

SPECIAL ADOPTION

OTHER AGENCIES

(a)

ECONOMIC DEVELOPMENT AUTHORITY

Authority Assistance Programs

Cultural Arts Incentives (CAFE) Program

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

Special New Rules Adopted and Concurrent Proposed New Rules

Authorized: February 10, 2025, by Economic Development Authority, Tim Sullivan, Chief Executive Officer.

Filed: February 10, 2025, as R.2025 d.033.

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

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

Concurrent Proposal Number: PRN 2025-024.

Effective Date: February 10, 2025.

Expiration Date: August 9, 2026.

Submit written comments by May 16, 2025, to:

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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 February 10, 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 February 10, 2026.

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 February 10, 2026, the expiration date is extended 180 days to August 9, 2026, 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 August 9, 2026.

The specially adopted and concurrently proposed new rules follows.

Summary

As set forth at N.J.S.A. 34:1B-383 et seq., the Cultural Arts Incentives Program ("CAFE Program" or "Program") is established as a program within the jurisdiction of the New Jersey Economic Development 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 the 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 through a competitive application process of up to 100 percent of eligible project costs.

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

N.J.A.C. 19:31BB-1.1 provides that this subchapter is promulgated by the NJEDA to implement the provisions of the Cultural Arts Incentives Program Act, sections 1 through 11 at P.L. 2023, c. 197 (codified at N.J.S.A. 34:1B-383 through 393).

N.J.A.C. 19:31BB-1.2 sets forth the definitions of words and terms 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-1.3 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-1.4 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-1.5 sets forth the fees for the Program.

N.J.A.C. 19:31BB-1.6 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-1.7 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 the 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-1.8 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-1.9 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 are not timely submitted.

N.J.A.C. 19:31BB-1.10 sets forth the process and basis for any reduction, forfeiture, or recapture of tax credits pursuant to 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-1.11 sets forth the requirements for application for a tax credit transfer certificate and assignment of a tax credit transfer certificate. This section 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-1.12 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 if the cultural arts institution is leased, subleased, or reduces its tenancy during the eligibility period.

N.J.A.C. 19:31BB-1.13 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-1.14 sets forth the appeal process for the Program.

N.J.A.C. 19:31BB-1.15 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.

As the Authority has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The Cultural Arts Incentives 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 that are presently underserved with access to cultural arts facilities. Moreover, N.J.S.A. 34:1B-387.a(10) requires successful applicants to partner with one or more community organizations that provide support and services to Work First New Jersey program recipients.

Economic Impact

The Cultural Arts Incentives 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 pursuant to the Program will attract visitors to communities throughout the State which will help to drive commerce and economic growth on a broader scale. The Program rules set fees that have been analyzed to ensure a source of necessary revenue for the Authority to cover the costs of administering the Program.

Federal Standards Statement

A Federal standards is not required because the concurrently 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 concurrently 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 concurrently 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 businesses, as defined in the Regulatory

Flexibility Act, N.J.S.A. 52:14B-16 et seq., are those that are assumed by the small business if it applies and is approved for an incentive award pursuant to the Program.

Housing Affordability Impact Analysis

The concurrently proposed new rules will not have an impact on the average costs associated with housing or on the affordability of housing in the State, as the Program is intended to elevate the 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. Accordingly, no further analysis is required.

Smart Growth Development Impact Analysis

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

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The concurrently 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.

Full text of the specially adopted and concurrently proposed new rules follows:

CHAPTER 31BB

CULTURAL ARTS INCENTIVES (CAFE) PROGRAM RULES

SUBCHAPTER 1. CULTURAL ARTS INCENTIVES (CAFE) PROGRAM RULES

19:31BB-1.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement the provisions of the Cultural Arts Incentives Program Act, sections 1 through 11 at 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-1.2 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 the 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 pursuant to N.J.S.A. 34:1B-4.

"Board" means the Board of the New Jersey Economic Development Authority established pursuant to 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. One of the following:

i. A governmental entity;

ii. A nonprofit entity; or

iii. 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

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

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 through 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 five years during which a cultural arts institution may claim, sell, transfer, or otherwise use a tax credit pursuant to 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 that 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” 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 standards 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 as 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, pursuant to 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 a 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 population census tract having a poverty rate of 20 percent or more; or 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 heterogeneous 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, airfare, 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-1.8 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 the 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-1.3 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 pursuant to 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 at N.J.A.C. 19:31BB-1.13(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 a 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 pursuant to 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 that 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 have ownership of, or lease space in, the cultural arts institution facility and 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 pursuant to N.J.A.C. 19:31BB-1.7(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 at 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-1.4 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 pursuant to 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 an 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 is 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 has 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-1.7(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-1.7(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-1.7(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 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 has 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-1.7(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-1.3(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-1.5 Fees

(a) A cultural arts institution applying or revising an application pursuant to N.J.A.C. 19:31BB-1.7(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 of 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 of less than \$20 million, the fee shall be \$15,000.

2. For cultural arts projects 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-1.8(g), as follows:

1. For cultural arts projects with a total project cost of 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-1.8(d) and (e) 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 of 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 for a tax credit transfer certificate pursuant to N.J.A.C. 19:31BB-1.11, including use of the tax credit transfer certificate as collateral or 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 of 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 \$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 of 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-1.8(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 of 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 of 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-1.6 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, the amount of capital sufficient to complete the project, operating cash flow, a 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-1.7 Review, scoring, and approval of completed application; tax credit amounts

(a) The Authority shall award tax credits pursuant to 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 (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 through rulemaking;

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 the 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 the 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 respective 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 (e) above, 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 at (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 chapter. 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 pursuant to 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-1.8 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-1.13(b) and (c), and affirmative action requirements, N.J.S.A. 34:1B-5.4 and N.J.A.C. 19:31BB-1.13(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 pursuant to 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-1.7(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. Information necessary to calculate such tax credit if the award contains a tax credit based on an operating reserve;
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-1.13(b) and (c), affirmative action requirements pursuant to N.J.A.C. 19:31BB-1.13(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-1.9, as the Authority deems necessary;
13. Reporting requirements pursuant to N.J.A.C. 19:31BB-1.9;
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 (e) below, which shall include, but not be 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 (c)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 (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-1.7(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-1.7(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-1.3(a)9, which the 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-1.3(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 acknowledgment 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 at N.J.A.C. 19:31BB-1.3(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 at (e) below. If the Governor declares an emergency, the Chief Executive Officer of the Authority may grant an extension to the time set forth at N.J.A.C. 19:31BB-1.3(a)15 for the duration of the emergency and the Board of the Authority, and upon recommendation of the Chief Executive Officer, may grant two additional six-month extensions, provided that on an ongoing basis:

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

2. 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;

3. 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

4. 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 pursuant to (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-1.3(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 chapter;

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 pursuant to (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-1.7(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-1.9 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-1.7(c), or the provisions of this chapter and the Act and any additional reporting requirements included 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 pursuant to (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-1.7(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-1.13(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-1.13(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-1.3(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 N.J.S.A. 34:1B-392 and N.J.A.C. 19:31BB-1.11; 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 chapter.

(e) If the Authority approval pursuant to (d) above included a co-applicant, the Authority shall provide notice of the certificate of compliance to the co-applicant.

(f) Credits granted to a partnership shall be passed through to the corporate partners, corporate members, or corporate owners, respectively, prorate, 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.

(g) 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-1.10 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 at N.J.A.C. 19:31BB-1.3; the requirements in the definition of cultural arts institution; that the cultural arts institution operates, causes to operate, or holds 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-1.7(d).

(b) As of the date of the annual report pursuant to N.J.A.C. 19:31BB-1.9:

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-1.3(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 at N.J.S.A. 34:1B-387 and N.J.A.C. 19:31BB-1.3(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; and

3. If the cultural arts institution is not in compliance with the requirements set forth at N.J.A.C. 19:31BB-1.7(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. 19:31BB-1.8(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. 19:31BB-1.8(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-1.11 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-1.11 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 pursuant to 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 this chapter 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 at (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 transferor;
 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 transferor.

19:31BB-1.12 Effect of sale or lease of qualified facilities and relocation of cultural arts facility

(a) Except as set forth at (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 rights, 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-1.11(b), and the impact of the transaction on 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, 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-1.13 Affirmative action and prevailing wage

(a) The Authority's affirmative action requirements at N.J.S.A. 34:1B-5.4 and N.J.A.C. 19:30-3 and 19:31BB-1.3(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 and N.J.A.C. 19:30-4 and 19:31BB-1.3(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 19:31BB-1.3(a)9 shall apply from application submission through the end of the eligibility period.

19:31BB-1.14 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 designee, shall designate an employee of the Authority to serve as a hearing officer for the appeal and 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 including 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 in 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-1.15 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.
