

MEMORANDUM

TO: DCHC MPO Policy Board
FROM: Doug Plachcinski, AICP, CFM, Executive Director
DATE: June 6, 2023
RE: **MPO + CPRC LEAD PLANNING AGENCY AGREEMENT**

The governance subcommittee met on May 22, 2023 and recommended the MPO Board approve the attached LPA agreement.

**DURHAM CHAPEL HILL CARRBORO METROPOLITAN PLANNING ORGANIZATION
AND THE CENTRAL PINES REGIONAL COUNCIL**

LEAD PLANNING AGENCY AGREEMENT

THIS AGREEMENT is entered into the ___ day of ___, 2023, by and between the DURHAM CHAPEL HILL CARRBORO METROPOLITAN PLANNING ORGANIZATION, a transportation planning organization and a governmental body, established and operating pursuant to 23 US Code 134, and Chapter 136, Article 16, of the North Carolina General Statutes (“DCHC”); and the CENTRAL PINES REGIONAL COUNCIL, a regional council organized and existing under the laws of the State of North Carolina (“CPRC”) (collectively, the “Parties”).

RECITALS AND BACKGROUND STATEMENT

Title 23, Section 134 of the US Code requires, as a condition of federal transportation funding assistance, the establishment of programs of comprehensive transportation planning in accordance with applicable laws. Article 16 of Chapter 136 of the General Statutes provides for the creation of metropolitan planning organizations (“MPO”) to perform comprehensive transportation planning services in the state. DCHC is the officially designated MPO for its jurisdictional region, consisting of county and municipal governments (“Members”), which comprise DCHC’s membership and governing authority. CPRC serves as the regional council for many of the same members pursuant to G.S. 160A-470, et. seq.

The Members of DCHC, together with the NC Department of Transportation and the State of North Carolina, entered a Memorandum of Understanding (the “MOU”) as updated and amended DATE setting forth their collective agreement regarding a continuing, cooperative, and comprehensive transportation planning process for the Durham Chapel Hill Carrboro Metropolitan Planning Area.

DCHC and CPRC acknowledge the MOU as establishing those goals, objectives, rules, regulations, responsibilities, mandates, and means for achieving the same, to which DCHC and its Members and agencies are subject. As established by the MOU, the DCHC Executive Board is responsible for cooperative transportation planning decision-making for DCHC, including but not limited to review and approval of the Unified Planning Work Program, Comprehensive and Metropolitan Transportation Plans, and Transportation Improvement Program; development and approval of by-laws; providing oversight of DCHC staff; and approval of cooperative agreements with municipalities and others.

As authorized by its Executive Board, DCHC has formally requested that CPRC be designated as its Lead Planning Agency (“LPA”) to help DCHC in the performance of agreed-upon functions and duties. CPRC has agreed to accept the LPA designation and assume the duties and functions of the Lead Planning Agency for DCHC, effective on July 1, 2023, all according to the terms set forth in this Agreement.

While the working relationships and protocols among officers and staff of DCHC and CPRC are expected to adapt and evolve, the Parties desire to formally set forth and clarify their respective primary authorities, responsibilities, and operations, according to terms of this Agreement.

IN CONSIDERATION OF the Recitals and Background statement, the mutual benefits to DCHC and CPRC arising hereunder, and other good and valuable consideration, the Parties agree to the following:

I. PURPOSE AND OBJECTIVES; TERM

As stated in the Recitals and Background Statement (incorporated and adopted as a part hereof), the purpose of this Agreement is to set forth the legal and functional relationships between DCHC and

CPRC as LPA. The Agreement is intended to inform and instruct the officers and staff of both organizations regarding their respective areas of responsibility.

The term of this Agreement begins July 1, 2023, and ends June 30, 2025 ("Initial Term"). This Agreement shall automatically renew and continue in effect for successive two-year terms ("Renewal Terms"), up to a maximum of five (5) additional Renewal Terms, unless either party gives written notice of its intention not to renew the Agreement at least six (6) months prior to the end of the Initial Term or any Renewal Term. In that event, this Agreement automatically terminates at the end of the Term.

II. GENERAL SCOPE OF DCHC AND CPRC RESPONSIBILITY

A. DCHC'S RESPONSIBILITY

DCHC is exclusively responsible for the conduct of the metropolitan transportation planning process in accordance with applicable laws, regulations, and agreements. The planning process shall include the establishment of general goals and objectives; the review and approval of a Prospectus for transportation planning; review, maintenance and updating of the Metropolitan area boundary; review and approval of the Comprehensive and Metropolitan Transportation Plans; review and approval of the Transportation Improvement Program; review and approval on an annual basis of the Unified Planning Work Program ("UPWP") and annual budget; and other duties and responsibilities in accordance with the MOU and as directed by the Executive Board.

The DCHC Executive Director shall be selected by the Policy Board, and an employment agreement will be entered into between DCHC and the Director. The Executive Director reports directly to the Policy Board on all matters relating to the administration and operation of DCHC. As described below for other DCHC staff, the Executive Director will be considered an employee of CPRC only for purposes of CPRC's Personnel Management Policies (defined below), NC Local Governmental Employees' Retirement System ("LGERS"), benefits, and general payroll administration, to the extent permitted by law.

The Executive Director is exclusively responsible for:

- 1) The appointment, assignment, direction, and control of all personnel necessary to carry out the transportation planning process;
- 2) The development of an appropriate organizational structure to carry out DCHC's responsibilities and duties; and
- 3) The development of procedures to monitor and coordinate the planning process and the overall administration of DCHC's programs.

B. CPRC'S LPA RESPONSIBILITY

To facilitate the transportation planning process generally, and in furtherance of the goals and objectives of DCHC under the MOU, CPRC agrees to provide to DCHC only those administrative services provided herein and as may be further agreed upon by CPRC and DCHC. The provision of services shall be limited to those specified and allocated to CPRC as LPA in the annual UPWP budget, and all approved budgets and management reports under federal or State contracts with DCHC. In accordance with applicable laws and regulations to which DCHC is subject, the UPWP shall be prepared by DCHC in cooperation with CPRC (acting as LPA) and the appropriate State and federal agencies.

III. BUDGET; FINANCIAL ADMINISTRATION; COST AND EXPENSE ALLOCATION AND ACCOUNTING

A. IN GENERAL; RESPONSIBLE OFFICERS.

As LPA, CPRC is the custodian and repository of DCHC's funds and accounts. DCHC revenues, proceeds, and other incomes and receipts will be paid to CPRC and maintained by CPRC in a designated DCHC fund or funds. The CPRC CFO is the Finance Officer for DCHC funds and is responsible for pre-audit and other functions.

B. DCHC BUDGET.

DCHC shall follow the same budget schedule as other CPRC programs and departments for budget development purposes. A budget calendar shall be produced by CPRC no later than December 1 of each year, outlining the budget process. DCHC shall only submit a budget to CPRC for consideration in which budgeted revenues equal or exceed budgeted expenses, and in which DCHC independently provides for one or more sources of revenue. No CPRC funds shall be included in DCHC's budget. A properly submitted DCHC budget shall be approved by the CPRC Board of Delegates as part of its budget process and included in CPRC's budget resolution. Once the budget has been approved by the Board of Delegates, any requested increase to the budget will require additional approval by the Board of Delegates. DCHC staff shall prepare all documents, including staff reports, necessary to bring a requested budget increase forward to the Board of Delegates.

C. CONTROL AND MANAGEMENT OF FUNDS; AUDIT.

Management of DCHC accounts will be in accordance with federal regulations, the NC Local Government Budget and Fiscal Control Act, rules, regulations, and practices applicable to local governments in this State, the MPO Agreement between CPRC, DCHC, and the North Carolina Department of Transportation, and all finance-related policies of CPRC.

DCHC funds in the custody of CPRC will be part of pooled cash and will be allocated a proportionate share of monthly interest earnings based on cash balance at the end of each month.

CPRC will report year-end financial activities related to the independently created DCHC revenue and expenditure fund as part of CPRC's Annual Comprehensive Financial report. DCHC is responsible for producing and providing all federal reporting and documentation necessary to complete the annual audit. DCHC's financial transactions will be included in CPRC's annual external financial audit. DCHC staff shall promptly fulfill any auditor requests for information related to DCHC transactions. Any findings or action required because of the audit must be promptly addressed and resolved by DCHC; failure to do so constitutes a material breach of this Agreement.

D. COSTS OF LPA SERVICES.

DCHC shall reimburse CPRC for Costs arising from services to DCHC by CPRC as LPA. Such Costs include both "Direct LPA Costs" and "Indirect LPA Costs", as further described below:

Direct LPA Costs. These costs include actual cost reimbursement of any type of sums paid by CPRC on DCHC's behalf, such as salary and benefit payments to DCHC staff; costs of other equipment or resources leased or purchased by DCHC; insurance (including worker's compensation and settlements) and other actual and direct costs of products provided to DCHC by CPRC.

Indirect LPA Costs. CPRC and DCHC have reached agreement regarding principles and guidelines for determining and allocating indirect costs of LPA services and resources. DCHC will pay the same indirect cost rate as all other CPRC programs provided to DCHC by CPRC ("Indirect LPA Costs").

DCHC shall, every quarter, reimburse CPRC for all accrued and eligible Direct and Indirect LPA Costs. CPRC will invoice DCHC for all Direct and Indirect LPA Costs by the 15th of the following month after the end of the quarter. All invoices shall be paid within thirty (30) days of receipt. DCHC shall have sole responsibility for satisfying all requirements, including the submission of all necessary documentation, to receive any federal, state, or other funding necessary to reimburse CPRC for such costs. If DCHC reimbursements to CPRC for a given fiscal year do not cover all accrued and eligible Direct and Indirect LPA Costs for that fiscal year, DCHC will provide final reimbursement to CPRC of Direct and Indirect LPA Costs due, if any, on or before September 15 of the following fiscal year. It is anticipated that this funding will come from Federal grants, State of North Carolina funding, and receipt of DCHC member participation fees.

IV. CONTRACTING AND PROCUREMENT

DCHC has sole authority and responsibility to review and approve all proposals and contracts and other agreements arising under the authority of DCHC relating to such matters that are not the responsibility of CPRC as LPA. DCHC's solicitations, proposals, bids, and contracts for the procurement of equipment, materials, services, or any other item shall be handled in accordance with applicable CPRC policies and procedures and State or federal policies and regulations to which DCHC is subject.

CPRC and DCHC acknowledge and agree that DCHC's contracting and procurement practices shall be governed by, and DCHC has adopted, applicable federal and NCDOT Disadvantaged Enterprise goals and policies. In addition, DCHC shall comply with CPRC's non-discrimination Policy Statement and requirements and policies relating to contracting and procurement.

DCHC shall enter into any contract or other agreement in its name only. DCHC shall have no authority to bind or obligate CPRC to any contract or other agreement.

V. OFFICE SPACE, INFORMATION TECHNOLOGY AND OFFICE EQUIPMENT

CPRC agrees to provide DCHC with offices, information technology and office equipment and related technical, administrative, and clerical services, and other incidental items, in the performance of DCHC's duties and responsibilities, as set forth in Exhibit 1 to this Agreement.

As part of this agreement, CPRC will provide offices and typical office and IT equipment to DCHC. DCHC and CPRC equipment will be similar and DCHC staff members will use the office space and equipment just as CPRC employees. Under this agreement, it is understood that having similar equipment for all promotes a positive office culture. It is understood that there may be certain specific, mission-critical equipment needs for DCHC that are above and beyond. Those items that are purchased wholly from DCHC funds will remain the property of DCHC.

DCHC acknowledges and agrees that, with respect to computer hardware, software, or other resources intended to operate on or communicate through CPRC's network, such hardware, software, or resources are subject to CPRC approval for compatibility and consistency with CPRC standards.

VI. HUMAN RESOURCES; STAFF SUPPORT; PERSONNEL MANAGEMENT

DCHC and CPRC agree that individuals comprising the staff of DCHC will be employees of CPRC for purposes of CPRC's Personnel Management Policies (defined below), NC Local Governmental Employees' Retirement System ("LGERS"), benefits, and general payroll administration, to the extent permitted by law. CPRC agrees to provide services, benefits, and entitlements to the staff members of DCHC, as provided to other employees of CPRC, as set forth in Exhibit 2 to this Agreement.

DCHC's Executive Director will be responsible for submitting the necessary information to CPRC to establish, maintain, and periodically update job descriptions and pay grades for DCHC staff members in CPRC's Payroll System.

Under the authority of DCHC's Executive Board, DCHC's Executive Director shall be responsible for full oversight and supervision of the DCHC staff. Subject to the DCHC Executive Board's authority and direction, the DCHC Executive Director's responsibilities include adding or deleting staff and/or staff positions, adjusting staff responsibilities and salaries, and determining when and whom to hire, terminate, suspend, or otherwise discipline, in accordance with all applicable laws and regulations, and the rules and procedures of CPRC's Personnel Policy, relevant Policy Statements and Standard Procedures, and any future policy amendments, ordinances or documents governing administration of employment, such as a Personnel Handbook (collectively, "Personnel Management Policies"), except that the DCHC Executive Director (or designee) shall act in the stead of CPRC's Executive Director or Human Resources Department. The DCHC Executive Board shall be responsible for full oversight and supervision of the Executive Director, including decisions to hire, terminate, suspend, or discipline the Executive Director, or to adjust the duties or salaries of the position.

DCHC staff will be generally subject to the Personnel Management Policies applicable to employees of CPRC, except for those matters set forth in Exhibit 2 hereof.

VII. COMMUNICATION/COOPERATION

CPRC and DCHC, through its Executive Director, shall provide cooperation, communication, and assistance to each other so that services and activities of both organizations will be carried out in the most efficient and professional means possible.

Contact individuals for purposes of communications and notices under this Agreement are as follows:

FOR DCHC:

Doug Plachcinski, Executive Director
4307 Emperor Blvd. Suite 110
Durham, NC 27703

FOR CPRC:

Lee Worsley, Executive Director
4307 Emperor Blvd. Suite 110
Durham, NC 27703

VIII. LEGAL REPRESENTATION

The CPRC Attorney does not represent DCHC and is not permitted to provide any legal advice or counsel to DCHC staff or the Executive Board.

DCHC may contract for general legal services on a continuing basis as it deems appropriate. As it deems necessary, DCHC may engage other legal counsel for more specialized needs, projects, or assignments.

IX. AMENDMENT, TERMINATION, INDEMNIFICATION, MISCELLANEOUS.**A. Entire Agreement; Amendments.**

This Agreement represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations, or agreements, either written or oral, including clickthrough agreements, clickwrap agreements, clickwrap licenses, or similar non-reciprocal agreements (collectively, "clickthrough agreement"). The CPRC Executive Director and DCHC Executive Director are authorized to make amendments to the Exhibits to this Agreement without further approval from the Board of Delegates or Executive Board; all other amendments to this Agreement must be authorized by the Board of Delegates and Executive Board. All amendments shall be memorialized in a written amendment signed by both parties. Neither party may amend, or seek to amend, this Agreement by clickthrough agreement.

B. Termination.

Any Party desiring to terminate this Agreement without cause shall give written notice to the other Party at least six (6) months prior to the expiration of the Initial Term or any Renewal Term. If such notice is timely given, the Agreement shall terminate at the end of the relevant Term. After thirty (30) days written notice to the other party of its default or breach, this Agreement may be terminated by the non-defaulting party, provided that the other party has not taken all reasonable actions to remedy the breach. In the event of termination for any reason (or no reason), CPRC shall be paid (1) all Direct LPA Costs incurred before the date of termination, as well as (2) a pro rata share of all Indirect LPA Costs for the period prior to the date of termination. In addition, CPRC shall be paid (3) any costs incurred or anticipated to be incurred by CPRC due to DCHC's breach of Agreement and (4) any Direct or Indirect LPA Costs incurred by reason of termination.

C. Indemnification.

To the fullest extent permitted by law, DCHC shall indemnify and hold harmless CPRC, its officers and employees (collectively, "Indemnitees"), from and against all claims, costs, civil penalties, fines, losses, and damages (including but not limited to professionals' fees and charges and all court or other dispute resolution costs) (collectively, "Claims"), by whomsoever brought or alleged, arising out of, resulting from, or in connection with (a) any breach by DCHC or any of its officers, employees, contractors, or agents (collectively, "Indemnitors"), of any term or condition of the Agreement, (b) any breach or violation by Indemnitors of any applicable law or regulation, or (c) any other cause resulting from any act or failure to act by Indemnitors under this Agreement or as otherwise required by applicable law or policy. Specifically, and not by way of limitation, DCHC shall indemnify and hold harmless Indemnitees from and against all Claims arising out of DCHC's human resources responsibilities, which include adding or deleting staff and/or staff positions, adjusting staff responsibilities and salaries, and determining when and whom to hire, terminate, suspend, or otherwise discipline. This indemnification shall survive the termination of the Agreement.

D. DCHC's Representations and Warranties. By executing the Agreement, DCHC represents and warrants that now and continuing for the term of Agreement:

1. DCHC shall comply with the agreement and with all applicable federal, state, and local laws, ordinances, rules, and regulations governing DCHC and its operations (collectively 'laws and regulations');
2. DCHC will work in good faith with CPRC to meet requirements imposed by the federal or state government or other funding entity if such funds are used to fund any portion of the

agreement;

3. The individuals signing the agreement have the authority to bind DCHC to the obligations set forth herein, and such individuals personally warrant they have such authority;
 4. Neither the execution of this agreement, nor the fulfillment or compliance with its terms and conditions, nor the completion of transactions contemplated by this agreement,
 - i. Results in a breach of the terms, conditions, or provisions of any agreement or instrument that DCHC is not a party, that binds DCHC, or constitutes a default under any of the foregoing, or
 - ii. Requires the approval of any regulatory body or any other entity the approval of which is not attained.
- E. CPRC's Representations and Warranties. By executing the Agreement, CPRC represents and warrants that now and continuing for the term of the Agreement:
1. CPRC will comply with the agreement and with all laws and regulations;
 2. CPRC will work in good faith with DCHC to meet requirements imposed by the federal or state government of other funding entity if such funds are used to fund any portion of the agreement;
 3. The individuals signing the agreement have the authority to bind CPRC to the obligations set forth herein, and such individuals personally warrant they have such authority; and
- F. Insurance. CPRC shall provide insurance coverage for DCHC employees for claims under workers' or workmen's compensation acts as required by law; Commercial General Liability Insurance. (including contractual liability and completed operations) covering claims arising out of or related to bodily injury and to real and personal property; Commercial Automobile Liability Insurance, including hired and non-owned vehicles, if any, covering bodily injury or death, and property damage when vehicles are used in performance of work or brought onto CPRC's premises; Employment Practices Liability covering claims arising out of employment including discrimination, harassment, wrongful termination, etc.; Fidelity/Public Official Bond for Finance Officer as required by state law for faithful performance of duties; Cyber Liability (if applicable) covering infringement, information theft, release of private information, damage, destruction and alteration of electronic information, extortion, network security, breach response costs, and regulatory fines; and Professional Liability Insurance (if applicable) covering personal injury, bodily injury and property damage and claims arising out of or related to performance under this Agreement. Insurance costs will be incorporated into the usual CPRC indirect rate that is used for administrative expenses and applied to all CPRC programs.
1. Minimum limits of insurance coverage are:
 - i. General Liability: \$1,000,000 per occurrence/\$2,000,000 aggregate
 - ii. Commercial Auto Liability: \$1,000,000 CSL Commercial Excess Liability / Umbrella Policy \$1,000,000 per occurrence
 - iii. Workers Comp: Statutory Limits
 - iv. Employers Liability: \$500,000 per occurrence
 - v. Employment Practices Liability: \$1,000,000 per occurrence/\$2,000,000 aggregate
 - vi. Fidelity/Public Official Bond: Statutory Limits
 - vii. Errors & Omissions (if applicable): \$1,000,000 per claim

viii. Cyber Liability (if applicable): \$1,000,000 per claim

2. DCHC may satisfy the insurance limits above with a combination of primary and umbrella/excess liability insurance policies. Umbrella/Excess liability shall follow form as to each of the underlying policies. Any available insurance proceeds more than or broader than the specified minimum limits of insurance and coverage must be available to CPRC.
3. The insurance policies are to contain, or be endorsed to contain, the following provisions:
 - i. Insurers: The minimum insurance ratings for any company insuring DCHC shall be Best's A-. If the ratings of any insurance carrier fall below the minimum rating, CPRC may, at its option, require the DCHC to purchase insurance from a company whose rating meets the minimum standard. DCHCs insurance carrier(s) shall be authorized to do business in the state of North Carolina. If DCHC is unable to find an authorized carrier for any line of insurance coverage, DCHC will notify CPRC in writing immediately.
 - ii. Additional Insured Status: DCHC insurance policies must name CPRC, its elected officials, officers, employees, and volunteers as an additional insured.
 - iii. Notice of Cancellation: Each DCHC policy will provide that CPRC must receive at least thirty (30) days prior written notice, when available, of any cancellation or non-renewal of coverage of any of the policies. Upon notice of such cancellation, non-renewal or if a policy's limits are exhausted, DCHC will procure substitute insurance to assure CPRC that the minimum limits of coverage are maintained continuously throughout the periods specified herein. If DCHC fails to procure substitute insurance, CPRC may do so on DCHC's behalf at DCHC's cost and expense.
 - iv. Primary: DCHC insurance coverage is primary for any claims related to this agreement.
 - v. Subrogation Waiver: The insurer(s) have no right of recovery or subrogation against CPRC, its agents or agencies. The Parties' intention is that the insurance policies protect CPRC and are primary coverage for all losses covered by the policies.
 - vi. Coverage Verification: DCHC will provide a certificate of insurance and all endorsements at, or prior to, execution of this Agreement. CPRC's review or acceptance of insurance certificates does not relieve DCHC's requirement to provide the specific insurance coverages or constitute a waiver or acknowledgement of satisfaction of the specific insurance requirements in this Agreement.

4. Certificate Holder address should read:

Central Pines Regional Council
 4307 Emperor Boulevard, Suite 110
 Durham, North Carolina 27703

- G. Public Records. DCHC acknowledges that certain records in the custody of CPRC are public records and may be released pursuant to G.S. 132-1, *et. seq.*
- H. Acknowledgment of CPRC Brand and Logo Ownership and Restrictions; Dissemination of Information: CPRC has developed proprietary branding (the "CPRC Brand") centered around the CPRC Logo ("Logo") DCHC acknowledges and understands that CPRC is not conferring any license to DCHC under this Agreement to use or depict the Logo or Slogan or other aspects of the CPRC Brand. DCHC shall not make any use or depiction of the Logo, Slogan, or other aspects of the CPRC Brand without the prior express written approval of CPRC. CPRC takes

efforts to assure that accurate information about CPRC is disseminated such that neither the public trust nor the public's perception of CPRC impartiality is compromised. DCHC, mindful of those efforts, agrees that it shall not publicly disseminate any information concerning this Agreement without prior approval from CPRC. Any approval given by CPRC may be given with certain stipulations, such as CPRC participation in the creation of the public product or CPRC review and the option to refuse ultimate release of the final product should it fail to meet CPRC's standards and goals. 'Publicly disseminate' means but is not limited to electronic, video, audio, photographic, or hard copy materials serving as, in whole or part, advertising, sales promotion, professional papers or presentations, news releases, articles, social media, or other media products, and/or DCHC's business collateral pieces.

- I. **Limited Assignment/Delegation.** Neither Party shall assign or transfer its rights or interest in the Agreement, nor delegate its duties under the Agreement, without the other Party's written consent, which may not be unreasonably withheld.
- J. **Dispute Resolution.** In the event of conflict or default that might arise for matters associated with this Agreement, the Parties agree to informally communicate to resolve the conflict. If any such dispute cannot be informally resolved, then such dispute, or any other matter arising under this Agreement, shall be subject to resolution in a court of competent jurisdiction.
- K. **Governing Law.** The rights and duties of the Parties shall be governed by the laws of the State of North Carolina, without regards to conflict of laws provisions. Any dispute arising from the Agreement shall be litigated in the courts of the State of North Carolina and all suits or actions related to the Agreement shall be brought exclusively in Durham County, North Carolina.
- L. **Non-Exclusive Remedies/No Waiver.** The selection of one or more remedies for breach shall not limit a Party's right to invoke any other remedy available under the Agreement or by law. No delay, omission, or forbearance to exercise any right, power, or remedy accruing to a Party shall impair any such right, power, or remedy or shall be construed to be a waiver of any breach hereof or default. Every right, power, or remedy may be exercised from time-to- time and as often as deemed expedient.
- M. **Survival.** All representations, indemnifications, and other terms and conditions of the Agreement which by their nature should survive Agreement termination shall survive its expiration or termination. **Gifts and Favors.** DCHC shall become aware of and comply with laws related to gifts and favors, conflicts of interest and the like, including N.C.G.S. §14-234, N.C.G.S. §133-1, and N.C.G.S. §133-32.
- N. **Nondiscrimination.** To the extent permitted by law, neither Party, their officers, employees, contractors, agents, successors, or permitted assigns, shall discriminate against any member of a protected class as defined by federal, state, or local law.
- O. **Electronic Version of Agreement.** CPRC may convert a signed original of the Agreement to an electronic record pursuant to a North Carolina Department of Natural and Cultural Resources approved procedure and process for converting paper records to electronic records for record retention purposes. Such electronic record of the Agreement shall be deemed for all purposes to be an original signed Agreement.
- P. **Verification of Work Authorization.** DCHC shall comply with Article 2, Chapter 64, of the North

Carolina General Statutes.

- Q. No Third-Party Beneficiaries. There are no third-party beneficiaries to Agreement.
- R. Pre-Audit Requirement. This Agreement has not been fully executed and is not effective until the Preaudit Certificate (if required by N.C.G.S. § 159-28) has been affixed and signed by the CPRC finance officer or deputy finance officer.
- S. Performance of Government Functions. Nothing contained in this Agreement shall be deemed or construed to restrict or inhibit CPRC's police powers or regulatory authority.
- T. No Waiver of Immunity. Nothing in this Agreement shall be construed to mandate purchase of insurance by CPRC pursuant to N.C.G.S. § 160A-485 or to in any way waive CPRC's defense of governmental immunity from any cause of action alleged or brought against any Party for any reason if otherwise available as a matter of law. No officer, agent, or employee of CPRC shall be subject to any personal liability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents, or employees shall be deemed to execute this Agreement in their official capacities only, and not in their individual capacities. This section shall not relieve any such officer, agent, or employee from the performance of any official duty provided by law.
- U. Electronic Signatures. Both Parties acknowledge and agree that the electronic signature application DocuSign may be used to execute this Agreement and any associated documents. By selecting 'I Agree,' 'I Accept,' or other similar item, button, or icon via use of a keypad, mouse, or other device, as part of the DocuSign application, the Parties consent to be legally bound by the terms and conditions of this Agreement and that such act constitutes their signature as if physically signed. No certification authority or other third-party verification is necessary to validate such electronic signature and the lack of such certification or third-party verification will not in any way affect the enforceability of such electronic signature. Delivery of a copy of this Agreement or any other document contemplated hereby, through the DocuSign application, will have the same effect as physical delivery of the paper document bearing an original written signature.

Exhibit 1 – Provision of Office Space, Information Technology and Office Equipment

	CPRC	DCHC
Personal Computers		
Microsoft Licenses		
Specialty Software Licenses		

Exhibit 2 – Provision of Human Resources, Staff Support, and Personnel Management Services

This Exhibit should outline which HR functions CPRC is responsible for and which ones DCHC is responsible for. Perhaps

	CPRC	DCHC
Job specification creation and editing		X
Position classification and reclassification evaluation	X	
Job ad creation		X
Job vacancy recruitment postings via NeoGov and other posting sources	X	
Application screening		X
Formulating interview questions; interviewing candidates; final selection		X
Background and drug testing administrative services and review of results	X	
Correspondence with job applicants	X	X
New Hire Paperwork	X	X
New employee I-9 verifications and storage	X	
Storage and Maintenance of benefits and related files	X	
Employee offboarding services (benefits related)	X	
Employee offboarding	X	X
Diversity, Equity, and Inclusion Initiatives/work	X	X
Organizational Development services	X	X

Employee Communication platforms	X	X
Policy and Procedure compliance	X	
Employee questions regarding policies and procedures	X	
New employee onboarding (for benefits administration)	X	
New employee orientation (for organizational culture, policies, and procedures)	X	X
Employee performance evaluations, including pay for performance and merit increase recommendations		X
New Employee entry and existing personnel action entry into Payroll/Personnel system	X	
Disciplinary and employee relations issues	X	X
Employee investigations	X	X
Employee dismissals	X	X
Storage and Maintenance of employee personnel files	X	
General benefits questions	X	X
Core (health/dental/life ins) related benefits administration services	X	
Short-Term Disability Benefit services	X	
Flexible Spending Benefit services	X	
Any other CPWC provided employee benefits administration services	X	
FMLA and/or ADA administration services	X	
WORKERS' COMPENSATION CLAIMS AND INJURY ADMINISTRATION (including settlements)	X	

All Employee Safety	X	X
Leave related benefits administration services	X	
Retirement and 401(k) general questions	X	
Retirement application processing services	X	
All employee appreciation/recognition	X	X