023, Nuveen, a subsidiary of TIAA, closed on the acquisition of Omni New York LLC/Omni America LLC and its portfolio to form the new larger company Paths Development LLC ("Paths").

Pennrose, LLC began in 1971 with a focus on the development of affordable housing. Since then, Pennrose, LLC has successfully completed over three-hundred-fifty developments consisting of more than twenty-seven-thousand rental housing units and roughly $5 billion in total development costs.

Key staff involved in the project include Richard K. Barnhart, Executive Chairman of the Board; Mark H. Dambly, Chief Executive Officer; and Timothy Henkel, President.

Pennrose LLC has undertaken several noteworthy projects including: 1] Gloria Robinson Court Homes III & IV, Jersey City, New Jersey, mixed-use, affordable, residential; 2] John Lewis Commons I, II, III, Long Branch, New Jersey, residential, affordable; 3] New Brunswick Performing Arts Center/Premiere Residences, New Brunswick, New Jersey, mixed-use, affordable, market, residential; 4] The Pryde, Boston, Massachusetts, mixed-use, adaptive reuse, affordable, senior.

Paths, wholly owned by Nuveen, operates as a full-service real estate company specializing in affordable housing development, new construction, preservation, maintenance, property management, and safety technology.

Key staff involved in the project include Reissa Bryan, Chief Executive Officer; Megan Thomas, Chief Operating Officer; and Mathew Holladay, President.

Paths has undertaken several noteworthy projects including: 1] Living Shopping Center, Marlton, New Jersey, retail; 2] Marlton Square, Marlton, New Jersey, retail; 3] 600-650 College Road, Princeton, New Jersey, mixed-use, office; and 4] 780 Third Avenue, New York, NY, mixed-use, retail, residential.

Co-Applicant

The Co-Applicant is Greater Bergen Community Action, Inc., ("GBCA") which is a 501(c)3 acting as the non-profit for the Project financing. Authority staff is in receipt of an IRS 501(c)3 Determination Letter for GBCA evidencing that it is a non-profit for taxation purposes under the provisions of Section 501(c)3 of the Internal Revenue Code.

The Applicant and the Co-Applicant have a Services Agreement that requires the Co-Applicant to provide programs for low-income families and individuals to attain the skills, knowledge, motivation and opportunities needed to become fully self-sufficient through the provision of services addressing the causes of poverty and the implementation of programs to stimulate self-advancement.

GBCA will be contributing two services that directly affect and serve residents of the Project. Specifically, these services will include:

- A Daycare Center that will offer childcare programs and services to meet the educational and childcare needs of the residents' children and for the surrounding community.

- A Credit Union that provides a variety of bank services including but not limited to, savings and checking accounts, loan products and services.

Per the Rules, in the application the Co-Applicant must also demonstrate the following:

The Co-Applicant has complied with all requirements for filing tax and information returns and for paying or remitting required State taxes and fees by submitting, as a part of the application, a tax clearance certificate, as described in section 1 at P.L. 2007, c. 101 (N.J.S.A. 54:50–39).

The Co-Applicant has provided staff with a valid Tax Clearance Certificate as of this recommendation.

The Co-Applicant's organizational purpose encompasses the proposed participation.

Greater Bergen Community Action, Inc. is a not-profit corporation organized under the laws of the State of New Jersey for the purpose of building more sustainable families, community focused institutions, and neighborhood. This is accomplished through strategic investments in the community, household finance, education, workforce development, healthcare, housing, neighborhood revitalization, and the energy sector.

GBCA's subsidiaries include a Federal Credit Union, a HUD-certified Community Housing Development Organization, a solar power company, and a construction company to name a few.

The Co-Applicant has the financial and operational capability to provide the proposed contribution or services.

Authority staff has reviewed financial statements provided by Greater Bergen Community Action, Inc. substantially evidencing the ability to provide the proposed services.

The Co-Applicant's receipt and sale of the tax credits is necessary to finance the Redevelopment Project.

The tax credit certificates will be allocated to the non-profit which will sell the credits annually to a tax credit investor and return those sales proceeds into the partnership Applicant. This allows the project to obtain the Aspire credit sales proceeds without tax consequences and to pay annual debt service on an Aspire bridge loan, putting critically important capital into the project.

Architect

Design for the project will be undertaken by Dattner Architects, a design firm providing planning and design of public and private projects, urban design, and interior design services. The firm was founded in 1964 by Richard Dattner.

Dattner Architects has a wide range of work completed including 1] The Bronx Library Center, Bronx, New York, educational; 2] Irving Sherwood Wright Center, New York, NY, medical; 3] Maine Transfer Stations, New York, NY, industrial and water facility; and 4] Vital Brookdale, Brooklyn, NY, residential mixed-use.

General Contractor

The general contractor for the Project is Del-Sano Contracting Corp, a full-service general contracting company specializing in construction management, design-build, sustainable construction, virtual design construction, building information modeling, and general contracting. The firm was founded in 1975 by Angelo Del Russo.

Construction is expected to commence in March 2025, and the Project will take 22 months to construct.

Project Details

As noted previously the project will include 210 residential units representing 268,960 square feet with an additional 10,670 square feet of commercial/retail within a 6-story mid-rise building consisting of studios, one, two and three-bedroom apartment units. The residential mix includes 136 market rate units and 74 affordable units making the development 35% affordable. Market rate units include 22 studios measuring 625 square feet, 78 one-bedroom units measuring between 825 and 923 square feet, 28 two-bedroom units measuring between 1,350 and 1,161 square feet, and 8 three-bedroom units measuring 1,393 square feet. Affordable rate units include 13 studios measuring 625 square feet, 31 one-bedroom units between 825 and 923 square feet, 15 two-bedroom units measuring between 1,350 and 1,161 square feet, and 15 three-bedroom units measuring 1,393 square feet. The gross rents will range from $1,065 to $4,998 per month with the affordability levels at 60% or less of Area Median Income.

Tenant amenities include outdoor terrace with grilling stations, community lounge with kitchen area, a coworking lounge, fitness and yoga room, dog wash station, and children's play area.

The Project will also include a 21,000 square foot covered parking garage with 52 parking spaces, 143 bike parking stations, and EV charging stations. The Project will comply with the Energy Star Homes Program included in the NJHMFA's Green Standard Requirements, which satisfies NJEDA Green Building Standards.

The buildings 10,670 square feet of commercial space will be comprised of three (3) units which are proposed to be leased to National Action Network (NANTech) and the Co-Applicant Greater Bergen Community Action, Inc.

- NANTech Training Center measuring approximately 4,000 square feet will be providing a community training center to encourage academic, scientific, and artistic excellence among minority students specifically minority & low-income students in education.
- The Co-Applicant, Greater Bergen Community Action, Inc. will be operating a credit union measuring approximately 1,000 square feet, and a day care center measuring approximately 5,000 square feet.

The Remediation Action Workplan is in place by MidAtlantic Engineering Partners to complete the required remediation work, prior to the Projects construction start date, in conjunction with redevelopment to meet Presumptive Remedy requirements and to allow for residential occupancy. The following tasks associated with contaminated materials at the Project site are anticipated to be necessary to complete the redevelopment and remediation: Soil Excavation and trenching; Waste Classification Soil Sampling, Soil Disposal; and Backfill/Capping.

Project Uses and Sources

The Applicant proposes the following uses for the Project:

	Total Development Costs	Project Costs
Acquisition	$3,948,000	$0
Hard construction costs	$87,763,454	$87,763,454
Professional Services	$5,634,772	$4,082,715
Financing and other soft costs	$22,681,388	$15,197,778
Developer Fee	$13,263,908	$0
Total	**$133,291,522**	**$107,043,947**

The total project cost is the cost included in total development costs that is used for sizing the tax credit. The total project cost excludes developer fee(s) and land acquisition, as well as various reserves to fund interest and operating expenses during lease-up.

The minimum total project cost is $5,000,000 for this residential project located in a qualified incentive tract.

The Applicant proposes the following Sources for the Project:

Sources	Type	Amount
NJHMFA 1st Mortgage	Permanent Loan	$40,514,219
NJHMFA Workforce Housing	NJHMFA Soft Loan	$13,950,000
Jersey City Redevelopment Agency	Soft Loan	$6,948,000
LIHTC Proceeds	Tax Credit Equity	$10,507,943
Aspire Bridge Loan	Aspire Proceeds	$43,604,719
Community Project Funding	Grant	$1,616,279
Private Equity	Equity	$10,227,694
Deferred Developer Fee	Equity	$5,992,668
	Total	**$133,291,522**

Developer Contributed Equity

Based on the equity requirement in the Rules of 20% of total development costs for a residential project not in a government-restricted municipality (N.J.A.C. 19:31-23.3), the required equity in this Project equates to $26,658,305. Equity consists of cash of $10,227,694, LIHTC Proceeds valued at $10,507,943, HUD grant in the amount of $1,616,279, and Deferred Developer fee of $5,922,668 which satisfies this program requirement.

Statutory Aspire Award Cap

As noted above, pursuant to Chapter 98, this Project may benefit from increases to project award caps. This Project is in a qualified incentive tract and, thus, eligible for an Aspire tax credit equal to the lesser of 60 percent of the total project costs or 90 million. The total project cost is estimated to be $107,043,947. As such, the Project is eligible for an Aspire tax credit not to exceed $64,226,368 which is the lesser of $90 million and 60 percent of the total project cost.

Financing Gap Analysis

NJEDA staff has reviewed the application to determine if there is a financing gap pertaining to the return on the investment for the developer and ability to attract the required investment. Staff analyzed the pro forma and projections and compared the returns with and without the Aspire award over 13 years. The investment analysis assumes that the Applicant will utilize a 37-month timeframe to build and stabilize the Project. It also assumes a 10-year cash flow with an exit through the sale of the Project in year 11.

IRR without Aspire tax credit	3.35%
IRR with Aspire tax credit	19.63%

Without the benefit of the Aspire tax credit, the Equity IRR is 3.35%, which is below the Hurdle Rate contained in the hurdle rate model provided by EDA's contracted consultant Jones Lang LaSalle ("JLL") for comparable multi-family residential developments in Jersey City, NJ of 23.80% As indicated in the chart above, a developer would not generally complete the Project without the benefit of the Aspire tax credit. Additionally, the Equity IRR with the Aspire tax credit award is below the Hurdle Rate provided by JLL. Applicant has elected to move forward with the Project even though the IRR with the award is still below the market hurdle rate.

Because the Project is receiving Low-Income Housing Tax Credits, NJHMFA's deferred fee model was also used to measure the appropriate and reasonable rate of return. The total developer fee is $13,263,908 with $5,047,352. This conforms to the Agency's policy, as the total developer fee is less than 15% of total development costs and the non-deferred fee is less than the cap on non-deferred fees of 8% of total development costs.

Aspire Tax Credit Sale Price

For projects that represent the new construction of residential units and including a Low-Income Housing Tax Credit Allocation the consideration for the sale or assignment of the Aspire tax credits can be no less than 65 percent of the transferred credit amount before considering any further discounting to present value. The Applicant has provided documentation to the Authority that the consideration contemplated in the current financing structure is 88 percent of the transferred credit amount before considering any further discounting to present value. Currently it is anticipated that a bridge loan will be secured by the future sale proceeds from the tax credits, and when accounting for these loan proceeds received during construction, it represents a discount rate of 2.90% from the 88 percent consideration of the transferred credit amount. The sources identified above in the Sources table as "Aspire Bridge Loan" reflect the value of this bridge loan. The ultimate financing structure and any changes in the future will be subject to this requirement and the Applicant will need to evidence this prior to any assignment or transfer of Aspire tax credits.

Net Positive Benefit Analysis

The NJEDA shall conduct a fiscal impact analysis to determine and ensure that the overall public assistance provided to an Aspire awarded project will result in a net positive economic benefit to the State. In the Former Act, exceptions to the requirement are capital investment for a residential project, a capital investment for a food delivery source, or a health care or health services center with a minimum of 10,000 square feet of space devoted to health care or health services that is located in a municipality with a Municipal Revitalization Index distress score of at least 50 lacking adequate access. The Project is a residential project and, therefore, the entire award and capital investment are not subject to the net positive economic benefit analysis.

Other Statutory Criteria:

Scoring

The Applicant is required to achieve a minimum score to be eligible for an Aspire award. The Project was scored in the areas of Equitable Development, Smart Growth, Environmental Justice, and Climate Resilience. The Applicant has satisfactorily evidenced to staff that the Project is consistent with the policy objectives represented by this scoring criteria.

Community Benefits Agreement

For a Redevelopment Project whose total project cost equals or exceeds $10 million, a community benefits agreement is required to be entered into by the Authority, chief executive of the municipality and the Applicant. The Applicant has provided a letter of support from the chief executive of the municipality acknowledging this requirement.

Labor Harmony Agreement

NJEDA shall not enter into an incentive award agreement for a Redevelopment Project that includes at least one retail establishment which will have more than 10 full-time employees, at least one distribution center that will have more than 20 full-time employees, or at least one hospitality establishment which will have more than 10 full-time employees, unless the incentive award agreement includes a precondition that any business that serves as the owner or operator of the retail establishment, distribution center, or hospitality establishment enters into a labor harmony agreement with a labor organization or cooperating labor organizations that represent retail or distribution center employees in the State. However, a labor harmony agreement shall be required only if the State has a proprietary interest in the Redevelopment Project and shall remain in effect for as long as the State acts as a market participant in the Redevelopment Project. This project does not have a State proprietary interest and therefore is not subject to this requirement.

Prevailing Wage Obligations

For any project awarded Aspire tax credits all workers employed to perform construction work or building services work at the Redevelopment Project shall be paid prevailing wages, which continue through the end of the Eligibility Period. The Applicant has acknowledged this requirement and that in any year where this is found not to be the case, the Applicant shall forfeit the tax credit for that year.

Substantial Good Standing/Subcontractor and Contractor Requirements:

For the duration of the Eligibility Period, the developer and Co-Applicant must be in substantial good standing (or have entered into an agreement) with the Department of Labor and Workforce Development, Environmental Protection, and the Treasury for any project awarded Aspire tax credits and that each contractor and subcontractor performing work at the Redevelopment Project: is registered as required by the Public Works Contractor Registration Act, has not been debarred by the Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State, and possesses a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury.

Availability of Emerge/Aspire Resources

At the time of this recommendation, there are $1,160,320,810 in unallocated tax credit resources available to Aspire projects located in the northern-most counties in the State for the fiscal year.

Recommendation

Authority staff has reviewed the application for Bayfront Partners 32 Urban Renewal L.P. and finds that it satisfies the eligibility requirements of the Act and Rules. It is recommended that the Members approve and authorize the Authority to issue an approval letter and execute an incentive award agreement. The tax credit award would be credited against the total available North Jersey award authority.

Issuance of the Aspire tax credits are contingent upon the Applicant submitting documentation evidencing project financing and planning approvals with respect to the Project within the time required in the Former Rules (one year after approval), which includes:

1. Financing commitments for all funding sources for the Project consistent with the information provided by the Applicant to the Authority for the Aspire tax credit;
2. Evidence of site control and site plan approval for the Project; and
3. Copies of all required State and federal government permits for the Project and copies of all local planning and zoning board approvals that are required for the Project.

Additionally, Applicant must submit an executed Community Benefits Agreement consistent with all of the requirements included in the Former Rules within six months after approval.

The recommendation is approval of an award of up to 60% of the total project cost, not to exceed $64,226,368 in Aspire tax credits based upon the financing gap illustrated by the Project's actual capital stack at time of commitment.

____

Tim Sullivan, CEO

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: January 22, 2025

SUBJECT: Special Adoption New Rules / Concurrent Proposal New Rules for the Cultural and Arts Facility Expansion (CAFE) Program (N.J.A.C. 19:30BB et seq.)

Request:

The Members are asked to approve:

1) The attached special adoption new rules and concurrent proposal new rules for the Cultural and Arts Facilities Expansion (CAFE) Program and to authorize staff to (a) submit the special adoption new rules and concurrent proposal new rules for publication in the New Jersey Register (b) submit the proposed new rules as final adopted rules for publication in the New Jersey Register if no substantive formal comments are received; subject to final review and approval by the Office of the Attorney General, Governor's Rules Office (GRO), and the Office of Administrative Law (OAL).

2) The creation of the Cultural and Arts Facilities Expansion (CAFE) Program as authorized by P.L. 2023, c. 197, the "Cultural Arts Incentive Program Act" (the "Act," codified at N.J.S.A. 34:1B-383 through –393) under the name of the Cultural Arts Incentive Program.

3) Delegated authority to the CEO to approve administrative changes to approved CAFE as currently exists for Economic Recovery Act (ERA) products.

Goals:

The CAFE Program is a robust competitive tax credit program aimed at:

1. Elevating arts and culture as a key sector of the State's economy.
2. Attracting visitors, who will spend additional dollars locally, to the State and local communities.
3. Increasing the number of new and improved art and cultural facilities for residents and visitors.

4. Promoting equitable engagement with the arts for underrepresented groups and underserved communities.

Legislative History:

On January 7, 2021, Governor Phil Murphy signed the New Jersey Economic Recovery Act of 2020 (ERA), P.L. 2020, c. 156, into law. The ERA includes 15+ economic development programs, including:

- Tax credits to incentivize job creation and capital investment, including the Community Anchored Program;
- Investment tools to support and strengthen New Jersey's innovation economy;
- Tax credits to strengthen New Jersey's communities including revitalization of brownfields and preservation of historic properties;
- Financial resources for small businesses, including those impacted by the COVID-19 pandemic;
- Support for new supermarkets and healthy food retailers in food desert communities;
- Additional tax credits for film and digital media.

The ERA included the creation of the Community-Anchored Development Program (CAP), which was amended by P.L.2021, c.160, and is codified at N.J.S.A. 34:1B-311 to -321. In 2023, the Legislature passed S4011 to amend CAP in various ways, including adding specialized criteria applicable only to projects involving cultural arts facilities. Governor Murphy issued a conditional veto of S4011. Instead of amending the CAP as initially proposed, this veto led to the creation of the Cultural Arts Incentive Program, also known as the Cultural and Arts Facilities Expansion (CAFE) Program. In creating this program, the Governor and legislature found that:

1. The Authority can effectively utilize cultural arts institutions to catalyze economic growth in targeted communities. By selling State tax credits, these institutions can fund development projects that attract tourism and businesses to the State, and the State benefits by leveraging the incalculable economic and cultural benefits of building and supporting world class cultural arts institutions.

2. Developing or renovating cultural arts facilities are "inherently beneficial to the State because they provide vital contributions to the communities in which they are located," and that, collectively, these projects enhance both the economy and culture of New Jersey. Therefore, the Act does not require a net benefit test. This is also the case for the Historic Property Reinvestment Program, Brownfields Redevelopment Incentive Program, Food Desert Relief Supermarket Tax Credit Program, and certain Aspire projects such as those that are predominantly residential.

3. Providing spaces for arts and culture to flourish will result in thriving communities and that establishing an incentive program that better aligns with the unique financial needs of these facilities, beyond what existing real estate programs offer, is necessary.

Program Purpose and General Description

CAFE encourages arts and cultural economic development in the State by providing tax credits during an eligibility period. The amount of tax credits a Cultural Arts Institution (or "applicant") receives is 100 percent of the eligible project costs and is subject to a statutory cap of $75 million per project. The overview provided here highlights key aspects of the program. Additional program details are included in the sections below, and full program details are contained in the rules (attached) and the Act.

CAFE is subject to a program cap of $1.2 billion over the lifetime of the program. The program may not accept applications on or after March 1, 2029.

CAFE is a competitive program, under which applicants must apply within a defined application window, with all applications considered following the closure of the application period. The Authority will establish a date for the availability of the application and a date by when applications must be submitted and will post the dates on the Authority's website.

To be eligible for CAFE, a "cultural arts project" (or "project") must meet various eligibility criteria at the time of application, including, but not limited to:

- Result in a capital investment of at least $5,000,000.
- Demonstrate that a project financing gap exists, including a reasonable and appropriate return on investment, and that the tax credits are necessary to finance the project, including both completion of the construction as well as operation of the project. Staff proposes to review operations for the duration of the eligibility period, as that is the period imposed by the Act for compliance.
- Not have commenced construction before application submission unless the Authority determines that the cultural arts project would not be completed without an award of tax credits under the program. Staff recommends the following additional exceptions: demolition and environmental remediation, consistent with Aspire, or the work was ordered by a building code or other official with jurisdiction over the site of the cultural arts project to correct a health, safety, or other hazard, consistent with the Historic Property Reinvestment Program.
- Include at least 20% equity in the project, or 10% for projects in government-restricted municipalities (GRMs) defined as Atlantic City, Paterson, and Trenton.
- Comply with minimum environmental and sustainability standards.
- Ensure all construction and building services workers are paid prevailing wages.
- Partner with an organization(s) that supports Work First New Jersey recipients.
- While the Act does not specify the time by when the project must be completed, staff proposes that the cultural arts institution obtain a temporary certificate of occupancy within four years of executing the tax credit agreement, consistent with the requirement for non-transformative, non-phased Aspire projects.
- Meet a minimum eligible score as outlined in the CAFE Program scoring criteria.

In addition to meeting the program eligibility, the cultural arts institution and any co-applicant must be in substantial good standing with the New Jersey Department of Labor and Workforce Development (DLWD), the New Jersey Department of Environmental Protection (DEP), and the New Jersey Department of Treasury (Treasury), as determined by each Department. The method for determining substantial good standing is the same that has been included in ERA tax credit incentive programs.

Similar to the Aspire Program, staff proposes reviewing the Lead Development Entity for substantial good standing with DLWD, DEP, and Treasury. The Lead Development Entity is responsible for overseeing the redevelopment project and is relied upon by the Authority to demonstrate operational and financial capability, expertise, and experience to complete the project.

All projects that receive CAFE support must also meet minimum environmental and sustainability standards (green building requirements) and pay prevailing wage during construction and the eligibility period to both construction workers and building service workers.

In addition, the applicant must execute a tax credit agreement that contains the Program terms and conditions, with which the applicant must comply.

Some of the areas described above are outlined in greater detail further in this memorandum and in the attached rules.

Eligibility Criteria

The following highlights key eligibility requirements for the CAFE Program. Full eligibility details are contained in the draft proposed rules in section N.J.A.C. 19:31BB-3, based on N.J.S.A. 34:1B-387. To be eligible, a project must meet various eligibility criteria at application, which the Board ascertains based on staff's review and presentation of a project to the Board, and at project completion, when staff reviews the cultural arts institution's certifications evidencing satisfaction of Program requirements and conditions.

Cultural Arts Institution

The definition of Cultural Arts Institution defines includes the following types of entities:

1. Government entities, nonprofit entities, governmental economic or community development entities (incorporated pursuant to Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes), all of which must have a primary mission and specific policy goal of arts education or artistic enrichment; or
2. For-Profit businesses receiving a federal historic rehabilitation tax credit or a tax credit from New Jersey's "Historic Property Reinvestment Act" with a cultural arts institution facility open to the public.

Cultural Arts Institution Facility

"Cultural arts institution facility" means an existing or proposed cultural arts facility within this State, operated and maintained by a cultural arts institution. Consistent with the intent of the intent of the Act, staff proposes that all cultural arts institution facilities must be "open to the public." A "cultural arts institution facility" includes, without limitation, an aquarium, botanical society, historical society, library, museum, gallery, performing arts center, arts-based community centers, or any related facility that is principally for the support and benefit of any of the foregoing. The term "cultural arts institution facility" shall not include facilities predominately used for athletics, recreation, and non-arts based community centers.

To ensure that State subsidized cultural arts institution facilities provide benefits to as visitors and residents in general, staff proposes to define "open to the public" as: no special membership, invitation, appointment, or private status shall be required, and any member of the general public who wishes may enter, visit, participate, or attend. Access may be during specified hours and/or ticketed. As applied to a cultural arts facility in which primarily (i) objects of cultural and/or artistic interest are exhibited, the facility shall be accessible on average at least 20 hours per week; (ii) performances are held in front of a live audience, the facility shall conduct on average at least four events per month; or (iii) arts education is conducted, the facility shall conduct art educational offerings, workshops, programs, or classes on average at least four times per month. The Authority may determine a different number of hours per week or other standard of "open to the public" either based on a standard generally accepted by custom or practice or due to unavoidable closures or other circumstances approved by the Authority.

Cultural Arts Project

"Cultural arts project" or "project" means a capital project for the construction or improvement of a cultural arts institution facility that is located in the State for which a cultural arts institution is to be awarded tax credits by the Authority under the program pursuant to a tax credit agreement, provided that the project for which the tax credits are awarded will result in a capital investment (that is, eligible project cost) of at least $5,000,000.

Project Size / Cost Thresholds

A project must result in a capital investment of at least $5,000,000. If the cultural arts facility is part of a larger building, any shared parts like foundations or parking lots can only be counted as project costs in proportion to the square footage that the cultural arts facility occupies in the building.

Equity

Staff proposes a definition of equity similar to Aspire. The Authority will consider as equity sources of capital: cash, funds raised by the cultural arts institution, costs for project feasibility incurred within the 12 months prior to application, property value less any mortgages when the applicant owns the project site, and any other investment by the applicant in the project deemed acceptable by the Authority. Property value shall be valued at the lesser of: the purchase price, provided the property was purchased pursuant to an arm's length transaction within 12 months of application; or the value as determined by a current appraisal acceptable to the Authority.

The CAFE Program requires that the Cultural Arts Institution include at least 20% equity in the project, or 10% for projects in a GRM.

For CAFE, equity also includes State grants except assistance provided by the Authority. This differs from other real estate tax credit incentive programs, which only count Federal and local grants as equity.

Additionally, as detailed in the attached proposed rules, staff proposes that the value of the property included in the equity contribution shall not be 50 percent or more of the equity. The limitation that not more than 50% of the equity contribution can come from the property value is to ensure that applicants bring other sources of funding for the project and maintain a substantial stake in the project to encourage commitment and accountability in the project. The differs from Authority programs, as this program offers a 100% tax credit, which is higher than other NJEDA programs.

Project Financing Gap and Reasonable Rate of Return

Given that the CAFE Program is intended to catalyze arts and cultural capital projects that need the CAFE tax credits, the Act requires that a project must demonstrate the existence of a project financing gap in order to be eligible for tax credits under this program. The Act defines project financing gap to include a review of the project's reasonable and appropriate return on investment. As with Aspire, staff will compare a project's return on investment against a market rate of return. The Act specifically requires that the Authority consider past and projected fundraising efforts of the applicant to make the determination.

This means that the project must demonstrate part of the "total project cost," including reasonable and appropriate return on investment, remains to be financed after all other sources of capital have been accounted for. "Total project cost" is used to evaluate the return and is based upon all costs incurred by the cultural arts institution prior to completing the project.

Reasonable and appropriate return on investment means the discount rate at which the present value of the future operating cash flows of an investment equals the total project cost. Although this is similar to Aspire, one key difference due to the structure of the program is that CAFÉ applicants are operating entities rather than real estate developers that lease the project.

Economic Feasibility and Capacity

The cultural arts facility must demonstrate at time of application the tax credit is necessary to finance the cultural arts project. The applicant must also demonstrate that they have the ability to successfully complete and then operate the cultural arts project throughout the eligibility period. The applicant will be required to provide a market / feasibility study along with a project budget and operating costs to demonstrate that they have the ability to complete and operate the project as well as demonstrate that the tax credit is needed.

Commencement of Construction

Pursuant to the Act, projects applying for assistance under the CAFE must not have commenced any construction at the site of the cultural arts project, unless the Authority determines that the cultural arts project would not be completed without an award of tax credits under the program.

Additionally, staff recommends the following additional exceptions:

- Consistent with Aspire, demolition and environmental remediation,

- Consistent with the Historic Property Reinvestment Program, if the cultural arts institution has been ordered by a building code or other official with jurisdiction over the site or the cultural arts project to correct a health, safety, or other hazard if:
    - The cultural arts institution provides a copy of the order to the Authority;
    - The cultural arts institution documents to the Authority's satisfaction that the proposed construction activity is limited to resolve the hazard; and
    - Any construction or at the site of the cultural arts facility project was conducted by an entity that is not the current owner or cultural arts institution, or an affiliate of the current owner or cultural arts institution and was not done at the direction of or under contract with the owner, business entity, or an affiliate of the owner or cultural arts institution.

Completion of Construction

While the Act does not specify the time by when the project must be completed, staff proposes Construction of the project must be completed and issued a temporary certificate of occupancy within four years of executing the tax credit agreement. This is consistent with the requirement for non-transformative, non-phased Aspire projects.

Partnership with an organization(s) that supports Work First New Jersey recipients.

During the eligibility period, the cultural arts institution is statutorily required to partner with one or more local community organizations that provide support and services to Work First New Jersey program recipients, in order to provide work activity opportunities and other appropriate services to Work First New Jersey program recipients. These activities and services may include, but are not limited to: work-study programs, internships, sector-based contextualized literacy training, skills-based training in growth industries in the State, and job retention and advancement services;

Project Operation

The CAFE Program requires that the cultural arts institution have ownership of, or lease space in, the cultural arts institution facility and operate, cause to operate, or hold an operating agreement for at least the eligibility period, after the project is completed. To allow the cultural arts institution to use some of the facility for amenities for visitors and as a source of revenue, such as restaurants or other retail not operated by the institution, staff proposes allowing the institution to lease or sublease (or reduce the institution's tenancy or space) up to 40 percent of 15,000 square feet of the facility, whichever is less.

Project Scoring

The Authority is statutorily obligated to establish scoring criteria for the evaluation of proposed projects. The Act requires that the Authority set a minimum acceptable score and use scoring to "determine priority for an award." Priority among applicants is necessary to allocate tax credits in circumstances where there are more project requests than available credits. The program is well funded, with $1.2 billion in credits available. Given the relatively large pool of available credits, staff does not anticipate that the CAFE Program will be oversubscribed. Accordingly, staff are recommending that priority be set through the minimum score approach to assess whether a proposed project is consistent with the objectives, policy goals, and principles of the CAFE Program, rather than using scoring as a means to competitively rank or compare projects against each other. If the volume of CAFE tax credit award requests is greater than currently anticipated, staff will present to the Board a revised scoring evaluation process that can be used for comparative project ranking.

The Authority has established scoring criteria in consultation with the New Jersey Council on the Arts. Please refer to Appendix B for the "CAFE Scoring Criteria" for the specific proposed criteria, and further clarification on each of the different aspects the Authority will consider in its scoring evaluation of proposed projects.

The Act requires the Authority to include the following factors in scoring, which have been included into the scoring matrix for the program and addressed in the rules:

1) Amount of tax credits requested compared to the amount needed to complete the project (leveraging other sources of funding)
2) Advancement of State, regional, and local goals of arts & cultural facilities in underserved communities
3) The relationship of the project to a comprehensive local development strategy
4) Job creation and economic development
5) Project location (economic and social distress locations)
6) Number of new full-time jobs
7) Diverse board which is representative of the community.

The Act also allows the Authority to include additional scoring criteria. As such, staff recommends including 8) Plan for affordable offerings to the general public.

Please refer to Appendix B for the "CAFE Scoring Criteria" for the specific proposed criteria the Authority will consider in its scoring evaluation of proposed CAFE projects.

Similar to the Brownfield Redevelopment Incentive Program, previously approved by this Board, the definitions for "diverse" and "representative of the community" are included in the rules and are specific for this program purpose. In accordance with the Act, the program will consider diversity of the owners and board of directors (or partners or members if no board of directors exist). To receive full points for this category, the applicant will need to include identity self-certification forms, as well as information on the percentage of ownership held by each diverse owner, and an explanation on how the current board members are representative of the community. NJEDA's Diversity Equity and Inclusion (DEI) Department, will evaluate and score applications for this category.

Green Building Standards

As with nearly all Authority tax credit incentive program, the Act requires projects to comply with the standards established by the Authority based on the green building manual prepared by the Commissioner of the Department of Community Affairs (DCA) pursuant to N.J.S.A. 52:27D-130.6, regarding the use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction. The Authority has developed a "Green Building Standards" document that reflects the requirements of the DCA Green Building Manual to ensure projects meet these standards. The Green Building Standards lists options that apply the best practice principles of the Green Building Manual to the applicant's specific type of project.

Post-Approval Process

CAFE is a performance-based program. After approval, the cultural arts institution must sign an approval letter with standard post-approval conditions, such as site control and executed financing commitments, and subsequently a tax credit agreement. Upon completion of the project, the cultural arts institution must submit satisfactory evidence of the completion of the project and satisfaction of the program eligibility requirements. Thereafter, on an annual basis during the eligibility period, the cultural arts institution must demonstrate compliance with eligibility criteria and, among other things, affirmative action, and prevailing wage. During the eligibility period, the cultural arts institution must also certify that the project is still open to the public and operating in a manner that is consistent with the approval for which the tax credit award was based.

Assuming the project is in compliance each year, the cultural arts institution may use – through a sale or transfer – an amount of tax credit equal to the total divided by the duration of the eligibility period in years. The Act authorizes an eligibility period between five and ten years and does not specify the amounts of the tax credit that the institution may have available each year. Staff proposes a five-year eligibility period as it facilitates project financing by reducing risk and enhancing the ability to secure bridge lending sources. This approach also allows recipients to maximize the proceeds from the award.

There are several scenarios where a tax credit award may be reduced or forfeited. These include, but are not limited to, the following, where applicable:

- A project change so that it would not have been eligible or would have been reviewed under different eligibility criteria including but not limited to characteristics used in initial project scoring so that the project no longer achieves the minimum requisite score under the CAFE Program Scoring Criteria;
- Non-compliance with affirmative action or prevailing wage;
- Failure to operate the project as a cultural arts institution facility, including but not limited to the requirements related to being open to the public; or
- A material misrepresentation on the cultural arts institution's application, project completion certification, annual report, or any related submissions. In this case, the rules also state that the Authority may recapture any and all tax credits.

Further information regarding reduction, forfeiture, and recapture of tax credits under CAFE can be found in N.J.A.C. 19:31BB-10.

Rulemaking Process

The CAFE legislation authorized the Authority to promulgate special adoption rules for the CAFE Program, which will be effective immediately upon filing with the Office of Administrative Law. In addition, Staff proposes concurrently proposing the rules, which will include a formal 60-day public comment period pursuant to the Administrative Procedure Act's rulemaking procedures, so the rules can ultimately be adopted as final program rules.

Compliance with Executive Order 63

In accordance with Executive Order 63, to ensure outreach efforts are made to the public and affected stakeholders, the Authority issued a media release advising the public that information on CAFE was available for review and informal input.

The Authority staff convened a virtual public "Listening Session," which provided an overview of the CAFE Program and the opportunity for public feedback on November 26, 2024. The listening session was recorded and posted the Authority's website.

Additionally, the public was invited to submit written feedback through the NJEDA's website from November 26, 2024, through December 20, 2024.

Chief Compliance Officer Certification of Draft Rule Proposal

Pursuant to N.J.S.A. 34:1B-365, the Chief Executive Officer is required to appoint a Chief Compliance Officer (CCO) to, among other things, "review and certify that the provisions of program rules or regulations provide the authority with adequate procedures to pursue the recapture of the value of an economic development incentive in the case of substantial noncompliance, fraud, or abuse by the economic development incentive recipient, and that program rules and regulations are sufficient to ensure against economic development incentive fraud, waste, and abuse".

Jignasa Desai-McCleary has been designated the CCO. In that capacity, Ms. Desai-McCleary has reviewed the proposed compliance portion of rules and regulations for the CAFE Program and is prepared to sign the certification, subject to the Board taking action to approve the same for submission to the New Jersey Office of Administrative Law for publication in an upcoming issue of the New Jersey Register.

Fees

The fee structure as outlined below is also included in the new rules. Prior to establishing the fee structure for this program, Authority staff conducted an internal review to estimate the likely administrative costs to the Authority to administer the CAFE Program. This review considered staff time and third party or contractor fees for reviews and services such as marketing.

Fees are determined based on a project's total cost. The two tiers are those projects with total cost of eligible project costs of less than $20 million and those with total cost of eligible project costs of $20 million and more.

The rules specify the following tiered fees for the Program:

Total Project Cost	<$20MM	≥$20MM
Application Fee	$ 5,000	$ 10,000
Approval Fee	$ 15,000	$ 30,000
Issuance Fee / Certification Fee	$ 25,000	$ 50,000
Annual Servicing Fee	$ 10,000	$ 25,000
Transfer / Assignment Fee	$ 5,000	$ 7,500
Minor Modification	$ 2,500	$ 5,000
Major Modification	$ 5,000	$ 10,000
6-Month Extensions (post-agreement)	$ 2,500	$ 5,000
Termination Fee	$ 5,000	$ 10,000

Delegated Authority

On November 18, 2024, the Members approved a delegation to the CEO to approve routine administrative changes to ERA products, including applicant/awardee name changes, site identification updates, affiliate additions (program permitting), updates to reflect internal reorganizations and organizational changes, and the re-designation the recipient of an award as a result of an acquisition and/or merger.

Presently, we are seeking the Members' approval to delegate to the CEO, who pursuant to existing delegated authority policy may further sub-delegate authority to staff, authority to approve routine administrative changes for CAFE.

Recommendation

The Members are asked to approve:

1) The attached special adoption new rules and concurrent proposal new rules for the Cultural and Arts Facilities Expansion (CAFE) Program and to authorize staff to (a) submit the special adoption new rules and concurrent proposal new rules for publication in the New Jersey Register (b) submit the proposed new rules as final adopted rules for publication in the New Jersey Register if no substantive formal comments are received; subject to final review and approval by the Office of the Attorney General, Governor's Rules Office (GRO), and the Office of Administrative Law (OAL).

2) The creation of the Cultural and Arts Facilities Expansion (CAFE) Program as authorized by P.L. 2023, c. 197 (codified at N.J.S.A. 34:1B-383 through –393).

3) Delegated authority to the CEO to approve administrative changes to approved Café as currently exists for Economic Recovery Act (ERA) products.

Tim Sullivan, CEO

Prepared by**:** Elizabeth Limbrick, Dan Jennings, and Jorge Santos

Attachments:
Appendix A – Proposed New Rules – CAFE Program
Appendix B – CAFE Program Scoring Criteria

OTHER AGENCIES

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Authority Assistance Programs

Cultural Arts Incentives (CAFE) Program

Specially Adopted and Concurrently Proposed New Rules: N.J.A.C. 19:31BB

Filed: ___________, 2025, as R.2025 d.___.

Authority: P.L. 2023, c. 197.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2025-___.

Effective Date: ___________, 2025

Expiration Date: ___________, 2025

Submit written comments by ____________, 2025, to:

Alyson Jones, Managing Director of Legislative and Regulatory Affairs
New Jersey Economic Development Authority
PO Box 990
Trenton, NJ 08625-0990
Alyson.Jones@njeda.gov

Take notice that in accordance with P.L. 2023, c. 197, the New Jersey Economic Development Authority ("NJEDA" or "Authority") has specially adopted the following new rules to implement the provisions of the Cultural Arts Incentives Program Act, P.L.2023, c.197.

The specially adopted new rules shall be effective on ____________, 2025, upon acceptance for filing by the Office of Administrative Law (OAL). The specially adopted new rules shall be effective for a period not to exceed 365 days from the date of filing, that is, until _______________, 2025.

Concurrently, the provisions of the new rules are being proposed for readoption in accordance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. As the NJEDA has filed this notice of readoption before _________, 2025, the expiration date is extended 180 days to ____________, 2025, pursuant to N.J.S.A. 52:14B-5.1.c. The concurrently proposed new rules will become effective and permanent upon acceptance for filing by the OAL (see N.J.A.C. 1:30-6.4(f)), if filed on or before ___________, 2025.

The specially adopted and concurrently proposed new rules follow.

Summary

As set forth at N.J.S.A. 34:1B-383, et. seq., the Cultural Arts Incentives Program (CAFE or Program) is established as a program under the jurisdiction of the New Jersey Economic Development Authority (NJEDA or Authority). The purpose of the Program is to provide tax credits to incentivize broad scale capital projects for arts and cultural venues in New Jersey.

The Program focuses on development and rehabilitation of cultural arts facilities as a key component of the State's economy. The goals of the CAFE Program are to elevate arts and culture as a key sector within the state's economy, attract visitors to the State and local communities, increase the number of first-rate art and cultural experiences for residents and visitors, and promote equitable engagement with the arts for underrepresented groups and underserved communities. The CAFE Program awards tax credits via a competitive application process up to 100 percent of eligible project costs.

The following paragraphs summarize the contents of each section of the specially adopted and concurrently proposed new rules implementing the CAFE Program.

N.J.A.C. 19:31BB-1 provides that this subchapter is promulgated by the NJEDA to implement the provisions of the Cultural Arts Incentives Program Act, sections 1 through 11 of P.L. 2023, c. 197 (codified at N.J.S.A. 34:1B-383 through -393).

N.J.A.C. 19:31BB-2 sets forth the definitions used throughout the Program rules, such as, "cultural arts institution," "cultural arts institution facility," "cultural arts project," "open to the public," "project cost," "project financing gap," and "underserved community." The term "cultural arts institution facility" shall not include facilities predominantly used for athletics, recreation, and non-arts-based community centers.

N.J.A.C. 19:31BB-3 sets forth the eligibility criteria for participation in the Program, including how the Authority will review the proposed total cost of the cultural arts project, and evaluate the project financing gap, which includes consideration of the project's reasonable and appropriate return on investment. The cultural arts institution must have at least 20 percent equity in the cultural arts project; however, for a cultural arts project located in a government-restricted municipality, the equity required shall not be less than 10 percent. Additionally, the cultural arts institution must partner with one or more local community organizations that support Work First New Jersey program participants. Lastly, an applicant will be ineligible if construction has commenced at the site before submission of an application with certain limited exceptions.

N.J.A.C. 19:31BB-4 sets forth the Program application requirements, which include but are not limited to, a description of the project, a letter of intent evidencing a proposed partnership with one or more local community organizations that support Work First New Jersey program recipients, a copy of an independent market study, and an anticipated construction schedule. Any co-applicants must provide similar information.

N.J.A.C. 19:31BB-5 sets forth the fees for the Program.

N.J.A.C. 19:31BB-6 sets forth the process for reviewing the proposed total project cost and evaluating the project financing gap. The Authority will determine if the applicant's submitted financial information is satisfactory. The project financing gap analysis must include an evaluation of the total project cost, amount of capital sufficient to complete the project, operating cash flow, information related to the reasonable and appropriate return on investment analysis, past and projected fundraising efforts of the cultural arts institution, as well as other information.

N.J.A.C. 19:31BB-7 sets forth the process for reviewing, scoring, and approving completed applications as part of a competitive application process. To receive a tax credit award, an applicant must meet a minimum score based on factors that include, but are not limited to, the amount of tax credits requested compared to the amount of tax credits required for project completion, how the project will advance State, regional, and local goals concerning development of cultural arts facilities in underserved communities, and the relationship of the project to a comprehensive local development strategy.

N.J.A.C. 19:31BB-8 sets forth the requirements for the approval letter and tax credit agreement for the Program. The Board shall determine whether or not to approve the application. If approved, the Board shall determine the maximum amount of the tax credit award. This section additionally sets forth a requirement that the cultural arts institution shall submit, prior to the issuance of tax credits but not later than six months following project completion, satisfactory evidence that the project is complete and that the program eligibility requirements are met.

N.J.A.C. 19:31BB-9 sets forth the reporting requirements of the Program including annual reports. This section sets forth the timing for when these reports must be submitted, the submission requirements for these reports, and the penalties if the reports are incomplete or not timely submitted.

N.J.A.C. 19:31BB-10 sets forth the process and basis for any reduction, forfeiture, or recapture of tax credits under the Program. Reduction, forfeiture, or recapture may result if the cultural arts institution changes the cultural arts project that has been approved by the Authority's Board based on the Program's eligibility requirements or minimum scoring requirements, fails to be in compliance with prevailing wage requirements, or fails to meet certain post-approval compliance requirements as specified.

N.J.A.C. 19:31BB-11 sets forth the requirements for application for tax credit transfer certificate and assignment of a tax credit transfer certificate. This subsection permits a cultural arts institution to apply to the Authority and the Division of Taxation for a tax credit transfer certificate covering one or more years. Additionally, the tax credit transfer certificate may be sold or assigned, as specified in and subject to certain limitations.

N.J.A.C. 19:31BB-12 sets forth the limitations if the cultural arts facility is sold during the eligibility period, the requirements for assignment of a tax credit agreement, and the requirements for it the cultural arts institution is leased, subleased, or reduces its tenancy during the eligibility period.

N.J.A.C. 19:31BB-13 sets forth the affirmative action and prevailing wage requirements for the Program. The affirmative action requirements of the Program apply to the cultural arts project from application submission until two years after the first certificate of compliance is issued. The Authority's prevailing wage requirements for construction work and building services work are also applicable. The prevailing wage requirements are applicable from application submission through the end of the eligibility period for both construction work and building services work.

N.J.A.C. 19:31BB-14 sets forth the appeal process for the Program.

N.J.A.C. 19:31BB-15 sets forth the severability of any section, subsection, provision, clause, or portion of the Program rules if adjudged to be unconstitutional or invalid by a court of competent jurisdiction.

Social Impact

The Cultural and Arts Incentive Program will have a positive social impact throughout the state as it will provide greater access for New Jersey residents to arts and cultural facilities, including communities which are presently underserved with access to cultural arts facilities. Moreover, N.J.S.A. 34:1B-387(10) requires successful applicants to partner with one or more community organizations that provide support and services to Work Force New Jersey program recipients.

Economic Impact

The Cultural and Arts Incentive Program will bolster the State's economy by elevating arts and culture as a key sector within the State's economy through increasing the number of new and improved art and cultural experiences for residents and visitors. The Program will potentially also have a high economic spill-over effect into other parts of the economy as the facilities built or expanded under the Program will attract visitors to communities throughout the state which will help to drive commerce and economic growth on a broader scale.

Federal Standards Statement

A Federal standards analysis is not required because the proposed new rules are not subject to any Federal requirements or standards. Accordingly, no further analysis is required.

Jobs Impact

The EDA anticipates that the proposed new rules will incentivize an indeterminate amount of increased job creation throughout New Jersey.

Agriculture Industry Impact

An agricultural industry analysis is not required because the proposed new rules are not related to the agricultural industry. Accordingly, no further analysis is required.

Regulatory Flexibility Statement

As this rulemaking implements the creation of a voluntary program within the Authority, the only reporting, recordkeeping, or other compliance requirement on small business are those that are assumed by the small business if it applies and is approved for an incentive award under the program.**Housing Affordability Impact Analysis**

The proposed new rules will not have an impact on the average costs associated with housing or on the affordability of housing. Accordingly, no further analysis is required.

Smart Growth Development Impact Analysis

The proposed new rules will not evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey. Accordingly, no further analysis is required.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The proposed new rules will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State. Accordingly, no further analysis is required.

19:31BB-1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority ("Authority") to implement the provisions of the Cultural Arts Incentives Program Act, sections 1 through 11 of P.L. 2023, c. 197 (codified at N.J.S.A. 34:1B-383 through -393) and shall apply to all Program applications.

19:31BB-2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Act" means the New Jersey Cultural Arts Incentives Program Act, P.L. 2023, c. 197 (codified at N.J.S.A. 34:1B-383 through -393).

“Affiliate” means an entity that directly or indirectly controls, is under common control with, or is controlled by a cultural arts institution. Control exists in all cases in which the entity is a member of a controlled group of corporations as defined pursuant to section 1563 of the federal Internal Revenue Code (26 U.S.C. § 1563) or the entity is an organization in a group of organizations under common control that is subject to the regulations applicable to organizations pursuant to subsection (b) or (c) of section 414 of the federal Internal Revenue Code (26 U.S.C. § 414). A cultural arts institution may establish by clear and convincing evidence, as determined by the Authority, that control exists in situations involving lesser percentages of ownership if the cultural arts institution shall have control, at a minimum, of all aspects of compliance with this Program. An affiliate of a cultural arts institution may contribute to the project cost and may satisfy the requirement for site control during construction and the eligibility period, but in no event shall the tax credit certificate be issued to any affiliate.

"Authority" means the New Jersey Economic Development Authority established at N.J.S.A. 34:1B-4.

"Board" means the Board of the New Jersey Economic Development Authority established at N.J.S.A. 34:1B-4.

"Building services" means any cleaning or routine building maintenance work, including, but not limited to, sweeping, vacuuming, floor cleaning, cleaning of rest rooms, collecting refuse or trash, window cleaning, securing, patrolling, or other work in connection with the care or securing of an existing building, including services typically provided by a door-attendant or concierge. Building services shall not include any skilled maintenance work, professional services, or other public work for which a contractor is required to pay the prevailing wage as defined at N.J.S.A. 34:11-56.26.

"Co-applicant" means an entity that:

1. Is non-profit for taxation purposes pursuant to the provisions of section 501(c)3 of the Internal Revenue Code;
2. Contributes capital, real property, or services related to the project that directly affect and serve the anticipated customers or visitors of the cultural arts institution facility; and
3. Enters into a participation agreement with the cultural arts institution that specifies the co-applicant's participation in the cultural arts project.

"Cultural arts institution" or "applicant" means

1. i. One of the following:

(1) A governmental entity,

(2) A nonprofit entity, or

(3) A governmental economic or community development entity, which is incorporated pursuant to Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes, operating on a not-for-profit basis, and

ii. That has the primary mission and specific policy goal of cultural, arts and cultural education, or artistic enrichment of the people of this State.

2. A for-profit business seeking a tax credit for a cultural arts institution facility open to the public provided that the cultural arts institution facility is receiving a federal historic

rehabilitation tax credit pursuant to the federal Internal Revenue Code of 1986, 26 U.S.C. § 47, or a tax credit pursuant to the "Historic Property Reinvestment Act," N.J.S.A. 34:1B-270 through -276.

"Cultural arts institution facility" means an existing or proposed facility within this State, operated and maintained by a cultural arts institution for cultural arts and that is open to the public. A "cultural arts institution facility" includes, without limitation, an aquarium, botanical society, historical society, library, museum, gallery, performing arts center, arts-based community centers, or any related facility that is principally for the support and benefit of any of the foregoing. The term "cultural arts institution facility" shall not include facilities predominantly used for athletics, recreation, and non-arts-based community centers.

"Cultural arts project" or "project" means a capital project for the construction or improvement of a cultural arts institution facility that is located in the State for which a cultural arts institution is to be awarded tax credits by the Authority under the Program pursuant to a tax credit agreement, provided that the project for which the tax credits are awarded will result in a capital investment of at least $ 5,000,000.

"Director" means the Director of the Division of Taxation in the Department of the Treasury.

"Diverse" means being a historically underserved or underrepresented identity within the following categories: race, ethnicity, gender, sexual orientation, disability status, educational attainment, veteran status, nation of origin, and language use.

"Eligibility period" means the period of 5 years during which a cultural arts institution may claim, sell, transfer, or otherwise use a tax credit under the Program, beginning with the tax period in which the Authority accepts certification of the cultural arts institution that it has met the capital investment requirements of the Program.

“Eligible position” means a full-time position in an entity in this State which the entity has filled with a full-time employee. An eligible position shall not include an independent contractor or a consultant.

“Environmental remediation costs" means any costs incurred by an applicant in the completion of any actions necessary to investigate, clean up, or respond to a known, suspected, or threatened discharge of contaminants, including, as necessary, the preliminary assessment, site investigation, remedial investigation, and remedial action, pursuant to N.J.S.A. 58:10B-1 et seq.

"Equity" or means applicant-contributed capital to the cultural arts project, which may consist of cash, funds raised by the cultural arts institution, costs for project feasibility incurred within the 12 months prior to application, property value less any mortgages when the applicant owns the project site, and any other investment by the applicant in the project deemed acceptable by the Authority. Property value shall be valued at the lesser of: the purchase price, provided the property was purchased pursuant to an arm’s length transaction within 12 months of application; or the value as determined by a current appraisal acceptable to the Authority. The property value shall not equal 50 percent or more of the equity. Equity shall include Federal, State, or local grants and proceeds from the sale of Federal or local tax credits, including, but not limited to, the Historic Rehabilitation Tax Credit, 26 U.S.C. § 47, Low-Income Housing Credit, 26 U.S.C. § 42, and New Markets Tax Credit, 26 U.S.C. § 45D. Equity shall not include Authority economic subsidies, including, but not limited to, grants or tax credits, or proceeds from redevelopment area bonds.

"Government-restricted municipality" means a municipality in this State with a municipal revitalization index distress score of at least 75, that met the criteria for designation as an urban aid municipality in the 2019 State fiscal year, and that, on the effective date of the New Jersey Economic Recovery Act of 2020, P.L.2020, c.156 (January 7, 2021), is subject to financial restrictions imposed pursuant to the “Municipal Stabilization and Recovery Act,” N.J.S.A. 52:27BBBB-1 et seq., or is restricted in its ability to levy property taxes on property in that municipality as a result of the State of New Jersey owning or controlling property representing at least 25 percent of the total land area of the municipality or as a result of the federal government of the United States owning or controlling at least 50 acres of the total land area of the municipality, which is dedicated as a national natural landmark.

"Incentive award" means an award of tax credits to a cultural arts institution or a co-applicant, if applicable, to reimburse a cultural arts institution for all or a portion of the project financing gap of a cultural arts project pursuant to the provisions at N.J.S.A. 34:1B-383 through -393.

“Lead Development Entity” means the entity that is responsible for overseeing the cultural arts project and is relied upon by the Authority to demonstrate operational capability, expertise, and experience to complete the project. The Authority shall determine which entity is the lead development entity by considering the role an entity has in the coordination of activities related to the cultural arts project, including, but not limited to, project design, project financing, permitting and local approvals, construction oversight and contracting, and property management.

"Minimum environmental and sustainability standards" means the standards established by the Authority, in accordance with the green building manual prepared by the Commissioner of the Department of Community Affairs pursuant to N.J.S.A. 52:27D-130.6, regarding the use of renewable energy, energy-efficient technology, and non-renewable resources to reduce environmental degradation and encourage long-term cost reduction. The Authority shall publish these standards on its website.

“New full-time job” means an eligible position created by a cultural arts institution at a cultural arts project that did not previously exist in this State. For the purposes of determining the number of new full-time jobs, the eligible positions of an affiliate shall be considered eligible positions of the cultural arts institution.

"Open to the public" means no special membership, invitation, appointment, or private status shall be required, and any member of the general public who wishes may enter, visit, participate, or attend. Access may be during specified hours and/or ticketed. As applied to a cultural arts facility in which primarily (i) objects of cultural and/or artistic interest are exhibited, the facility shall be accessible on average at least 20 hours per week; (ii) performances are held in front of a live audience, the facility shall conduct on average at least four events per month; or (iii) arts education is conducted, the facility shall conduct art educational offerings, workshops, programs, or classes on average at least four times per month. The Authority may determine a different number of hours per week, events per month, art educational offerings, workshops, programs, or classes per month, or other standard of “open to the public” either based on a standard generally accepted by custom or practice or due to unavoidable closures or other circumstances approved by the Authority.

“Operating cash flow” means the cultural arts institution’s income at the cultural arts institution facility from various sources, including ticket sales, grants, donations, sponsorships, merchandise, and program fees, minus its expenses, including salaries, rent, production costs, and administrative expenses. Income for purposes of this definition shall not include the proceeds of the sale of the Program tax credits. Expenses for purposes of this definition shall not include debt service.

"Operating reserve" means an unrestricted fund balance set aside to stabilize a nonprofit's finances to mitigate against unexpected events, losses of income, and large unbudgeted expenses.

"Program" means the Cultural Arts Incentives Program established pursuant to N.J.S.A. 34:1B-383 through -393.

"Project cost" or "capital investment" means the costs incurred after application, except for soft costs, in connection with a cultural arts project by a cultural arts institution until the issuance of a permanent certificate of occupancy, or until such other time specified by the Authority, for a specific investment or improvement, including the costs relating to lands, buildings, improvements, real or personal property, or any interest therein, including leases discounted to present value, including lands under water, riparian rights, space rights, and air rights acquired, owned, developed or redeveloped, constructed, reconstructed, rehabilitated, or improved, any environmental remediation costs, plus soft costs of an amount not to exceed 20 percent of the total costs, and the cost of infrastructure improvements, including ancillary infrastructure projects. Project cost shall not include the cost of acquiring land. Vehicles and heavy equipment not permanently located in the building, structure, facility, or improvement shall not constitute a project cost. The fees associated with the application or administration of tax credits under N.J.S.A. 34:1B-383, et seq. and this subchapter shall not constitute a project cost. If the cultural arts facility is a component of a larger facility, the otherwise eligible costs of any shared structures or improvements, including, but not limited to, foundations or parking lots, may be included as project cost only to the extent of the cultural arts facility's pro-rata share, based on square footage, of the larger facility.

“Project financing gap” means the part of the total project cost, including reasonable and appropriate return on investment, that remains to be financed after all other sources of capital have been accounted for, including, but not limited to equity, which shall not be less than 20 percent of the total project cost, and investor or financial entity capital or loans; provided, however, that for a cultural arts project located in a government-restricted municipality, the equity shall not be less than 10 percent of the total project cost.

“Qualified incentive tract” means (a) a population census tract having a poverty rate of 20 percent or more; or (b) a census tract in which the median family income for the census tract does not exceed 80 percent of the greater of the statewide median family income or the median family income of the metropolitan statistical area in which the census tract is situated.

"Reasonable and appropriate return on investment" means the discount rate at which the present value of the future operating cash flows of an investment equals the cost of the investment.

“Representative of the community” means being a heterogenous group that includes individuals sharing diverse identities with those found within the diverse population of a defined community no larger than the municipality(s) in which the cultural arts project is located.

"Soft costs" means costs not directly related to construction, including capitalized interest paid to third parties, real estate taxes, utility connection fees, accounting, title/bond insurance, fixtures/equipment with a useful life of five years or less, and all costs associated with financing, design, engineering, legal, or real estate commissions, including, but not limited to, architect fees, permit fees, loan origination and closing costs, construction management, and freight and shipping delivery. Soft costs may be incurred up to 12 months prior to application. “Soft costs” shall not include early lease termination costs, air fare, mileage, tolls, gas, meals, packing material, marketing and advertising, temporary signage, incentive consultant fees, Authority fees, loan interest payments on permanent financing, escrows, reserves, pre-opening costs, commissions and fees to the applicant not included in the definition of project cost, project management, or other similar costs.

“Tax credit agreement” or “incentive award agreement” means a tax credit agreement entered into pursuant to N.J.S.A. 34:1B-390 and N.J.A.C. 19:31BB-8 between the Authority, a cultural arts institution, and any co-applicant, if applicable, which sets forth the terms and conditions pursuant to which the cultural arts institution and any co-applicant may receive the incentive award.

"Total project cost" means any and all costs incurred for and in connection with the cultural arts project by the applicant and any affiliate of the applicant until the issuance of a permanent certificate of occupancy, or upon such other event evidencing project completion as set forth in the incentive grant agreement, which shall include, but is not limited, to project costs, soft costs, and cost of acquisition of land and buildings.

“Underserved community” means counties that as of December 2024, and based on the 2020 U.S. Census population and 2020 U.S. Census County Business Patterns, have less than the state average of North American Industry Classification System (NAICS) code 71 for Arts, Entertainment, and Recreation Establishments.

“Work First New Jersey program” means the Work First New Jersey program established pursuant to N.J.S.A. 44:10-55, et. seq.

19:31BB-3 Eligibility criteria

(a) Prior to March 1, 2029, a cultural arts institution and co-applicant, if applicable, shall be eligible to receive an incentive award for a cultural arts project only if the cultural arts institution demonstrates to the Authority at the time of application:

1. The proposed cultural arts project will result in a capital investment of at least $ 5,000,000;

2. The structure and terms of the financial, corporate, and real estate instruments to be utilized are adequate to successfully complete and then operate the cultural arts project during the eligibility period;

3. Construction has not commenced at the site of the cultural arts project prior to submitting an application, unless the work was ordered by a building code or other official with jurisdiction over the site of the cultural arts project to correct a health, safety, or other hazard or the Authority determines that the cultural arts project would not be completed without an award of tax credits under the Program. Construction shall not include demolition or site remediation activities for purposes of this paragraph;

4. That the requested value of the tax credit is necessary in each year of the eligibility period in order for the cultural arts institution to finance the establishment of the cultural arts project;

5. That the requested total aggregate value of the tax credits for the entire eligibility period is necessary in order for the cultural arts institution to finance the establishment of the cultural arts project;

6. The cultural arts project complies with the minimum environmental and sustainability standards;

7. The cultural arts project complies with the Authority's affirmative action requirements at N.J.A.C. 19:30-3, adopted pursuant to N.J.S.A. 34:1B-5.4, as set forth in N.J.A.C. 19:31BB-13(a);

8. The significant economic, social, planning, employment, and other benefits that would accrue to the State, county, or municipality from the cultural arts project;

9. During the eligibility period, each worker employed to perform construction work and building services work at the cultural arts project, whether pursuant to contract by the cultural arts institution or a commercial tenant, commercial subtenant, or other commercial occupant, is paid not less than the prevailing wage rate for the worker's craft or trade, as determined by the Commissioner of Labor and Workforce Development pursuant to N.J.S.A. 34:11-56.25 et seq., and 34:11-56.58 et seq. In the event the cultural arts project constitutes a lease of more than 55 percent of a single facility or structure, these requirements shall apply to construction work and building services work at the entire facility or structure. In the event the cultural arts project constitutes a lease of more than 35 percent of a single facility or structure, these requirements shall apply to construction work at the entire facility or structure;

10. During the eligibility period, the cultural arts institution will partner with one or more local community organizations that provide support and services to Work First New Jersey program recipients, in order to provide work activity opportunities and other appropriate services to Work First New Jersey program recipients, which activities and services may include, but shall not be limited to: work-study programs, internships, sector-based contextualized literacy training, skills-based training in growth industries in the State, and job retention and advancement services;

11. The timing of the award of tax credits under the Program will allow for the successful completion and operation of the cultural arts project during the eligibility period demonstrated through an independent market study submitted by the applicant showing there is demand for a cultural arts institution facility at the proposed project site and that it is expected to be successful;

and that the cultural arts institution has a strong prior track record of success or an independent analysis demonstrates that a newly formed cultural arts institution will be successful;

12. A project financing gap, which includes consideration of the project's reasonable and appropriate return on investment, exists, or the Authority determines that a cultural arts project will generate a below market rate of return and supports an incentive award of all or a portion of the project financing gap. The Authority shall evaluate past and projected fundraising efforts of the cultural arts institution to determine whether a project financing gap exists;

13. That, for at least the eligibility period, the cultural arts institution will (a) have ownership of, or lease space in, the cultural arts institution facility and (b) operate, cause to operate, or hold an operating agreement;

14. The cultural arts institution will have at least 20 percent equity in the cultural arts project, provided, however, for a cultural arts project located in a government-restricted municipality, the equity required shall not be less than 10 percent;

15. The cultural arts project will be completed, and the cultural arts institution will be issued a temporary certificate of occupancy for the cultural arts institution facility by the applicable enforcing agency within four years of executing the tax credit award agreement corresponding to the cultural arts project;16. The applicant has complied with all requirements for filing tax and information returns and for paying or remitting required State taxes and fees by submitting, as a part of the application, a tax clearance certificate, as described at N.J.S.A. 54:50-39;

17. The application meets the minimum score under N.J.A.C. 19:31BB-7(c); and

18. If the application includes a co-applicant:

i. The co-applicant has complied with all requirements for filing tax and information returns and for paying or remitting required State taxes and fees by submitting, as a part of the application, a tax clearance certificate, as described in N.J.S.A. 54:50-39;

ii. The co-applicant's organizational purpose encompasses the proposed participation;

iii. The co-applicant has the financial and operational capability to provide the proposed contribution or services;

iv. The co-applicant's proposed capital, real property, or services will materially affect and serve the visitors or customers of the cultural arts project; and

v. The co-applicant's receipt and sale of the tax credits is necessary to finance the cultural arts project.

(b) The cost, or a portion of the cost, of acquiring a building or buildings can be included as a project cost in an amount not exceeding the cost of all other components of the project cost.

19:31BB-4 Application submission requirements

(a) Each application to the Authority made by a cultural arts institution shall include the following information in an application format prescribed by the Authority:

1. The name of the cultural arts institution and lead development entity;

2. The contact information of the person identified as the primary contact for the cultural arts institution and lead development entity;

3. The type of business of the cultural arts institution and lead development entity;

4. The New Jersey tax identification number of the cultural arts institution and lead development entity;

5. The Federal tax identification number of the cultural arts institution and lead development entity;

6. Financial statements for the last three years of the cultural arts institution or, if the cultural arts institution has not been in existence for at least three years, other documentation acceptable to the Authority;

7. Financial statements for the last three years of the lead development entity;

8. A description of the project, including scope of work, project budget, cost estimate, and breakdown of uses and related square footage;

9. A description of the significant economic, social, planning, employment, and other benefits that would accrue to the State, county, or municipality from the cultural arts project;

10. A letter of intent evidencing a proposed partnership with one or more local community organizations that provide support and services to Work First New Jersey program recipients;

11. A copy of a market and/or feasibility study for the proposed use of the project site by an independent third party, which must show there is demand for a cultural arts institution facility at the proposed project site, that it is expected to be successful, and that the cultural arts institution has a strong prior track record of success or an independent analysis which demonstrates that a newly formed cultural arts institution will be successful;

12. An anticipated construction schedule, including a narrative description on what, if any, work, such as demolition, has commenced and, if such work includes construction other than demolition or site remediation activities, the timeline of such work along with an explanation as to why the project has commenced and cannot be completed without an award of tax credits under the Program;

13. Financial information for the project development, which shall include a sources and uses statement, a letter of intent or commitment from each equity source that has been identified, and if applicable, a fundraising plan for the project;

14. An operating plan that includes staffing and annual budget during the eligibility period;

15. A letter evidencing support for the cultural arts project from the chief executive or governing body of the municipality in which the project located;

16. A list of all of the New Jersey Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury permits and approvals or obligations and responsibilities, with which the cultural arts institution and lead development entity are associated, or in which they have an interest. The list shall identify the entity that applied for or received such permits and approvals or have such obligations and responsibilities, such as by program interest numbers or licensing numbers. The cultural arts institution and lead development entity shall also submit a written certification by the chief executive officer, or equivalent officer, stating that the cultural arts institution and lead development entity, respectively, satisfies the criteria at N.J.A.C. 19:31BB-7(e)1 to be in substantial good standing with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury and N.J.A.C. 19:30BB-7(e)3 regarding contractors and subcontractors;

17. A certification that any contractors or subcontractors that will perform work at the cultural arts project are registered as required by the Public Works Contractor Registration Act, N.J.S.A. 34:11-56.48 et seq., have not been debarred by the Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State, and possess a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury;

18. A certification by the chief executive officer, or equivalent officer of the cultural arts institution, that the officer has reviewed the application information submitted and that the representations contained therein are accurate;

19. A completed legal questionnaire disclosing all relevant legal matters in accordance with the Authority's debarment and disqualification rules at N.J.A.C. 19:30-2;

20. Submission of a tax clearance certificate of the cultural arts institution and lead development entity;

21. A list of all the development subsidies, as defined at N.J.S.A. 52:39-1, et. seq., that the cultural arts institution facility is requesting or receiving, the name of the granting body, the value of each development subsidy, and the aggregate value of all development subsidies requested or received;

22. The status of control of the site of the cultural arts project and any agreements that provide a right of access to the cultural arts institution or an affiliate to perform and complete the project. If the cultural arts institution has not secured access to the site at the time of application, an agreement with the current owner of the site evidencing an intent or obligation to provide the necessary right of access to complete the cultural arts project, including, but not limited to, a letter of intent;

23. A list and status of all required local, State, and Federal government permits and local planning and zoning board approvals that have been issued for the project, or will be required to be issued, pending resolution of financing issues;

24. A description of how the minimum environmental and sustainability standards are to be incorporated into the proposed project;

25. Information required by the Authority to evaluate and determine the application's score pursuant to N.J.A.C. 19:31BB-7(d); and

26. Any other necessary and relevant information as determined by the Authority for a specific application including, but not limited to, information needed to complete a review of the

financial information of the project and the cultural arts institution's experience successfully completing similar redevelopment projects.

(b) If the cultural arts institution is applying with a co-applicant, the application shall also include the following information of the co-applicant:

1. The name of the business;

2. The contact information of the person identified as the primary contact for the business;

3. The type of the business;

4. The New Jersey tax identification number;

5. The Federal tax identification number;

6. A list of all of the New Jersey Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury permits and approvals or obligations and responsibilities, with which the co-applicant is associated with, or has an interest in. The list shall identify the entity that applied for or received such permits and approvals or have such obligations and responsibilities, such as by program interest numbers or licensing numbers. The co-applicant shall also submit a written certification by the chief executive officer, or equivalent officer of the eligible co-applicant, stating that the co-applicant applying for the Program satisfies the criteria at N.J.A.C. 19:31BB-7(e)1 to be in substantial good standing with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury;

7. A certification by the chief executive officer, or equivalent officer of the co-applicant, that the officer has reviewed the application information submitted and that the representations contained therein are accurate;

8. A completed legal questionnaire disclosing all relevant legal matters, in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;

9. Submission of a tax clearance certificate, pursuant to N.J.S.A. 54:50-39;

10. A list of all the development subsidies, as defined at N.J.S.A. 52:39-1 et seq., that the co-applicant is requesting or receiving for the project, the name of the granting body, the value of each development subsidy, and the aggregate value of all development subsidies requested or received;

11. Organizing documents of the co-applicant and a narrative regarding the activity of the co-applicant generally and the activity of the co-applicant in the State and municipality;

12. A description of the long-term participation agreement between the co-applicant and the applicant, including a description of how the co-applicant will take an active role in the project, including a description of the capital, real property, or services related to the project that the co-applicant will provide that directly affect and serve the anticipated visitors or customers of the project;

13. An explanation of the need for a co-applicant to receive and sell the tax credits to finance the cultural arts project and how the co-applicant satisfies the eligibility criteria set forth at N.J.A.C. 19:31BB-3(a)18; and

14. Any other necessary and relevant information as determined by the Authority for a specific application including, but not limited to, information needed to complete the review of the co-applicant's participation and eligibility.

(c) The Authority may, in its sole discretion, consider two or more applications as one application for one cultural arts project based on factors including, but not limited to, the location of the cultural arts projects, the types of uses proposed, and the applicant's financing and operational plans.

(d) If circumstances require an applicant to amend its application to the Authority, then the applicant, or chief executive officer or equivalent officer of the applicant, shall certify to the Authority that the information provided in its amended application is true under the penalty of perjury.

19:31BB-5 Fees

(a) A cultural arts institution applying or revising an application pursuant to N.J.A.C. 19:31BB-7(h), for benefits pursuant to the Program shall submit a one-time non-refundable application fee. The application fee shall be as follows:

1. For cultural arts projects with a total project cost less than $ 20 million, the fee shall be $ 5,000.

2. For cultural arts projects with a total project cost of $ 20 million or greater, the fee shall be $ 10,000.

(b) The Authority may procure third-party consultants to review and evaluate an application, including, but not limited to, determining a project's likelihood of success and whether a project financing gap exists. The Authority shall assess the cost of these reviews to the applicant. A cultural arts institution shall pay to the Authority the full amount of the direct costs of an analysis concerning the cultural arts institution's application for tax credits that a third party retained by the Authority performs, if the Authority deems such retention to be necessary.

(c) The cultural arts institution shall pay to the Authority a non-refundable fee prior to the approval of the tax credit by the Authority as follows, except that the fee shall be refunded if the Authority does not approve the tax credit:

1. For cultural arts projects with a total project cost less than $ 20 million, the fee shall be $ 15,000.

2. For cultural arts project with a total project cost of $ 20 million or greater, the fee shall be $ 30,000.

(d) For all cultural arts projects, a cultural arts institution shall pay to the Authority a non-refundable fee prior to the receipt of the tax credit certificate pursuant to N.J.A.C. 19:31BB-8(g) as follows:

1. For cultural arts projects with a total project cost less than $ 20 million, the fee shall be $ 25,000.

2. For cultural arts projects with a total project cost of $ 20 million or greater, the fee shall be $ 50,000.

(e) A cultural arts institution shall pay to the Authority an annual servicing fee beginning with the tax accounting or privilege period in which the Authority accepts the certification that the cultural arts institution has met the eligibility requirements of the Program for the respective cultural arts project pursuant to N.J.A.C. 19:31BB-8(d) and (e) and for the duration of the eligibility period. The annual servicing fee shall be paid to the Authority by the cultural arts institution at the time the cultural arts institution submits its annual report, as follows:

1. For cultural arts projects with a total project cost less than $ 20 million, the fee shall be $ 10,000.

2. For cultural arts projects with a total project cost of $ 20 million or greater, the fee shall be $ 25,000.

(f) A cultural arts institution applying (i) for a tax credit transfer certificate pursuant to N.J.A.C. 19:31BB-11, including use of the tax credit transfer certificate as collateral, or (ii) to pledge, assign, transfer, or sell any or all of its right, title, and interest in and to an incentive award agreement and in the incentive awards payable thereunder, shall pay to the Authority a fee, as follows:

1. For cultural arts projects with a total project cost less than $ 20 million, the fee shall be $ 5,000.

2. For cultural arts project with a total project cost of $ 20 million or greater, the fee shall be $ 7,500.

(g) A cultural arts institution shall pay to the Authority a non-refundable fee for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval, as follows:

1. For cultural arts projects with a total project cost less than $ 20 million, a non-refundable fee of $ 2,500 shall be paid for each request for any administrative change, addition, or modification to the tax credit; and a non-refundable fee of $ 5,000 shall be paid for any major change, addition, or modification to the tax credit, such as those requiring extensive staff time and Board approval.

2. For cultural arts projects with a total project cost of $ 20 million or greater, a non-refundable fee of $ 5,000 shall be paid for each request for any administrative change, addition, or modification to the tax credit; and a non-refundable fee of $ 10,000 shall be paid for any major change, addition, or modification to the tax credit, such as those requiring extensive staff time and Board approval.

(h) A non-refundable fee shall be paid for the first six-month extension to the date by which the cultural arts institution shall submit the satisfactory evidence pursuant to N.J.A.C. 19:31BB-

8(e) with respect to the eligibility requirements of the Program for the respective cultural arts project; and a non-refundable fee shall be paid for each subsequent extension, as follows:

1. For cultural arts projects with a total project cost less than $ 20 million, the fee shall be $ 2,500.

2. For cultural arts projects with a total project cost of $ 20 million or greater, the fee shall be $ 5,000.

(i) A cultural arts institution seeking to terminate an existing incentive agreement in order to participate in an incentive award agreement authorized pursuant to the Cultural Arts Facilities Expansion Program shall pay to the Authority a non-refundable fee, as follows:

1. For cultural arts projects with a total project cost under $ 20 million, the fee shall be $ 5,000.

2. For cultural arts projects with a total project cost of $ 20 million or greater, the fee shall be $ 10,000.

19:31BB-6 Project Financing gap

(a) The Authority shall review the proposed total project cost and evaluate and validate the project financing gap estimated by each cultural arts institution applying for an incentive award, as follows:

1. The Authority shall evaluate the proposed project cost, including any of the components of the proposed project cost, to develop the cultural arts project against reasonable market costs and components of comparable redevelopment projects;

2. The Authority shall determine if the applicant's submitted financial information for the project is satisfactory. If satisfactory, the Authority shall incorporate the financial information in the project financing gap, including the reasonable and appropriate return on investment; and

3. The project financing gap analysis shall include, but not be limited to, an evaluation of the total project cost, amount of capital sufficient to complete the project, operating cash flow, reasonable and appropriate return on investment, past and projected fundraising efforts of the cultural arts institution, and, in the Authority's sole discretion, a comparison to alternative financing structures for a comparable redevelopment project available to the applicant.

19:31BB-7 Review, scoring, and approval of completed application; Tax credit amounts

(a) The Authority shall award tax credits under the Program through a competitive application process consisting of at least one award round each year. The Authority shall provide notice to the public of the opening and closing dates for submission of Program applications on the Authority's Internet website.

(b) The Authority shall review completed applications for tax credits submitted to the Authority by the deadline date of the award round and shall evaluate each application as if it were received on the deadline date, without providing any preference for early submissions. The review shall determine if the applicant:

1. Complies with the eligibility criteria;

2. Satisfies the submission requirements; and

3. Provides adequate information for the subject application.

(c) To determine priority for an award of a tax credit, all eligible applications in a given award round shall be ranked on the basis of a scoring system developed by the Authority, in consultation with the New Jersey State Council on the Arts. Prior to the commencement of an award round, the Authority shall determine the weights for the factors and the minimum score for the award round that each applicant is required to attain to be eligible for a tax credit. The Authority shall provide public notice of the weights through its website.

(d) The scoring system developed by the Authority pursuant to subsection (c) above shall assess applications for tax credits based on competitive criteria, which shall include, but shall not be limited to:

1. The amount of tax credits requested by the cultural arts institution compared to the amount of tax credits required for the completion of the cultural arts project;

2. How the cultural arts project will advance State, regional, and local goals concerning the development of arts and cultural facilities in underserved communities;

3. The relationship of the cultural arts project to a comprehensive local development strategy, adopted as of the time of application, including its relation to other development and redevelopment projects in the municipality;

4. The degree to which the cultural arts project enhances and promotes job creation and economic development in the municipality and the immediate area surrounding the cultural arts project at the time of application;

5. The extent of economic and related social distress in the municipality and the immediate area surrounding the cultural arts project, including whether the cultural arts project is located in a qualified incentive tract or other areas of the State identified from time to time by the Authority in rules;

6. The quality and number of new full-time jobs that will be created at the cultural arts institution, as determined by new or expanded space or an increase in activities at the cultural arts institution facility;

7. At time of application, if the cultural arts institution has a board of directors, the extent to which that board of directors is diverse and representative of the community in which the cultural arts project is located; and

8. At time of application, a detailed plan to make the applicant's exhibitions, performances, events, and/or educational offerings affordable and available to the general public.

(e) Prior to the award of a tax credit:

1. The Authority shall confirm with the New Jersey Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury that the cultural arts institution, any co-applicant, and the lead development entity are in compliance by being in substantial good standing with the statutes, rules, and other enforceable standards of the respective department, or, if a compliance issue exists, the cultural arts institution, any co-applicant, or the lead development entity, as applicable, has entered into an agreement with the respective department that includes a practical corrective action plan, as applicable.

i. Substantial good standing shall be determined by each department and mean, at a minimum, that the cultural arts institution, the lead development entity, and any co-applicant:

(1) As to the Department of Labor and Workforce Development and the Department of Environmental Protection:

(A) Is in substantial compliance with all material statutes, rules, and other enforceable standards of the respective department that apply to the cultural arts institution and any co-applicant; and

(B) Has no material violations of those statutes, rules, or other enforceable standards that remain substantially unresolved through entry into a corrective action plan, or other agreement with the department, with respect thereto; and

(2) As to all other departments, has no unpaid liability in excess of any threshold dollar amount(s) that may be established by each respective department.

ii. If the Department of Labor and Workforce Development, the Department of Environmental Protection, or the Department of the Treasury promulgates, or issues, its own more stringent rule or standard defining the term "substantial good standing," the respective department shall use such rule or standard to determine whether an entity is in substantial good standing.

2. The Authority may contract with an independent third party to perform a background check on the cultural arts institution, the lead development entity, and any co-applicant.

3. The cultural arts institution shall certify that any contractors or subcontractors that will perform work at the cultural arts project are registered, as required by the Public Works Contractor Registration Act, N.J.S.A. 34:11-56.48 et seq., have not been debarred by the Department of Labor and Workforce Development from engaging in, or bidding on, public works contracts in the State, and possess a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury.

(f) Provided that all parties are in compliance with subsection (e), the Authority shall allocate tax credits to cultural arts projects according to the cultural arts projects' scores and until either the available tax credits are exhausted or all cultural arts projects obtaining the minimum score receive a tax credit, whichever occurs first.

1. If insufficient funding exists to fully fund all eligible cultural arts projects, a cultural arts project may be offered a partial tax credit valued at less than what is provided for in subsection (g) below.

(g) A cultural arts project involving the development or rehabilitation of a cultural arts institution facility that has been approved by the Board shall be eligible for a tax credit award in an amount not to exceed 100 percent of eligible project costs, subject to the caps and maximum amounts in the Act and this subchapter. In the case of a cultural arts institution operating on a not-for-profit basis, if the Authority has determined that incentive awards shall include an amount based on the operating reserve of such cultural arts institution and has determined the amount of such operating reserve based on a generally accepted standard, the tax credit award may include up to 100 percent of such cultural arts institution's appropriate operating reserve, as determined by the Authority.

1. The value of the tax credits approved by the Authority under the Program for a cultural arts project shall not exceed $ 75,000,000 per cultural arts project.

(h) Applications that do not receive the minimum score established by the Authority for that award round shall not receive further consideration for a tax credit by the Authority in that award round; however, a cultural arts institution may revise or complete a new application to be submitted in a subsequent award round.

(i) If a cultural arts institution declines a tax credit offered by the Authority, the Authority shall offer the tax credit to the applicant with the application having the next highest score and having obtained at least the minimum score in that award round.

19:31BB-8 Approval letter; Tax credit agreement

(a) Upon receipt of a recommendation from the Authority staff on the cultural arts project, the Board shall determine whether or not to approve the application, the maximum amount of tax credits and the maximum percentage amount of allowed tax credits for its project cost and operating reserve, if any, in a cultural arts project, and promptly notify the applicant, any co-applicant, and the Director of the Division of Taxation of the determination.

1. The Board's award of the credits will be subject to conditions subsequent that must be met in order to retain the credits. An approval letter setting forth the conditions subsequent will be sent to the applicant and any co-applicant. Such conditions shall include, but not be limited to, the

requirement that the cultural arts institution has entered into a partnership with one or more local community organizations that provide support and services to Work First New Jersey program recipients, the project complies with the Authority's prevailing wage requirements, N.J.S.A. 34:1B-5.1 and N.J.A.C. 19:31BB-13(b) and (c), and affirmative action requirements, N.J.S.A. 34:1B-5.4 and N.J.A.C. 19:31BB-13(a), that the project does not violate any environmental law requirements, including, but not limited to, the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13, and the requirement that the minimum environmental and sustainability standards are incorporated into the proposed project. The approval letter shall also provide the requirements necessary for the Authority to execute the tax credit agreement.

2. The approval letter shall require documentation verifying project financing and planning approvals, including the submittal of executed financing commitments and capital raised, documents that evidence site control by the cultural arts institution or an affiliate of the cultural arts institution, a copy of the site plan approval, and a copy of all required permits and planning and zoning approvals and permits. If the Authority approval included a co-applicant, the required documents shall also include the executed participation agreement between the co-applicant and the cultural arts institution with a term that extends for the duration of the eligibility period. Absent extenuating circumstances or the Authority's determination, in its sole discretion, the Authority's approval of the tax credits shall expire if the cultural arts institution or co-applicant, as applicable, does not submit the documentation required in this paragraph within a year after approval of the application.

3. The approval letter shall provide an estimated date of completion and include a requirement for periodic progress reports. In the event of a default under the approval letter or the tax credit agreement, the Authority may rescind the incentive award. If the Authority rescinds an

incentive award in the same calendar year in which the Authority approved the incentive award, then the Authority may allocate the unused tax credits to another applicant that attained the minimum score as determined pursuant to N.J.A.C. 19:31BB-7(d).

(b) Following satisfaction of the requirements for the execution of an incentive award agreement, the Authority shall enter into an incentive award agreement with the cultural arts institution and any co-applicant. The Chief Executive Officer of the Authority shall negotiate the terms and conditions of the incentive award agreement on behalf of the State. The awarding of tax credits shall be conditioned on the cultural arts institution’s and any co-applicant's compliance with the requirements of the agreement.

(c) The incentive award agreement shall specify and include:

1. A detailed description of the proposed cultural arts project;

2. The maximum amount of project cost and the maximum percentage of the project cost that will be used to calculate the amount of tax credits. If the actual project cost is less than the project cost set forth in the application, the tax credit shall be calculated based on the actual project cost;

3. If the award contains a tax credit based on an operating reserve, information necessary to calculate such tax credit.

4. The duration of the eligibility period;

5. A description of the occupancy permit or other event evidencing project completion that begins the eligibility period;

6. An ongoing requirement to provide the Authority with current personnel information that will enable the Authority to administer the Program;

7. A requirement that the cultural arts institution shall not cease to operate or cause another entity to operate the cultural arts project during the eligibility period. If the cultural arts institution causes another entity to operate the cultural arts project, the tax credit incentive award agreement shall require that the cultural arts institution provide oversight of the cultural arts project through, at a minimum, ongoing reporting by the cultural arts institution to the Authority;

8. A method for the cultural arts institution to certify that it has met the project cost and other eligibility requirements of the Program;

9. For a for-profit cultural arts institution, a requirement to provide annual financial statements, as certified by a certified public accountant and accompanied by an unqualified opinion, reporting the project's financial performance;

10. Representations that the cultural arts institution will comply with the minimum environmental and sustainability standards;

11. Representations that the cultural arts institution and any co-applicants are in substantial good standing and that the cultural arts project will comply with all applicable laws, including, but not limited to, prevailing wage requirements pursuant to N.J.A.C. 19:31BB-13(b) and (c), affirmative action requirements pursuant to N.J.A.C. 19:31BB-13(a), and environmental laws, including, but not limited to, the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13;

12. A provision permitting an audit of evidence and documentation of the cultural arts institution and any co-applicant, supporting the certifications pursuant to (e) below, and the annual reports pursuant to N.J.A.C. 19:31BB-9, as the Authority deems necessary;

13. Reporting requirements pursuant to N.J.A.C. 19:31BB-9;

14. A provision permitting the Authority to amend the agreement;

15. A provision establishing the conditions pursuant to which the Authority, the cultural arts institution and any co-applicant, or all parties, may terminate the agreement;

16. Milestones for the cultural arts project, which shall include the estimated date of commencement and completion of the project, and a provision that the Authority may rescind the award of tax credits if a project fails to advance in accordance with milestones in the incentive award agreement or fails to provide progress reports required pursuant to the approval letter;

17. For a for-profit cultural arts institution, a provision to verify the financing gap and the cultural arts institution's updated projected cash flow at the time the cultural arts institution submits the evidence of the completion of the project pursuant to subsection (e) below, which shall include, but is not limited to, any executed permanent financing commitments. To ensure the protection of taxpayer money, if the Authority determines at project certification that the actual capital financing approach utilized by the project or the updated projected cash flow has resulted in a financing gap that is smaller than the financing gap determined at Board approval, the Authority shall use the information and updated projected cash flow to calculate the return on investment required pursuant to paragraph 18 below. If there is no project financing gap due to the actual capital financing approach utilized by the project or the updated projected cash flow, then the cultural arts institution shall forfeit the incentive award;

18. For a for-profit cultural arts institution, a provision requiring that at project completion and at the end of the eligibility period, the Authority shall evaluate the cultural arts institution's actual reasonable and appropriate rate of return on investment and compare that actual reasonable and appropriate rate of return on investment to the reasonable and appropriate rate of return at the time of Board approval. If the actual rate of return on investment exceeds the reasonable and appropriate rate of return on investment at the time of Board approval by more than 15 percent,

the Authority shall require the cultural arts institution to pay 20 percent of the amount in excess of the reasonable and appropriate rate of return on investment as calculated at time of Board approval, as follows: for any payment amount calculated at the time the cultural arts institution submits the evidence of the completion of the project pursuant to subsection (d) below, the cultural arts institution shall make equal annual payments, which in aggregate shall equal the calculated payment amount, with each annual report during the eligibility period. The Authority shall require an escrow account to be held by the Authority for any payment received until the end of the eligibility period. Following the final year of the eligibility period, the Authority shall determine if the cultural arts institution's actual rate of return exceeded the reasonable and appropriate rate of return determined at Board approval. If the final actual rate of return does not exceed the reasonable and appropriate rate of return determined at Board approval, the Authority shall release to the cultural arts institution the escrowed funds. If the actual project final rate of return exceeds the reasonable and appropriate rate of return determined at Board approval, the Authority shall require the cultural arts institution to pay 20 percent of the amount of the excess, which shall include the funds held in escrow, and such funds shall be deposited in the State General Fund;

19. A provision acknowledging the Authority's right to confirm with the Department of Environmental Protection, the Department of Labor and Workforce Development, and the Department of the Treasury, as set forth at N.J.A.C. 19:31BB-7(e)1, that the cultural arts institution, and any co-applicant, is in substantial good standing or has entered into an agreement with the respective department that includes a practical corrective action plan, as applicable;

20. A provision providing that if the cultural arts institution, and any co-applicant, is not in substantial good standing with the Department of Environmental Protection, the Department of Labor and Workforce Development, and the Department of the Treasury and has not entered into

an agreement with the respective department, as set forth at N.J.A.C. 19:31BB-7(e)1, and after being given written notice thereof and an opportunity to be heard or to contest the determination by the respective department, then the cultural arts institution and any co-applicant shall forfeit the tax credits in any year in which the cultural arts institution and any co-applicant is neither in substantial good standing with each department nor has entered into a practical corrective action plan;

21. A requirement that the cultural arts institution shall include in all commercial leases or other commercial occupancy agreements and shall require that all subleases or other commercial occupancy agreements applicable to the cultural arts project include, a provision setting forth the requirements at N.J.A.C. 19:31BB-3(a)9, which provision shall be in a form acceptable to the Authority. Such provision shall state that if a commercial tenant, commercial subtenant, or other commercial occupant fails to pay the required prevailing wage rate as set forth at N.J.A.C. 19:31BB-3(a)9, then the issuance of tax credits to the cultural arts institution and any co-applicant shall be delayed until such time as documentation demonstrating compliance has been provided to the Authority.

22. A requirement that the cultural arts institution shall confirm that each contractor or subcontractor performing work at the cultural arts project: is registered as required by the Public Works Contractor Registration Act, N.J.S.A. 34:11-56.48 et seq.; has not been debarred by the Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State; and possesses a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury;

23. A provision allowing the Authority to extend, in individual cases, the deadline for any annual reporting or project completion certification requirement;

24. Indemnification and insurance requirements from the cultural arts institution and any co-applicant;

25. Events that would trigger forfeiture, reduction, rescission, or recapture of the tax credits, including, but not limited to, provisions in this subchapter;

26. Default and remedies, including, but not limited to, a default if a cultural arts institution or any co-applicant made a material misrepresentation on its application;

27. A provision that authorizes the Authority or the State to purchase tax credits offered for sale by a cultural arts institution for 90 percent of the stated value of the tax credit before considering any further discounting to present value which shall be permitted and an acknowledgement that the Authority elects not to make such purchases; and

28. Require that at project completion the cultural arts institution adopt specific nondiscrimination policies in accordance with the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 through -50, for the operation of a cultural arts project.

(d) A cultural arts institution shall submit, prior to the issuance of tax credits pursuant to the incentive award agreement and prior to the date set forth in N.J.A.C. 19:31BB-3(a)15, but no later than six months following project completion, satisfactory evidence of the completion of the cultural arts project and satisfaction of the Program eligibility requirements as set forth in (e) below. If the Governor declares an emergency, the Chief Executive Officer of the Authority may grant an extension to the time set forth in N.J.A.C. 19:31BB-3(a)15 for the duration of the emergency and the Board of the Authority, upon recommendation of the Chief Executive Officer, may grant two additional six-month extensions; provided that on an ongoing basis:

i. The extensions are due to the economic disruption caused by the emergency;

ii. The cultural arts project is delayed due to unforeseeable acts related to the project beyond the cultural arts institution's control and not due to the cultural arts institution's fault or negligence;

iii. The cultural arts institution is using best efforts, with all due diligence, to proceed with the completion of the cultural arts project and the issuance of the temporary certificate of occupancy; and

iv. The cultural arts institution has made and continues to make all reasonable efforts to prevent, avoid, mitigate, and overcome the delay;

(e) The evidence required under (d) above, shall include, but not be limited to, the documents in this subsection.

1. Evidence of a temporary certificate of occupancy or other event evidencing project completion that begins the eligibility period indicated in the incentive award agreement;
2. A certification by a qualified independent certified public accountant of the actual project cost. The certification shall be made pursuant to an "agreed upon procedures" letter acceptable to the Authority. If the project cost is reduced below the minimum capital investment for eligibility, the cultural arts project shall no longer be eligible. The Authority shall qualify certified public accountants and provide to the cultural arts institution the list of qualified certified public accountants; provided, however, the cultural arts institution may select a certified public accountant that is independent of the cultural arts institution and any co-applicant and not on the Authority's list of qualified certified public accountants for purposes of the project cost certification if the cultural arts institution demonstrates an extenuating circumstance prohibiting the cultural arts institution from retaining

a qualified certified public accountant. Such circumstances include, but are not limited to, the unavailability of any of the qualified certified public accountants to timely complete the certification or none of the qualified certified public accountants are independent of the cultural arts institution;

3. If the award includes tax credits on the basis of operating reserve, updated documents evidencing the basis of the calculation for such tax credit;
4. A floor plan identifying the actual and proposed uses and square footage of gross leasable area for each such use and, if the cultural arts project comprises multiple buildings, a site plan. For a cultural arts project with eligibility requirements on size or uses, evidence that the project satisfies all such requirements. For a cultural arts project in which any commercial tenant, commercial subtenant, or other commercial occupant is the party to the contract to perform building services work as set forth at N.J.A.C. 19:31BB-3(a)9, the floor plan, or site plan, shall identify all such tenants, the premises occupied by each such tenant, and the size of the space occupied by such tenant;
5. A certification indicating whether or not the cultural arts institution is aware of any condition, event, or act that would cause the cultural arts institution or any co-applicant not to be in compliance with the approval, the Act, or this subchapter;
6. A certification from a licensed engineer that the cultural arts project has adhered in all material respects to the plan submitted by the cultural arts institution describing how the cultural arts institution would satisfy the minimum environmental and sustainability standards;

7. Any permanent financing commitments executed as of the date of the submission of the documents in this subsection and an updated project pro forma;
8. A certification by the chief executive officer or equivalent officer of the cultural arts institution that the information provided pursuant to this subsection is true under the penalty of perjury. Claims, records, or statements submitted by a cultural arts institution to the Authority in order to receive tax credits shall not be considered claims, records, or statements made in connection with State tax laws;
9. If the Authority approval included a co-applicant, a certification that the participation agreement between the cultural arts institution and the co-applicant remains in effect and is not in default;
10. Evidence that the agreement between the cultural arts institution and the local community organization(s) regarding Work First New Jersey program recipients remains in effect and is not in default; and
11. Any information determined by the Authority to be necessary and relevant to its review.

(f) A cultural arts institution shall forfeit the credit amount for any tax period for which the cultural arts institution's documentation remains uncertified by the Authority as of the date for certification indicated in the incentive award agreement, although credit amounts for the remainder of the years of the eligibility period shall remain available to the cultural arts institution.

(g) Once the Authority accepts the documentation required at (e) above and the Authority determines that all eligibility requirements and other required conditions have been met, within 90 days of the Authority's acceptance of the documentation and evidence satisfactory to the Authority, the Authority shall notify the cultural arts institution and the Director. The cultural arts institution shall receive its tax credit certificate that will be based on the information submitted pursuant to (e) above, provided it shall not exceed the maximum amount determined by the Board pursuant to N.J.A.C. 19:31BB-7(g). The use of the tax credit certificate shall be subject to the receipt of an annual certificate of compliance issued by the Authority.

(h) At, or before, the date of certification, any modification to the cultural arts project as approved by the Board, including, but not limited to, a reduction in the amount of the project cost, or square feet, shall require review and approval by the Authority to determine that the cultural arts project as modified does not undermine the basis for the tax credit award approved.

19:31BB-9 Reporting requirements and annual report

(a) A cultural arts institution approved for an incentive award and that enters into an incentive award agreement shall submit annually, commencing in the year in which the incentive award is issued and for the remainder of the eligibility period, a report indicating whether the cultural arts institution is aware of any condition, event, or act that would cause the cultural arts institution or any co-applicant not to be in compliance with the incentive award agreement, the representations made to the Authority during the competitive award rounds conducted pursuant to N.J.A.C. 19:31BB-7(c), or the provisions of this subchapter and the Act and any additional reporting requirements contained in the incentive award agreement or tax credit certificate. The cultural arts institution, or an authorized agent of the cultural arts institution, shall certify that the information provided pursuant to this subsection is true under the penalty of perjury.

(b) The report required at (a) above is due 120 days after the end of the cultural arts institution's tax privilege period. Failure to timely submit the report, absent extenuating circumstances and the written approval of the Authority, shall result in a forfeiture of the tax credits for that privilege period. The Authority reserves the right to audit any of the representations made and documents submitted in the annual report.

(c) The annual report shall consist of:

1. A certification indicating whether or not the cultural arts institution is aware of any condition, event, or act that would cause the cultural arts institution or any co-applicant not to be in compliance with the approval, the Act, the incentive award agreement, representations made to the Authority during the competitive award rounds conducted pursuant to N.J.A.C. 19:31BB-7(c), or this subchapter;

2. Evidence that the agreement between the cultural arts institution and the local community organization(s) regarding Work First New Jersey program recipients remains in effect and is not in default and that the cultural arts institution is providing the work activity opportunities and other appropriate services to Work First New Jersey program recipients required pursuant to the agreement;

3. A certification indicating that the cultural arts project does not violate any environmental law requirements, including, but not limited to, the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13;

4. For the two years after the first certificate of compliance is issued, evidence that the cultural arts project remains in compliance with the Authority's affirmative action requirements pursuant to N.J.A.C. 19:31BB-13(a);

5. Evidence that the cultural arts project remains in compliance with the Authority's prevailing wage requirements pursuant to N.J.A.C. 19:31BB-13(b) and (c);

6. A tax clearance certificate as described at N.J.S.A. 54:50-39 for the cultural arts institution and any co-applicant;

7. A certification from the cultural arts institution that the cultural arts project is still operating as a cultural arts institution facility, including, but not limited to, continuing to meet the eligibility requirements on site control and eligible uses, and remains open to the public;

8. A floor plan identifying the actual uses, and if the cultural arts project comprises multiple buildings, a site plan. For a cultural arts project in which any commercial tenant, commercial subtenant, or other commercial occupant is the party to the contract to perform building services work as set forth at N.J.A.C. 19:31BB-3(a)9, the floor plan, or site plan, shall identify all such tenants, the premises occupied by each such tenant, and the size of the space occupied by such tenant;

9. For a for-profit cultural arts institution, an annual financial statement, as certified by a certified public accountant and accompanied by an unqualified opinion, reporting the project's financial performance, and operating budget, which includes operating cash flow, that is acceptable to the Authority;

10. If the Authority approval included a co-applicant, a certification that the participation agreement between the cultural arts institution and the co-applicant remains in effect and is not in default and that the co-applicant is making the contribution(s) required pursuant to the participation agreement; and

11. In conducting its annual review, the Authority may require a cultural arts institution to submit any information determined by the Authority to be necessary and relevant to its review.

(d) Upon receipt, review, and acceptance of each report submitted during the eligibility period, the Authority shall provide to the cultural arts institution and the Director a certificate of compliance indicating the amount of tax credits awarded to the cultural arts institution. No tax credit certificate will be valid without the certificate of compliance issued for the relevant tax privilege period. Upon receipt by the Director of the certificate of compliance, the Director shall coordinate with the cultural arts institution and the Authority the use of the tax credits awarded, which the cultural arts institution may:

1. Offer for sale through the provision of a tax credit transfer certificate pursuant to section N.J.S.A. 34:1B-392 and N.J.A.C. 19:31BB-11; or

2. Use as collateral or to secure any financial instrument approved by the Authority to provide financing for the cultural arts project, if that use is in accordance with the Act and this subchapter.

If the Authority approval included a co-applicant, the Authority shall provide notice of the certificate of compliance to the co-applicant.

(e) Credits granted to a partnership shall be passed through to the corporate partners, corporate members, or corporate owners, respectively, pro rata, or pursuant to an executed agreement among the partners, members, or owners documenting an alternate distribution method provided to the Director accompanied by any additional information as the Director may prescribe consistent with any rule, guidance, or other publication issued by the Division of Taxation.

(f) The Director may prescribe the order of priority of the application of the credit allowed pursuant to this section and any other credits allowed by law against the tax imposed pursuant to N.J.S.A. 54:10A-5.

19:31BB-10 Reduction, forfeiture, and recapture of tax credits

(a) The cultural arts institution and any co-applicant shall forfeit all credit for the tax period in which the change occurs and each subsequent tax period and may be subject to recapture, if:

1. The cultural arts institution changes the cultural arts project that has been approved based on certain eligibility requirements, including, but not limited to; the eligibility criteria set forth in

N.J.A.C. 19:31BB-3; the requirements in the definition of cultural arts institution; that the cultural arts institution operate, cause to operate, or hold an agreement to operate the cultural arts project as a cultural arts institution facility; that the cultural arts institution facility is open to the public, and the cultural arts project changes such that the eligibility requirements are no longer met; or

2. The cultural arts institution changes the cultural arts project, so that the cultural arts project would score less than the minimum score pursuant to N.J.A.C. 19:31BB-7(d).

(b) As of the date of the annual report pursuant to N.J.A.C. 19:31BB-9:

1. If any worker employed to perform construction work, or building services work pursuant to a building services contract to which the cultural arts institution is a party, at the cultural arts project is paid less than the prevailing wage rate for the worker's craft or trade pursuant to N.J.A.C. 19:31BB-3(a)9 during the relevant tax period, then the cultural arts institution and any co-applicant shall forfeit all credit for the tax period in which the prevailing wage is not paid and each subsequent tax period until the first tax period for which documentation demonstrating compliance has been reviewed and approved by the Authority, for which tax period and each subsequent period the full amount of the credit shall be allowed.

2. If a commercial tenant, commercial subtenant, or other commercial occupant violates the requirement to pay the prevailing wage rate for building services work set forth in N.J.S.A. 34:1B-387 and N.J.A.C. 19:31BB-3(a)9, then the issuance of all certificates of compliance for the tax credits to the cultural arts institution and any co-applicant shall be delayed until such time as documentation demonstrating compliance has been reviewed and approved by the Authority. If a violation is not cured, or is not capable of being cured, within one year of receipt of notice of the violation, then the cultural arts institution and any co-applicant shall forfeit 50 percent of the tax credits otherwise authorized for the tax period in which the notice of violation was issued. If the

violation is not cured on or before the conclusion of that tax period in which the one year to cure has expired, the cultural arts institution and any co-applicant shall forfeit up to 100 percent of the tax credits otherwise authorized, as determined by the Authority, in each subsequent tax period until the first tax period for which documentation demonstrating compliance has been reviewed and approved by the Authority. In this event, the cultural arts institution applicant and any co-applicant shall be allowed the full tax credit amount beginning in the tax period in which documentation of compliance was reviewed and approved by the Authority, and including each subsequent tax period in which the tax credits are otherwise authorized.

3. If the cultural arts institution is not in compliance with the requirements set forth in N.J.A.C. 19:31BB-7(e)3, the Authority may suspend the tax credits for the relevant tax period and if the suspension continues for two years, then, at the Authority's sole option, the cultural arts institution and any co-applicant may forfeit the tax credits for those years.

(c) If, based on new information, the Authority determines that a reduction, forfeiture, or recapture should have been applicable pursuant to any of the provisions in this section, the Authority shall recapture the tax credits for the relevant tax period(s).

(d) If, at any time, the Authority determines that the cultural arts institution or co-applicant made a material misrepresentation on the cultural arts institution's application, project completion certification, annual report, or any related submissions, the cultural arts institution and any co-applicant shall forfeit, and the Authority may recapture any or all of, the incentive award and all tax credits awarded pursuant to the Program, which shall be in addition to any other remedies in the incentive award agreement and any criminal or civil penalties to which the cultural arts institution, co-applicant, and their respective officers may be subject.

(e) A for-profit cultural arts institution shall provide an updated project pro forma and other relevant financial documentation to the Authority when the tax credit agreement is to be terminated. The Authority shall evaluate the reasonable and appropriate return on investment as of the date of termination in the same manner as at the end of the eligibility period pursuant to N.J.A.C. 19:30BB–8(c)18.

(f) If a for-profit cultural arts institution fails to provide the financial documentation required for the Authority to evaluate the reasonable and appropriate return on investment pursuant to (e) above or N.J.A.C. 19:30BB-8(c)18, the Authority shall recapture all of the tax credits awarded.

(g) Any recapture amount pursuant to this section may include interest on the recapture amount, at a rate equal to the statutory rate for tax deficiencies, plus any statutory penalties, and all costs incurred by the Authority and the Division of Taxation in the Department of the Treasury in connection with the pursuit of the recapture, including, but not limited to, counsel fees, court costs, and other costs of collection. The Authority shall confer with the Division of Taxation to determine the recapture amount.

(h) If all or part of a tax credit sold or assigned pursuant to N.J.S.A. 34:1B-392 and N.J.A.C. 19:31BB-11 is subject to recapture, then the Authority shall pursue recapture from the cultural arts institution, and to the extent the co-applicant is involved with the basis for the recapture, any co-applicant, and not from the purchaser or assignee of the tax credit transfer certificate.

(i) Any funds recaptured pursuant to this section, including penalties and interest, shall be deposited into the General Fund of the State.

19:31BB-11 Application for tax credit transfer certificate

(a) A cultural arts institution or co-applicant may apply to the Director and the Chief Executive Officer of the Authority for a tax credit transfer certificate, covering one or more years. The tax credit transfer certificate, upon receipt thereof by the cultural arts institution or co-applicant from the Director and the Chief Executive Officer of the Authority, may be sold or assigned, in full or in part, in an amount not less than $25,000, in the privilege period during which the cultural arts institution or co-applicant receives the tax credit transfer certificate from the Director, to another person, who may apply the credit against a tax liability pursuant to N.J.S.A. 54:10A-5, 54:18A-2 and 3, 17:32-15, or 17B:23-5. The certificate provided to the applicant or co-applicant shall include a statement waiving the applicant's or co-applicant's right to claim the amount of the credit that the applicant has elected to sell or assign against the applicant's tax liability.

(b) The cultural arts institution or co-applicant shall not sell, pledge, transfer, or assign, including a collateral assignment, a tax credit transfer certificate allowed under this section for consideration received by the cultural arts institution or co-applicant of less than 85 percent of the transferred credit amount before considering any further discounting to present value which shall be permitted. The cultural arts institution or co-applicant shall submit to the Authority documentation evidencing the value of the tax credits that may include, but not be limited to, the purchase agreement.

(c) The tax credit transfer certificate issued to a cultural arts institution or co-applicant by the Director shall be subject to any limitations and conditions imposed on the application of State tax credits pursuant to the Act and subchapter and any other terms and conditions that the Director may prescribe including, but not limited to, any applicable statutes of limitations for claiming a refund or credit; provided, however, that the holder of a tax credit certificate may transfer all or part of the tax credit amount, on or after the date of issuance of the tax credit transfer certificate, as set forth in (a) above for use by the transferee in the tax period for which it was issued, and the transferee may carry forward all or part of the tax credit amount in any of the next five successive tax periods. Notwithstanding any provision of this section to the contrary, the amount of tax credits that may be claimed by the transferee in any tax period shall not exceed the total tax credit amount divided by the duration of the eligibility period in years.

(d) A purchaser or assignee of a tax credit transfer certificate pursuant to this section shall not make any subsequent transfers, assignments, or sales of the tax credit transfer certificate. If a lender that holds a tax credit certificate as collateral on a cultural arts project forecloses on the project, the foreclosure and resulting transfer of the certificate shall not be considered a sale of the transfer certificate.

(e) The Authority shall publish, on its internet website, the following information concerning each tax credit transfer certificate approved by the Authority and the Director pursuant to this section:

1. The name of the transferrer;

2. The name of the transferee;

3. The value of the tax credit transfer certificate;

4. The State tax against which the transferee may apply the tax credit; and

5. The consideration received by the transferrer.

19:31BB-12 Effect of sale or lease of qualified facilities and relocation of cultural arts facility

(a) Except for (b) below, if the cultural arts facility is sold in whole or in part during the eligibility period, the new owner shall not acquire the capital investment of the seller and the seller shall forfeit all tax credits for the tax period in which the sale occurs and all subsequent tax periods, provided, however, that any tax credits of cultural arts institution tenants shall remain unaffected. If the cultural arts institution merges or consolidates with another entity, the resulting or transferee entity shall not be considered the new owner.

(b) A cultural arts institution entity may, upon notice to and written consent of the Authority, assign, transfer, or sell all of its right, title, and interest in, and to, the tax credit agreement and in the incentive award payable pursuant to the tax credit agreement, and the right to receive the incentive award, along with the rights and remedies provided to the eligible cultural arts institution pursuant to the tax credit agreement, provided that any sale, assignment, or transfer of the tax credit agreement shall be to the purchaser, assignee, or transferee of the cultural arts institution facility. To decide whether to consent, the Authority will consider the purchase price and terms of the assignment, transfer, or sale, the allocation of the purchase price to the tax credit in relation to the minimum required pursuant to N.J.A.C 19:31BB-11(b), and the impact of the transaction to the eligibility criteria. Any assignment shall be an absolute assignment for all purposes, including the Federal bankruptcy code. If the Authority approval included a co-applicant, prior to requesting the consent of the Authority, the cultural arts institution shall obtain, in writing, the co-applicant's consent, and the cultural arts institution shall provide the co-applicant's written consent to the Authority with the cultural arts institution’s notice.

(c) A co-applicant who has entered into a tax credit agreement may, upon notice to and written consent of the Authority, assign, transfer, or sell any or all of its right, title, and interest in, and to, the tax credit agreement and in the incentive award payable pursuant to the tax credit agreement, and the right to receive the incentive award, along with the rights and remedies provided to the co-applicant pursuant to the tax credit agreement, provided that the purchaser shall be a non-profit pursuant to section 501(c)3 of the Internal Revenue Code. To decide whether to consent, the Authority will consider the contributions of the co-applicant, the proposed contributions by the purchaser, the purchase price and terms of the assignment, transfer, or sale, and the allocation of the purchase price to the tax credit. The new purchaser shall be the co-applicant and shall be required to receive an assignment of the co-applicant's participation agreement or to execute a new participation agreement with the cultural arts institution. Any assignment shall be an absolute assignment for all purposes, including the Federal bankruptcy code. Prior to requesting the consent of the Authority, the co-applicant shall obtain, in writing, the cultural arts institution’s consent, and the co-applicant shall provide the cultural arts institution’s written consent to the Authority with the co-applicant's notice.

(d) The Authority shall publish, on its internet website, the following information concerning each assignment, transfer, or sale approved by the Authority pursuant to this section:

1. The name of the person or entity offering the assignment, transfer, or sale of a right, title, or interest in a tax credit agreement;

2. The name of the person or entity receiving the assignment, transfer, or sale of a right, title, or interest in the tax credit agreement;

3. The value of the right, title, or interest in the tax credit agreement; and

4. The consideration received by the person or entity offering the assignment, transfer, or sale of the right, title, or interest in the tax credit agreement.

(e) If a cultural arts institution leases, or subleases, or otherwise reduces its tenancy in whole or in part during the eligibility period, the new tenant shall not acquire the tax credits of the cultural arts institution, and the cultural arts institution shall forfeit all tax credits for any tax period of its lease, sublease, or tenancy reduction. Notwithstanding the foregoing, an eligible cultural arts institution may lease or sublease a portion of its cultural arts facility up to the lesser of 15,000 square feet or 40 percent of the cultural arts institution facility for any other tenant without forfeiting any of the cultural arts institution's credits, provided that the tenant's capital investment shall not be included in the cultural arts institution's capital investment.

19:31BB-13 Affirmative action and prevailing wage

(a) The Authority's affirmative action requirements at N.J.S.A. 34:1B-5.4, N.J.A.C. 19:30-3, and N.J.A.C. 19:31BB-3(a)7 shall apply to the cultural arts project. The affirmative action requirements shall begin at application submission and apply for two years after the first certificate of compliance is issued.

(b) The Authority's prevailing wage requirements for construction work at N.J.S.A. 34:1B-5.1, N.J.A.C. 19:30-4, and N.J.A.C. 19:31BB-3(a)9 shall apply to the cultural arts project from application submission through the end of the eligibility period.

(c) The Authority’s prevailing wage requirements for building services work at N.J.A.C. 19:30-4 and N.J.A.C. 19:31BB-3(a)9 shall apply from application submission through the end of the eligibility period.

19:31BB-14 Appeals

(a) The Board's action shall be effective 10 business days after the Governor's receipt of the minutes, provided neither an early approval nor veto has been issued.

(b) A cultural arts institution may appeal the Authority’s action by submitting in writing to the Authority, within 20 calendar days from the effective date of such action, an explanation of the grounds for such appeal. Such appeals are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(c) Appeals that are timely submitted shall be handled by the Authority as follows:

1. The Chief Executive Officer of the Authority, or delegee, shall designate an employee of the Authority to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal to the Board. The hearing officer shall perform a review of the written record, which includes but is not limited to the written appeal, any documentation provided in support of the appeal, and any written staff response to the appeal. The hearing officer may require an in-person hearing and has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal. The Authority may consider new evidence or information.

2. Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Board containing the hearing officer’s finding(s) and recommendation(s) on the merits of the appeal. The hearing officer's report shall be advisory in nature. After reviewing the report, the Chief Executive Officer may also include a recommendation to the written report of the hearing officer. The cultural arts institution shall receive a copy of the written report of the hearing officer, which shall include the recommendation of the Chief Executive Officer, if any, and shall have the opportunity to file written comments and

exceptions to the hearing officer's report within five business days from receipt of such report. Any such comments will be incorporated into the final report presented to the Board.

3. The Board shall consider the hearing officer's report, the recommendation of the Chief Executive Officer, if any, and any written comments and exceptions timely submitted by the cultural arts institution. Based on that review, the Board shall issue a final decision on the appeal.

4. Final decisions rendered by the Board shall be appealable to the Superior Court, Appellate Division, in accordance with the Rules Governing the Courts of the State of New Jersey.

19:31BB-15 Severability

If any section, subsection, provision, clause, or portion of this subchapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of this subchapter shall not be affected thereby.

Appendix B

Cultural and Arts Facilities Expansion (CAFE)
Program Project Scoring Criteria

The Authority is statutorily obligated to establish a system for scoring proposed CAFE projects. The Act requires that the Authority set a minimum acceptable scoring level and use scoring to "determine priority for an award." Priority among applicants is necessary to allocate tax credits to the highest scoring projects in circumstances where there are more project funding requests than tax credit awards available.

Given the currently large pool of available credits relative to anticipated demand, staff recommend that priority be set through the minimum score approach to assess whether a given project is consistent with the objectives, policy goals, and principles of the CAFE Program, rather than using scoring to competitively rank or compare projects against one other. Should demand increase and a comparative ranking of projects become necessary, staff will present a revised scoring rubric to the Board.

The recommended system will score projects with respect to eight criteria, of which the first seven are statutorily required and can be changed only "when necessary to respond to conditions in the State":

1. The amount of tax credits requested by the cultural arts institution compared to the amount of tax credits required for the completion of the cultural arts project
2. How the cultural arts project will advance State, regional, and local goals concerning the development of arts and cultural facilities in underserved communities
3. The relationship of the cultural arts project to a comprehensive local development strategy, including its relation to other development and redevelopment projects in the municipality, which, as explained below, staff proposes to be based on the letter of support required from the municipality containing an explanation of such relationship and whether the proposed project is an allowed by land use zoning or redevelopment plan
4. The degree to which the cultural arts project enhances and promotes job creation and economic development, which, as explained below, staff proposes to be measured in terms of the municipality and the immediate area surrounding the cultural arts project
5. The extent of economic and related social distress in the municipality and the immediate area surrounding the cultural arts project, which, as explained below, staff proposes be based on whether the cultural arts project is located in a qualified incentive tract or other areas of the State identified in related program statutes or rules
6. The quality and number of new full-time jobs that will be created by the cultural arts institution, which, as explained below, staff proposes to be based on jobs at the cultural arts institution facility as determined by new or expanded space or an increase in access to the public
7. If the cultural arts institution has a board of directors, the extent to which that board of directors is diverse and representative of the community in which the cultural arts project is located, which, as explained below, staff proposes to be reviewed solely at time of application

8. At time of application, detailed plan to make the applicant's exhibitions, performances, events, and/or educational offerings affordable and available to the general public

The details for each of the criteria are below.

For the initial round, staff is proposing a minimum score of 40 out of 100, to be as inclusive as possible. Staff may adjust the minimum score requirement for future rounds based on an evaluation of the results from the previous rounds.

Applications will be reviewed by a committee comprised of a multidisciplinary team of professionals from NJEDA. At a minimum, the committee will include at least one staff member with experience in real estate development projects, and one with construction and/or project management experience.

Criterion 1: The amount of tax credits requested by the cultural arts institution compared to the amount of tax credits required for the completion of the cultural arts project (10 points)

This criterion will look at whether the applicant is leveraging other sources of funding. Projects that leverage other larger sources of funding will receive a higher score. This criterion may change based on the actual amount of funding received by the project. The score will be based on the maximum percentage of the project comprised by the tax credit.

Criterion 2: How the cultural arts project will advance State, regional, and local goals concerning the development of arts and cultural facilities in underserved communities (5 points)

This criterion will look at where the project is located and whether the location is an area that is underserved by the Arts and Culture industry. As defined in the rules, "Underserved community" means counties that as of December 2024, and based on the 2020 U.S. Census population, have less than the state average of North American Industry Classification System (NAICS) code 71 for Arts, Entertainment, and Recreation Establishments. This project will not change after application. Using this approach, the following locations are deemed underserved:

1. Atlantic County
2. Burlington County
3. Camden County
4. Cumberland County
5. Essex County
6. Gloucester County
7. Hudson County
8. Middlesex County
9. Ocean County
10. Passaic County
11. Salem County
12. Union County
13. Warren County

Criterion 3: The relationship of the cultural arts project to a comprehensive local development strategy, including its relation to other development and redevelopment projects in the municipality (30 points)

Staff proposes evaluating this criterion based on the following at the time of application. Accordingly, this criterion will not change after application.

- Whether the letter of support for the cultural arts project from the governing body or chief executive of the municipality in which the project is located that is required for eligibility describes how the project aligns with the development goals for the municipality. (10 points).

- Evidence that the cultural arts project is a permitted use according to land use zoning or the redevelopment plan. Applicants must demonstrate compliance by submitting a letter from the local zoning official verifying that the project is an allowed use, or by referencing the relevant local zoning ordinance or redevelopment plan that confirms the project's permitted status. (20 points)

Criterion 4: The degree to which the cultural arts project enhances and promotes job creation and economic development (20 points)

This criterion assesses the project's potential to generate employment opportunities for both the region and the state. The evaluation will be conducted using the IMPLAN model alongside a detailed narrative explanation submitted by the applicant with the application. The assessment may include an analysis of the marketing plan, economic impact statement, and staffing plan (included in the Operating Plan). Staff proposes that the rules limit the assessment of this criterion to the time of application. Thus, the score every project receives for this criterion will not change after application even if the project changes and would have resulted in a lower score if re-evaluated.

Criterion 5: The extent of economic and related social distress in the municipality and the immediate area surrounding the cultural arts project (10 points)

This criterion evaluates whether the project is located in area experiencing social and/or economic distress. Staff proposes to assess this criterion based on the location of projects, which can be done based solely at application. Staff proposes that the following projects would receive full points in the initial application round: projects that are located in a Government Restricted Municipality (GRM), a Qualified Incentive Tract, as defined in Aspire, or a municipality ranked among the 10 percent of the most distressed according to the Municipal Revitalization Index. The MRI ranks New Jersey's municipalities according to eight separate indicators that measure diverse aspects of social, economic, physical, and fiscal conditions in each locality. The MRI is used as a factor in distributing certain "need based" funds. Staff may update or change the geographic designation with other similar designations in subsequent application rounds. Projects located outside of these areas would not receive points under this criterion. This criterion will not change after application.

Criterion 6: The quality and number of new full-time jobs that will be created by the cultural arts institution (5 points)

This criterion assesses the project's plan to create new positions. Staff proposes evaluating this criterion based on the type of construction and the assumption of job generation of such construction. Thus, a project that involves new construction or an addition or expansion of real estate will receive full points. Additionally, staff proposes that a cultural arts project that only includes renovating an existing facility and meets the definition of "open to the pubic" at time of application will not receive points, as it does not contribute to job creation. Conversely, if the cultural arts institution that is renovating an existing facility and does not meet the definition of "open to the public" at the time of application, will receive full points based on the assumption that the increased activities will result in the creation of jobs. Applicants are awarded either zero or full points, with no intermediate options. This criterion will not change after application.

Criterion 7: The Diversity of the Board of Directors (10 points)

This criterion assesses the diversity of the cultural arts institution's board of directors and ownership and whether it is representative of the community. Staff proposes as expressly stated in the rules that this criterion is evaluated based solely on the information at time of application regardless of any change to the composition of the board of directors subsequent to application. Thus, this criterion will not change after application.

Criterion 8: The Approach and Plan for Affordable Offerings to the General Public Availability (10 points)

Staff proposes the addition of this criterion to evaluate, solely at the time of application, the cultural arts institution's strategy for ensuring that its facility and programming are accessible to community members and the general public. Staff may also examine whether this strategy is explicitly mentioned in the applicant's mission or strategic plan. Considerations may include plans for discounted or free admission, accessible hours, events, or educational offerings available to the public without restrictive barriers. Institutions with a proven track record of such accessibility will receive additional points. While staff proposes that this evaluation be expressly limited in the rules to time of application, staff anticipates that cultural arts institutions that propose a plan are more likely to implement the plan or initiatives similar to the plan. Accordingly, this criterion will not change after application.