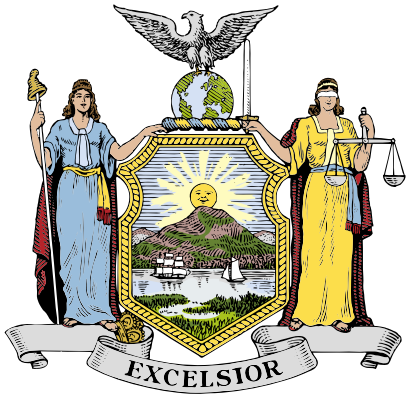
Lake Ontario Business Resiliency Program

NEW YORK STATE OF OPPORTUNITY. | Empire State Development

APPLICATION



State of New York

Andrew M. Cuomo, Governor

Empire State Development

Eric Gertler, Acting Commissioner and President & CEO-Designate

November 21, 2019

LAKE ONTARIO

BUSINESS RESILIENCY PROGRAM

When completing this application be sure to consult the **Lake Ontario Business Resiliency Program Guidelines** document which contains important eligibility and program requirements. The Guidelines are included as an appendix to this Application.

Additional information can be obtained by writing to LakeOntario@esd.ny.gov

The application is a fillable PDF form. Applicants must submit one unbound paper copy of the completed application with an original signature and all required attachments to the following address:

Lake Ontario Business Resiliency Program
Empire State Development
625 Broadway
Albany, NY 12245

Applications must be postmarked by January 31, 2020.

LAKE ONTARIO BUSINESS RESILIENCY PROGRAM

OVERVIEW

The Lake Ontario Business Resiliency Program (the "**Program**") is a State program administered by the New York State Urban Development Corporation d/b/a Empire State Development ("**ESD**"). Section 1 of Chapter 54 of the Laws of 2019 includes $30 million that ESD may use to provide financial assistance ("**Program Assistance**") to reimburse up to 50% of the costs of resiliency-related capital improvement projects ("**Resiliency Projects"**) with a minimum award eligibility amount of $10,000 up to a maximum award amount of $200,000 undertaken by eligible businesses, not for profit organizations, farms, homeowners associations, and owners of multiple dwellings ("**Eligible Entities**") that sustained documented direct physical flood-related damage, including but not limited to damages from inundation, erosion and wave action ("**Flood Damage**") between January 1, 2019, and October 31, 2019, ("**Recovery Period**") as a result of severe flooding and raised water levels in the vicinity of Lake Ontario, the St. Lawrence River, the Seneca River, the Oswego River, the Oneida River, Oneida Lake or Cross Lake ("**Covered Waterways**") at sites located in the following counties: Niagara, Orleans, Monroe, Wayne, Cayuga, Oswego, Jefferson or St. Lawrence ("**Coverage Area**"). If sufficient Program Assistance is available, ESD may elect to award Program Assistance to Eligible Entities with a demonstrated vulnerability ("**Demonstrated Vulnerability**") to future potential Flood Damage and other impacts of extreme water levels.

SECTION 1: ARE YOU ELIGIBLE?		
1.	ENTITY TYPE: Is the applicant an eligible business, not-for-profit organization, farm, homeowners association or owner of multiple dwellings? *(NOTE: Applicants must check "No" if the applicant is an entity engaged in lobbying, religious or political activities)*	☐ YES ☐ NO
2.	COVERAGE AREA: Is the proposed Resiliency Project located in Niagara, Orleans, Monroe, Wayne, Cayuga, Oswego, Jefferson or St. Lawrence County?	☐ YES ☐ NO
3.	FLOOD DAMAGE/DEMONSTRATED VULNERABILITY: Did the applicant sustain Flood Damage between January 1, 2019 and October 31, 2019 OR does the applicant have a Demonstrated Vulnerability to future potential Flood Damage as the result of a Covered Waterway? Please indicate which: ☐ Flood Damage between January 1, 2019 and October 31, 2019 ☐ Demonstrated Vulnerability to future Flood Damage	☐ YES ☐ NO
4.	RESILIENCY PROJECT: Does this application request funding for a resiliency capital improvement project to mitigate future Flood Damage, with related expenses all having clear resiliency components as outlined in Attachment 1 of the Program Guidelines?	☐ YES ☐ NO
5.	SITE OWNERSHIP/LEASING: a. Does the applicant currently own or lease the proposed Resiliency Project site? Please check: ☐ OWN ☐ LEASE b. Did the applicant own or lease the Resiliency Project site during the Recovery Period?	☐ YES ☐ NO ☐ YES ☐ NO
6.	LOCAL MATCH: Sections II and III.E. of the Program Guidelines require that, as a condition of receiving Program Assistance, all applicants must receive a Local Matching Contribution totaling at least 5% of the Program Assistance funds. This contribution may include, but not limited to, tax abatements and exemptions from an Industrial Development Authority; local government fee waivers of the costs of ordinarily due permits and fees; and direct expenditures by local governments on project-related infrastructure costs. If an applicant is deemed to be conditionally eligible for Program Assistance based on their application, then ESD will provide further guidance to the applicant in terms of securing their Local Matching Contribution. Does the applicant accept and agree to this requirement to solicit a Local Matching Contribution?	☐ YES ☐ NO

SECTION 1: ARE YOU ELIGIBLE? (cont'd)		
7.	TAX STATUS: Is the applicant current on all federal, state and local tax obligations?	☐ YES ☐ NO

IF YOU ANSWERED "NO" TO ANY QUESTIONS, THEN YOU ARE NOT ELIGIBLE FOR PROGRAM FUNDING.

IF YOU ANSWERED "YES" TO All ELIGIBILITY QUESTIONS, THEN YOU MAY BE ELIGIBLE FOR PROGRAM ASSISTANCE AND MAY PROCEED WITH COMPLETING THE REMAINDER OF THIS APPLICATION.

SECTION 2: ATTESTATIONS		
1.	Is the applicant/owner(s) presently the subject of any litigation or is litigation threatened which will likely have a material adverse effect on the applicant's financial condition?	☐ YES ☐ NO
2.	Has the applicant/owner(s) been or is the applicant/owner(s) involved in bankruptcy, a creditor's rights or receivership proceeding, or sought protection from creditors?	☐ YES ☐ NO
3.	Has the applicant/owner(s) ever settled a debt with a lending institution for less than the full amount outstanding?	☐ YES ☐ NO
4.	Has any current senior manager or principal of the Eligible Entity ever been convicted of a Misdemeanor or felony charge (including having been a member of the management, an owner or majority stockholder of any firm or corporation convicted of a misdemeanor or felony charge) or do they have a pending matter for: (i) any business-related activity including but not limited to fraud, coercion, extortion, bribe or bribe receiving, giving or accepting unlawful gratuities, immigration or tax fraud, racketeering, mail fraud, wire fraud, price fixing or collusive bidding; or (ii) any crime, whether or not business related, the underlying conduct of which related to truthfulness, including but not limited to the filing of false documents or false sworn statements, perjury or larceny?	☐ YES ☐ NO
5.	Has the applicant/owner(s) ever been out of compliance with federal, state or local laws or regulations with respect to labor practices, hazardous wastes, environmental pollution, permits/other authorizations or operating practices?	☐ YES ☐ NO
6.	Are there any outstanding judgments or liens pending against the applicant/owner(s) other than liens in the normal course of business?	☐ YES ☐ NO
7.	Has the applicant/owner(s) ever defaulted on an obligation to the New York State Urban Development Corporation, doing business as Empire State Development (ESD) or any other agency or public benefit corporation of the State of New York?	☐ YES ☐ NO

IF YOU ANSWERED "NO" TO THE ATTESTATION QUESTIONS, PROCEED WITH THE FULL APPLICATION.

IF YOU ANSWERED "YES" TO ANY OF THE ATTESTATION QUESTIONS, PROVIDE A DETAILED EXPLANATION AND SUBMIT IT WITH A COMPLETE APPLICATION. YOUR APPLICATION WILL BE REVIEWED; HOWEVER, PROGRAM ELIGIBILITY CANNOT BE GUARANTEED.

SECTION 3: APPLICANT INFORMATION

A. APPLICANT INFORMATION:

Legal Entity Name ("Applicant"):

DBA Name (if applicable):

Address of Proposed Resiliency Project site: (Street)

City:	**State:** NY	**Zip Code:**	**County:**

Mailing Address of Applicant (if different than above): (Street)

City:	**State:**	**Zip Code:**	**County:**

Phone Number of Applicant:	**Email Address of Applicant:**

Federal Employer Identification Number (EIN) or Social Security Number (for owners of multiple dwellings, sole proprietors and those operating under a DBA) of Applicant:

Tax Map Lot and Block Number(s) of Impacted Property:

B. "AUTHORIZED INDIVIDUAL" APPLYING ON BEHALF OF APPLICANT:

Name of Individual "Authorized" to Apply on Behalf of the Applicant (All correspondence will be directed to this Individual):

Title of Individual "Authorized" to Apply on Behalf of the Applicant:

Address of "Authorized Individual": (Street)

City:	**State:**	**Zip Code:**	**County:**

Phone Number of "Authorized Individual":	**Email Address of "Authorized Individual":**

C. ELIGIBLE ENTITY STRUCTURE (as further described in Section III of Program Guidelines):

- ☐ Business Corporation
- ☐ Sole Proprietorship
- ☐ Limited Liability Company
- ☐ Partnership
- ☐ Subchapter S Corporation
- ☐ Not-for-Profit Organization
- ☐ Homeowners Association
- ☐ Farm
- ☐ Owner of Multiple Dwellings

SECTION 4: APPLICANT, SITE & PROJECT DESCRIPTION

ADDRESS ALL OF THE FOLLOWING QUESTIONS FOR both Sections 4A AND 4B IN AN ATTACHED NARRATIVE (use headings as outlined below)

A. APPLICANT DESCRIPTION

1. Provide a detailed description of the nature of the "business" including services provided.
2. Please provide a detailed description of the applicant's ownership structure, including:
    a. Applicant's type of organization as recognized by the IRS; and
    b. All current legal owners of applicant and their percent ownership of applicant.
3. If the subject property is leased, attach a copy of the lease and a written authorization from the owner to complete the Resiliency Project, and provide a summary description of the applicant's leasehold interest, including:
    a. Dates of applicant's lease term, including the effective date, the termination date, and any extension terms;
    b. Description of how the lease provides authorization for the applicant to complete the Resiliency Project;
    c. Describe the relationship and association between the applicant and the landlord; and
    d. Describe if a lease or other property interest has been obtained from New York State for any portion of the business that occupies state-owned lands underwater.

B. PROJECT SITE INFORMATION AND FLOODING HISTORY/VULNERABILITY

1. Provide a detailed description of the buildings/structures including their size and current use at the proposed Resiliency Project site. Include a map or graphic to help clarify.
2. Fully describe the direct and indirect impacts on the business because of the 2019 flooding. Provide a detailed list of flood-related damages to business assets, and their estimated value. Include clearly-labeled photographs with respect to the date and location.
3. In cases where no Flood Damage was experienced in 2019, provide information to demonstrate how the business is vulnerable at the proposed project location, including a full description of vulnerable assets that need protection as well as details of the type of event that would imperil the business. Include clearly labeled and dated photographs of identified vulnerable assets.
4. Other than the 2019 flooding period, describe any physical damage that occurred at the proposed project site due to past flooding events and the effects on the business. Include approximate month/year of past events, and duration of event, and the specific Resiliency Component(s) under Section 4C of this application that would address these concerns.
5. Describe any measures that your business has taken prior to 2019 to mitigate flooding at the proposed project site.
6. Please describe any negative effects of nearby land uses or development (e.g., impermeable surface redirecting water and increasing flooding on the site) or structures (e.g., adjacent jetty increasing erosion on site) on the business that impact its vulnerability or resiliency.
7. If you are proposing project components that would be outside of the footprint of existing infrastructure, clearly describe why this is necessary for the success of the project.

SECTION 4: APPLICANT, SITE & PROJECT DESCRIPTION (cont'd)

C. RESILIENCY PROJECT INFORMATION

Complete the following table as it relates to each component of your Resiliency Project. If your project has several components (e.g., installing floating docks, elevating utilities, stabilizing your shoreline), you must complete application pages 7-10 for EACH Resiliency Component. Additional electronically fillable copies of these pages are available on the Lake Ontario Business Resiliency Program web page. For each Component, save a copy of the pages to your computer with a unique name, complete the Component information on the saved pages and submit these along with your application. For further information on Resiliency Project requirements, refer to Attachment 1 of the Guidelines.

Name of Applicant: **Resiliency Component # ___ of ____**

1	Name of Resiliency Component: (e.g., "Replace fixed docks with floating docks," "Elevate utilities by relocating," etc.)
2	Goals of Resiliency Component: (list assets and/or "business" functions that will be protected and how they are essential)
3	Describe how the Resiliency Component addresses the vulnerability of the business and the durability and/or adaptability of this Resiliency Component to changing conditions.
4	Describe any alternatives that have been considered and could otherwise satisfy the goals of the Resiliency Component.

SECTION 4: APPLICANT, SITE & PROJECT DESCRIPTION (cont'd)

C. <u>RESILIENCY PROJECT INFORMATION</u>

Complete the following table as it relates to each component of your Resiliency Project. If your project has several components (e.g., installing floating docks, elevating utilities, stabilizing your shoreline), you must complete the form for EACH Resiliency Component by attaching multiple copies of this form with your application and numbering each Resiliency Component. For further information on Resiliency Project requirements, refer to Attachment 1 of the Guidelines.

Name of Applicant: **Resiliency Component # ___ of ____**

5	What is the size/extent of the Resiliency Component? (e.g., linear feet of shoreline stabilization, square feet of building space to be elevated)
6	List the relevant state, federal and local permits required to complete this Resiliency Component.
7	Describe any work that has been completed to date to improve the resiliency of the asset that you are seeking to protect with this Resiliency Component.
8	Describe any public benefit that this Resiliency Component either individually or in conjunction with other Resiliency Component(s) would have.

SECTION 4: APPLICANT, SITE & PROJECT DESCRIPTION (cont'd)	
9	Sketch or attach a simple cross-section / schematic of the Resiliency Component with labels
10	As an attachment to this application package, provide a map of the project site including the location of this Resiliency Component clearly labelled. If you have more than one Resiliency Component, you can label multiple Resiliency Components together on one map as long as they are legible.

SECTION 5: FINANCIALS

A. PROPOSED BUDGET – PER RESILIENCY COMPONENT

Provide a detailed line-item budget for all eligible capital costs of each proposed Resiliency Component. Include any cost estimates that you have received to inform this budget. You must complete the form for EACH Resiliency Component by attaching multiple copies of this form with your application and numbering each Resiliency Component.

Name of Applicant: **Resiliency Component # ___ of ____**

Expense Type	Description	Estimated Eligible Capital Costs
		$
		$
		$
		$
		$
		$
		$
		$
		$
		$
		$
		$
		$
		$
		$
		$
	Resiliency Component Budget Total	$ 0

Comments on Resiliency Component Budget:

SECTION 5: FINANCIALS (cont'd)

B. PROPOSED BUDGET - TOTAL RESILIENCY PROJECT

Provide a total budget for all eligible project capital costs for ALL Resiliency Components, numbering each Resiliency Component accordingly.

Resiliency Project Component Name (from Section 5 A Above)	**Amount**
1.	$
2.	$
3.	$
4.	$
5.	$
6.	$
7.	$
8.	$
9.	$
10.	$
Resiliency Project Eligible Cost Budget Total:	$ 0
Lake Ontario Business Resiliency Program Assistance Request: (50% of total Project Budget, maximum not to exceed $200,000)	$
Required Local Government Match (5% of total Program Assistance Request)	0
Applicant's Match	0

C. THIRD-PARTY ASSISTANCE

Third-party assistance from 2019 flooding refers to losses that have been reimbursed or covered by grants or other assistance received from the local, state or federal governments, third-party payors and/or insurance carriers received. List all insurance claims and other assistance you have received, applied for or will receive.

Name of Applicant:

Source of Potential Assistance	**Status**	**Amount Anticipated or Received**
1.		$
2.		$
3.		$
4.		$
5.		$
	Total Reimbursed Loss Anticipated or Received:	$ 0
Please initial if no assistance was received to-date nor will it be received in the future.		*Initial:*

SECTION 6: CERTIFICATIONS

The undersigned Applicant or "Authorized Individual" does solemnly affirm, acknowledge and agree that:

(a)	He/she is authorized to execute this application on behalf of the applicant and that to the best of his/her knowledge, information and belief, all statements in the application, including all attachments hereto and any affidavits, certifications or supplemental information provided herewith, are true and accurate;
(b)	Applicant has a Demonstrated Vulnerability to, and/or experienced Flood Damage between January 1 and October 31, 2019 from, flooding caused by raised water levels in the vicinity of Lake Ontario, St. Lawrence River, Seneca River, Oswego River, Oneida River, Oneida Lake or Cross Lake.
(c)	Applicant will be obligated to repay any grant funds received under this program in the event (i) its application, including any information provided therewith or thereafter, contains any material misrepresentations; or (ii) the grant was made in error and the applicant is not entitled to assistance under the Guidelines; or (iii) the Applicant fails to provide documentation to support any grant payments;
(d)	In the event the applicant fraudulently represents any information in the application or supporting documentation, ESD may exercise any and all remedies available to it under the law and shall refer the matter to the appropriate authorities for prosecution;
(e)	This application is a request for assistance and does not obligate ESD to award any funds;
(f)	All figures and calculations in the application are subject to review and adjustment. Under no circumstances do the calculations imply award of funds. If approved, award may be adjusted or rescinded if warranted upon comparison of all documentation;
(g)	The receipt of any grants made under this Program is subject to the approval of the program by the NYS Division of the Budget and the receipt of funds by ESD;
(h)	All documents submitted will become property of ESD and will not be returned;
(i)	ESD reserves the right to modify the requirements of this application and to require additional information from the Applicant;
(j)	ESD, acting in its sole discretion, may reject any Application that it deems incomplete, ineligible for assistance or inappropriate for funding;
(k)	In accordance with IRS regulations, all Program Assistance disbursed to an Applicant will be reported by ESD to the IRS and ESD shall mail a Form 1099 to you at the address provided;
(l)	Applicant agrees to indemnify and hold harmless ESD, as well as their respective agents, directors and employees, for any claims arising from the administration of this Program;
(m)	Applicant agrees to comply with the New York State Lake Ontario Business Resiliency Program Guidelines and requirements;
(n)	If funded, the application is subject to audit prior to and for up to three years from the date of disbursement of funds;
(o)	Applicant's name and any grant award may be used by ESD or New York State in its promotional materials;
(p)	Applicant authorizes ESD to order credit reports or other financial background information on the Applicant, and any individual or entity proposed as a guarantor, as may be necessary to provide the assistance requested.
(q)	Applicant's tax information is being provided in order to receive a grant or grants from ESD and I understand that ESD officials may verify this information by obtaining my tax records from the NYS Department of Taxation and Finance, and I specifically authorize release of my tax records from the NYS Department of Tax and Finance for this purpose.
(r)	Applicant agrees to allow the Department of Labor to share its tax, employer or other information with ESD. Any information shared as a result of this agreement shall not be available for disclosure or inspection under the State Freedom of Information Law;
(s)	Applicant agrees to allow any federal, state, local government agency or authority that has or is providing flood recovery funding to share relevant information with ESD. Any information shared as a result of this agreement shall not be available for disclosure or inspection under the State Freedom of Information Law;
(t)	Applicant agrees to allow ESD and its agents access to any and all books and records ESD may require to monitor compliance.
(u)	Applicant understands that any funding awarded as a result of this application will be subject to 1. the provisions of Article 15-A of the New York State Executive Law as it relates to non-discrimination and utilization of women-owned business enterprises, 2. The provisions of Article 8 of the Environmental Conservation Law and its implementing regulations under Title 6 NYCRR Part 617 as it relates to the State Environmental Quality Review Act, 3. The provisions of Section 14.09 of the New York State Parks, Recreation and Historic Preservation Law, and 4. The provisions of Article 6 of the Environmental Conservation Law the State Smart Growth Public Infrastructure Policy Act.

_____ _____

(Applicant or "Authorized Individual" Signature) Title

_____ _____

(Printed Name) Date

ATTACHMENT CHECKLIST	
The following items must be included, please check if attached:	
☐	An original completed and signed application form.
☐	Required narrative answering all questions in Section 4 of the application.
☐	Detailed line-item budget(s) for each Resiliency Project component as specified in Section 5.
☐	Copy of the Eligible Entity's complete federal and state tax returns for 2018. In cases where the Eligible Entity's tax returns are not separate from the Eligible Entity's owner's personal taxes, the complete 2018 state and federal personal tax returns must be submitted. (Except for the first page of each filing, please redact Social Security or Employer Identification numbers from all pages of these documents.)
☐	Copy of the Certificate of Incorporation or Assumed Name Certificate (DBA) for the Eligible Entity unless proprietor is using their own name.
☐	Documentation of project costs for each Resiliency Project element, including contractor quotes if available.
☐	Photocopy of state issued identification (i.e. driver's license or non-driver identification card) for all owners of the applicant.
☐	Photocopy of full lease or deed for the Resiliency Project Site.
☐	If Resiliency Project Site is leased, a letter of authorization for the project from landowner.
☐	Tax map of the Resiliency Project Site, with existing buildings/structures noted, and Resiliency Project component(s) locations clearly identified.
☐	Photos and other material that provide context and documentation to understand:
☐	a. Flood Damage sustained by the applicant between January 1, 2019 and October 31, 2019 at the Resiliency Project Site, or in the case where no Flood Damage occurred during this timeframe, how the business is vulnerable to future flood damage at the Resiliency Project Site.
☐	b. Location of assets and essential business functions that need protection from future flooding events.
☐	If previously obtained, a copy of all permits and approvals for the proposed project.
☐	Letter from insurance carrier/agent that physical damage is not covered by an existing policy or policies.
Additional documentation may be requested as ESD deems necessary.	

Guidelines For
Financial Assistance

Lake Ontario
Business Resiliency Program

State of New York
Andrew M. Cuomo, Governor

Empire State Development
Eric Gertler, Acting Commissioner and
President & CEO-Designate

Approved by the Empire State Development Board of Directors on: November 21, 2019

Table of Contents

I. Overview **3**

II. Program Assistance **3**

III. Program Eligibility **4**

A. Eligible Entities 4
B. Eligible Costs 5
C. Ineligible Entities and Contractors 5
D. Resiliency Projects 6
E. Local Matching Contribution 6

IV. Application **6**

A. Application Submission 6
B. Application Review 6

V. Terms and Conditions **7**

A. Permits 7
B. Program Assistance Recapture 7
C. Audit and Control 7
D. Disclosure of Information 8
E. Availability of Funds 8
F. Non-Discrimination 8
G. Minority and Women Owned Business Enterprises/Contractor and Supplier Diversity 8
H. SEQRA, SHPO, Smart Growth Act 9
I. Amendments to Guidelines 9
J. Additional Information 9

ATTACHMENT 1 ..... **10**

Resiliency Project Requirements **10**

I. Overview

The Lake Ontario Business Resiliency Program (the "**Program**") is a State program administered by the New York State Urban Development Corporation d/b/a Empire State Development ("**ESD**"). Section 1 of Chapter 54 of the Laws of 2019 includes $30 million that ESD may use to provide financial assistance ("**Program Assistance**") to reimburse up to 50% of the costs of resiliency-related capital improvement projects ("**Resiliency Projects"**) with a minimum award eligibility amount of $10,000 up to a maximum award amount of $200,000 that are undertaken by eligible businesses, not for profit organizations, farms, homeowners associations, and owners of multiple dwellings ("**Eligible Entities**") that sustained documented direct physical flood-related damage, including but not limited to damages from inundation, erosion and wave action ("**Flood Damage**") between January 1, 2019, and October 31, 2019, ("**Recovery Period**") as a result of severe flooding and raised water levels in the vicinity of Lake Ontario, the St. Lawrence River, the Seneca River, the Oswego River, the Oneida River, Oneida Lake or Cross Lake ("**Covered Waterways**") at sites located in the following counties: Niagara, Orleans, Monroe, Wayne, Cayuga, Oswego, Jefferson or St. Lawrence ("**Coverage Area**"). If sufficient Program Assistance is available, ESD may elect to award Program Assistance to Eligible Entities with a demonstrated vulnerability ("**Demonstrated Vulnerability**") to future potential Flood Damage and other impacts of extreme water levels.

The Program has been developed to support the 2019 Resiliency and Economic Development Initiative (**REDI**), which was created in response to the extended pattern of flooding along the shores of Lake Ontario and the St. Lawrence River. REDI intends to address the immediate and long-term resiliency needs of these areas while also enhancing economic development opportunities and health of the lake, and the Lake Ontario Business Resiliency Program is intended to support this purpose, which aligns with ESD's mission.

II. Program Assistance

Eligible Entities that are awarded Program Assistance will receive a grant reimbursing up to 50% of the costs of approved Resiliency Projects, with a minimum award eligibility amount of $10,000 up to a maximum award amount of $200,000.

As a condition of receiving Program Assistance, Eligible Entities must also receive a local matching contribution ("**Local Matching Contribution**") totaling at least 5% of the Program Assistance funds. By way of example, a Resiliency Project that cost $100,000 may be eligible for up to $50,000 in Program Assistance. Under this example, the applicant must apply for and receive at least $2,500 in Local Matching Contributions (e.g., a sales tax exemption on construction materials or a property tax abatement valued at $2,500 over time). In calculating the total cost of a Resiliency Project for reimbursement, ESD will include total documented eligible costs ("**Eligible Costs**"). If an applicant is deemed to be conditionally eligible for Program Assistance based on their application, then ESD will provide further guidance to the applicant in terms of securing their Local Matching Contribution.

To receive Program Assistance, Resiliency Projects must not have been compensated by any other federal, State or local recovery program (other than the Local Matching Contribution), or any third-

party payors. If the Eligible Entity sells the property that is the site of the Resiliency Project, any award of Program Assistance shall be non-transferable.

Notwithstanding the foregoing, in cases where multiple Eligible Entities are applying for Program Assistance for a Resiliency Project at the same location, ESD may elect to collectively award the Eligible Entities not more than a maximum of $200,000 in total Program Assistance.

III. Program Eligibility

A. Eligible Entities

1. Eligible Entities must be located in the Coverage Area, with priority given to entities that have sustained Flood Damage during the Recovery Period due to high water levels in a Covered Waterway. Eligible Entities shall include:
   (i) a for-profit business entity or a not-for-profit organization established under Sections 501(c), 501(e), 501(f), 501(k), 501(n) or 521(a) of the Federal Tax Code that is not involved in religious or political activities and that is not excluded as an Ineligible Entity; **or**
   (ii) a farm that is or is part of, the land and on-farm buildings, equipment, manure processing and handling facilities, and practices, which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise, including a "commercial horse boarding operation," a timber operation, "compost, mulch or other biomass crops" and "commercial equine operation," as such terms are defined in Section 301(11) of the New York Agriculture and Markets Law. Such farm operation may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other, and it is used for raising, cultivating, propagating, fattening, grazing, or any other farming or livestock operations and the land, improvements, structures, and buildings (excluding buildings used for residential purposes that are not Eligible Multiple Dwellings) are used or occupied to carry out such operations, including land set aside or retired under a federal supply management or soil conservation program; **or**
   (iii) the owner of a dwelling that (i) is not owner occupied or a second home, is operated as a business and is either rented, leased, or hired out for occupancy; or (ii) the owner of an owner-occupied residence in which five or more families live independently of each other (a "**Multiple Dwelling**"); **or**
   (iv) an organization created for the purposes of developing and managing a group of homes, town homes and/or condominium units with the authority to enforce the covenants, conditions and restrictions as well as manage the common elements of the development (a "**Homeowners Association**").

2. All Eligible Entities must also:
   (i) currently own or lease the Resiliency Project site and, if leased, possess the necessary rights or permissions from the owner that enables the Eligible Entity to make relevant capital repairs and improvements; **and**

(ii) have acquired its ownership or leasehold prior to or during the Recovery Period; **and**

(iii) be current on its tax obligations; **and**

(iv) have a Federal Employer Identification Number (EIN; applicable to most businesses, not-for-profit organizations, farms and homeowners associations) or Social Security Number (for owners of multiple dwellings, sole proprietors and those operating under a DBA) for IRS form W-9 purposes.

3. The owner of a Multiple Dwelling shall be an Eligible Entity if the Multiple Dwelling is current on its tax obligations and the owner of the Multiple Dwelling is current on their tax obligations for the documented rental income. ESD may require owners of Multiple Dwellings to certify that no families are to be displaced by the Resiliency Project for the Multiple Dwelling or that there is a feasible method for the relocation of families and individuals displaced from the Multiple Dwelling into decent, safe and sanitary dwellings, which are or will be provided in the same area or in other areas not generally less desirable in regard to public utilities and public commercial facilities, at rents or prices within the financial means of such families or individuals, and reasonably accessible to their places or employment.

4. A Homeowners Association shall be an Eligible Entity if it commonly owns and is responsible for the maintenance of surrounding property and amenities such as lawns, green belt areas, recreational facilities and private roads, and the proposed project pertains to these commonly owned areas as opposed to individual homes or properties.

B. Eligible Costs

All project costs must be related to achieving Resiliency Project requirements as outlined in *Attachment 1* to this document. ESD will determine a Resiliency Project's Eligible Costs in its sole discretion and may exclude costs as ineligible based on factors that may include, but not limited to: insufficient documentation; non-capital expenses; costs unrelated to resiliency; or untimely costs.

C. Ineligible Entities and Contractors

Entities engaged in lobbying, religious or political activities are ineligible for Program Assistance.

ESD may consider any entity that would otherwise be an Eligible Entity as an entity ineligible to receive Program Assistance if ESD deems such consideration to be in the public interest.

An Eligible Entity cannot receive Program Assistance for labor costs performed by its respective owner or owner's immediate family members regardless of whether the labor was performed as a contractor. A contractor, or his/her immediate family members cannot receive Program Assistance for labor costs performed on a property that s/he owns. Immediate family is defined as a spouse, son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, grandfather, grandmother, grandson, granddaughter, brother-in-law, sister-in-law, father-in-law, mother-in-law, son-in-law or daughter-in-law.

D. Resiliency Projects

Resiliency is the capacity to withstand extreme events and other forces or risks; quickly recover the social, economic, and/or ecological structure and function in the aftermath of a disaster; and adapt to changing environmental conditions and forces. Eligible Resiliency Projects must meet resilience guidelines provided and must reduce vulnerability of an identified asset to a risk or risks experienced during the Covered Waterway high water event (e.g., flooding, erosion), preventing permanent damage and loss of function to the identified asset.

Additional guidance regarding Resiliency Projects may be found in *Resiliency Project Requirements* included within *Attachment 1* to these Guidelines.

E. Local Matching Contribution

Local Matching Contributions acceptable to ESD may include, but not be limited to, tax abatements and exemptions offered by Industrial Development Authorities, local government waivers of the costs of ordinarily due permits and fees, and direct expenditures by local governments on project-related infrastructure costs.

IV. Application

A. Application Submission

Program applications ("**Applications**") will be accepted continuously through **January 31, 2020**. A complete Application package must be mailed to:

Empire State Development
Attn: Lake Ontario Business Resiliency Program
625 Broadway
Albany, NY 12245

An Eligible Entity should submit one complete Application when all documentation can be established as described in the Application.

Additional documentation may be requested as ESD deems necessary.
Applications will be accepted continuously, and all Applications must be postmarked by January 31, 2020. Applications postmarked after such date may be rejected by ESD. Based on interest in the program and the availability of program funds, the deadline for submission of Applications may be extended by ESD at its discretion.

B. Application Review

Applications will be reviewed on a first come, first served basis until funding is exhausted. ESD may give preference to Eligible Entities that demonstrate the greatest need or Resiliency Projects that were identified by a REDI Regional Planning Committee. All payments will be made by electronic transfer. In accordance with IRS regulations, all Program Assistance disbursed will be

reported by ESD to the IRS and ESD shall mail a Form 1099 to the Program Assistance recipient, at the address provided in the application.

For Applications deemed eligible for Program Assistance, Eligible Applicants will receive a conditional award letter from ESD indicating that, subject to the completion of the Resiliency Project and additional terms and conditions, which may require entering into a Grant Disbursement Agreement (GDA) with ESD, the Eligible Applicant may expect to receive Program Assistance.

V. Terms and Conditions

A. Permits

Prior to any commitment of Program Assistance by ESD, all Resiliency Projects will still need to receive all relevant federal, State and local permits and authorizations. Applicants are strongly encouraged to review the information on the Department of Environmental Conservation (DEC)'s website at: https://on.ny.gov/rediguidance, including the "Great Lakes and St. Lawrence River Coastal Development Fact Sheet" (PDF) at:
https://www.dec.ny.gov/docs/water_pdf/rediguidance101819.pdf.

B. Program Assistance Recapture

ESD may require any Eligible Entity to repay any Program Assistance received under this program in the following events:

a) if its Application, including any information provided therewith or thereafter, contains any material misrepresentations or is incomplete;
b) if the Program Assistance was awarded or disbursed in error and the Eligible Entity is not entitled to Program Assistance under these Guidelines; or
c) if supporting documentation is not true and/or complete.

In the event the Eligible Entity receives insurance payments and/or additional grants or assistance for an item that has been reimbursed with Program Assistance, the Eligible Entity shall immediately repay to ESD the Program Assistance proceeds corresponding to such item.

In the event of any fraudulent misrepresentations by the Eligible Entity, in addition to the recapture of Program Assistance, ESD may pursue other legal remedies and refer the matter to the appropriate governmental authorities for investigation and prosecution.

C. Audit and Control

ESD may conduct site visits and audit Applications on a random or specified basis for a period extending to three years after the final disbursement of the Program Assistance to the Eligible Entity. ESD reserves the right to contact insurance companies and other federal, state and local governmental agencies to confirm information included, or that should have been included, in the applications.

D. Disclosure of Information

Each Eligible Entity must agree to allow:

a) the Department of Taxation and Finance to share its tax information with ESD. However, any information shared as a result of this agreement shall not be available for disclosure or inspection under the State Freedom of Information Law;
b) the Department of Labor to share its tax, employer or other information with ESD relevant to Program Assistance. However, any tax information shared as a result of this agreement shall not be available for disclosure or inspection under the state freedom of information law;
c) any federal, state, local governmental agency or authority that has or is providing flood recovery funding to share relevant information with ESD. Any information shared as a result of this agreement shall not be available for disclosure or inspection under the State Freedom of Information Law; and
d) ESD and its agents access to any and all books and records ESD may require to monitor compliance.

Except as required by applicable law or regulations, ESD will endeavor to maintain the confidentiality of tax and rent information submitted as part of the application. Notwithstanding the foregoing, such information may be made available to ESD staff and designated individuals that are processing the application and to federal, state or local officials and to auditors evaluating the Program and others as ESD may deem to be required in accordance with applicable law and regulations, including judicial orders and subpoenas.

E. Availability of Funds

The disbursement of any Program Assistance is explicitly subject to the approval of ESD and the receipt by ESD of a sufficient amount of Program funds from the State of New York acting by and through the New York State Division of the Budget.

F. Non-Discrimination

ESD's non-discrimination policy will apply. The Eligible Entity shall not unlawfully discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status.

G. Minority and Women Owned Business Enterprises/Contractor and Supplier Diversity

ESD is required to comply with and implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (MWBE Regulations) for all State contracts as defined therein, with a value (1) in excess of $25,000 for labor, services, equipment, materials, or any combination of the foregoing; or (2) in excess of $100,000 for real property renovations and construction. In accordance with the requirements of Article 15-A of the New York State Executive Law, all Resiliency Projects awarded Program Assistance shall be reviewed by ESD's Office of Contractor and Supplier Diversity ("OCSD""), which will, where applicable, set Minority and Women-owned Business Enterprise ("MWBE") participation goals. Such goals shall

typically be included in the award letter or other contemporaneous communication from OCSD with respect to these requirements.

After application approval, the project may be assigned an individual contract-specific goal, which may be higher or lower than 30%. In instances where goals are set, grantee will be required to use good faith efforts to achieve the prescribed MWBE goals assigned to the project and must maintain such records and take such actions necessary to demonstrate compliance with Article 15-A of the New York State Executive Law.

H. SEQRA, SHPO, Smart Growth Act

Applicant understands that any Program Assistance awarded as a result of the Application may be subject to:

a) The provisions of Article 8 of the Environmental Conservation Law and its implementing regulations under Title 6 NYCRR Part 617 as it relates to the State Environmental Quality Review Act (SEQRA);
b) The provisions of Section 14.09 of the New York State Parks, Recreation and Historic Preservation Law; and
c) The provisions of Article 6 of the Environmental Conservation Law the State Smart Growth Public Infrastructure Policy Act (Smart Growth Act).

I. Amendments to Guidelines

ESD may amend these guidelines from time to time.

J. Additional Information

Eligible Entities can access the Application form and instructions, these Guidelines, any amendments to these Guidelines and additional information at the Program web site at https://esd.ny.gov/lake-ontario-business-resiliency-program. Information can also be obtained by calling (518) 292-5100 and referencing the Program or by emailing LakeOntario@esd.ny.gov.

ATTACHMENT 1

Lake Ontario Business Resiliency Program -
Resiliency Project Requirements

Resiliency Project Requirements

To be eligible to receive Program Assistance, project costs must be related to achieving Resiliency Project requirements. ESD will determine a Resiliency Project's Eligible Costs in its sole discretion and may exclude costs as ineligible based on factors that may include, but not be limited to: insufficient documentation; non-capital expenses; costs unrelated to resiliency; or untimely costs. In-kind services are not Eligible Costs.

The applicant should clearly describe how the project meets one or more of the following listed resiliency components:

- Accommodating varying water levels without losing function. A project that is designed only for a high-water environment will not function properly during low water events. Consider the difference between a fixed dock that is underwater during high water versus a floating dock that can move vertically as water levels fluctuate.
- Incorporating natural features into the design or otherwise using non-structural components that avoid/minimize impacts to natural processes (e.g., sediment movement) and habitats. A vegetative buffer can provide habitat benefits in addition to risk reduction benefits without negatively impacting natural processes.
- Including design elements that allow for modifications to changing conditions. For example, while a project may be designed to withstand the flooding experienced in 2019, it could also include room for expanding the project landward or vertically to address potentially higher levels.
- relocating structures above the maximum high-water levels reached in 2019 or even further landward. A proposed project that removes an asset such as a fueling facility out of a hazardous area is considered a highly resilient approach.

Resiliency Projects that have clear resiliency components include:

- Elevating and or moving, landward, non-water dependent features such as offices, restrooms, stores, restaurants, parking or boat storage;
- Raising/relocating fueling facilities;
- Converting to floating docks or other docks that allow for movement with water levels (adapted to both high and low water) such that docks can raise to a minimum elevation;
- Strengthening existing dockage by evaluating and strengthening connection points between dock sections (typically the weakest point in a dock's design); and
- Retaining and/or creating vegetated buffers along the waterfront.

There are some capital projects that require additional analysis due to their complexity and potential impacts on adjacent areas. These projects or project elements may be required to include

an alternatives analysis to better understand the resilience potential and to minimize negative impacts. An alternatives analysis should consider the following options: no action, non-structural measures, natural and nature-based features, and if none of the other alternatives are feasible, hard structural measures should be assessed (see the Great Lakes and St. Lawrence River Coastal Development Fact Sheet https://www.dec.ny.gov/docs/water_pdf/rediguidance101819.pdf).

Projects in the below categories will require further consultation with ESD or its partnering agencies prior to being deemed complete and receiving Program Assistance:

- All shoreline stabilization projects require an understanding of design, site conditions, and possible alternatives. For example, a bulkhead is not adaptable and although it may address higher water levels, it may interrupt natural processes and may create additional risks to adjacent areas.
- Projects that address landside stormwater/drainage impacts may reduce flooding risk for an individual property but transfer the risk to an adjacent property if not properly designed.
- Stormwater and septic system reinforcement similarly require a design that addresses varying water levels to allow for proper treatment and discharge.