

HAZARDOUS MATERIALS TRAINING AGREEMENT

THIS HAZARDOUS MATERIALS TRAINING AGREEMENT ("Agreement"), made this 7th day of June, 2016 by and between the City of La Crosse and its Fire Department (hereinafter collectively referred to as "City"), and Duratech Industries (hereinafter referred to as "Contracting Party" or "Duratech Industries").

RECITALS

WHEREAS, Contracting Party desires to have the City provide one four (4) hour class of Hazardous Materials Awareness Training for Duratech staff. NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises, conditions, and covenants, and other good and valuable consideration of the parties hereto, it is covenanted and agreed as follows:

1. **GENERAL STATEMENT OF AGREEMENT:** The parties agree that the City shall provide one (1) class to be scheduled at a time mutually agreed upon by both parties. Those Classes will be one (4) hour OSHA Hazmat Awareness to the standard equal to or above CFR 1910.120 hazmat for industrial employees. Each class will be site specific to the facility and with instruction pertinent to reasonable staff expectations for response. Classes will not exceed (twenty) 24 students. Contracting Party agrees to provide suitable classroom for instruction, necessary audio visual aids, and equipment and supplies suitable for instruction for the classes.
2. **INSTRUCTORS:** City shall provide competent instructors for the training and shall maintain a student to instructor ratio of six to one (6:1) when performing hands-on activities. In the event that any trainer is found to be unacceptable by the Contracting Party, the Contracting Party shall notify City of such fact and City shall work with Contracting Party to resolve the problem, including removal of staff and providing a replacement acceptable to Contracting Party.
3. **COMPENSATION:** Compensation will be paid at the class at the set price of \$1000.00 The price includes course building preparation, travel, software, handouts, props, and instruction. Duratech Industries La Crosse shall reimburse the City for any reasonable and necessary expenses that may arise outside the above designated situations. All invoices shall be due within thirty (30) days after receipt by Duratech Industries.
4. **RECORDS:** City shall maintain complete and accurate records of training sessions for a period of seven (7) years after the date of the training session. Written documentation of the training session shall be provided to all students who satisfactory complete a training course.
5. **NON-DISCLOSURE:** The parties agree they will not at any time during or after the terms of this Agreement, disclose any confidential information to any person except as provided by the Wisconsin Public Records Law. Upon termination of this Agreement, each party will return any confidential information that belongs to the other party.
6. **INDEMNIFICATION:** Contracting Party shall protect, defend, indemnify, and hold harmless the City, its elected and appointed officials, agencies, officers, employees, agents, or authorized representatives or volunteers, from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorney's fees, costs and expenses of whatsoever kind or character arising out of bodily injury, personal injury (including death) or property damage, that occur as a result of any wrongful, intentional, or negligent act or omission by Contracting Party's elected and appointed officials, agencies, officers, employees, agents, or

authorized representatives or volunteers which may arise out of or is connected with the activities covered by this Agreement. Contracting Party's aforesaid indemnity and hold harmless agreement shall not be applicable to any liability caused by the willful misconduct of the City, its elected and appointed officials, officers, employees or authorized representative or volunteers. This indemnity provision shall survive the termination or expiration of this Agreement.

7. **SEVERABILITY:** In the event that any part, term, portion or provision or the application thereof to any person or circumstances be in conflict with any federal or state law, or otherwise rendered unenforceable, it shall be deemed severable and shall affect the remaining provision, provided that such remaining provisions can be construed in substance to continue to constitute the agreement that the parties intended to enter into in the first instance.
8. **ENTIRE AGREEMENT:** This Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements or understandings (whether oral or written) between or among the parties relating to the subject matter of this Agreement which are not fully expressed herein. This Agreement may not be amended or modified, except pursuant to a written instrument which has been duly authorized and executed by both parties to this Agreement. This Agreement replaces and supersedes any previous agreements by the parties.
9. **INDEPENDENT CONTRACTOR:** Contracting Party, its employees, agents, volunteers, and representatives shall in no way be deemed as a result of this Agreement to be the employees of the City. Contracting Party, its employees, agents, volunteers, and representatives are not entitled to any of the benefits that the City provides for its employees.
10. **DISCRIMINATION:** Contracting Party agrees that its performance and activities pursuant to this Agreement will not discriminate or permit discrimination against any person or group of persons in any manner prohibited by Title VII of the Civil Rights Act of 1964 or amendments thereto, or Section 7.03(J) of the Municipal Code of the City of La Crosse.
11. **NO PERSONAL LIABILITY:** Under no circumstances shall any trustee, officer, official, commissioner, director, member, partner or employee of the City have any personal liability arising out of this Agreement, and Contracting Party shall not seek or claim any such personal liability.
12. **ASSIGNMENT:** Contracting Party is prohibited from assigning this Agreement or any portion thereof to any third persons without the prior written consent of the City.
13. **CAPTIONS:** The captions in this Agreement are for the convenience of reference only and shall not define or limit any of the terms and conditions set forth herein.
14. **NON-WAIVER OF RIGHTS:** No failure by a party to insist upon the strict performance of any term in this Agreement, or to exercise any right, power, or remedy consequent upon a breach thereof, shall constitute a waiver of any such term or breach. No waiver of any breach shall affect or alter this Agreement, which shall continue in full force and effect with respect to any other then existing or subsequent breach.

15. **CHOICE OF LAW:** This Agreement is and shall be governed by the laws of the State of Wisconsin. Any judicial action relating to the construction, interpretation, or enforcement of this Agreement shall be brought and venued in La Crosse County Circuit Court in La Crosse, Wisconsin.
16. **TERMINATION.** Either party may terminate this Agreement upon thirty (30) days advanced written notice to the other party for any reason.
17. **DELAYS.** If performance of the City's obligations is delayed through no fault of the City, the City shall be entitled to an extension of time equal to the delay.
18. **JURY TRIAL WAIVER.** The parties hereby waive their respective rights to a jury trial on any claim or cause of action based upon or arising from or otherwise related to this Agreement. This waiver of right to trial by jury is given knowingly and voluntarily by the parties and is intended to encompass individually each instance and each issue as to which the right to a trial by jury would otherwise accrue. Each party is hereby authorized to file a copy of this section in any proceeding as conclusive evidence of this waiver by the other party.
19. **MEDIATION.** The parties agree to mediate in good faith any dispute amongst themselves from this Agreement prior to commencing any litigation.
20. **NO THIRD-PARTY BENEFICIARY.** Nothing contained in this Agreement, nor the performance of the parties hereunder, is intended to benefit, nor shall inure to the benefit of, any third party.
21. **LIABILITY LIMITATION.** The City's liability, if any, under this Agreement is limited to any compensation Contracting Party made to City. Notwithstanding, the City retains all of its immunities and liability limitations as provided under Wisconsin law or other authority.
22. **NOTICES.** Any notice, demand, certificate or other communication under this Agreement shall be given in writing and deemed effective: (a) when personally delivered; (b) three (3) days after deposit within the United States Postal Service, postage prepaid, certified, return receipt requested,; or (c) one (!) business day after deposit within a nationally recognized overnight courier service, addressed by name and to the party or person intended as follows:

To the City: Attn: City Clerk
 City of La Crosse
 400 La Crosse Street
 La Crosse, WI 54601

Copy to: Attn: Fire Chief
 City of La Crosse
 400 La Crosse Street
 La Crosse, WI 54601

Duratech Industries: Attn: _____

23. EXECUTION OF AGREEMENT. Contracting Party shall sign and execute this Agreement on or before sixty (60) days of its approval by the La Crosse Common Council, and Contracting Party's failure to do so will render the approval of the Agreement by the La Crosse Common Council null and void unless otherwise authorized.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their authorized representatives on the date and year first above written.

CITY OF LA CROSSE:

:

BY: Tim Kabat
Tim Kabat, Mayor

BY: Teri Lehrke, deputy
Teri Lehrke, City Clerk

DURATECH INDUSTRIES

BY: Mike Wakeen 6-1-16
Mike Wakeen

BY: _____