

## CONSTRUCTION AGREEMENT

This Agreement is made and entered into this 1st day of July, 2002 by and between Central Nine Career Center ("School"), and Center for Emergency Response Training, Inc. an Indiana not-for-profit corporation, ("CERT"):

### WITNESSETH THAT:

**WHEREAS**, the **SCHOOL's** Greenwood, Indiana campus has approximately three (3) acres available for expansion and development; and

**WHEREAS**, **CERT** has the funds to pay for the construction of an Emergency Services Training Facility; and

**WHEREAS**, **CERT** is desirous of using its funds to pay for the construction of an Emergency Services Training Facility upon real estate owned by the **SCHOOL**; and

**WHEREAS**, the **SCHOOL** is willing to manage **CERT's** administrative responsibilities and shall use income generated from the training facility to pay for training facility expenses; and

**WHEREAS**, **SCHOOL** and **CERT** have entered a Lease and Operating Agreement of even date regarding the use and operation of the improvements.

**IN WITNESS WHEREOF**, subject to all of the conditions which are a part of this Agreement, the parties hereto agree as follows:

1. **CERT** hereby agrees to construct improvements and additional facilities ("Improvements") to serve as an emergency services training center on real estate owned by School. **CERT** has estimated the costs of the Improvements to be Four Hundred Thousand Dollars (\$400,000.00).
2. **CERT** hereby agrees to provide Four Hundred Thousand Dollars (\$400,000.00) of Construction Funds, the proceeds of which shall be applied toward the cost of the Improvements identified on Exhibit A attached hereto and incorporated herein.
3. Construction Funds shall be deposited into a restricted escrow account ("Escrow Account"). The School and **CERT** shall designate an escrow agent who shall administer the Escrow Account and hold and deliver the funds deposited therein pursuant to a separate Escrow Agreement and the relevant terms and conditions hereof.
4. Upon the deposit of Construction Funds into the Escrow Account, **CERT** will proceed with design by **CERT's** architect of the Improvements. Design of the Improvements includes the obtaining of zoning approval, a construction permit and all other necessary permits, easements and

similar matters from other legal and regulatory authorities and affected landowners. **CERT** will notify the **School** when the design of the Improvements have been completed.

a. The cost of the design of the Improvements shall be funded with proceeds deposited in the Escrow Account. The **School** shall have no responsibility to pay such design costs except from proceeds deposited in the Escrow Account.

b. After the design of the Improvements has been completed, **CERT** will invite quotes for the construction of the Improvements. However, before the **CERT** shall be obligated to execute any construction contract(s), the **School** shall determine whether the proceeds in the Escrow Account are sufficient to pay the cost of the Improvements under such contracts. If there are sufficient funds in the Escrow Account and appropriate quotes from responsible quotes have been received, **CERT** with the **School's** approval shall award the contract(s) for the Improvements and proceed with construction thereon. The Improvements will be completed within 365 days of the date on which construction commences ("Completion Date"). If the funds in the Escrow Account are not sufficient or if appropriate quotes from responsible quotes have not been received, the **School** shall immediately instruct the Escrow Agent to refund to **CERT** all proceeds remaining in the Escrow Account net of any design cost that remain due.

c. The Escrow Agent shall pay and disburse funds from the Escrow Account to **CERT'S** contractor in amounts which the **School** certifies from time to time as being due in order to make periodic pay applications through the course of construction of the Improvements. The Escrow Agent shall have no obligation to pay any amounts to **CERT'S** contractor prior to the date from time to time which the costs relate to the Improvements become due as certified by the **School**.

d. The **School** shall have access to **CERT** Construction Funds or any other (**CERT** funds upon **CERT'S** default on the Lease, Operating Agreement or Construction Agreement and in the event of any breach of any agreement between the **School** and **CERT**).

e. Upon completion of the Improvements, **CERT** shall dedicate those Improvements to the **School**.

7. **CERT** agrees to comply with all federal, state and local statutes, laws, ordinance, rules and regulations in constructing the Expansion Improvements.

8. If permitted by law, any construction agreement between **CERT** and any other party shall contain a "no lien contract" provision.

9. Prior to the commencement of construction, **CERT**, or **CERT** through its contractor, shall furnish a performance guarantee, in a suitable form approved by the **School**, of either an irrevocable letter of credit, a certificate of deposit, a certified check, or a guarantee construction insurance bond made payable to the **School** with good and sufficient surety thereon, conditioned on the

performance within two (2) years of the date of this Agreement or later date agreed to by the School of the obligations relating to the Improvements set forth under this Agreement, in the amount of One Hundred Percent (100%) of the total cost of construction of the Improvements. If for any reason the performance guarantee becomes invalid, CERT shall replace the performance guarantee within thirty (30) days.

10. No liability of any kind for any part of the Improvements, prior to its acceptance by the School, shall attach to the School. CERT shall indemnify and hold the School harmless against all claims, demands, actions, causes of action, loss and expense of every nature and kind (including attorney's fees) at any time asserted against the School, for or on account of any person, arising out of, or in any way connected with, the location, installation and construction of the Improvements prior to its acceptance by the School. This indemnity shall not be limited by reason of the enumeration of any insurance coverage required herein. So long as Central Nine can name CERT as an additional insured at no cost to Central Nine on its insurance policy, Central Nine shall provide public liability insurance. In the event Central Nine cannot name CERT as an additional insured at no cost to Central Nine, prior to the commencement of the construction authorized by this Agreement, CERT, or CERT through its contractor, shall furnish to the School evidence of a public liability insurance policy in the minimum amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) each occurrence, Five Hundred Thousand Dollars (\$500,000.00) each aggregate, for bodily injury limits, and One Hundred Thousand Dollars (\$100,000.00) each occurrence, Two Hundred Thousand Dollars (\$200,000.00) each aggregate, for property damage limits.

11. The inspection of the Improvements construction shall be handled in the following manner:

a. Persons working on or having control of the construction of the Improvements shall cooperate fully with the School and shall have available on site a copy of the approved plans and specifications; and

b. CERT and its contractor(s) shall take all steps necessary to ensure the safety of all person at the worksite, including but not limited to the School, its inspector or other employees. The School shall have no responsibility for identifying, eliminating or otherwise abating any safety, health or environmental hazard created or otherwise resulting at the worksite from the activities of CERT or any other person. Nothing in this Agreement shall be construed or interpreted, directly or indirectly, as requiring that the School undertake any legal duty of CERT or its contractor(s) or any other entity to CERT's or contractor's employees, invitees or licensees, or to any other person at the worksite, or to any federal, state or local government agency.

12. All necessary easements pertaining to privately owned property shall be dedicated and conveyed to the School in an acceptable form prior to acceptance of the Improvements. All forms of dedication and conveyance shall be approved by the School prior to execution by the grantor of said easement. All recording fees for such dedications and conveyances shall be paid by CERT.

13. Upon completion, but before acceptance by the School, CERT shall furnish a completion affidavit in a form prescribed by the School, and CERT, or CERT through its contractor, shall furnish to the School in a suitable form, an irrevocable letter of credit, a certified check, a certificate of deposit, or a guarantee maintenance insurance bond, made payable to the School, with good and sufficient surety thereon and acceptable to the School in an amount not to exceed twenty percent (20%) of the total Construction Costs for Improvements. The letter of credit, or certified check, or certificate of deposit, or bond shall be in the form required by the School and shall guarantee material and construction for a period of three (3) years from the date of final acceptance. If, for any reason, the maintenance guarantee becomes invalid, CERT shall replace the maintenance guarantee within thirty (30) days.

#### General Provisions

14. This Agreement, and any Assignment thereof, shall be in recordable form and recorded.

15. All modifications to this Agreement must be in writing and executed by both parties in substantially the same form and manner as this original Agreement.

16. The parties hereto shall execute and deliver any and all consents, releases, authorizations, transfers and other documents as may be reasonably required to carry out the provisions of this Agreement and to fully accomplish its purposes and intents.

17. This Agreement may be executed in any number of counterparts, and each such counterpart shall be deemed to be an original instrument.

18. This Agreement shall be construed and enforced in accordance with the laws of the State of Indiana.

19. The parties hereto agree that the venue for any dispute arising out of or related to this Agreement shall be Johnson County, Indiana.

20. Nothing herein expressed or implied is intended to confer on any person other than the parties hereto or their respective successors, assigns, and legal representatives, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

21. This Agreement shall inure to the benefit of and bind the parties and their purchasers, successors, assigns, heirs, executors and administrators.

22. The paragraph headings herein are solely for the convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.

23. All recitals herein and exhibits, schedules and related agreements attached hereto are incorporated herein by this reference and expressly made a part of this Agreement.

24. Neither party shall be liable or deemed to be in default for any delay or failure in performance under this Agreement or other interruption of service deemed resulting, directly or indirectly, from acts of God, civil or military authority, agency or other regulatory action or inaction, acts of public enemy, war, accidents, fire, explosions, earthquakes, floods, failure of transportation, strikes or other work interruptions, or any similar or dissimilar cause beyond the reasonable control of either party.


25. Any notice to be given by either party to the other shall be given by certified mail, return receipt requested. If notice cannot be accomplished by certified mail or is refused, then notice may be given by personal delivery or ordinary mail.

26. No consent or waiver, express or implied, by any party to any breach or default by any other party in the performance of obligations hereunder shall be deemed or construed to be a consent or waiver to any other breach or default in the performance of other obligations of any party. Failure on the part of any party to declare any of the other parties in default, irrespective of how long such failure continues, shall not constitute consent or a waiver of rights by such party.


27. If any provisions of this Agreement or its application to any circumstances shall be invalid or enforceable to any extent, the remainder of this Agreement and the application of its provisions to other circumstances shall not be effected and shall be enforced to the extent permitted by law.

IN WITNESS WHEREOF, the parties hereto acting by and through their authorized representatives, have executed this instrument on the day and year first above written.

**CENTRAL NINE CAREER CENTER**

"SCHOOL"  
By:   
Printed: NICK SANDRON  
Title: DIRECTOR

**CENTER FOR EMERGENCY  
RESPONSE TRAINING, INC.**

"CERT"  
By:   
Printed: Steve Phondt  
Title: President

STATE OF INDIANA            )  
  ) SS:  
COUNTY OF JOHNSON        )

BEFORE ME, the undersigned, a Notary Public in and for said County and State, personally appeared Steve Dhondt, an authorized representative of **CENTER FOR EMERGENCY RESPONSE TRAINING, INC.**, and acknowledged the execution of the foregoing Construction Agreement.

WITNESS my hand and Notarial Seal this 15<sup>th</sup> day of July, 2002.

My Commission Expires:

2-28-2008

Phyllis M Jones  
Notary Public Phyllis M. Jones  
Resident of JOHNSON County, IN

STATE OF INDIANA            )  
  ) SS:  
COUNTY OF JOHNSON        )

BEFORE ME, the undersigned, a Notary Public in and for said County and State, personally appeared Nick Banks, Jr., an authorized representative of **CENTRAL NINE CAREER CENTER**, and acknowledged the execution of the foregoing Construction Agreement.

WITNESS my hand and Notarial Seal this 15<sup>th</sup> day of July, 2002.

My Commission Expires:

2-28-2008

Phyllis M Jones  
Notary Public Phyllis M. Jones  
Resident of JOHNSON County, IN

This instrument prepared by Eric W. Fredbeck, DEPPE FREDBECK & BOLL, Nine East Court, Franklin, Indiana 46131.