

Cultural Arts Facilities Expansion (CAFE) Program EO63 Listening Session

November 26, 2024



Recording of Public Feedback Sessions

Members of the public can submit written feedback on the Cultural Arts Facilities Expansion (CAFE) Program via <https://www.njeda.gov/informal-draft-rules-feedback/> through December 20, 2024 at 5PM

This NJEDA public feedback session will be recorded and posted on the <https://www.njeda.gov/informal-draft-rules-feedback/> so that members of the public unable to participate in a virtual session have the opportunity to review.

Executive Order No. 63

Pursuant to Governor Murphy's Executive Order No. 63, the NJEDA is providing opportunities for groups and stakeholders to engage with the NJEDA in crafting rules around the CAFE Program.

We welcome constructive input on how to ensure new programs created are structured and administered in a manner that drives opportunities for all residents and communities.

The NJEDA will begin the session with a presentation to summarize the information – opportunity for public feedback will be available following the NJEDA's presentation. It is expected that the entirety of the session will take up to 90 minutes.

Public Feedback Policy

- ▶ **Feedback may be submitted verbally by using the “raise hand” function in Zoom, or in writing through the Q&A feature.** Input will not be accepted verbally until the NJEDA has concluded its presentation.

- ▶ **Each member of the public who wishes to speak during the public feedback period should use the “raise hand” function in Zoom.** The host will acknowledge each speaker in the order in which they raised their hand and will open the speaker’s microphone to make their statement.

- ▶ To ensure everyone that chooses to has an opportunity to speak, **each speaker will have a maximum of three (3) minutes to speak and should limit input to matters pertaining to the CAFÉ Program.**

- ▶ **Each member of the public will have one opportunity to provide remarks.** If time remains at the end of the session, we will reopen the opportunity for additional remarks.

- ▶ **Speakers should not expect to engage in a dialogue. NJEDA staff may respond to basic questions or clarify a speaker’s input.** However, NJEDA staff are not obligated to answer impromptu questions or address remarks from members of the public.

- ▶ **Speakers and members of the public should at all times maintain proper decorum and shall provide their remarks in a civil manner.**

Please Note

NJEDA staff will summarize the information and provide context.

To access a copy of the slide presentation please visit www.njeda.gov/program-specific-feedback.

For this presentation, please note the following:

Text highlighted in light green indicates areas where the NJEDA has exercised discretion to add clarity to the legislation.

Non-highlighted text is written into law which NJEDA does not have discretion to change.

Cultural Arts & Facilities Expansion (CAFE) Program Key Features



Established by legislation (S4011) signed by Governor Phil Murphy on December 21, 2023 (P.L. 2023, c.197, and codified at N.J.S.A. 34:1B-383 through -393)



Provides **tax credits** to incentivize broad scale **capital projects for arts and cultural venues** in New Jersey



Focuses on **development and rehabilitation of cultural arts facilities** as a key component of the state's economy



Awards up to 100% of eligible project costs and 100% of operating reserve for unexpected expenses capped at **\$75 million** per project



A project has a financing gap and is **not economically feasible without the tax credit**



Tax credits awarded via **competitive application process**



Tax Credits are **transferable** (can be sold)



Program must **open competitive rounds for applications at least annually through March 1, 2029, subject to tax credit availability**

Program Goals

- 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.
- Promote equitable engagement with the arts for underrepresented groups and underserved communities.



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How Do Tax Credits Work?

- An awardee of NJEDA tax credit programs will generally sell the credits to an investor or tax credit syndicator/broker.
- Once the project is completed, the investor or tax will claim the credit each year of the eligibility period. Under the CAFE program, for example, if an awardee receives a \$25 million award, the investor can claim a tax credit of \$5 million each year during the 5-year eligibility period.
- An investor or tax credit broker will buy the tax credit from the awardee for 85 cents or higher on the dollar before discounting. In the example above, if an investor purchases the credit from the awardee for 90 cents of the dollar, the investor will purchase the credit for between \$4.5 million each year of the 5-year eligibility period.

How Do Tax Credits Work?

- An awardee of a real estate tax credit program like CAFÉ can use two methods to bring cash into its project. The first is to bring the proceeds from the sale of the credits into the project each year of the eligibility period.
- The second and most prevalent method is to enlist a bridge lending source and monetize the credit and bring cash into the project at the beginning of construction. However, the source will chart an interest rate that will discount the tax credit award.
- The bridge lending source can be the tax credit investor, bank or syndicator.
- Tax credit process is complicated.

Eligibility at Application

ELIGIBILITY CRITERIA

- ▶ The applicant is a **cultural arts institution** and **will have ownership or lease space** in the cultural arts facility, **will operate** the facility, and **the project will be open to the public (full definition provided on subsequent slide).***
- ▶ *Definitions for cultural arts institution and facility are provided on following slides. Cultural arts institution may include government entities, not-for profits whose primary mission is arts and culture, or a for profit business receiving a federal or state rehabilitation tax credit.
- ▶ The cultural arts project will result in a **capital investment of at least \$5 million.**
- ▶ **Letter of support** for the project from the local governing body (e.g., City Council) or Chief Executive (e.g., Mayor) of the municipality where the project is located.

Eligibility at Application

ELIGIBILITY CRITERIA CONT.

- ▶ Letter of intent to partner with one or more community organizations that provide support and services to **Work First New Jersey** program recipients.
- ▶ **Project financing gap** exists or the Authority determines the project will generate a below market rate of return.
- ▶ **Independent third-party market** study showing there is demand for a cultural arts institution facility at the proposed project site and that it is expected to be successful.
- ▶ Minimum **equity** from the applicant of 20% (10% in Government Restricted Municipalities GRMs (Atlantic City, Paterson, Trenton)).
 - ▶ If sufficient equity is available, no fundraising plan is needed; otherwise, a fundraising plan is required and may be considered an acceptable source of equity.

Eligibility at Application

ELIGIBILITY CRITERIA CONT.

- ▶ Construction has **NOT** commenced, unless the Authority determines the project would not be **completed** without the tax credit.
- ▶ **Prevailing Wages:** construction contracts (which may include fixtures and permanent installations of sculptures and other art) and building services (e.g., janitorial services) contracts must adhere to New Jersey's prevailing wage and labor compliance requirements.
- ▶ Project Completion within **4 years** of executing tax credit agreement.
- ▶ **Good Standing** with sister agencies, including the Departments of Taxation, Labor & Workforce Development, and Environmental Protection.
- ▶ Applicant has the **financial** and team capacity to complete and operate the project.
- ▶ Operating Plan for 5-year eligibility period.

Additional Program Information

“Cultural arts institution” or “applicant”

“Cultural arts institution” or “applicant” means a governmental entity or nonprofit or governmental economic or community development entity 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 having the **primary** mission and specific policy goal of cultural, educational, or artistic enrichment of the people of this State. A “cultural arts institution” shall include a for-profit business seeking a tax credit for a cultural arts institution facility primarily 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.

The applicant for this program is the cultural arts institution. The applicant must continue to meet the eligibility requirements throughout the project.

Additional Program Information

Cultural arts institution facility

“Cultural arts institution facility” means an existing or proposed facility within this State, operated and maintained by a cultural arts institution primarily open to the public. A “cultural arts institution facility” includes, without limitation, an aquarium, botanical society, historical society, library, museum, gallery, performing arts center, or any related facility that is principally for the support and benefit of any of the foregoing, including but not limited to arts-based community centers, provided that not more than 15,000 square feet or 25 percent of square footage, whichever is less, shall be dedicated to generating revenue that is not directly related to the primary mission of the cultural arts institution. The term “cultural arts institution facility” shall not include facilities predominately used for athletics, recreation, and non-arts-based community centers. If the cultural arts facility is a component of a larger facility, the otherwise qualifying costs of any shared structures or improvements, including but not limited to, foundations or parking lots may be included as project cost only to the extent of the cultural arts facility’s pro-rata share, based on square footage, of the facility.

Additional Program Information

Open to the Public

“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, including for a fee. As applied to a cultural arts facility in which objects of cultural and/or artistic interest are exhibited, the facility shall be accessible on average at least 20 hours per week in a calendar year, including events and absent unavoidable closures or other circumstances approved by the Authority. As applied to a cultural arts facility in which performances are held in front of a live audience, the facility shall conduct on average at least four events per month in a calendar year including events and absent unavoidable closures or other circumstances approved by the Authority.

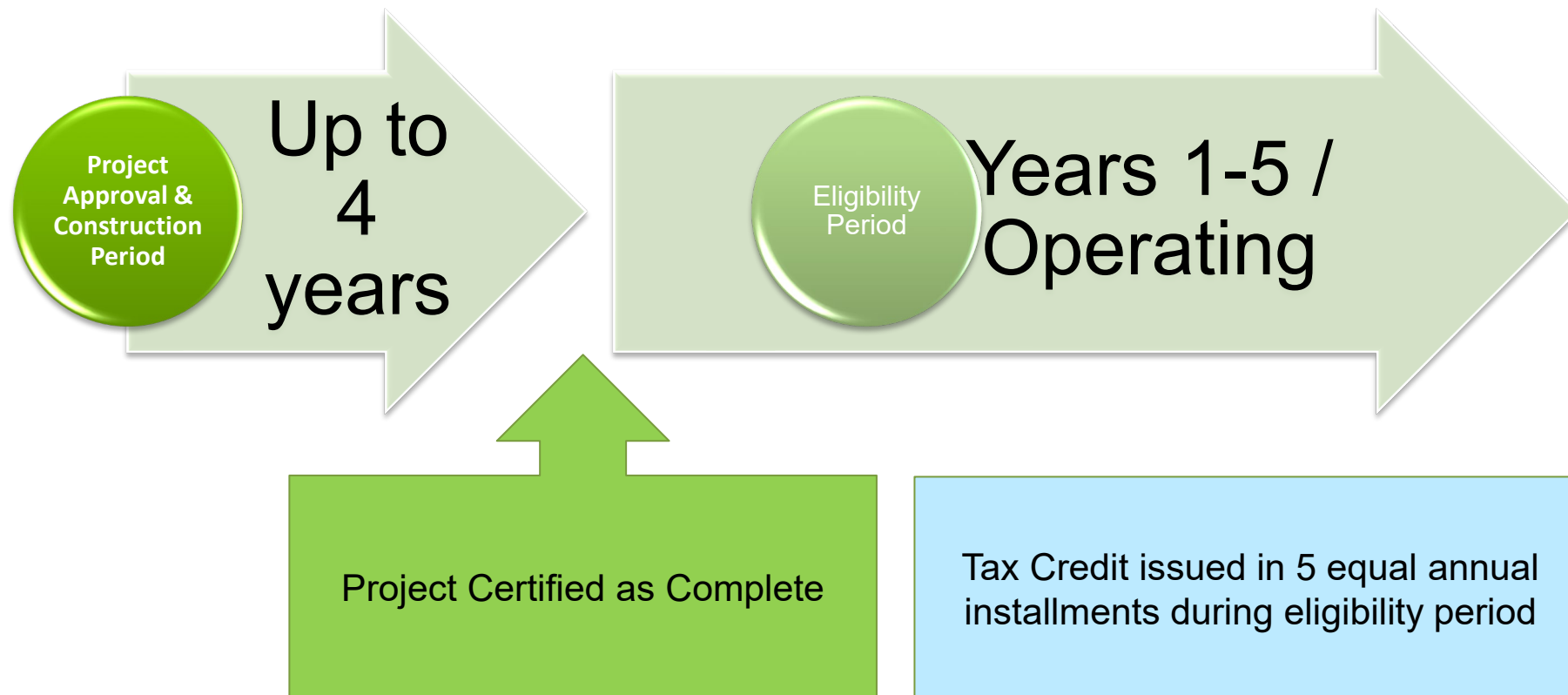
Cultural arts project

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

Additional Program Information

Eligibility Period

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



Additional Program Information

Eligible Position

Statute:

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

"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.

Additional Program Information

Equity

Statutory Requirement: the cultural arts institution will have at least 20 percent equity in the cultural arts project, which equity interest may include amounts contributed through government grants, not including economic subsidies provided by the authority, received by the cultural arts institution; provided, however, for a cultural arts project located in a government-restricted municipality, the equity required shall not be less than 10 percent.

Proposed Rule: "Equity" means applicant or co-applicant-contributed capital that may consist of cash, costs for project feasibility incurred within the 12 months prior to application. Equity may also include private donations and pledges, Federal, State, or local grants and proceeds from the sale of Federal, State or local tax credits, including, but not limited to, the Historic Rehabilitation Tax Credit, 26 U.S.C. § 47, and New Market Tax Credit, 26 U.S.C. § 45D. Equity shall not include any Authority financial assistance, including but not limited to proceeds from any other tax credit sale awarded by the Authority.

Note: equity does not include land and/or buildings.

Additional Program Information

Operating Reserve

“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. In the case of a cultural arts institution operating on a not-for-profit basis, the tax credit award may include up to 100 percent of such cultural arts institution’s operating reserve that does not exceed 50 percent of the average annual budget during the eligibility period, provided that the value of tax credits approved by the authority never exceeds \$75,000,000 per cultural arts project.

Operating Cash Flow

Proposed Rule: “Operating cash flow” means the cultural arts institution’s income at the cultural arts project location from various sources, including ticket sales, grants, donations, sponsorships, merchandise, and program fees, minus its expenses, including salaries, rent, production costs, and administrative expenses.

Additional Program Information

Project Financing Gap

Applicant must establish that a project financing gap exists. A reasonable and appropriate return on investment is allowed.

Reasonable and Appropriate Return on Investment

"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. In determining the "reasonable and appropriate return on investment," an investment shall not include any Federal, State, or local tax credits.

Additional Program Information

Project Cost

“Project cost” means the costs incurred in connection with a cultural arts project by a cultural arts institution until the issuance of a permanent certificate of occupancy, or until such other time specified by the authority, for a specific investment or improvement, including the costs relating to lands, buildings, improvements, real or personal property, or any interest therein, including leases discounted to present value, including lands under water, riparian rights, space rights, and air rights acquired, owned, developed or redeveloped, constructed, reconstructed, rehabilitated, or improved, any environmental remediation costs, plus **soft costs** not directly related to construction, of an amount not to exceed 20 percent of the total costs. **Project costs shall not include the cost of acquiring land or building acquisition.** **Project costs shall also include equipment that allows the cultural arts institution to carry out programs and performances off-site, provided the equipment has a useful life beyond the eligibility period, and the equipment does not exceed the greater of \$1 million or 10 percent of total project costs, whichever is lower.** The fees associated with the application or administration of tax credits under N.J.S.A. 34:1B-383, et seq., shall not constitute a project cost.

Additional Program Information

Prevailing Wage

Prevailing Wage is required for construction and building services work

NJEDA's prevailing wage requirements applies to construction contracts (which may include fixtures and other permanent installation of sculpture and other art) for work performed for the cultural arts project. The prevailing wage requirements shall apply throughout the eligibility period. Prevailing wage shall apply to all work done by tenants at the project. **Each contractor and subcontractor** performing work at the project must be registered as required by the **Public Works Contractor Registration Act** through the Department of Labor and Workforce Development.

In the event the cultural arts project constitutes a lease of:

1. more than 35 percent of a single facility, then these requirements shall apply to construction work at the entire facility;
2. more than 55 percent of a single facility, then these requirements shall apply to construction work and building services work at the entire facility.

Affirmative Action

The NJEDA's affirmative action requirements shall apply to the cultural arts project.

Additional Program Information

Soft Costs

"**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. The term does not include early lease termination costs, air fare, mileage, tolls, gas, meals, packing material, marketing and advertising, temporary signage, incentive consultant fees, Authority fees, loan interest payments on permanent financing, escrows, reserves, pre-opening costs, commissions and fees to the developer not included in the definition of project cost, project management, or other similar costs.

Additional Program Information

Work First NJ Program

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

During the eligibility period, the cultural arts institution shall 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 service. A Letter of Intent for the partnership is required at time of application, and an executed commitment is required within 1 year of board approval.

Minimum Environmental and Sustainability Standards

“Minimum environmental and sustainability standards” means standards established by the Authority in accordance with the green building manual prepared by the Commissioner of the Department of Community Affairs pursuant to section 1 of P.L. 2007, c. 132 (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.

Note: The NJEDA Green Building Manual outlines acceptable green construction standards widely recognized in the industry, such as USGBC LEED Silver, and ASHRAE standards. To comply with minimum environmental and sustainability standards, the cultural arts institution needs to submit a plan prior to Board approval and needs to implement the plan to certify completion.



CAFE Scoring

Scoring

- Amount of tax credit requested vs. need (Leveraging Other Sources of Funding)
- Advancing State, regional, and local goals of arts and cultural facilities in underserved communities
- Impact of project and link to local development strategy
- Diverse board which is representative of the community
- New Job Creation and Job Quality
- Project Location (economic and social distress locations)

Tax Credit Award Example

Awards Calculation

- 100% of eligible project costs and operating reserve capped at \$75 million
- Soft costs are capped at 20% of eligible project costs
- Operating reserve for non-profit can not exceed 50% of average annual budget
- Equity Requirement minimum of 20% (10% in GRM)

	Ineligible costs	Eligible project costs	Operating Costs	Totals
Total Eligible Costs				\$20,000,000
Total Development Costs				\$22,200,000
Land Acquisition	\$ 2,000,000			
Financing and Tax Credit Fees	\$ 200,000			
Architect and Legal Fees (Soft Cost - subject to 20% cap)		\$ 1,000,000		
Project Construction Costs		\$ 18,500,000		
Operating Reserve (average annual budget for Nonprofit is \$1M in this example)			\$ 500,000	

Total Eligible Costs	\$20,000,000
Equity Contribution by applicant (20% minimum)	\$4,000,000
Project Financing Gap	\$16,000,000
Tax Credit Award Amount (100% of Project Financing Gap)	\$16,000,000
Tax Credit disbursed annually over 5 years	\$3,200,000
Tax Credit sale proceeds @90 cents/ \$1	\$2,880,000

Application Review Process

Sister Agency Check for Good Standing

Scoring

Legal Review/Underwriting

EDA Board

- 1) Certify applicant is a Cultural Arts Institution
- 2) Decision approval based on project eligibility and feasibility
- 3) Available funding provided in order of rank from scoring

Additional Program Details

Approval Conditions

Within one year after Board Approval, several conditions will need to be met (aka Approval Letter Conditions), these conditions include but are not limited to:

- Documentation of site control (deed, lease, etc.)
- Executed financial commitments and fundraising commitments
- Plan for satisfying minimum environmental sustainability standards
- Site plan approval and copies of required permits, planning and zoning approvals
- Partnership with community organization(s) providing support and services to Work First New Jersey program recipients.

Additional Program Details

Submittals for Certification of Project Completion

- ▶ Evidence of project completion: Certificate of Occupancy (Temporary)
- ▶ CPA certification of actual project costs
- ▶ Floor plan showing actual and proposed uses (Site plan, if multiple buildings)
- ▶ Permanent financing commitments and updated pro forma
- ▶ Compliance with minimum environmental and sustainability standards
- ▶ Labor harmony agreement, if applicable
- ▶ Proof of prevailing wage for construction and building services
- ▶ Any other information that may be required by NJEDA

Additional Program Details

Forfeiture of Tax Credit

Proposed Rules:

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

- Failure to operate as a cultural arts institution, including but not limited to the requirements related to being open to the public.
- Changes to the characteristics of the cultural arts project without prior written approval by the Authority.
- Changes to the cultural arts project that would result in the project scoring less than the required minimum score.
- The credit shall be forfeited in the case of material misrepresentation.
- In any year in which the applicant is not in substantial good standing with the Department of Labor and Workforce Development, the Department of Environmental Protection, or the Department of the Treasury, the applicant may forfeit all tax credits awarded in that year subject to the determination in the sole discretion of the Authority to extend, in individual cases, the deadline for any annual reporting requirement.
- Violation of prevailing wage requirements and other covenants.

Additional Program Details

Recapture of the Tax Credit

Proposed Rules:

- If, based on new information, the Authority determines that recapture should have been applicable pursuant to any of the provisions in this section, the Authority shall recapture the tax credits as if the Authority had been timely informed.
- If all or part of a tax credit is subject to recapture, then the Authority shall pursue recapture from the applicant, and not from the purchaser or assignee of the tax credit transfer certificate.

This Means: NJEDA will recapture the tax credit if the applicant has made a material misrepresentation. EDA may recapture the tax credit if the applicant fails to submit reports on time, fails to meet prevailing wage requirements, fails to meet sister agency review, fails to maintain compliance with contractor/subcontractor registration requirements, and fails to meet other requirements. The buyer of the tax credit certificate will be held harmless upon recapture.

Additional Program Details

Reporting

Progress reports will be required every six months from Board Approval through execution of tax credit agreement to track the progress of the project and the conditions of approval.

Annual reports shall be submitted beginning in the year the incentive award is issued until the remainder of the eligibility period. Certifications will be required to indicate the representations made to the Authority during the competitive award continue to be true and continued compliance with the tax credit agreement (including prevailing wage) as well as a certification that the facility continues to operate as a cultural arts institution and continues to meet eligibility requirements. The report also includes annual financial statement certified by a CPA, and a tax clearance certificate. For projects that include a co-applicant, proof that the co-applicant is making the contribution required by the participation agreement.

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