



PROGRAM GUIDELINES

November 2022 Storm Damage Fund Program

July 19, 2023

The Erie County Department of Environment and Planning (ECDEP) hereby establishes the following guidelines and procedures for the implementation of a November 2022 Storm Damage Fund Program. Funding for this program will be provided through Erie County 2023 Budget Balancing and appropriations and do not include any state or federal funds. The objective of the program is to indirectly provide grant funds to eligible farms and agribusinesses throughout Erie County to assist them with covering the cost of capital damages to buildings, structures, machinery, or equipment resulting from the 2022 November Storm that were not covered by Insurance or a Small Business Administration (SBA) Loan.

1. **Program Goals**

- To help stabilize farms and agri-business in their recovery from November 2022 Storm damage to facilities, structures, equipment, machinery, and capital assets which were determined not eligible for insurance coverage, in a manner in which will preserve agricultural lands and conserve agricultural soils, and protect water quality for future generations.
- To strategically invest in and strengthen our local farms and agri-businesses business that were adversely impacted by the November Storm but were not eligible for full insurance coverage or federal/state loan assistance resulting from the November Storm not being declared a federal disaster.
- Non-farm/agribusinesses are welcome to apply; however, their eligibility will be determined on a case-by-case basis as allowable under applicable NYS laws.

2. **Funding Available**

\$2 million is being allocated within the 2023 Erie County Budget to help area farms and agribusinesses. Erie County will transfer this funding to the Erie County Soil and Water Conservation District (ECSWCD), which will administer this program on behalf of Erie County. ECSWCD shall receive a 4% grant administration fee for each grant to cover their costs of program administration. The remaining funds will be made available to eligible businesses as grants of up to \$200,000 per business. Funds approved by ECSWCD will be in forgivable grants conditioned upon preservation of farmlands for a period of 5 years.

3. **Program Administration**

Erie County Soil & Water Conservation District (ECSWCD), will administer this program on behalf of Erie County. ECSWCD will be responsible for accepting and reviewing Applications, and determining which Applications are complete and meet the eligibility criteria, in order to qualify for potential funding. ECSWCD will then work with selected businesses to determine what costs are eligible and work with the

business to finalize the contractual agreement to allow for the transfer of funding. ECSWCD will then confirm that work was conducted as proposed and approved, prior to issuing final payment.

ECSWCD will administer funds as authorized by County Law and NYS Soil and Water Conservation District Laws, which limits their ability to provide County funds to only to farms and agribusinesses to ensure the conservation of soil and water resources, protect the tax base, and related uses.

It should be noted that Erie County is prohibited by NYS law to provide grant funds to for profit businesses. Under NYS law, the ECSWCD is authorized to provide funds to farms and agri-business owners for uses such as agricultural machinery and equipment and other such material and equipment to assist farm businesses to carry on operations of their lands. Erie County and ECSWCD have an existing contractual arrangement, which acts as a basis for providing these funds to ECSWCD in order to provide public benefit to the residents of Erie County. As such, ECSWCD is able to administer these funds on behalf of Erie County, and ECSWCD will be solely responsible for determining eligible uses and activities.

Non-farm/agribusinesses are welcome to apply; however, their eligibility will be determined by Erie County on a case-by-case basis as allowable under applicable NYS laws.

4. Eligible Activities

Costs associated with farm/agribusiness facilities, structures, equipment, machinery, and capital assets which sustained documented damage/losses between the dates of November 16 to 21, 2022, which were NOT covered by Insurance or an SBA Loan. Eligible activities also include items necessary to ensure building compliance with federal Americans with Disabilities (ADA) regulations. Funding to farm businesses will be in forgivable grants conditioned upon preservation of farmlands for a period of 5 years. Applicants must demonstrate that this grant will stabilize an agricultural business and help preserve farmlands. If the farm or agribusiness ceases to use these assets for such farming use within 5 years, they will need to reimburse Erie County for this forgivable grant.

5. Ineligible Activities

Costs associated with farm/agribusiness facilities, structures, equipment, machinery, and capital assets which sustained documented damage/losses between the dates of November 16 to 21, 2022, but which were covered by Insurance or an SBA Loan.

Repairs or replacement of capital assets not specifically damaged by the November 2022 Storm are not eligible for assistance under this program. Operating losses, loss of revenue, or labor costs incurred as a result of the November Storm are not eligible. Costs for Snow plowing and snow removal during or after the November Storm are not eligible.

6. Eligible Areas

All farm/agribusiness within Erie County who meet the criteria outlined in Paragraph 7 are eligible to apply.

7. Eligible Applicants

Eligible applicants are owners or lessees of occupied farms and agricultural businesses that are located within Erie County. Local franchises are eligible (national franchises are not). Eligible applicants include any occupied business structure that is operating in conformity with the Municipality's zoning regulations. Business must be current on Federal, State, and Local taxes, including property taxes, for the building or capital assets they wish to repair or replace through the program. Also, eligible applicants can have no pending petition for bankruptcy protection, and no pending liability claims.

Eligible applicants must show they were operating during the November 2022 Storm, and currently remain

in operation.

Non-farm/agribusinesses are welcome to apply; however, their eligibility will be determined on a case-by-case basis by Erie County as allowable under applicable NYS laws.

Further Criteria:

- Eligible Entities include: C-Corp, S-Corp, LLC, LLP, Partnership (JV, Gen, Limited), sole proprietorship whereby they have employees who are on a payroll and pay payroll taxes.
- Must provide evidence or proof of business license or permit.
- Show proof of Employees paying Payroll Taxes prior to November 16, 2022.
- Farms/agribusinesses must have viable agricultural farmland or vegetated soils that were in operation during the November 2022 Storm, and that will be protected against subdivision or nonagricultural development for a period of 5 years.
- Applicants must demonstrate that this grant will stabilize an agricultural business and help preserve farmlands.

8. IN-ELIGIBLE Applicants:

- Businesses that may have sustained damage during the November Storm, but which have since gone out of business.
- Non-profit organizations
- Non-farm/agribusinesses generally will not be eligible. However, non-farm/agribusinesses are welcome to apply, and their eligibility will be determined by Erie County on a case-by-case basis as allowable under applicable NYS laws.
- National Chain Franchises
- Government-owned entities (except for businesses owned or controlled by a Native American tribe)
- Businesses principally engaged in teaching, instructing, counseling, or indoctrinating religion, whether in a religious or secular setting
- Businesses which 1) present live performance of a prurient sexual nature or 2) derive directly or indirectly more than *de minimis* gross revenue through the sale of products or services, or the presentation of any depictions or displays, of a prurient sexual nature.
- Unless waived by SBA for good cause, businesses that have previously defaulted on a Federal loan or Federally assisted financing, resulting in the Federal government or any of its agencies or Departments sustaining a loss in any of its programs, and businesses owned or controlled by an applicant or any of its Associates which previously owned, operated, or controlled a business which defaulted on a Federal loan (or guaranteed a loan which defaulted) and caused the Federal government or any of its agencies or Departments to sustain a loss in any of its programs. For purposes of this section, a compromise agreement shall also be considered a loss.
- Businesses primarily engaged in political or lobbying activities.

9. Match Requirement

There is no match requirement for this program. Please note that business owner does not need to come up with funds up front for this program. ECSWCD will grant farm businesses directly for eligible work completed up to \$200,000 in the form of a forgivable grant conditioned upon future preservation of agricultural lands for 5 years.

10. Compliance with Local Municipal Government Regulations

All repairs or replacements funded through this program must be carried out in a manner that ensures full compliance with any local, state, and federal regulations applicable to the Project. This includes any local building permits, zoning approvals, and related requirements. Funding cannot be used for any purpose which is not in compliance with local zoning requirements or Building Codes.

It also includes compliance with the Americans with Disabilities Act and the Architectural Barriers Act.

11. Grant Approval and Payment Procedures

ECSWCD will be responsible for evaluation applications and determining which farms businesses will receive funds based on these Guidelines. Upon approval by the ECSWCD Board of Directors, payments will be made to the business as follows:

- 25% up front to cover deposit/materials
- 50% upon completion of the work by a Contractor
- 25% upon ECSWCD confirmation that the work as proposed was completed and verified

12. Payment Procedures

Upon completion of the improvements, the applicant shall notify the ECSWCD so that they can schedule an inspection to ensure conformity with the approved design plans and specifications. The ECSWCD and the applicant must approve and sign off on all construction work before submitting a final payment request. Said payment request must include receipts or other items documenting the entire cost of work.

13. Application Process

Application forms to participate in the Program are available at www.ecswcd.org. Applications will be accepted and approved on a rolling basis for up to 1 year, or until all such funds are allocated. All unallocated funds remaining after a year will be returned to Erie County.

All Applicants will need to submit proof that damages occurred between November 16-21, 2022 as a result of the November 2022 Storm, and that eligible repairs were not covered by an insurance settlement/payment or an SBA Loan. Applicants will need to submit copies of Insurance claims and correspondence from the Insurance company confirming which costs are not covered by insurance.

Each complete application will then be scored by ECSWCD. The following applicants will receive weighted points/consideration in scoring:

- Applicants who are certified as a minority-owned business (MBE)
- Applicants who are certified as a woman-owned business (WBE)
- Applicants involved in farming or agricultural production.
- Condition of the existing structure or equipment that was damaged by the November Storm (must submit photos and related documentation of pre-existing and existing conditions with application).
- Projects that have potential Building Code violations which would be corrected by the November Storm Fund Grant will increase their score.
- Awarding of funds to businesses geographically dispersed throughout Erie County, however it should be noted that the November Storm impacted some portions of Erie County much worse than others.

14. Self-Help Projects

Eligible November 2022 Storm Damage repairs that have been conducted by the farm/agribusiness on a self-help basis will be partially eligible. The ECSWCD will reimburse the business for documented purchase of materials, agricultural machinery, equipment, and supplies used to make eligible repairs, but will not reimburse for labor time, snow plowing/removal, or lost revenue costs.