

Community Development Finance Authority  
Investment Tax Credit Program Contract  
Award No. 20-133-CDIP-CDED1

1. Project Allocation, Purpose, and Description

1.1 **Project Award:** City of Nashua (Grantee) is awarded \$367,500 (the "Award") in Community Development Finance Authority ("CDFA") Investment Tax Credit Program funds for the Nashua Performing Arts Center project (the "Project"), with a net total to the Project (after the standard 20% CDFa program fee) of \$294,000 (the "Grant").

1.2 **Project Purpose:** The purpose of this award, made under the provisions of RSA 162-L, is to provide funding to support development of a performing arts center in Nashua, NH and will be used by the Grantee in accordance with the Grantee's application for tax credit funding, subject to any conditions and restrictions as set forth by the CDFa Board of Directors, as approved on June 11, 2019.

1.3 **Grant Period:** This Grant period shall begin on July 1, 2019, and end on June 30, 2024 (the "Grant Completion Date"). The parties agree that the Project activities shall be completed prior to the Grant Completion Date. The Grant Completion Date may be amended only upon the written request of the Grantee and the approval of CDFa.

1.4 **Project Scope Requirements:** The scope of the Project may not be substantially less than what was proposed in the tax credit application submitted, and/or as approved by the CDFa Board of Directors on June 11, 2019. CDFa retains the right at all times to evaluate the eligibility and scope of Grantee's Project and to adjust Contract terms accordingly. Any substantial changes to the scope, nature, location, implementation schedule, grantee administrative capacity or financing of the Project may require additional action of the CDFa Board of Directors. All determinations related to change in scope are at the sole discretion of CDFa.

2. Tax Credit Pledge Schedules and Fundraising Requirements

2.1 **Schedule of State Fiscal Year Tax Credit Allocation:** The allocation of \$367,500 in tax credit funds will take place over the State Fiscal Years ("SFY" which runs July 1 through June 30) as outlined below.

2.2 **Fundraising Deadline Schedule and Donation Due Dates:** The Grantee shall secure donations which shall be evidenced by an executed Pledge Agreement. The pledges shall be payable by cash or marketable securities specifically earmarked for the Project and payable to CDFa according to the following schedule:

Type	Amount	Due to CDFa by	for SFY
Pledges	\$367,500	March 31, 2021	2021
Cash Donations	\$367,500	June 30, 2021	2021

**2.3 Early Pledge Fulfillment:** Donors may fulfill Pledges at any time prior to the due date agreed to in the Pledge Agreement. Donors will be issued tax credits for the SFY approved by CDFA for that project.

**2.4 Non-Collusion Requirement:** The Grantee acknowledges that executed Pledge Agreements will require that the Donors not enter into any agreement or other arrangement with the Grantee or any other party to recoup, or in any way be reimbursed for, the pledged tax credit funds that do not qualify for a tax credit.

**2.6 Fundraising Reporting Requirements:** All Grantees are required to provide monthly tax credit fundraising reports to CDFA, while in the fundraising stage of the Project. This report is to be submitted to CDFA by the 5<sup>th</sup> of each month during the fundraising period via the Status Reports component on CDFA's Grants Management System.

### **3. Total Matching Fund Commitments**

**3.1 Matching Fund Commitments/Sources and Uses of Funds:** CDFA is making this grant contingent on the Grantee's ability to obtain firm commitments in the amounts necessary to complete the Project, and will not release any tax credit funds held by CDFA until firm commitments are documented and provided to CDFA from the sources, or from acceptable substitute sources. In the event the funding sources change, an updated Sources and Uses Statement shall be submitted to CDFA by the Grantee.

### **4. Standard Conditions**

**4.1 Legal Existence:** By countersigning this Contract, Grantee confirms that it is a community development corporation, other nonprofit organization involved in community development, or an employee or other type of cooperative, as referenced in RSA 162-L:4 (h)(i)(j).

**4.2 Legal Compliance:** The Grantee shall comply with all applicable federal, state, and local laws, statutes, regulations, executive orders, and rules as they relate to the application, acceptance, and use of funds for the Project, including but not limited to, requirements specified in the Contract.

**4.3 Legal Remedies:** Grantee shall have the right to institute legal proceedings to protect its rights, including without implied limitation actions for specific performance or monetary damages, in the event the Donor fails to complete the terms of its Pledge commitment.

**4.4 Assignment:** The Grantee shall not assign or transfer any of its rights or obligations under this Contract without the prior written consent of the CDFA, and any attempted assignment or transfer shall render this Contract null and void.

**4.5 Dissolution:** In the event of the dissolution of the Grantee corporation, after provision for payment of all the corporation's liabilities, the board of directors shall dispose or transfer all assets of the corporation, exclusively for the exempt purposes of the Grantee corporation, in such manner or to such organization organized and operated exclusively for similar purposes as the Grantee, which organization qualifies under section 501(c)3 of the US Internal Revenue Code.

**4.6 Indemnification:** CDFA's only obligation shall be to release funds to the Grantee in accordance with the terms of this Contract. CDFA shall have no liability with respect to the property, the Project, or the renovation, development, construction or operations contemplated by the Project, and Grantee agrees to indemnify and hold harmless CDFA, its officers and employees, from and against such cost, loss, damage, or liability suffered by the Grantee and any and all claims, liabilities or penalties assessed the Grantee to the extent allowed under state law.

**4.7 Security:** To protect CDFA's investment of public funds, a relevant form of security (the "Security") will be required based upon the Project Purpose up to the net amount of funding. The CDFA Security will self-amortize over a period of ten years, effective upon Grant Start Date.

Tax credit funds will not be released until the Security is recorded and received at CDFA. Grantee will be responsible for requesting a written release of said Security after the ten-year period expires.

**4.7.1** Grantee shall provide a performance lien on the project property, up to the net amount of funding. The lien shall amortize over a 10-year period.

**4.8 Liability Insurance:** Grantee shall, at its sole expense, obtain and maintain in force, and shall require any Subrecipient to obtain and maintain in force, for the benefit of CDFA and duration of the Grant Period the following insurance: 1) if applicable and only to the extent required by law, statutory worker's compensation and employers liability insurance for all employees engaged in the performance of the Grant Activities, and; 2) comprehensive general liability insurance against claims of bodily injury, death or property damage arising out of negligence in whole or part of the grantee, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate. Each policy shall contain a clause prohibiting cancellation or modification of the policy earlier than thirty (30) days after written notice thereof has been received by CDFA. CDFA shall be named as a certificate holder. Any change in this requirement shall require the approval of CDFA.

**4.9 Property Insurance:** If applicable, the Grantee, at its sole expense, shall obtain and maintain in full force, fire and extended coverage insurance covering all property purchased or improved with Grant Funds in an amount not less than 100% of the whole replacement value of the property. CDFA shall be named as a certificate holder.

**4.10 Builders' Risk Insurance:** If applicable, the Grantee shall ensure that all contractors and subcontractors involved shall possess builders' risk insurance in amounts sufficient to cover the value of the property and its contents.

**4.11 Taxes:** The Grantee shall be required to pay all taxes, assessments, charges, fines, and impositions attributable to the property, as applicable.

**4.12 Project Publicity:** The Grantee shall acknowledge CDFA appropriately in all organizational and public forums as to the support, financial and otherwise, that has been provided to your Project. This recognition shall include, but not be limited to, print/electronic media, publications, interviews, brochures, etc. This will support our efforts to be visible, which in turn will aid in generating additional financial support for New Hampshire community development efforts.

**4.12.1** CDFA does not require worksite signage be erected for construction/renovation projects; however, if a sign is erected the CDFA logo must be included. CDFA logo may not be any smaller than 50% of the size of the largest logo displayed.

**4.12.2** Organizations using websites to solicit tax credit purchases must include the CDFA logo and a link to the CDFA website.

**4.12.3** If none of these are applicable or feasible, an alternative display of the CDFA logo or public recognition agreeable to CDFA.

**4.13 Grantee Certification:** All agreements between CDFA and Grantee shall be executed by a person duly authorized by the Board of Directors of the Grantee, evidenced by a certificate (the "Certificate") and returned upon execution of the Contract.

**4.14 RSA 162-L Restrictions:** CDFA is providing the tax credit funding in accordance with RSA 162-L, as amended from time to time. Any future amendments to RSA 162-L may alter CDFA's ability to provide the funding covered by the Contract. In the event CDFA ceases to exist as an agency of the State of New Hampshire, to the extent permitted by applicable law, the rights and obligations hereunder shall be transferred to another agency of the State of New Hampshire to continue to administer the terms hereof.

**4.15 Default:** A failure on the part of the Grantee to successfully complete the terms of this Contract shall be considered a default, which may result in a loss or reallocation of tax credit funding and may impact Grantee's ability to qualify for future grant rounds. Should the agreement be terminated due to a default based upon the inability of the Grantee to perform or complete the Project, it is within the authority of the CDFA to request the return of grant funds, and the disposition of the returned Grant funds shall be determined solely by CDFA.

**4.16 Conflict of Interest:** Conflicts of interest or the appearance of such shall be avoided in order to ensure public confidence in the expenditure of state funds. No officer, member or employee of the Grantee or Subrecipient shall participate in any decision relating to this Agreement, which reflects his or her personal interest or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested, nor shall such person have any personal or pecuniary interest, direct or indirect, in this Agreement or proceeds thereof.

## 5. Special Conditions

Grantee shall provide CDFA with a final project design and project sources-and-uses budget by ~~April 1, 2020~~  
May

## 6. Reporting Requirements

**6.1 Tax Credit Annual Status Report:** For each year this Contract is active, the Grantee is required to report on the Project's progress as well as information that addresses the Project's goals and outcomes, financial data, and any special conditions as proposed in the application, and as identified below. The report shall also include a narrative on the

Project's progress including the items proposed in the Outcome Measures narrative section of the application. This report is to be submitted to CDFA on an annual basis, no later than July 31 of each year. CDFA may not disburse tax credit funds being held for the Project until this report is received. The report shall be submitted through the Status Reports component on CDFA's Grant Management System.

**Performance Outcomes:**

Grantee shall provide the following as they pertain to this Project:

- 6.1.1 Total number of unduplicated persons served.
- 6.1.2 Total number of low income person served.
- 6.1.3 Total number of new jobs created.
- 6.1.4 Total number of square feet of commercial, community facility or recreational space developed or improved.

**Financial Data:**

- 6.1.5 The Grantee shall submit its organization's most recent Annual Report.
- 6.1.6 The Grantee shall submit its most recent organization's Audited Financial Statements prepared in accordance with Generally Accepted Accounting Principles (GAAP).

**6.2 Final Report and Closeout:** Within thirty days of Project completion, the Grantee shall submit a Final Report in the same format as the Tax Credit Annual Status Report. This report will include cumulative outcomes and shall be submitted through CDFA's Grant Management System. Grantee and CDFA shall enter into and execute a Closeout Agreement once the project is complete and the final report has been submitted and approved.

**7. Disbursement of Grant Funds**

**7.1 Disbursement Conditions:** The Grant shall be disbursed to the Project, for the sole purpose of providing funds to the Project. CDFA reserves the right to amend, revoke, or reallocate its tax credit commitment to the Project if any of the conditions indicated in this Contract are not met. All disbursement requests shall be uploaded through CDFA's Grant Management System, and shall include any supporting documentation with each request, satisfactory to CDFA.

All tax credits must be secured by the Grantee prior to release of any funds, unless an exception is approved by CDFA. For programs funded over two state fiscal years, first-year proceeds may be considered for release once all Tax Credit pledges have been received by CDFA for that year. For programs funded in only one state fiscal year and the second year of two-year grants, CDFA will consider requests for early disbursement only when 50% of the Tax Credits for that grant year have been received. Any Grant funds that were received by Grantee and not spent on approved Grant activities shall be returned to CDFA.


**7.2 Disbursement Restrictions:** No disbursement from CDFA will be made to the Grantee greater than the amount of funding held on behalf of the Project in cash contributions, fulfilled pledges, or established values, net the standard 20% CDFA fee. Furthermore, no disbursement shall be made unless the Grantee is in compliance with Paragraphs 3, 4 and 5.

**7.3 Compliance Requirement:** Notwithstanding the conditions set forth in previous sections, CDFA shall not make any disbursement of grant funds unless, at the time of such disbursement, Grantee is in full compliance with all terms and conditions of this agreement, and the making of such disbursement of Grant funds (i) will not violate any provision of law, regulation, or administrative ruling to which CDFA is subject; (ii) will not subject CDFA to any tax, penalty, or fine; and (iii) will further the purposes of CDFA. Failure to meet the terms of this Contract may result in suspension and/or reallocation of tax credits for the Project.

If you agree to the terms of this Contract, please indicate by signing below.

Agreed,

By: City of Nashua

  
James W. Donchess, Mayor

Date 3/2/20

By: Community Development Finance Authority

  
Katherine Easterly Martey, Executive Director

Date 2/27/2020

**CERTIFICATE OF THE CLERK OF CITY OF NASHUA**

March 2, 2020

The undersigned, Sue Lovering, hereby certifies as follows:

1. The undersigned is the duly appointed City Clerk of City of Nashua, New Hampshire., a municipal corporation (the "City").
2. The undersigned hereby certifies that Jim Donchess, Mayor of the City, is authorized to execute binding agreements on the City's behalf upon Approval of the Board of Aldermen, including without limitation the Community Development Finance Authority Investment Tax Credit Program Contract.

The undersigned has executed this certificate as Clerk of the City as of the date first written above.

  
Sue Lovering  
City Clerk

Affix City Seal