

**NORTH CAROLINA  
CITY OF DURHAM**

**AGREEMENT WITH KRAMDEN INSTITUTE, INC.**

**THIS AGREEMENT** is made and entered into this the \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and between the City of Durham, a political subdivision of the State of North Carolina ( "City"), and Kramden Institute, Inc., a non-profit corporation authorized to do business in the State of North Carolina ("Recipient" or "Contractor").

Sec. 1. Background and Purpose. The City of Durham owns certain computer equipment which may from time-to-time be deemed surplus (the "Property"). The Durham City Council has adopted a resolution authorizing the City Manager or designee to declare surplus any City personal property valued at equal to or less than the threshold prescribed by the N.C.G.S. (currently set at \$30,000) for any one item or group of items, to set its fair value, and to convey title to the property from the City to another entity.

Sec. 2. Services and Scope to be Performed. Pursuant to 160A-279, the City may convey surplus personal property to a non-profit corporation so long as the instrument of conveyance contains covenants which assure that the property will be put to a public purpose used by the recipient entity. Recipient is a non-profit corporation and is willing to accept the City's surplus personal property conveyed herein, and agrees to use said property only for a public purpose pursuant to the terms of this Agreement.

The Recipient expressly agrees and covenants:

- a. The Property conveyed herein shall only be used for a public purpose by the Recipient.
- b. In the event that Recipient causes or allows the Property to be used in a manner that is not deemed a public purpose, Recipient shall be deemed to be in material breach of this Agreement and the City shall be entitled to terminate this Agreement immediately upon notice.
- c. Any computer equipment that is part of conveyed Property shall have all hard drives either wiped and overwritten, pursuant to Department of Defense standards, or physically destroyed.
- d. Any computer equipment that is part of conveyed Property and is subsequently "refreshed" by the Recipient shall be provided to a non-profit corporation located within the City of Durham whose work constitutes a public purpose, meaning the City of Durham would be authorized to directly fund that non-profit corporation. Computer equipment that is part of the Property may also be provided to individuals who are residents of the City in accordance with program standards submitted in writing by the Kramden Institute to the City to ensure that the requirement of public purpose is fulfilled, and the program standards may be approved by the City's CIO or the City Manager.
- e. Any computer equipment that is not refreshed shall be ethically recycled pursuant to a 0% landfill policy.
- f. Recipient will provide an annual report in January specifying the disposition of all Property received from the City in the prior calendar year. Said report will, at a minimum, confirm that all Property was processed in compliance with this Agreement and include the number and types of computers received and their final disposition. The City shall provide an electronic spreadsheet for each shipment of Property to Recipient. The spreadsheet will list each piece of equipment with identifying information. Recipient shall use this spreadsheet to provide information on the disposition of each piece of equipment, as well as any other information that the City may reasonably require.
- g. The City makes no express or implied warranty or representation of any kind whatsoever with respect to the Property or any component part thereof conveyed herein, including but not limited to any warranty or representation with respect to the merchantability or the fitness or suitability thereof for any purpose; any latent defect; the ability thereof to perform any function; or any other characteristic of the Property, it being agreed that all risks relating to the Property, the acquisition thereof, or the transactions contemplated hereby are to be borne by the Recipient.
- h. The initial term of this Agreement shall be for two years, beginning on the date of this Agreement, first written above. The Agreement shall renew thereafter on the anniversary date for two-year renewal terms, unless either party provides written notice of termination at least thirty (30) days prior to the renewal date.

In this Agreement, "Work" means the services that the Recipient is required to perform pursuant to this Agreement and all of the Recipient's duties to the City that arise out of this Agreement. Unless the context requires otherwise, if this Agreement states that work is to be performed or that a duty is owed, it shall be presumed that the work or duty is the obligation of the Recipient.

Sec. 3. Complete Work without Extra Cost. Except to the extent otherwise specifically stated in this Agreement, or at the specific request of the City to amend this Agreement, and evidenced by mutual agreement of the parties, the Recipient shall obtain and provide, without any cost to the City, all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to receive and accept surplus personal property from the City of Durham.

Sec. 4. Compensation. The City shall not be obligated to pay the Recipient any payments, fees, expenses, or compensation.

Sec. 5. Prompt Payment to City of Durham. Recipient is not obligated to pay for the Property. The Property is donated at no cost to the Recipient or the City of Durham.

Sec. 6. Insurance. See Exhibit A entitled, "City of Durham Insurance Requirements."

Sec. 7. Exhibits. The following exhibit is made a part of this Agreement:  
Exhibit A. City of Durham Insurance Requirements.

In case of conflict between an exhibit and the text of this Agreement excluding the exhibit, the text of this Agreement shall control.

Sec. 8. Notice. (a) All notices and other communications required or permitted by this Agreement shall be in writing and shall be given either by personal delivery, fax, UPS, Federal Express, or certified United States mail, return receipt requested, addressed as follows. The parties are requested to send a copy by email.

To the City:

Customer Service Management Manager, Technology Solutions Department  
City of Durham  
101 City Hall Plaza  
Durham, NC 27701-3329  
The fax number is (919) 560-4808  
Email: [martha.lester@durhamnc.gov](mailto:martha.lester@durhamnc.gov)

To the Recipient (Principal Office):

Jason Ricker, Director of Technical Operations  
Kramden Institute, Inc.  
2239 Cranford Road  
Durham, NC 27705  
The fax number is (919) 293-1239  
Email: [jricker@kramden.org](mailto:jricker@kramden.org)

(b) Change of Address. Date Notice Deemed Given. A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this Agreement shall be deemed given and sent at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

Sec. 9. Indemnification. (a) To the maximum extent allowed by law, the Recipient shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this Agreement as a result of acts or omissions of the Contractor or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection "a," the Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City. (b) Definitions. As used in subsections "a" above and "c" below -- "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control,

pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this Agreement). "Indemnitees" means City and its officers, officials, independent contractors, agents, and employees, excluding the Contractor. (c) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this Agreement. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this Agreement. (d) Survival. This section shall remain in force despite termination of this Agreement (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this Agreement. (e) Limitations of the Contractor's Obligation. If this section is in, or is in connection with, an agreement relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, then subsection "a" above shall not require the Contractor to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

Sec. 10. E-Verify Compliance. The Contractor represents and covenants that the Contractor and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (NCGS). In this E-Verify Compliance section, "Contractor," "its subcontractors," and "comply" shall have the meanings intended by NCGS 160A-20.1(b). The City is relying on this section in entering into this Agreement. The parties agree to this section only to the extent authorized by law. If this section is held to be unenforceable or invalid in whole or in part, it shall be deemed amended to the extent necessary to make this Agreement comply with NCGS 160A-20.1(b).

Sec. 11. Miscellaneous

(a) Choice of Law and Forum; Service of Process. (i) This Agreement shall be deemed made in Durham County, North Carolina. This Agreement shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this Agreement shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This subsection (a) shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this subsection. (ii) If the Contractor is not a natural person (for instance, the Contractor is a corporation or limited liability company), this subsection (ii) applies. "Agent for Service of Process" means every person now or hereafter appointed by the Contractor to be served or to accept service of process in any State of the United States. Without excluding any other method of service authorized by law, the Contractor agrees that every Agent for Service of Process is designated as its non-exclusive agent for service of process, summons, and complaint. The Contractor will instruct each Agent for Service of Process that after such agent receives the process, summons, or complaint, such agent shall promptly send it to the Contractor. This subsection (ii) does not apply while the Contractor maintains a registered agent in North Carolina with the office of the N. C. Secretary of State and such registered agent can be found with due diligence at the registered office.

(b) Waiver. No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this Agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

(c) Performance of Government Functions. Nothing contained in this Agreement shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

(d) Severability. If any provision of this Agreement shall be unenforceable, the remainder of this Agreement shall be enforceable to the extent permitted by law.

(e) Assignment, Successors and Assigns. Without the City's written consent, the Contractor shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this Agreement. Notwithstanding of this, Contractor reserves the right to assign its rights, interests or obligations defined in this Agreement at any time to any successor or acquirer of its business or assets. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, the Contractor and all assignees shall be subject to all of the City's defenses and shall be liable for all of the Contractor's duties that arise out of this Agreement and all of the City's claims that arise out of this Agreement. Without granting the Contractor the right to assign, it is agreed that the duties of the Contractor that arise out of this Agreement shall be binding upon it and its heirs, personal representatives, successors, and assigns.

(f) Compliance with Law. In performing all of the Work, the Contractor shall comply with all applicable law.

(g) Notice of City Policy. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

(h) EEO Provisions. During the performance of this Agreement the Contractor agrees as follows: (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions. (2) The Contractor shall in all solicitations or advertisement 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, national origin, political affiliation or belief, age, or handicap. (3) The Contractor shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding. (4) In the event of the Contractor's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend this Agreement, in whole or in part, and the City may declare the Contractor ineligible for further City agreements/contracts. (5) Unless exempted by the City Council of the City of Durham, the Contractor shall include these EEO provisions in every purchase order for goods to be used in performing this Agreement and in every subcontract related to this Agreement so that these EEO provisions will be binding upon such subcontractors and vendors.

(i) SDBE. The Contractor shall comply with all applicable provisions of Article III of Chapter 18 of the Durham City Code (Equal Business Opportunities Ordinance), as amended from time to time. The failure of the Contractor to comply with that article shall be a material breach of contract which may result in the rescission or termination of this Agreement and/or other appropriate remedies in accordance with the provisions of that article, this contract, and State law. The Participation Plan submitted in accordance with that article is binding on the Contractor. Section 18-59(f) of that article provides, in part, "If the City Manager determines that the Contractor has failed to comply with the provisions of the Agreement, the City Manager shall notify the Contractor in writing of the deficiencies. The Contractor shall have 14 days, or such time as specified in the Agreement, to cure the deficiencies or establish that there are no deficiencies." It is stipulated and agreed that those two quoted sentences apply only to the Contractor's alleged violations of its obligations under Article III of Chapter 18 and not to the Contractor's alleged violations of other obligations.

(j) No Third Party Rights Created. This Agreement is intended for the benefit of the City and the Contractor and not any other person.

(k) Principles of Interpretation and Definitions. (1) The singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words "include," "including," etc. mean include, including, etc. without limitation. (2) References to a "Section" or "section" shall mean a section of this contract. (3) "Contract" and "Agreement," whether or not capitalized, refer to this instrument. (4) "Duties" includes obligations. (5) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (6) The word "shall" is mandatory. (7) The word "day" means calendar day. (8) The word "Work" is defined in Section 2. (9) A definition in this contract will not apply to the extent the context requires otherwise.

(l) Modifications. Entire Agreement. A modification of this Agreement is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless it is signed by the City Manager, a deputy or assistant City Manager, or, in limited circumstances, a City department director. This Agreement contains the entire agreement between the parties pertaining to the subject matter of this Agreement. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract.

(m) City's Manager's Authority. To the extent, if any, the City has the power to suspend or terminate this Agreement or the Contractor's services under this Agreement, that power may be exercised by City Manager or designee without City Council action.

Sec. 12. Termination for Convenience (“TFC”). (a) *Procedure*. Without limiting any party’s right to terminate for breach, the parties agree that the City may, without cause, and in its discretion, terminate this Agreement for convenience by giving the Contractor written notice that refers to this section. TFC shall be effective at the time indicated in the notice. (b) *Obligations*. Upon TFC, all obligations that are still executory on both sides are discharged except that any right based on prior breach or performance survives, and the indemnification provisions and the section of this Agreement titled Trade Secrets and Confidentiality, if any, shall remain in force. At the time of TFC or as soon afterwards as is practical, the Contractor shall give the City all Work, including partly completed Work. In case of TFC, the Contractor shall follow the City’s instructions as to which subcontracts to terminate. (c) *Payment*. The City shall not pay the Contractor for this service.

Sec. 13. Trade Secrets; Confidentiality. The request for proposals (RFP) section titled “Trade Secrets and Confidentiality” shall apply to any Trade Secrets disclosed to the City during the process leading to the parties’ entering into this Agreement (including all of the Contractor’s responses to the RFP). This section (titled “Trade Secrets; Confidentiality”) shall remain in force despite termination of this Agreement (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this Agreement. For purposes of this Agreement, the word “candidate” in the RFP section just cited shall mean the “Contractor.”

IN WITNESS WHEREOF, for and in consideration of the performance of the conditions hereinafter set forth on the part of the Recipient, the City hereby conveys to Recipient the personal property conveyed as surplus.

ATTEST:

\_\_\_\_\_  
City Clerk

CITY OF DURHAM

By \_\_\_\_\_  
City Manager

\_\_\_\_\_  
Secretary (SEAL)

KRAMDEN INSTITUTE, INC.

By \_\_\_\_\_  
President

NORTH CAROLINA

ACKNOWLEDGEMENT BY CORPORATION

DURHAM COUNTY

I, a notary public in and for the aforesaid county and state, certify that \_\_\_\_\_ personally appeared before me this day and stated that he or she is \_\_\_\_\_ Secretary of KRAMDEN INSTITUTE, INC., a corporation, and that by authority duly given and as the act of the corporation, the foregoing Agreement with the City of Durham was signed in its name by its \_\_\_\_\_ President, whose name is \_\_\_\_\_, sealed with its corporate seal, and attested by him/herself as its said Secretary or Assistant Secretary. This the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

My commission expires:

\_\_\_\_\_

\_\_\_\_\_  
Notary Public

**Exhibit A**  
**City of Durham Insurance Requirements**

Contractor shall purchase and maintain insurance coverage for not less than the following:

**Commercial General Liability**, covering:

- Premises/operations
- Products/completed operations (two years minimum from project completion)
- Broad form property damage
- Contractual liability
- Independent contractors, if any, are used in the performance of this contract
- City of Durham must be named additional insured, and an original of the endorsement to effect the coverage must be attached to the certificate (if by blanket endorsement, then agent may so indicate in the GL section of the certificate, in lieu of an original endorsement)
- Combined single limit not less than \$1,000,000 per occurrence, with an annual aggregate on not less than \$2,000,000.

**Commercial Auto Liability**, covering:

- Symbol 1, all vehicles
- Combined single limit of \$1,000,000
- City of Durham must be named additional insured

**Workers' Compensation Insurance**, covering:

- Statutory benefits
- Covering employees; covering owners partners, officers, and relatives (who work on this contract) (this must be stated on the certificate)
- Employers' liability, \$1,000,000
- Waiver of subrogation in favor of the City of Durham

**Insurance shall be provided by:**

- Companies authorized to do business in the State of North Carolina
- Companies with Best rating of A-, VII or better.

**Insurance shall be evidenced by a certificate:**

- Providing notice to the City of not less than 30 days prior to cancellation or reduction of coverage
- Certificates shall be addressed to:  
City of Durham, North Carolina  
Attention: (your name and address)