

NORTH CAROLINA  
DURHAM COUNTY

SERVICE CONTRACT

THIS CONTRACT is made, and entered into this the 1<sup>st</sup> day of July, 2019, by and between the COUNTY of DURHAM, a political subdivision of the State of North Carolina, (hereinafter referred to as "COUNTY"), and Westaff Workforce Solutions, LLC d/b/a Westaff a company duly authorized to do business in the state of North Carolina, (hereinafter referred to as "CONTRACTOR").

For and in consideration of mutual promises to each as herein after set forth, the parties hereto do mutually agree as follows:

1. **SCOPE OF SERVICES.** CONTRACTOR hereby agrees to provide the staff augmentation services (consisting of recruiting, screening, hiring and assigning personnel on a temporary basis to COUNTY's designated location(s)) under this contract pursuant to the provisions and specifications identified in "Attachment I" (hereinafter collectively referred to as "Services"). Attachment I is hereby incorporated herein and made a part of this contract. Time is of the essence with respect to all provisions of this contract that specify a time for performance.

The COUNTY will perform on-going contract monitoring to ensure that the terms of this contract are complied with. CONTRACTOR agrees to cooperate with the COUNTY in its monitoring process and provide documentation and/or information requested during the term of this Agreement for the purpose of monitoring the services provided by CONTRACTOR.

2. **EFFECTIVE DATE AND TERM OF CONTRACT.** The "effective date" of this Contract shall be the date first set forth above in the preamble to this Contract, irrespective of the date of execution by the parties. The first date written above is July 1, 2019. All renewal or non-renewal periods or deadlines stated in this Contract, if any, shall be calculated based on the "effective date" indicated above.

The Term of this contract for services is from July 1, 2019 to June 30, 2020 unless sooner terminated as provided herein.

3. **PAYMENT TO CONTRACTOR.** CONTRACTOR shall receive from COUNTY an amount not to exceed Fifty Thousand Dollars (\$50,000.00) as full compensation for the provision of Services. COUNTY agrees to pay CONTRACTOR at the rates specified for Services performed to the satisfaction of the COUNTY, in accordance with this contract, and Attachment 1. Unless otherwise specified, CONTRACTOR shall submit an itemized invoice to COUNTY by the end of the week during which Services are performed. A Funds Reservation number may be assigned to encumber the funds associated with this contract and must appear on all invoices and correspondence mailed to Purchaser. Payment will be processed promptly upon receipt and approval of the invoice by COUNTY, and is due within thirty (30) days of the date of invoice.
4. **INDEPENDENT CONTRACTOR.** COUNTY and CONTRACTOR agree that CONTRACTOR is an independent contractor and shall not represent itself as an agent or employee of COUNTY for any purpose in the performance of CONTRACTOR's duties under this Contract. Accordingly, CONTRACTOR shall be responsible for payment of all federal, state and local taxes as well as business license fees arising out of CONTRACTOR's activities in accordance with this Contract. For purposes of this contract taxes shall include, but not be limited to, Federal and State Income, Social Security and Unemployment Insurance taxes.

CONTRACTOR, as an independent contractor, shall perform the Services required hereunder in a professional manner and in accordance with the standards of applicable professional organizations and licensing agencies.

5. **CONFIDENTIALITY, DATA SECURITY, TRAINING AND NON-DISCLOSURE.** CONTRACTOR acknowledges and agrees that, in the course of its engagement with COUNTY, CONTRACTOR or its licensors, subcontractors or suppliers in connection with the services to be rendered under this Contract may receive or have access to "confidential information" or "personal identifiable information".

CONTRACTOR or its licensors, contractors or suppliers has obtained or may need to obtain confidential information from the COUNTY in connection with the provision of services to the COUNTY or the discussions of such a proposed relationship.

The COUNTY and CONTRACTOR desire to stipulate and agree that any disclosure of confidential information in connection with the provision of services or the discussion of such a proposed relationship has occurred or will occur under circumstances and conditions that will protect and preserve the confidentiality of the information.

In consideration of the pursuit of current discussions and payment for the services, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in further consideration of the covenants and representations contained herein, the parties agree as follows:

5.1 **DEFINITIONS.** As used in this Contract, the following terms shall have the meanings set forth below:

**Confidential Information.** The term "Confidential Information" shall mean any information, in any medium, whether oral or electronic, not generally known in the relevant trade or industry, which falls within any of the following general categories:

- a. **Trade Secrets.** For purposes of this Contract, trade secrets consist of information of the COUNTY or CONTRACTOR or any of its suppliers, contractors or licensors: (a) that Derives value from being secret; and (b) that the owner has taken reasonable steps to keep confidential. Examples of trade secrets include information relating to proprietary software, new technology, new products or services, flow charts or diagrams that show how things work, manuals that tell how things work and business processes and procedures. .
- b. **Highly Restricted Information.** CONTRACTOR acknowledges that certain Highly Restricted Information is subject to legal restrictions beyond those imposed by this Contract, and agrees that: (a) . all provisions in this Contract applicable to Confidential Information shall apply to Highly Restricted Information; and (b) CONTRACTOR will also comply with any more restrictive instructions or written policies that may be provided by the COUNTY from time to time to protect the confidentiality of Highly Restricted Information, as defined below:
  - 1 . Information of the COUNTY or its suppliers, contractors or licensors marked "Confidential" or "Proprietary."
  2. Information relating to criminal investigations conducted by the COUNTY, and records of criminal intelligence information compiled by the COUNTY.
  3. Information contained in the COUNTY's personnel files, as defined by NCGS {153A-98. This consists of all information gathered by the COUNTY about employees, except for that information which is a matter of public record under North Carolina law.
  4. Citizen or employee social security numbers collected by the COUNTY.
  5. Computer security information of the COUNTY, including all security features of electronic data processing, or information technology systems, telecommunications networks and electronic security systems. This encompasses but is not limited to passwords and security standards, procedures, processes, configurations, software and codes.

6. Local tax records of the COUNTY that contained information about a taxpayer's income or receipts.
7. Any attorney/client privileged information disclosed by either party.
8. Any data collected from a person applying for financial or other types of assistance, including but not limited to their income, bank accounts, savings accounts, etc.
9. The name or address of individual homeowners who, based on their income, have received a rehabilitation grant to repair their home.
10. Protected Information (PHI), as defined in the Insurance Portability and Accountability Act (HIPAA), and any other information that is designated as confidential under federal or state law.

The parties acknowledge that in addition to information disclosed or revealed after the date of this Contract, the Confidential information shall include information disclosed or revealed within one year prior to the date of this Contract.

Personal Identifiable Information. The term "Personal Identifiable Information" shall mean information that can be used to distinguish or trace an individual's identity, either alone or when combined with other information that is linked to a specific individual.

5.2 RESTRICTIONS. CONTRACTOR shall keep the Confidential Information in its possession and/or which it accesses in the strictest confidence, in the manner set forth below:

- a. Not copy, modify, enhance, compile or assemble (or reverse compile or disassemble), or reverse engineer Confidential Information, except as authorized by the COUNTY in writing.
- b. Not directly or indirectly, disclose, divulge, reveal, report or transfer Confidential Information to any third party, other than an employee, agent, subcontractor or CONTRACTOR of the COUNTY or CONTRACTOR having a need to know such Confidential Information for purpose or performing work contemplated by this Contract between the COUNTY and CONTRACTOR, and who has executed a confidentiality agreement incorporating substantially the form of this Confidentiality and NonDisclosure Agreement. CONTRACTOR shall not directly or indirectly, disclose, divulge, reveal, report or transfer Highly Restricted Information to any third party without the County's prior written consent.
- c. Not use any Confidential Information for its own benefit or for the benefit of a third party, except to the extent such use is authorized by this Contract or other written contracts between the parties hereto, or is for the purpose for which such Confidential Information is being disclosed.
- d. Not remove any proprietary legends or notices, including copyright notices, appearing on or in the Confidential Information.
- e. Use reasonable efforts (including but not limited to seeking injunctive relief where reasonably necessary) to prohibit its employees, agents and subcontractors from using or disclosing the Confidential Information in a manner not permitted by this Contract.
- f. In the event that any demand is made in litigation, arbitration or any other proceeding for disclosure of Confidential Information, CONTRACTOR shall assert this Contract as a ground for refusing the demand and, if necessary, shall seek a protective order or other appropriate relief to prevent or restrict and protect any disclosure of Confidential Information.

- g. All materials which constitute, reveal or derive from Confidential Information shall be kept confidential to the extent disclosure of such materials would reveal Confidential Information, and unless otherwise agreed, all such materials shall be returned to the COUNTY or destroyed upon satisfaction of the purpose of the disclosure of such information.
- h. Restrict employee access to the Confidential Information to those employees having a need to know for purposes of their jobs.
- i. Take all reasonable measures to prevent the use or disclosure of Confidential Information by its employees in a manner not permitted by this Contract.

5.3 EXCEPTIONS. The COUNTY agrees that CONTRACTOR shall have no obligation with respect to any Confidential Information that CONTRACTOR can establish was:

- a. Already known to CONTRACTOR prior to being disclosed by the COUNTY;
- b. Or becomes publicly known through no wrongful act of CONTRACTOR;
- c. Rightfully obtained by CONTRACTOR from a third party without similar restriction and without breach hereof;
- d. Used or disclosed by CONTRACTOR with the prior written authorization of the COUNTY;
- e. Disclosed pursuant to the requirement or request of a governmental agency, which disclosure cannot be made in confidence, provided that, in such instance, CONTRACTOR shall first give to the other party notice of such requirement or request;
- f. Disclosed pursuant to the order of a court of competent jurisdiction or a lawfully issued Subpoena, provided that CONTRACTOR shall take reasonable steps to obtain an agreement or protective order providing that this Agreement will be applicable to all disclosures under the court order or subpoena.

5.4 REMEDIES. CONTRACTOR acknowledges that the unauthorized disclosure of the Confidential Information will diminish the value of the COUNTY's proprietary interests therein. Accordingly, it is agreed that if CONTRACTOR breaches its obligations hereunder, the COUNTY shall be entitled to equitable relief to protect its interests, including but not limited to injunctive relief, as well as monetary damages.

5.5 DATA SECURITY. The CONTRACTOR shall adopt and apply data security standards and procedures that comply with all applicable federal, state, and local laws, regulations and rules.

The CONTRACTOR shall report a suspected or confirmed security breach to the COUNTY Department within twenty-four (24) hours after the breach is first discovered, provided that the CONTRACTOR shall report a breach involving Social Security Administration data or Internal Revenue Service data within one (1) hour after the breach is first discovered.

If any applicable Federal, State, or local law, regulation, or rule requires the CONTRACTOR to give written notice of a security breach to affect persons, the CONTRACTOR shall bear the cost of the notice.

5.6 TRANNG AND NON-DISCLOSURE. Upon request by the COUNTY, CONTRACTOR agrees to ensure compliance and the security of "confidential information" and "personal identifiable information", by having its employees, agents and subcontractors take online privacy and security awareness training provided by COUNTY, by way of an internet link or some other electronic method to be provided by COUNTY. CONTRACTOR, at the request of COUNTY, shall execute a non-disclosure agreement if, and when submitted by COUNTY.

6. INDEMNIFICATION. To the fullest extent permitted by laws and regulations, CONTRACTOR shall indemnify and hold harmless the COUNTY and its officials, agents, and employees from and against all claims, damages, losses, and expenses, direct, indirect, or consequential (including but not limited to reasonable fees and charges of attorneys, and costs related to court action or mediation) to the extent resulting from CONTRACTOR's negligent performance of its Services under this Contract or the grossly negligent actions or willful misconduct of the CONTRACTOR or its officials, employees, or subcontractors under this Contract or under contracts entered into by the CONTRACTOR in connection with this Contract. This indemnification shall survive the termination of this Contract.

In claims against any person or entity indemnified under this provision by an employee of the CONTRACTOR, a subcontractor, an employee of a subcontractor, or an agent of the CONTRACTOR or a subcontractor, the indemnification obligation under this provision shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the CONTRACTOR or a subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

7. INSURANCE. CONTRACTOR shall procure and maintain for the duration of the contract the following insurance coverage from an insurance company(s) possessing a rating of A-VII or higher from the A.M. Best Company and licensed to do business in North Carolina. All of the policies required of the CONTRACTOR shall contain a waiver of subrogation provision to waive all rights of recovery under subrogation or otherwise against the COUNTY. In the event CONTRACTOR'S Insurance Policy or Certificate of Insurance conflicts with the aforesaid language concerning "waiver of subrogation" this contract shall govern. CONTRACTOR shall advise the COUNTY of any cancellation, non-renewal, or material change in any policy within ten (30) days of notification of such action and provide updated certificates of insurance evidencing renewals prior to expiration. CONTRACTOR'S insurance shall be primary and any insurance or self-funded liability programs maintained by the COUNTY shall not contribute with respect to the CONTRACTOR's insurance. COUNTY shall not be listed as an additional insured on any Insurance Policy or Certificate of Insurance of the CONTRACTOR. In the event CONTRACTOR'S Insurance Policy or Certificate of Insurance conflicts with the aforesaid language concerning "additional insured" this contract shall govern.

7.1 Commercial General Liability: Insurance Services Office (ISO) Form CG 00 01 on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than \$1,000,000 per occurrence and \$2,000,000 aggregate.

7.2 Commercial Automobile Liability: ISO Form CA 00 01 covering any auto with limit not less than \$1,000,000 per accident for bodily injury and property damage.

7.3 Worker's Compensation and Employers Liability: as required by The State of North Carolina, with statutory limits, and Employers Liability Insurance with a limit of no less than \$1 per occurrence.

By requiring insurance herein, the COUNTY does not represent that coverage and limits will necessarily be adequate to protect CONTRACTOR, and such coverage and limits shall not be deemed as a limitation on CONTRACTOR's liability under the indemnities granted to the COUNTY in this Contract. CONTRACTOR shall provide the COUNTY a valid certificate of insurance, in advance of the performance of any work, exhibiting coverage required. CONTRACTOR shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein.

The failure of the COUNTY at any time to enforce the insurance provisions, to demand such certificates of insurance, or to identify a deficiency shall not constitute a waiver of those provisions, nor reduce obligations of the CONTRACTOR to maintain such insurance or to meet its obligations under the indemnification provisions. Notwithstanding the foregoing, nothing contained in this section shall be deemed to constitute a waiver of the governmental immunity of the COUNTY, which immunity is hereby reserved to the COUNTY.

## 8. TERMINATION.

8.1 EVENT OF DEFAULT. Any one or more of the following acts or omissions of the Contractor shall constitute an Event of Default hereunder:

- a. Failure to perform the Services satisfactorily or on schedule,
- b. Failure to submit any report required hereunder; and/or
- c. Failure to perform any other covenant, term, or condition of this Agreement.

Upon the occurrence of an Event of Default, the COUNTY may take one or more, or all the following actions:

- a. Give Contractor written Notice of the Event of Default, specifying the Event of Default and requiring it to be remedied within, in the absence of greater or lesser specification of time, seven (7) calendar days from the date of the notice; and if the Event of Default is not timely remedied, terminate the agreement, effective two (2) days after giving the Contractor written Notice of Termination; and/or
- b. Deduct any and all expenses incurred by the COUNTY for damages caused by the Contractor's Event of Default; and/or
- c. Treat the agreement as breached and pursue any of its remedies at law or in equity, or both, including damages and specific performance.

8.2 TERMINATION FOR CONVENIENCE. This Contract may be terminated, without cause, by either party upon thirty (30) days written notice to the other party. This termination notice period shall begin upon receipt of the Notice of Termination.

Termination of this Contract, under either section 8.1 or 8.2, shall not form the basis of any claim for loss of anticipated profits by either party.

9. COUNTY NOT RESPONSIBLE FOR EXPENSES. COUNTY shall not be liable to CONTRACTOR for any expenses paid or incurred by CONTRACTOR, unless otherwise agreed in writing.

10. EQUIPMENT. CONTRACTOR shall supply, at its sole expense, all equipment, tools, materials, and/or supplies required to provide Services hereunder, unless otherwise agreed in writing.

11. **COMPLIANCE WITH LAWS.** CONTRACTOR shall abide by all applicable statutes, rules, regulations, laws, and executive orders Federal, State and Local as they relate to, but are not limited to, (i) services in general, (ii) payment of employees, subcontractors and agents, (iii) the Fair Labor Standards Act and (iv) the Wage and Hour Division. In the event CONTRACTOR is determined by the final order of a court or appropriate agency to be in violation of any Federal, State or Local statute, rule, regulation, law or executive order or this provision, this Contract may be canceled, terminated or suspended in whole or in part by COUNTY and CONTRACTOR may be declared ineligible for further COUNTY contracts.
12. **HEALTH AND SAFETY.** CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs required by OSHA and all other regulatory agencies as to its Services while providing Services under this Contract.
13. **NON-DISCRIMINATION IN EMPLOYMENT.** CONTRACTOR shall not discriminate against any employee or applicant for employment because of age, sex, race, creed, national origin, or disability. CONTRACTOR is an equal opportunity employer and ensures that qualified applicants are employed and that employees are treated fairly and legally during employment with regard to their age, sex, race, creed, national origin, or disability. In the event CONTRACTOR is determined by the final order of an appropriate agency or court to be in violation of any non-discrimination provision of federal, state or local law or this provision, this Contract may be canceled, terminated or suspended in whole or in part by COUNTY, and CONTRACTOR may be declared ineligible for further COUNTY contracts.
14. **EMPLOYMENT ADVERTISING REQUIREMENTS.** CONTRACTOR shall post local job openings, in connection with this contract, with the City of Durham's Office of Economic and Workforce Development, the North Carolina Department of Commerce-Division of Employment Services (formerly ESC, Employment Security Commission) and with the Durham COUNTY Department of Social Services throughout the term of this Agreement; provided that the foregoing requirement does not limit CONTRACTOR'S ability to advertise and/or otherwise post job openings with other organizations or media outlets.
15. **E-VERIFY.** As a condition of payment for services rendered under this agreement, CONTRACTOR shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, if CONTRACTOR provides the services to the COUNTY utilizing a subcontractor, CONTRACTOR shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes as well. CONTRACTOR shall verify, by affidavit, compliance of the terms of this section upon request by the COUNTY.
16. **AFFORDABLE CARE ACT REQUIREMENTS** (Applicable only to Staffing Agencies). Beginning in 2015, employers with 100 or more full-time equivalent employees (50 or more beginning in 2016) must offer health insurance coverage that is affordable and provides "minimum value" to full-time employees and dependents as defined by the Patient Protection and Affordable Care Act or face penalties. Staffing companies under contract with Durham COUNTY are required to provide affordable minimum essential coverage as defined by the Patient Protection and Affordable Care Act and to indemnify Durham COUNTY against any 4980H penalties that result from their failure to provide the appropriate coverage. By signing this contract as a Staffing Company, CONTRACTOR shall comply with the aforementioned health insurance coverage requirements of the Affordable Care Act and to indemnify the COUNTY against any associated 4980H penalties. Please complete Exhibit A and return with this contract.
17. **SECURITY BACKGROUND CHECKS.** The Contractor is responsible for requesting and paying for criminal history checks on all individuals providing services under this contract who will be obtaining COUNTY identification badges and allowed unescorted access to COUNTY facilities. Background checks can be provided by any vendor, or from a North Carolina State agency, providing that the criminal history check is done nationwide. The Sheriff's Office will conduct background investigations for those Contractor employees

who will be working at the Courthouse or Detention Center. A criminal history will not automatically disqualify a Contractor employee from employment on a COUNTY contract unless explicitly mandated by law.

To the extent permitted by law, the Contractor will send the results of the background checks to their COUNTY point of contact who will provide them to the Durham COUNTY Security Manager. The Security Manager will individually assess and determine the degree to which the nature of a person's criminal conduct has a direct and/or specific negative bearing on a person's fitness or ability to perform contract services in Durham COUNTY buildings. The Security Manager will consult the Legal Office on any negative determinations. The Security Manager will notify the Contractor's COUNTY point of contact of the results of the review. A Contractor can appeal a negative determination by the Security Manager to the COUNTY Manager for final disposition. Appeals need to be submitted in writing to the contract point of contact within 30 days of notice of a decision to remove or deny an individual from working the COUNTY contract due to adverse information in the background check.

This information will be updated annually by the Contractor, 90 days prior to the renewal or extension of the contract, and submitted to their COUNTY point of contact who will provide them to the Durham COUNTY Security Manager. Personnel without a currently approved background check will have their access to those buildings restricted.

Additional background screening may be necessary at specific COUNTY buildings. The Contractor shall provide names of all individuals in the Contractor communications log and to the COUNTY Representative. This information will be reviewed annually.

For those Contractor employees who will be working at the Courthouse or Detention Center, the Sheriff's Office will make the security determination. To the extent permitted by law, the Contractor will provide the results of their background check to the Major for Support Services who will conduct an additional investigation and then individually assess and determine the degree to which the nature of a person's criminal conduct has a direct and/or specific negative bearing on a person's fitness or ability to perform contract services in the Courthouse or Detention Facility. A Contractor can appeal a negative determination to the Chief Deputy for final disposition. Appeals need to be submitted in writing to the Chief Deputy within 30 days of notice of a decision to remove or deny an individual from working the contract due to adverse information in the background check. While an appeal is pending, the employee will not be allowed access to the Courthouse or Detention Facility.

This information will be updated by the Contractor and submitted to the Sheriff's Office annually, 90 days prior to the renewal or extension of the contract. Personnel without a currently approved background check will have their access to those buildings restricted.

18. **AUDIT RIGHTS.** For all Services being provided hereunder, COUNTY shall, to the extent permitted by law, have the right to inspect, examine, and make copies of any and all books, accounts, invoices, records and other writings relating to the performance of the Services. Audits shall take place at times and locations mutually agreed upon by both parties. Notwithstanding the foregoing, CONTRACTOR must make the materials to be audited available within one (1) week of the request for them.
19. **DISPUTE RESOLUTION PROCEDURE.** To prevent disputes and litigation, it is agreed by the parties that any claim or dispute between COUNTY and the CONTRACTOR, arising from this Agreement or the services and/or materials being provided by the CONTRACTOR, shall be sent to the Durham COUNTY Manager who shall appoint a qualified mediator to address the issue. Such request shall be submitted to the COUNTY Manager in writing within ten (10) days of the claim or dispute. Upon receipt of a timely written claim, the Manager, or his designee, shall notify the Mediator who will conduct a mediation and notify the CONTRACTOR in writing of the decision within forty-five (45) calendar days from the date of the submission of the claim or dispute, unless the Mediator requires additional time to gather information or allow the parties to provide additional information. The Mediator's orders, decisions and decrees shall be non-binding.



Mediation, pursuant to this provision, shall be a pre-condition to initiating litigation concerning the dispute. During the pendency of any dispute and after a determination thereof, parties to the dispute shall act in good faith to mitigate any potential damages including utilization of schedule changes and alternate means of providing services and/or materials. The costs of mediation shall be divided equally between parties to the dispute.

The mediation session shall be private and shall be held in Durham COUNTY, North Carolina. Mediation under this provision shall not be the cause for a delay of services and/or materials being provided which is the focus of the dispute.

If the disputed issue cannot be resolved in mediation or either party disagrees with the results of the mediation, the parties may seek resolution in the General Court of Justice in the COUNTY of Durham and the State of North Carolina. If a party fails to comply in strict accordance with the requirements of this provision, the noncomplying party specifically waives all of its rights provided hereunder, including its rights and remedies under State law.

20. EXISTENCE. CONTRACTOR warrants that it is a corporation or otherwise legal entity duly organized, validly existing, and in good standing under the laws of the State \_\_\_\_\_ of Delaware and is duly qualified to do business in the State of North Carolina and has full power and authority to enter into and fulfill all the terms and conditions of this contract.
21. CORPORATE AUTHORITY. By execution hereof, the person signing for CONTRACTOR below certifies that he/she has read this contract and that he/she is duly authorized to execute this contract on behalf of the CONTRACTOR.
22. SUCCESSORS AND ASSIGNS. CONTRACTOR shall not assign its interest in this Contract without the written consent of COUNTY. CONTRACTOR has no authority to enter into contracts on behalf of COUNTY.
23. NOTICES. All notices which may be required by this contract or any rule of law shall be effective when received by certified mail sent to the following addresses:

COUNTY OF DURHAM  
ATTN: PURCHASNG DEPARTMENTATTN: Kathy Boone  
4TH FLOOR, 200 EAST MAIN STREET

DURHAM, NORTH CAROLNA 27701

CONTRACTOR

\_\_\_\_\_  
Westaff  
Attn: Donald Williams  
3200 Croasdaile Drive, Suite 403  
Durham, NC 27705

With a copy of all legal notices to:

Westaff, Attn: Legal Department  
1040 Crown Pointe Parkway, Suite 1040  
Atlanta, GA 30338

24. **HEADINGS.** The subject headings of the sections are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This contract shall be deemed to have been drafted by both parties and no interpretation shall be made to the contrary.
25. **GOVERNING LAW.** This Contract shall be governed by and in accordance with the laws of the State of North Carolina. All actions relating in any way to this Contract shall be brought in the General Court of Justice in the COUNTY of Durham and the State of North Carolina.
26. **REQUIRED PROVISIONS FOR CONTRACTS/AGREEMENTS/GRANTS UTILIZING FEDERAL FUNDS.** Pursuant to the Federal Uniform Guidance Appendix II to 2 CFR Part 200, if Federal Funds are involved in this Contract/Agreement/Grant Agreement, by executing this Contract/Agreement/Grant Agreement, the Contractor/Vendor/Grantee, certifies that if applicable it agrees to and is in compliance with the provisions specified in Exhibit B — Federal Uniform Guidance Contract Provisions Certification. (If Exhibit B is not attached, then it is not applicable to this Contract.)
27. **MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE (MWBE) PROGRAM.** It is the policy of the County to provide minorities and women-owned businesses equal opportunity to participate in all aspects of the County's contracting programs, including but not limited to, the procurement of construction, goods and services consistent with law. The County has established an ordinance and implements an MWBE Program based on the ordinance, that promotes, increases and works towards eradicating the underutilization of minorities and women-owned businesses in the County's contracting programs. As part of the implementation of the MWBE Program, Contractors shall complete Attachment 2 — MWBE Utilization Form, to provide the percentage/dollar value being subcontracted to any minority or women-owned business being utilized on this contract. Attachment 2 is hereby incorporated herein and made a part of this contract.
28. **ENTIRE CONTRACT.** This contract, including Attachment 1 and Attachment 2, and if applicable Exhibit A and Exhibit B, shall constitute the entire understanding between COUNTY and CONTRACTOR and shall supersede all prior understandings and agreements relating to the subject matter hereof and may be amended only by written mutual agreement of the parties.
29. **TIMEKEEPING.** COUNTY acknowledges that CONTRACTOR's standard practice is to pay Assigned Employees on minute-to-minute timekeeping. If COUNTY requests that Assigned Employees' time be calculated on any other basis or with use of rounding, COUNTY accepts responsibility for any loss or liability arising from such practice. If COUNTY uses or intends to use any biometric data of Assigned Employees, COUNTY shall so notify CONTRACTOR and will comply with all applicable biometric privacy laws.
30. **NON-SOLICITATION.** COUNTY recognizes that CONTRACTOR spends considerable time and effort to locate, screen and identify the skill sets of its Assigned Employees and agrees that the collective information regarding the Assigned Employees' identities, contact information and skill sets are considered confidential information. COUNTY will not solicit the services of Assigned Employees outside of the assignment through CONTRACTOR during any assignment or within a year of the last date of assignment. In further recognition of the time and effort that CONTRACTOR spends to locate, screen and identify its Assigned Employees' skill sets, COUNTY agrees to pay a ten percent (10%) fee for each Assigned Employee that COUNTY or any of its affiliates (or any other entities acting under the direction or encouragement of COUNTY or its entities or Departments) encourages or facilitates large numbers of Assigned Employees to leave CONTRACTOR in order to work at COUNTY's site through another staffing provider. This would apply to any rollovers that take place within six (6) months after the expiration of this Agreement.

IN TESTIMONY WHEREOF, the parties have expressed their agreement to these terms by causing this Service Contract to be executed by their duly authorized officer or agent.

COUNTY OF DURHAM

By: Teresa Hairston

Teresa Hairston, Interim Tax Administrator

Date of Signature: 7-8-19

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
Susan Tezai, Durham County Chief Financial Officer

Westaff Workforce

Solutions, LLC

d/b/a Westaff By:

Sheila B Yearby

Print Name/Title: Sheila B Yearby Franchise Owner

Date of Signature: 7-2-19

ATTACHMENTS I & 2 to follow

EXHIBIT A

(For Staffing Agencies Only)

AFFORDABLE CARE ACT REQUIREMENTS

This Exhibit is an integral part of the contract between the County of Durham (hereinafter referred to as "County"),

and Westaff Workforce Solutions, LLC d/b/a Westaff (hereinafter referred to as "Contractor"), which contract is dated \_\_\_\_\_.

- (1) The Contractor agrees that, effective as of \_\_\_\_\_, it shall offer "affordable," "minimum value" coverage to all "full-time employees" who are assigned by the Contractor to Durham County. For purposes of this provision:
  - (a) Coverage shall be considered "affordable" if it satisfies one of the "safe harbors" for "affordability" as set forth in Treasury Regulation 54.4980H-5(e) or any successor regulation thereto;
  - (b) Coverage shall be considered to provide "minimum value" if the percentage of the total allowed costs of benefits provided under the coverage is no less than 60 percent when calculated in accordance with the provisions of 45 CFR 156.145 or any successor regulation thereto; and
  - (c) A "full-time employee" means an employee of the Contractor who is considered to be a "full-time employee" as that term is defined in Code 4980H(c)(3) and in the Treasury Regulations issued thereunder and entitled to the coverage and protections provided thereunder.
- (2) Durham County shall pay zero (0.00) for each individual per month for each full-time employee of the Contractor who was assigned to Durham County and who accepts coverage for that month. In the event that a full-time employee of the Contractor was assigned to Durham County for less than an entire-calendar month or was covered for less than an entire calendar month, the employee's status will be determined as of the first day of the calendar month.
- (3) The parties agree that the above provisions are intended to ensure that Durham County is able to take advantage of the "safe harbor" provided by the Treasury in the preamble to the final "shared responsibility" regulations as published in the Federal Register on February 12, 2014 (79 Fed. Reg. 8544, 8966 (Feb. 12, 2014)) and that the above provisions should be construed and applied accordingly.
- (4) The Contractor shall indemnify Durham County and hold Durham County harmless from any and all claims and penalties that may be asserted against Durham County as a consequence of or arising out of the non-compliance by Contractor with the ACA during performance of services by the Contractor under this Agreement, including, but not limited to any penalties that maybe assessed against Durham County under Code 4980H relating to or caused by any failure on the part of the Contractor to offer "affordable," "minimum value" coverage to any "full-time employees" assigned to Durham County, and further including any costs and expenses incurred by Durham County in responding to an actual or proposed assessment of such penalties on the part of the Internal Revenue Service. This Section shall survive the expiration or termination of this Agreement.
- (5) The foregoing requirements shall not apply to any person who is assigned to Durham County and is engaged for less than sixty (60) days unless and until such time as such person has in fact been engaged for a period of greater than sixty (60) days. Upon meeting such threshold, the Contractor shall provide Durham County the discount for employees that have accepted coverage pursuant to section 2 above.

## McCoy, Anneta

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**From:** Darby, Willie S.  
**Sent:** Monday, July 1, 2019 2:56 PM  
**To:** McCoy, Anneta  
**Subject:** RE: Westaff Contract

Hi Anneta:

The revisions to the Westaff Contract are hereby accepted.

Thanks,

Willie

WILLIE S. DARBY | SENIOR ASSISTANT COUNTY ATTORNEY



County Attorney

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**From:** McCoy, Anneta  
**Sent:** Monday, July 01, 2019 1:50 PM  
**To:** Darby, Willie S. <[wdarby@dconc.gov](mailto:wdarby@dconc.gov)>  
**Subject:** FW: Westaff Contract

Good afternoon Mr. Darby,

Please let me know at your earliest convenience if the attached changes that Westaff made to the original contract template are acceptable.

Thank you.

ANNETA MCCOY | ADMINISTRATIVE OFFICER



Tax Administration

201 East Main Street 3<sup>rd</sup> Floor  
Durham, North Carolina 27701  
Office (919) 560-0305 | Fax (919) 328-6175



# CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)  
07/02/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Aon Risk Insurance Services West, Inc. San Francisco CA Office 425 Market Street Suite 2800 San Francisco CA 94105 USA	<b>CONTACT NAME:</b>		
	<b>PHONE (A/C, No. Ext):</b> (866) 283-7122	<b>FAX (A/C, No.):</b> (800) 363-0105	
	<b>E-MAIL ADDRESS:</b>		
<b>INSURED</b> EMPLOYBRIDGE LLC, SELECT STAFFING AND westaff 1040 Crown Pointe Parkway, Suite 1040 Atlanta GA 30338 USA	<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
	<b>INSURER A:</b> Greenwich Insurance Company		22322
	<b>INSURER B:</b> XL Insurance America Inc		24554
	<b>INSURER C:</b>		
	<b>INSURER D:</b>		
	<b>INSURER E:</b>		
	<b>INSURER F:</b>		

**COVERAGES****CERTIFICATE NUMBER:** 570077328489**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

Limits shown are as requested

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY		Y	RGD943767706	01/31/2019	01/31/2020	EACH OCCURRENCE \$2,000,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000
	<input checked="" type="checkbox"/> Contractual Liability						MED EXP (Any one person) \$10,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PERSONAL & ADV INJURY \$2,000,000
	<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						GENERAL AGGREGATE \$2,000,000
	OTHER:						PRODUCTS - COMP/OP AGG \$2,000,000
A	<b>AUTOMOBILE LIABILITY</b>		Y	RAD943767806	01/31/2019	01/31/2020	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000
	<input checked="" type="checkbox"/> ANY AUTO						BODILY INJURY (Per person)
	<input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS						BODILY INJURY (Per accident)
	<input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)
	<input checked="" type="checkbox"/> Contractual Liability						
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR						EACH OCCURRENCE
	<b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE						AGGREGATE
	<input type="checkbox"/> DED <input type="checkbox"/> RETENTION						
B	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>		Y	RWD943543506	01/31/2019	01/31/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER
	ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N		AOS			E.L. EACH ACCIDENT \$1,000,000
	if yes, describe under DESCRIPTION OF OPERATIONS below	N/A		RWR943543606	01/31/2019	01/31/2020	E.L. DISEASE-EA EMPLOYEE \$1,000,000
				WI			E.L. DISEASE-POLICY LIMIT \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

A waiver of Subrogation is granted in favor of Certificate Holder in accordance with the policy provisions of the General Liability, Automobile Liability and Workers' Compensation policies, where required by written agreement signed prior to loss except where not permitted by law.

**CERTIFICATE HOLDER****CANCELLATION**Durham County Tax Collector  
200 E. Main Street  
Durham NC 27701 USA

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

*Aon Risk Insurance Services West, Inc.*

Holder Identifier :

Certificate No : 570077328489



## MWBE UTILIZATION FORM

This MWBE Utilization Form is an integral part of the contract between the County of Durham and Westaff Workforce Solutions LLC d/b/A Westaff (Contractor), which contract is dated July 1, 2019. The purpose of this form is to assist in identifying minority participation associated with County contracts.

**Note: If Purchasing has already performed MWBE pre-award compliance during a bid process and/or BOCC contract approval, please attach the pre-award compliance form to this form and submit with the contract. Completing the remainder of this form will not be required.**

Description of Services/Goods: Temporary Staffing for Durham County Tax Office.

Contract Amt \$50,000.00 Contract Term: 1 Year

Please check one:

☒ **XX** Contractor will provide 100% of the services/goods for this contract.

☐ Contractor will **subcontract** a percentage of the services/goods for this contract to a non-minority business enterprise or a non-profit.

☐ Contractor will **subcontract** a percentage of the services/goods for this contract to the minority-owned business enterprise(s) identified below.

Minority Business Enterprise Name, Address & E-Mail	Minority Category*	Description of Work	Percentage %	Dollar Value

\*Minority Categories: Black/African American (B), Female (F), Hispanic (H), Asian American (A), American Indian (I)

### Durham County Goals for M/WBE Participation in the Procurement of Goods, Services and Construction

Categories	Construction	Architect/ Engineer	Services	Goods	MWBE % Availability (Median Availability)
Black American	14.6	9.8	10.9	2.8	10.4%
Asian American	1.3	3.0	1.1	.43	1.3%
Hispanic American	4.2	1.8	1.1	.43	1.5%
American Indian	.65	.75	1.0	.5	.70%
White Female	13.8	11.0	9.5	7.1	10.3%
<b>Overall MWBE Participation Goal</b>					<b>25.0%</b>

*This form shall accompany all contracts submitted to Purchasing.*