

FOR CONSIDERATION

September 21, 2023

TO: The Directors

FROM: Hope Knight

SUBJECT: ConnectALL Office – Municipal Infrastructure Program

REQUEST FOR: Adoption of Municipal Infrastructure Program Guidelines; and
Authorization to Take Related Actions

I. BACKGROUND

The ConnectALL Initiative, announced by Governor Kathy Hochul in January 2022, is an ambitious set of programs and activities aimed at addressing New York State’s digital divide, transforming the state's digital infrastructure, and ensuring that all New Yorkers have access to reliable and affordable high-speed broadband internet service. ConnectALL programs are designed and administered by the ConnectALL Office (“CAO”), which is housed within the New York State Urban Development Corporation d/b/a Empire State Development (“ESD”).

As part of the ConnectALL Initiative, Governor Hochul designated CAO to administer a Local Connectivity Planning and 21st Century Municipal Infrastructure Program providing grants to municipalities, non-profits, and other entities to construct open and accessible public broadband infrastructure.

CAO is implementing the Governor’s mandate as the Municipal Infrastructure Program (“MIP”). Through MIP, New York State will construct new fiber to the premises for thousands of properties statewide by providing funding to deploy last mile conduit and fiber and connections from those new last mile deployments to middle mile networks.

II. MUNICIPAL INFRASTRUCTURE PROGRAM GUIDELINES

Pursuant to the New York State WIRED Act and the federal Digital Equity Act of 2021, ConnectALL will establish and implement programs, including grant programs, in furtherance of improving digital equity, digital inclusion, and digital literacy.

Broadband infrastructure constructed via or included in MIP will be owned by a public entity or publicly controlled with stipulations on its use that will ensure long-term adherence to CAO standards. The new broadband infrastructure will be made available to Internet Service

Providers (“ISPs”) and Managed Service Providers (“MSPs”) capable of providing New Yorkers with high-quality and affordable service options.

MIP will facilitate coordination of planning and operations of infrastructure networks owned by statewide, regional, and local Public Entities, Municipal Utilities, Utility Cooperatives; and ISPs, MSPs, and Broadband Infrastructure Owners.

The MIP Guidelines articulate the proposed governing standards that the ConnectALL Office will implement to run MIP.

III. STATUTORY AUTHORITY

Section 16-GG*2 of the New York State Urban Development Corporation Act (“UDC Act”), Chapter 174 of the Laws of 1968, as amended, establishes the Division of Broadband Access, with the stated goal to “assist in ending the digital divide, supporting a more robust and competitive internet marketplace, and carrying out other actions to ensure universal access to high-speed, reliable, and affordable broadband.” See UDC Act, §16-GG*2(1).¹ The statute also establishes the ConnectALL municipal assistance program “to provide grant funding to municipalities, state and local authorities, and entities established pursuant to section 99-y of the general municipal law to plan and construct infrastructure necessary to provide broadband services, support the adoption of broadband services, or other purposes for maximizing the effectiveness of municipal broadband programs as determined by the division.” See UDC Act, §16-GG*2(8). While the FCC has the authority to set minimum standards for internet speed, the NYS WIRED ACT authorizes the ConnectALL office to establish speed standards for grants (which are higher than the federal minimum standards).

IV. ENVIRONMENTAL REVIEW

ESD staff has determined that the requested adoption of MIP Program Guidelines constitutes a Type II action as defined by the New York State Environmental Quality Review Act (“SEQRA”) and the implementing regulations of the New York State Department of Environmental Conservation. No further environmental review is required in connection with this approval.

V. NON-DISCRIMINATION AND CONTRACTOR & SUPPLIER DIVERSITY

Pursuant to New York State Executive Law Article 15-A, ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority and women-owned businesses (“MWBs”) in the performance of ESD contracts. In accordance with the requirements of Article 15-A of the New York State Executive Law: Participation by Minority Group Members and Women with Respect to State Contracts, Projects awarded funding shall be reviewed by ESD’s Office of Contractor and Supplier Diversity, which may set business

¹ https://www.nysenate.gov/legislation/laws/UDA/16-GG*2

and participation goals for minorities and women, to the extent not preempted by federal requirements pertaining to participation by socially and economically disadvantaged individuals (“SEDI”).

VI. SERVICE-DISABLED VETERAN-OWNED BUSINESSES

Pursuant to New York State Executive Law Article 17-B, ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified service-disabled veteran-owned businesses (“SDVOBs”) in the performance of ESD contracts.

VII. REQUESTED ACTION

The Directors are being asked to adopt the attached MIP Guidelines, and authorize the taking of related actions.

Attachments

Resolution

Municipal Infrastructure Program Guidelines

September 21, 2023

NEW YORK STATE URBAN DEVELOPMENT CORPORATION d/b/a EMPIRE STATE DEVELOPMENT – ConnectALL Office – Municipal Infrastructure Program - Adoption of Municipal Infrastructure Program Guidelines; and Authorization to Take Related Actions

BE IT RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is hereby ordered filed with the records of the Corporation (the “Materials”), relating to implementation and administration by the ConnectAll Office (“CAO”) of the Municipal Infrastructure Program, the Corporation hereby determines pursuant to Section 10(g) of the UDC Act that there are no families or individuals to be displaced by the project at issue; and be it further

RESOLVED, that the President and Chief Executive Officer of the Corporation or her designee(s) be, and each of them hereby is, authorized in the name and on behalf of the Corporation to take such action and execute such agreements and instruments as he or she may consider necessary or desirable or appropriate in connection with the implementation of the Guidelines and to take related actions; and be it further

RESOLVED, that the President and Chief Executive Officer or her designee(s) be, and each of them hereby is, authorized in the name and on behalf of the Corporation to execute and deliver any and all documents and to take all actions as she or he may in her or his sole discretion consider to be necessary or proper to effectuate the foregoing resolutions, including without limitation, to make findings and hold public hearings that may be necessary pursuant to applicable law and to act on behalf of the Corporation to affirm, modify or withdraw any contemplated funding or assistance as a result of testimony given at any such hearing, if necessary; and be it further

RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is hereby ordered filed with the records of the Corporation (the “Materials”), relating to the Municipal Infrastructure Program Guidelines (the “Guidelines”), the Guidelines are hereby approved and adopted.

* * *

Subject to Board Approval

Grant Program Guidelines

Municipal Infrastructure Program (MIP)

September 2023

State of New York

Kathy Hochul, Governor

Empire State Development

ConnectALL Office



Subject to Board Approval

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A. Definitions

In these guidelines, the terms below shall have the following meanings:

- "Address" shall refer to any residential, commercial, community anchor institution, public, or other broadband-serviceable building within a Project Area that a Grantee (eligible as defined in Section E) seeks to connect to fiber broadband service through a Municipal Infrastructure Program grant.
- "Affordable Connectivity Program" (ACP) shall mean the Federal Communications Commission's federal subsidy program which provides a monthly discount for internet service subscription costs and a one-time discount for an internet-enabled device for eligible households.
- "Applicant" shall mean the entities described in Section E – Eligible Applicants, that will apply to participate in the Municipal Infrastructure Program.
- "Application" shall mean the materials submitted to CAO (defined below) by an Applicant seeking to participate in MIP, which shall be aligned with the specific requirements of a Request for Applications (RFA).
- "Broadband" shall mean high-capacity transmission technology that transmits data, voice, and video across long distances and at high speeds. As defined by the Federal Communications Commission (FCC), broadband is internet service with a minimum of 25 Mbps download and 3 Mbps upload speeds.
- "Capital Projects Fund (or CPF)" shall mean the grant program established by Section 604 of the Social Security Act (the Statute), as added by Section 9901 of the American Rescue Plan Act of 2021 (American Rescue Plan).
- "ConnectALL Office" (or CAO) shall mean New York State's division of broadband access, established through passage of the New York State WIRED Broadband Act in 2022 and with powers to: coordinate the activities of all state agencies performing functions affecting access to high-speed, reliable, and affordable broadband; conduct research and analyses of matters affecting access to high-speed, reliable, and affordable broadband; and establish and implement programs, including grant programs, to expand access to high-speed, reliable, and affordable broadband; and other powers. CAO is responsible for the implementation of the ConnectALL Initiative announced by Governor Hochul in January 2022.
- "Data Center," which for the purposes of this document can also be referred to as an "Internet Exchange," "Internet Exchange Point," "IX," "IXP," or "Regional Exchange Point," is a location where internet companies, such as Internet Service Providers (ISPs), connect to serve traffic between the global internet and the local region.
- "Digital Equity," as defined in the federal Digital Equity Act of 2021, means the condition in which individuals and communities have the information technology capacity that is needed for full participation in the society and economy of the United States.
- "Fiber" refers to optical fiber, which carries information from one place to another via transmitted pulses of infrared light.
- "Grantees" shall refer to selected/awarded Applicants.
- "Internet Service Provider" (or ISP) and "Managed Service Provider" (or MSP) shall refer to companies that provide subscribers with access to internet.
- "Make-Ready" shall mean the work required on a utility pole to move existing attachments so that the pole can be made ready to handle a new attachment or line.

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- “Open access” means an internet network where there may be more than one ISP that provides retail services over the same access network infrastructure simultaneously, allowing the subscribers to decide from which ISP they will purchase their services.
- “Partner” shall mean an entity defined in Section E that is not eligible for grant program funding on their own but that can partner with an Applicant to provide services aligned with the grant program and can receive funds through a partnership agreement with a Grantee.
- “Publicly controlled” refers to infrastructure that is either managed by, or whose immediate or long-term ownership remains with, a Public Entity (as defined in Section E) or the state.
- “Project Area” shall mean a to-be-defined region in which an Applicant operates or intends to operate as part of their participation in the Municipal Infrastructure Program. A Project Area will be defined in partnership between CAO and selected Grantees to determine the boundaries in which a Grantee deploys grant funds for eligible uses.

B. Statutory Authority

Section 16-GG*2 of the New York State Urban Development Corporation Act (“UDC Act”), Chapter 174 of the Laws of 1968, as amended, establishes the Division of Broadband Access, with the stated goal to “assist in ending the digital divide, supporting a more robust and competitive internet marketplace, and carrying out other actions to ensure universal access to high-speed, reliable, and affordable broadband.” See UDC Act, §16-GG*2(1).¹ The statute also establishes the ConnectALL municipal assistance program “to provide grant funding to municipalities, state and local authorities, and entities established pursuant to section 99-y of the general municipal law to plan and construct infrastructure necessary to provide broadband services, support the adoption of broadband services, or other purposes for maximizing the effectiveness of municipal broadband programs as determined by the division.” See UDC Act, §16-GG*2(8). While the FCC has the authority to set minimum standards for internet speed, the NYS WIRED ACT authorizes the ConnectALL Office to establish speed standards for grants (which are higher than the federal minimum standards).

C. Program Background

The ConnectALL Initiative, announced by Governor Kathy Hochul in January 2022, is an ambitious set of programs and activities aimed at addressing New York State’s digital divide, transforming the state's digital infrastructure, and ensuring that all New Yorkers have access to reliable and affordable high-speed broadband internet service. The Governor’s announcement included a “Local Connectivity Planning and 21st Century Municipal Infrastructure [grant program] providing grants to municipalities, non-profits and other entities to construct open and accessible public broadband infrastructure.” ConnectALL programs are designed and administered by the ConnectALL Office (“CAO”), which is housed within the New York State Urban Development Corporation d/b/a Empire State Development (“ESD”).

CAO is implementing the Governor’s mandate as the Municipal Infrastructure Program (“MIP”). Through MIP, New York State will construct new fiber to the premises for thousands of properties statewide by

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providing funding to deploy last mile conduit and fiber and connections from those new last mile deployments to middle mile networks.

Broadband infrastructure constructed via or included in MIP will be owned by a public entity or be publicly controlled with stipulations on its use that will ensure long-term adherence to CAO standards. The new broadband infrastructure will be made available to Internet Service Providers (“ISPs”) and Managed Service Providers (“MSPs”) capable of providing New Yorkers with high-quality and affordable service options.

This program is informed by:

- CAO’s municipal infrastructure pilot, which was launched in May 2022 in partnership with the New York Power Authority (“NYPA”) and has connected hundreds of homes in four communities to newly constructed fiber owned, operated, and maintained by the Development Authority of the North County (“DANC”), Southern Tier Network (“STN”), and Sherburne Electric, a municipal electric utility, with internet service provided over this municipal infrastructure by multiple private internet service providers.
- Analysis published by the New York State Public Service Commission (“PSC”) in 2022, which indicates that the digital divide remains a significant challenge in New York.² PSC’s data show that several thousand locations in the state, in both rural and urban communities, lack access to reliable high-speed service. Further, roughly 40% of served locations in the state only have access to one Internet Service Provider (ISP), resulting in no price point or service quality choice for consumers.³ Findings also include that broadband affordability and ISP choice are inversely correlated with household income.
- Engagement between CAO and Public Entities, Municipal Utilities, Utility Cooperatives, Broadband Infrastructure Owners, ISPs, MSPs, and broadband network investors. This includes a substantial number of Public Entities that indicated interest in or plans to build publicly controlled fiber networks to address challenges of network availability, performance, affordability, and consumer choice, among other local priorities, and to address digital equity locally.

D. Program Administration

MIP will provide grant funding directly to Eligible Applicants (see Section E) to enable last mile connectivity including: 1) last-mile fiber to Addresses; and 2) fiber connections to Internet Exchange Points and Data Centers to support the last mile connections.

CAO will be the administrator of MIP. As such, CAO, or its duly authorized representative will determine program structure and requirements, evaluate Applicant information, monitor Grantees for project completion and satisfactory performance, collect Grantee data to ensure compliance with all program requirements and verify allowable uses of funds, and approve disbursement of grant funds to selected

² <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId=%7B94520887-43D6-45D4-B140-A5CF72CBF708%7D>

³ New York State Public Service Commission Broadband Assessment Program, “2022 Report on the Availability, Reliability and Cost of High-Speed Broadband Services in New York State,” June 2022.

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Grantees. CAO may provide technical assistance to the Applicants during the application and/or the application curing process, at CAO's discretion.

A Grant Disbursement Agreement (GDA) will be executed between CAO and each Grantee, i.e., the Applicant selected to work on and matched to Project Areas. The Grantee may be required to enter into use agreements with asset-owning or -controlling public entities to support infrastructure deployment.

Grantees selected to deploy infrastructure in their Project Areas will be responsible for coordinating directly with Address owners or their representatives to determine an agreed-upon project deployment schedule, secure access to facilities for installation work, and liaise with residents to ensure access to residential units as needed for installations. CAO will provide documents to guide coordination between Grantees and Address Owners, such as a target deployment schedule, roles and responsibilities for each party, communications methods, inspection and completion verification procedures, and process remedies, which will be reflected in the GDA.

CAO may assist in providing or identifying technical assistance resources available to Grantees, depending upon assessed need as grants are awarded.

E. Eligible Applicants

Applicants

Eligible Applicants matching one or more of the following descriptions are encouraged to submit applications:

- Public Entities: Cities, counties, towns, villages, Tribal Nations, and other special units of government such as government-controlled nonprofits.
- Municipal Utilities: Local government entities, including those established by a municipality as nonprofits, which provide essential services such as electricity, telecommunications, water, sewer, and gas services over municipally owned infrastructure.
- Utility Cooperatives: Nonprofit entities that deliver electricity to their constituent members.

Eligible Partners to Applicants

Eligible Partners to Applicants match one or more of the following descriptions, with an ownership structure that may be in the form of private or shareholder ownership; nongovernmental nonprofit; non-utility cooperative; or community trust.

- Internet Service Providers (ISPs): Entities providing internet services to consumers, not limited to providers of cable television or telephone services. ISPs must partner with a Public Entity, Municipal Utility, or Electric Cooperative to be eligible to receive funds.
- Managed Service Providers (MSPs): Entities operating networks and providing service to residents and businesses by leveraging existing internet infrastructure or partnering with construction entities to build networks. MSPs must partner with a Public Entity, Municipal Utility, or Rural Electric Cooperative to be eligible to receive funds.
- Broadband Infrastructure Builders: Entities that construct and/or deploy open access broadband infrastructure assets. These entities must partner with a Public Entity, Municipal Utility, or Rural Electric Cooperative to be eligible to receive funds.

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- **Broadband Infrastructure Owners:** Entities that own, operate, or hold last mile or middle mile fiber infrastructure. These entities must partner with a Public Entity, Municipal Utility, or Rural Electric Cooperative to be eligible to receive funds.

In certain instances, CAO may 1) facilitate a match between a public entity, municipal utility, or electric cooperative and an Eligible Partner, or 2) may accept applications from Eligible Partners that will serve a dual role as Applicants.

F. Program Assistance

MIP makes available financial assistance in the form of one-time grants for use by Applicants (public entities, municipal utilities, and electric coops as defined in Section E – Eligible Applicants). Funds are available for the eligible uses described in Section G – Eligible Uses, and for the additional activities set forth in the GDA CAO will share with, negotiate, and agree upon with Grantees. To the extent this Program’s funding comes from the U.S. Treasury Capital Projects Fund (CPF), the State and its Grantees are required to follow the respective compliance requirements of that program, as described under *U.S. Treasury Guidance for The Coronavirus Capital Projects Fund for States, Territories & Freely Associated States and the New York State WIRED broadband act*. The State and its Grantees will be required to follow additional compliance requirements of other future program funding sources.

CAO may choose to provide non-capital resources to Grantees in the form of technical assistance related to Eligible Uses, coordination between Grantees and relevant State agencies, or reporting requirements.

G. Eligible Uses

Eligible uses for program funding include non-capital resources, technical assistance, and the following categories of publicly controlled, open access infrastructure:

1. Last-mile fiber connections to Addresses:
 - Last-mile infrastructure: The cabling, wires, and/or wireless spectrum and radios that ISPs use to distribute the internet from local Internet Exchanges to network endpoints.
 - Drops to a building: The cabling or wires necessary to make the connection from passing fiber or cable on a street pole or in-street conduit into a building structure for interior distribution to units.
2. Fiber connections to Internet Exchange Points or Data Centers:
 - Middle-mile fiber: The fiber necessary to transport internet services to a local Data Center where an Applicant is connecting its last-mile infrastructure.
 - Networking equipment: The routers, switches, and other equipment necessary to interconnect networks in a Data Center.
3. Related infrastructure improvements:
 - Make-ready: Rearranging existing attachments on a pole so that it can safely support a new attachment or line.
 - Pole replacement: The work of replacing a utility pole with a new one that is up to specification if the previous pole is deemed insufficient or unsafe for continued operation of all services and attachments that the pole must support.

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4. Acquisition of existing infrastructure assets and related agreements
 - Acquisition: the purchase of network assets from a public or private entity for incorporation by an Applicant into a Project Area, and related legal agreements.

Ineligible Uses: The program will not fund activities defined as ineligible uses under applicable state and federal law, including the federal guidance for the CPF program, as described in the *U.S. Treasury Guidance for The Coronavirus Capital Projects Fund for States, Territories & Freely Associated States*.

H. Application and Selection Process

CAO will issue a Request for Applications (RFA), in which it will set forth specific program details and eligibility/selection criteria in line with MIP guidelines.

CAO will accept applications to this Program on a rolling basis until funds are expended or until CAO pauses or closes the RFA. Respondents are encouraged to submit applications as soon as they are able; applications will be reviewed in the order in which they are received. Applications submitted early may be advanced to detailed project scoping and deployment more quickly, depending upon prioritization.

CAO may provide a means for Eligible Partners to Applicants to express interest, which CAO may use to facilitate matchmaking between Eligible Entities and Eligible Partners. Such an opportunity to express interest may require information on an Eligible Partner business model, proposed structure of public-private partnership, and the geography or geographies of interest. Upon receipt of applications, CAO will review applications for eligibility, completeness, and conformance with these guidelines. Applications shall be processed in full compliance with the applicable provisions of federal and state law, including 16-gg*2 of the New York State Urban Development Corporation Act.

Based on the information provided in the applications (see Section J - Application Requirements), CAO will evaluate the applications according to criteria put forward in the RFA. Applicants who are deemed conditionally selected based on the Evaluation Criteria will be advanced to negotiations with CAO for one or more Project Areas as may be defined by the Applicant or CAO. CAO may request infrastructure cost and service pricing information from Applicants as part of the evaluation process to select Applicants for further negotiations.

Once conditionally selected, CAO will negotiate with the Applicant to determine the final list of Addresses to be served within one or more Project Areas. CAO may approach the Applicant to submit an additional application for a specific Project Area or multiple Project Areas.

As a condition of the grant award, CAO and the Grantee will enter into a GDA, which will outline the program's stipulations in compliance with CPF and penalties for failures to comply. In cases of grant awards made for infrastructure with open access and long-term public ownership terms, the GDA will outline the relevant terms a Grantee must follow.

CAO may provide a template of a Service-Level Agreement (SLA) between the Grantee and Address owner and/or end-users that outlines the terms for service speed, uptime, latency, privacy, and customer service offerings, in accordance with CAO's service performance expectations.

There may be a separate set of terms for long-term quality and use of fiber to provide affordable service. As part of these terms, participation in the Federal Communications Commission Affordable Connectivity Program (ACP) will be a requirement and baseline qualification of all ISPs seeking to receive

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grants or engage in partnerships with Grantees. Grantees will be required to represent their commitment to the GDAs and to provide a copy of their ACP provider enrollment verification for CAO's review. Grantees will be required to certify their continued participation in the program in regular reporting to CAO.

I. Application Requirements

The MIP application requirements will be further defined in the Request for Applications (RFA).

Applicants may need to include maps and address lists in their applications, indicating the fiber routes and accompanying infrastructure (e.g., poles and huts) which the MIP grants may fund. If applicable, grantees may need to submit a list of publicly controlled assets that they would like to request access to, in order to support their deployments.

Furthermore, in accordance with the requirements of Article 15-A of the New York State Executive Law: Participation by Minority Group Members and Women with Respect to State Contracts, Projects awarded funding shall be reviewed by ESD's Office of Contractor and Supplier Diversity, which may set business and participation goals for minorities and women.

Applicants must submit the EEO Policy Statement (Form OCSD-1) <https://esd.ny.gov/sites/default/files/OCSD-1-Policy-Statement.pdf> with their application confirming their understanding of the MWBE requirements and agreeing to show due-diligence and make good faith efforts to provide meaningful participation by MWBE's, whenever possible, if awarded grant funding.

ESD's agency wide MWBE utilization goal is 30%. Each Project will be assigned an individual contract-specific goal, which may be higher or lower than 30%. Should an Applicant receive a funding award, the Applicant shall be required to use good faith efforts to achieve the prescribed MWBE goals assigned to this Project. Applicants must maintain such records and take the actions necessary to demonstrate such compliance. Failure to achieve the specified MWBE goal may result in award reduction.

In 2014, the Service-Disabled Veteran-Owned Business Act was signed into law. The new law created the Division of Service-Disabled Veterans' Business Development in Office of General Services to certify, promote and encourage economic development among disabled veterans throughout the state. Project Applicants are urged to work with Service-Disabled Veteran-Owned Businesses (SDVOBs) and a directory can be found at <https://ogs.ny.gov/Veterans>.

J. Evaluation Criteria

The MIP application evaluation criteria will be defined in the Request for Applications (RFA).

K. Compliance, Monitoring, and Reporting Requirements

CAO will provide guidance on compliance procedures and eligible costs. CAO will require Grantees to include along with their reports:

- A certification that program funds were spent only on eligible uses and in compliance with state and federal guidelines; and
- Detailed documentation of all expenditures.

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CAO may provide technical assistance and support to Grantees for completing project and expenditure reports. CAO may work with Grantees to revise report materials or provide additional documentation if required.

CAO may require Grantees to submit materials including, but not limited to:

- Detailed project construction plans and network designs;
- Permitting, licensing, and access approvals necessary for construction;
- Detailed documentation of project expenses;
- Regular reports on project progress, risks, expenditures, and impact against objectives.