A G R E E M E N T
BETWEEN THE
WESTERN PIEDMONT COUNCIL OF GOVERNMENTS AND
CALDWELL COUNTY
FOR THE PROVISION OF GRANT MANAGEMENT ASSISTANCE
APPALACHIAN REGIONAL COMMISSION GRANT NC-21420
EVERGREENE INDUSTRIAL INFRASTRUCTURE PROJECT
AUGUST 1, 2024 - JUNE 30, 2026

This Agreement, entered into this the 1st day of August 2024 by and between the Western Piedmont Council of Governments (hereinafter called the "Planning Agency") and Caldwell County, NC (hereinafter called the "Local Government"), WITNESSETH THAT:

WHEREAS, the Planning Agency is empowered to provide planning assistance by the N.C. General Statutes and by resolution passed by the Planning Agency on April 27, 1972. Technical assistance shall consist of the provision of services as described in Attachment A to this Agreement; and

WHEREAS, the Local Government has requested the Planning Agency to provide such technical planning assistance to the Local Government; and

WHEREAS, the Planning Agency desires to cooperate with the Local Government in every way possible to the end that the proposed activities are carried out in an efficient and professional manner.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. **Personnel.** That during the period of this Contract, the Planning Agency will furnish the necessary trained personnel to the Local Government.

2. **Travel/Printing.** The Local Government will pay for expenses related to conferences, conventions, seminars, local travel, etc. of the personnel when the Local Government requests or approves travel related to the Local Government's planning program, or if it is beneficial to both parties, the costs will be shared on an agreed-upon ratio.

   The Local Government will also pay for expenses related to printing of report(s), mailings to advisory boards, and other costs not related to normal travel and staffing costs associated with personnel furnished by the Planning Agency.

3. **Compensation.**
The Local Government agrees to pay the Planning Agency an amount not to exceed Twenty-Five thousand Six hundred Seventy-One dollars ($25,671) to carry out activities outlined in the Scope of Services attached to this Contract. Included in this contract are costs associated with environmental review activities. This amount will be calculated on actual expenditures including salaries, fringe benefits, indirect costs, and other approved expenses and billed on a monthly basis, beginning August 1, 2024 and ending June 30, 2026.

4. **Termination/Modifications.** The Local Government may terminate this Contract by giving the Planning Agency a thirty-day written notice. Furthermore, if there is a need to amend the proposal outlined in Attachment A, either party may do so with the written approval of the other.

5. **Time of Performance.** The Planning Agency shall ensure that all services required herein shall be completed and all required reports, maps, and documents submitted during the period beginning August 1, 2024 and ending June 30, 2026.

6. **Interest of Members, Officers, or Employees of the Planning Agency, Members of the Local Government, or Other Public Officials.** No member, officer, or employee of the Planning Agency or its agents; no member of the governing body of the locality in which the program is situated; and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the program during his tenure or for one year thereafter, shall have any financial interest, either direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under this Agreement. Immediate family members of said members, officers, employees, and officials are similarly barred from having any financial interest in the program. The Planning Agency shall incorporate, or cause to be incorporated, in all such contracts or subcontracts, a provision prohibiting such interest pursuant to the purpose of this section.

7. **Nondiscrimination Clause.** No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination with any program or activity funded in whole or in part with funds available under the Housing and Community Development Act of 1974, Section 109.

8. **Age Discrimination Act of 1975, as amended.** No qualified person shall on the basis of age be excluded from participation in, be denied the

benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from federal financial assistance.

9. **Section 504, Rehabilitation Act of 1973, as amended.** No qualified handicapped person shall, on the basis of handicap be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from federal financial assistance.

10. **Access to Records and Record Retainage.** All official project records and documents must be maintained during the operation of this project and for a period of three years following closeout, in compliance with 15 NCAC 13L Rule .0911, Recordkeeping. The NC Department of Economic and Community Development, US Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers, and records of the Planning Agency which are pertinent to the execution of this Agreement, for the purpose of making audits, examinations, excerpts, and transcriptions in compliance with 15 NCAC 13L Rule .0911, Recordkeeping.

11. **Liquidated Damages Clause.** If the project fails to be carried out within the time frame outlined in the administrative proposal due to activities attributed to the Planning Agency, the Local Government may assess the Planning Agency a sum in the amount of $100 per week for any subsequent weeks until completion.

12. **Termination of Agreement for Cause.** If, through any cause, the Planning Agency shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or violate any of the covenants, conditions, or stipulations of this Agreement, the Local Government shall thereupon have the right to terminate this Agreement by giving written notice of such termination and specifying the effective date thereof. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared under this Agreement shall, at the option of the Local Government, becomes its property, and the Planning Agency shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials indirect proportion to the extent of services actually completed.

13. **Grantee Assurances.** In the performance of this Agreement, the Planning Agency shall comply with all applicable federal rules and procedures outlined on the attached pages as E.O. 11246 Clause and the

Section 3 Clause (Attachments B and C).

14. **Legal Remedies Provision.** As stated in 24 CFR Part 85.36, contracts other than small purchases shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for such sanctions and penalties as may be appropriate. Examples of legal remedies could be liquidated damages, consequential damages, arbitration and others not listed.

IN WITNESS WHEREOF, the Planning Agency and the Local Government have executed this Agreement as of the date first above written.

| LOCAL GOVERNMENT: | PLANNING AGENCY: |
|---|---|
| CALDWELL COUNTY, NC GOV'TS. | WESTERN PIEDMONT COUNCIL OF |
| By:_____ | |
| By:_____ | |
| County Manager | Executive Director |

| LOCAL GOVERNMENT: | PLANNING AGENCY: |
|---|---|
| By:_____ | |
| By:_____ | |
| Chairman | Chairman |

Preaudit statement:

This instrument has been preaudited in the manner prescribed by the Local Government Budget and Fiscal Control Act.

By:_____

Local Government Finance Officer

ATTACHMENT A

SCOPE OF SERVICES
CALDWELL COUNTY, NC
GRANT MANAGEMENT ASSISTANCE
APPALACHIAN REGIONAL COMMISSION GRANT NC-21420
EVERGREENE INDUSTRIAL INFRASTRUCTURE PROJECT
AUGUST 1, 2024 - JUNE 30, 2026

The following work program and budget are presented as descriptive of the work and dollar amounts called for in the Agreement concerning administrative activities by the Western Piedmont Council of Governments for Caldwell County, NC.

Ben Willis, Community and Economic Development Director, and Kyle Case, Community and Economic Development Administrator, will be responsible for the administration of this project.

Work Program

Professional services necessary to administer all aspects of the project will include but not be limited to the following:

- Administration and coordination of all activities involved in the Evergreene Industrial Infrastructure Project. Coordination activities will begin from the point of initiating the bid process through final inspection.

- Set up and maintenance of all community development project files and records in accordance with program and audit guidelines.

- Develop forms to meet ARC/CDBG requirements to document all activities from start to finish.

- Coordination of the community development program with federal, state and local officials including Davis Bacon wage standards for construction.

- Coordination of all fiscal and legal activities relating to the community development program.

- Preparation and submission of all project and financial reports.

- Conducting project closeout and representing Caldwell County at audits and monitoring visits. This does not assume, however, responsibility for payment of fees levied by auditors or accountants.

Caldwell County will be responsible for the following:

- Adequate office space including utilities.
- Payment of funds for legal and audit services and general administrative costs.
- All administrative costs not specifically identified as WPCOG responsibilities.

Time of Performance

The WPCOG will complete all activities involved in administration of this project in a 36-month period beginning August 1, 2024 and ending June 30, 2026.

Budget

| | |
|---|---|
| Salaries | $ 12,500 |
| Fringe Benefits | 6,313 |
| Travel | 1,308 |
| Indirect | 5,550 |
| TOTAL | $ 25,671 |

Assurances

Assurances are attached as a part of the Agreement.

Amendments

This Scope of Services and Budget may be amended as desired by mutual consent of the Local Government and Planning Agency.

ATTACHMENT B - ASSURANCES OF COMPLIANCE

Executive Order 11246
During the performance of this Contract, the contractor agrees as follows:

1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, or national origin. Such action shall include, but not be limited to the following: recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, or national origin.

3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, notice advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies involved as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

ATTACHMENT C

Section 3 Clause
"Section 3" Compliance in the Provision of Training, Employment, and Business Opportunities

a. The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 170lu. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.

b. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

c. The contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment and training.

d. The contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant or recipient of federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The contractor will not subcontract with any subcontractor where it has notice of knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

e. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued hereunder prior to the execution of the contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors or assigns to those sanctions specified by the grant or loan agreement of contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

LOBBYING CLAUSE

Required by Section 1352, Title 31, US Code

(1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than federal appropriated funds have been paid or will be paid any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, US Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

WESTERN PIEDMONT COUNCIL OF GOVERNMENTS

ASSURANCE OF COMPLIANCE WITH THE
AMERICANS WITH DISABILITIES ACT OF 1990

The undersigned authorized official(s) (hereinafter, "Contractor") agrees to comply with the Americans with Disabilities Act of 1990 (ADA) and with requirements contained in applicable federal regulations, rules and guidelines.

In accordance with the ADA, the Contractor hereby agrees to a policy of "nondiscrimination against persons with disabilities." If it is determined that present services or facilities do discriminate against persons with disabilities, the Contractor agrees (1) first, to try to remedy the situation; or (2) to find a comparable service for the disabled person. If the last course (2) is chosen, the Contractor shall take steps to ensure that no additional costs are incurred by the person with the disability and that the service is equally effective, affords equal opportunity, and was fully integrated, not segregating the person with the disability such that they are in a more restrictive setting than disabled receiving the same service.

The purpose of this agreement is to ensure that all services and facilities obtained for contracts made with the Western Piedmont Council of Governments (WPCOG) are readily accessible to and usable by disabled persons and are in complete and total compliance with the ADA and all relevant regulations as well as any other state or federal law regarding the protection of persons with disabilities.

Release of liability: Should any administrative or judicial forum hold Western Piedmont Council of Governments (WPCOG) liable under any provision of the ADA for acts or omissions caused by the Contractor, then the Contractor will be responsible for reimbursing any damages incurred by the Western Piedmont Council of Governments (WPCOG), including attorneys' fees. We take full responsibility for our compliance with all applicable provisions of the ADA and for ensuring compliance in all programs or services contracted by us.

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Signature and Title of Authorized Official

Western Piedmont Council of Governments

Agency Name