

AGREEMENT FOR ELK GROVE POLICE SERVICES

This agreement ("Agreement") is entered into by and between the City of Elk Grove, a California municipal corporation ("City"), and California Northstate University, LLC, a Delaware limited liability company registered with the California Secretary of State ("CNU").

WHEREAS, CNU is processing an application with the City for a hospital, associated parking facilities, medical office buildings, and a dormitory ("Hospital Facilities Project"); and

WHEREAS, during the processing of CNU's application the City reviewed police services needs that may be generated by Hospital Facilities Project and therefore CNU has included in their Hospital Facilities Project an onsite police presence; and

WHEREAS, CNU seeks to obtain, and is in need of, services of the Elk Grove Police Department ("EGPD") including, but not limited to, providing police officers for the CNU new Hospital Facilities Project, primarily in CNU's emergency department ("Police Services") described in further detail below; and

WHEREAS, the City has agreed to coordinate and provide the Police Services, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, City and CNU agree to as follows:

1. RECITALS. The above recitals are true and correct and incorporated herein by reference.
2. POLICE SERVICES. CNU has requested, and City has agreed to provide, the following Police Services.
 - a. EGPD will provide law enforcement resources on Hospital Facilities Project, including police presence and patrol within the facilities, primarily in its emergency department.
 - b. EGPD will assist Hospital Facilities Project security staff in providing police services for the Hospital Facilities Project.
 - c. EGPD will develop working relationships with hospital staff and meet regularly with hospital administration to provide a proactive approach to police services.
 - d. Number of EGPD Police Officers in Phase I: Two (2) Police Officers shall be assigned to provide Police Services to CNU for a total of 80 hours per week. Notwithstanding the foregoing, in the event an incident occurs that requires Police Services beyond the regular 80 hours per week, for example, a critical incident occurs that requires additional Police Services, and/or CNU makes a written request for, and City agrees to, additional Police Services, CNU shall compensate City for that extra time as billed by the City each month. For purposes of this Agreement, Phase I is as described in the Final Environmental Impact Report for the Hospital Facilities Project (FEIR).
 - e. Number of EGPD Police Officers in Phase II: If, after an evaluation of calls for service resulting from CNU's operations, as reviewed in the City's sole discretion, the City determines that two additional officers for a total of four (4) on site officers are needed, CNU shall fund two additional officers. Based on City's review of other hospitals, it is likely that four officers will be necessary. EGPD always retains discretion to increase or decrease the number of officers at Hospital Facilities Project and to charge CNU accordingly for such staffing. For purposes of this Agreement, Phase II is described in the FEIR.
 - f. On site assigned Police service will begin in full once Phase I is open to the public. Prior to that date EGPD will need access to the facility for training purposes. Such access shall be provided thirty days in advance of Phase I of the Hospital Facilities Project opening to the public.

3. POLICE OFFICER RATES. Police Officers shall maintain a time sheet verifying the hours worked (“Time Sheet”). Police Officers assigned to CNU will receive 30 minutes for doffing and 30 minutes for donning each day. This time will be taken into account for overtime billing purposes. If Police Officers perform donning at CNU start time will occur from the ending of their donning time. Doffing and donning will only occur at CNU if proper locker facilities are provided by CNU. CNU shall reimburse the City per officer at a rate of \$149,697.60. This includes both administrative costs and vehicle maintenance costs. The two officers for phase I will total \$299,395.20 per year. CNU will be billed quarterly in the amount of \$74, 848.80 (Phase I Quarterly Base Rate). A deposit in this same amount shall be paid to EGPD prior to request for Certificate of Occupancy of the hospital in Phase I of the Hospital Facilities Project. The addition of two Police Officers for a total of four shall raise the Phase I Quarterly Base Rate accordingly. If assigned Police Officers or additional officers are required on site CNU shall be billed for over time in addition to the Phase I Quarterly Base Rate. Overtime will be billed monthly to CNU PURCHASE OF POLICE VEHICLE. The opening of CNU has created the need for an additional police vehicle that is not currently present in the existing fleet available to EGPD. Therefore, CNU shall remit to the City a one-time payment of \$65,000 for the City to purchase a police vehicle for CNU. Such payment shall be made prior to issuance of CNU’s first building permit.
4. INDEMNIFICATION. CNU hereby agrees to indemnify, defend, and hold harmless the City, its officials, officers, employees, volunteers, agents, assigns, and anyone working on their behalf, from and against any and all claims, losses, liabilities, damages, injuries, demands, suits, judgments and/or actions (“Claims”), including payment of reasonable attorney’s fees and cost, arising out of, relating to, or resulting from this Agreement, the Police Services, and/or an incident at or related to the Hospital Facilities Project, except for those Claims arising out of the sole and active negligence or willful misconduct of the City or EGPD Officer(s), all as determined by a Court of competent jurisdiction. Unless and until such judicial determination is made, or as otherwise agreed by the parties, CNU shall remain obligated to defend, indemnify, and hold harmless the City, its officials, officers, employees, volunteers, agents, assigns, and anyone working on their behalf pursuant to this Agreement. The provisions of this section shall survive termination or suspension of this Agreement.
5. TERMINATION. City may, at any time and in its sole discretion, cancel any or all Police Services and/or terminate this Agreement; the City shall not be liable to CNU for any costs, damages, or any other claim related to City’s cancelation of services or termination of this Agreement. In the event City elects to terminate this Agreement, CNU shall take immediate action to implement additional security and/or other protective measures to adequately address the security needs of the Hospital Facilities Project, and the surrounding community from activities occurring as a result of CNU’s operation.
6. PAYMENT. CNU shall remit payment to City for all fees associated with this Agreement within ten (10) business days from the date of City’s invoice or demand for payment. Payments shall be made by check or other method acceptable to the City, payable to the “City of Elk Grove.” CNU shall pay City a \$25.00 fee for each returned check.

In the event payments are not made within the time stated herein, CNU shall pay interest to City at the rate of 10 percent per annum. Furthermore, CNU shall pay, on City’s demand and in City’s discretion, an advance deposit in an amount sufficient to cover any future services.

7. CNU SECURITY AND FACILITIES REQUIREMENTS.
 - a. CNU shall submit a detailed security plan for police department approval prior to beginning hospital operations.

- b. CNU shall have an appropriate amount of security on staff or through a contract with an outside vendor. All security companies and/or security officers must hold valid licenses through the Department of Consumer Affairs Bureau of Security and Investigative Services or be sworn peace officers within the State of California/ Security officers must wear a uniform that is approved by the Chief of Police so that police officers and security officers are easily distinguishable from one another.
 - c. CNU shall provide dedicated office space and two workstations with computers at the campus for law enforcement to complete reports and other administrative tasks.
8. **PEACE OFFICER DUTIES.** CNU acknowledges and agrees that the Police Officers, Supervisor, and/or Manager assigned to work pursuant to this Agreement shall conduct themselves in accordance with California peace officer standards, the rules and regulations of the City and EGPD, and serve to enforce local, California state, and federal laws; CNU shall not request the Police Officers, Supervisor, and/or Manager to act in a manner that is contrary to these rules, regulations, standards, and laws. The Police Officers, Supervisors, and/or Managers assigned to work pursuant to this Agreement shall, at all times, wear his or her EGPD approved uniform, and shall report directly to the EGPD On-Duty Watch Commander. CNU shall not attempt to direct any Police Officer, Supervisor, and/or Manager, nor shall any Police Officer, Supervisor, and/or Manager be used to enforce the CNU's private rules, regulations, and/or policies. Any use of City equipment by the Police Officers, Supervisor, and/or Manager assigned to work must be approved, in advance and in writing, by the City. Use of equipment not provided for herein shall be charged to CNU at the rate set by the City. CNU further agrees to the following:
- a. No Police Officer, Supervisor, and/or Manager assigned to work shall work as a private security guard, private investigator or other similar private security position;
 - b. No Police Officer, Supervisor, and/or Manager assigned to work shall engage in any activity during or at the site of a strike, lockout, picket, or other physical demonstration of a labor dispute;
 - c. Police Officers, Supervisors, and/or Managers assigned to work shall work as supplemental law enforcement and provide services consistent with the position of a peace officer. Police Officers, Supervisors, and/or Managers assigned to work shall not perform those duties customarily performed by "doormen," "bouncers," or the like;
 - d. Police Officers, Supervisors, and/or Managers assigned to work shall not serve as "I.D. checkers" at the door, but may respond to a location for clarification as to the validity of identification received by the CNU;
 - e. Any time more than five (5) Police Officers are required, CNU shall also employ an EGPD Police Supervisor. Any time more than three (3) Police Supervisors are required, CNU shall also employ an EGPD Manager;
 - f. CNU agrees to employ the number of Police Officers deemed necessary by the City for the Hospital Facilities Project, however, CNU shall be fully responsible for all activities relating to and/or arising out of its Hospital Facilities Project, including a full assessment of its security needs, and shall employ all security personnel and measures necessary to protect the health, safety and welfare of the public and those visiting, admitted to, or employed at the Hospital Facilities Project; and
 - g. CNU agrees and acknowledges that any assigned Police Officer, Supervisor and/or Manager may be called away to assist with other EGPD operations at any time, and for any duration, at the discretion of the EGPD. In the event the Police Officer, Supervisor and/or Manager is called away, City will review CNU bill to determine if a credit is warranted.
9. **INSURANCE.** CNU shall not make a demand against the City's liability coverage for any Claim, as defined above, and CNU agrees to carry all insurance necessary to cover itself and the City against any and

all risks associated with this Agreement, the Police Services, and the Hospital Facilities Project. Prior to City assigning any Police Officer, Supervisor, and/or Manager to perform work under this Agreement, CNU shall provide City with proof of insurance meeting the requirements of Exhibit A, which is attached hereto and incorporated herein by reference.

NO POLICE SERVICES SHALL BE PROVIDED UNTIL SATISFACTORY PROOF ALL REQUIRED INSURANCE IS RECEIVED BY THE CITY. FAILURE TO PROVIDE, AND MAINTAIN, THE REQUIRED INSURANCE IS A MATERIAL BREACH OF THIS AGREEMENT.

10. MODIFICATIONS. Amendments, changes or modifications in the terms of this Agreement may be made at any time by mutual written agreement between the parties hereto and shall be signed by the persons authorized to bind the parties.
11. COMPLIANCE WITH LAWS. CNU shall comply with all applicable laws, ordinances, and codes of federal, State and local governments, and shall commit no trespass on any public or private property in conducting the activities related to the Hospital Facilities Project and this Agreement.
12. LICENSES, PERMITS AND OTHER APPROVALS. CNU represents and warrants to City that it has all licenses, permits, qualifications and approvals of whatsoever nature legally required for CNU to conduct the activities related to the Hospital Facilities Project and this Agreement. CNU represents and warrants to City that CNU shall, at its sole cost and expense, obtain and/or keep in effect at all times during the term of this Agreement any required licenses, permits, and approvals.
13. MISCELLANEOUS PROVISIONS.
 - a. Attorney's Fees. In the event an action or proceeding is instituted by either party for the breach or enforcement of any provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and all litigation expenses, including, but not limited to expert's fees and disbursements.
 - b. Venue. This Agreement shall be deemed to be made in, and the rights and liabilities of the Parties, and the interpretation and construction of the Agreement governed by and construed in accordance with the laws of the State of California. Any legal action arising out of this Agreement shall be filed in and adjudicated by a court of competent jurisdiction in the County of Sacramento, State of California.
 - c. Enforceability: If any term or provision of this Agreement is found to be void, voidable, invalid or unenforceable by a court of competent jurisdiction under the laws of the State of California, any and all of the remaining terms and provisions of this Agreement shall remain binding.
 - d. Time: All times stated herein are of the essence.
 - e. Binding: This Agreement shall bind and inure to the heirs, devisees, assignees and successors in interest of CNU and to the successors in interest of City in the same manner as if such parties had been expressly named herein.
 - f. Survivorship: Any responsibility of CNU for warranties, insurance, indemnity, record-keeping or compliance with laws with respect to this Agreement shall not be invalidated due to the expiration, termination or cancellation of this Agreement.
 - g. Construction and Interpretation: CNU and City agree and acknowledge that the provisions of this Agreement have been arrived at through negotiation and that each party has had a full and fair opportunity to revise the provisions of this Agreement and to have such provisions reviewed by legal counsel. Therefore, any ambiguities in construing or interpreting this Agreement shall not be


resolved against the drafting party. The titles of the various sections are merely informational and shall not be construed as a substantive portion of this Agreement.

- h. Waiver: The waiver at any time by any party of any of its rights with respect to a default or other matter arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent default or other matter.
- i. Severability: The invalidity, illegality or unenforceability, of any provision of this Agreement shall not render the other provisions invalid, illegal or unenforceable.
- j. No Third Party Beneficiary: It is expressly understood and agreed that the enforcement of these terms and conditions shall be reserved to the City and CNU. Nothing contained in the agreement shall give or allow any claim or right of action whatsoever by any third party. It is the express intent of the City and the CNU that any such person or CNU, other than the City or CNU, receiving benefits or services under this agreement shall be deemed as incidental beneficiary.
- k. Non-Discrimination/Non-Preferential Treatment Statement: In performing this Agreement, the parties shall not discriminate or grant preferential treatment on the basis of race, sex, color, age, religion, sexual orientation, disability, ethnicity, or national origin, and shall comply to the fullest extent allowed by law, with all applicable local, state, and federal laws relating to nondiscrimination and equal employment opportunities.
- l. Authority to Execute: The person or persons executing this Agreement on behalf of the CNU warrant and represent that they have the authority to execute this Agreement on behalf of their agency and further warrant and represent that they have the authority to bind CNU to the performance of its obligations hereunder.
- m. Entire Agreement: This instrument, any attachments hereto, and any documents expressly referenced herein, constitute the entire Agreement between City and CNU concerning the subject matter hereof and supersedes any and all prior oral and written communications between the parties regarding the subject matter hereof.

AGREED to this 23rd of June 2020, by the parties as follows:

CNU:

By:



(CNU Signature)

Name: Dr. Alvin Cheung, PharmD, MHSA

Title: CEO and President

Date:

6/23/2020

Address: 9700 West Taron Drive

Phone: 916-686-7400

Fax:

Email: ACheung@cnsu.edu

CITY OF ELK GROVE:

By:

Jason Behrmann, City Manager

Approved as to form:

By:

Jonathan P. Hobbs, City Attorney

Attest to:

By:

Jason Lindgren, City Clerk

Dated: _____

Please return to:
Elk Grove Police Department
Attn: Paul Solomon
8400 Laguna Palms Way
Elk Grove, CA 95758

Elk Grove Police Department Records

Date Filed: _____
Expires: _____

EXHIBIT A

Insurance Requirements

Prior to commencement of any work under this Agreement, CNU shall provide to the City proof of, and maintain in full force and effect at all times during the term of the Agreement, at its sole cost and expense, policies of insurance as set forth herein:

1. General Liability:

- a. Comprehensive general liability insurance including, but not limited to, protection for claims of bodily injury and property damage liability, and personal and advertising injury liability.
- b. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage form CG 0001 (occurrence).
- c. Claims-made coverage is not acceptable.
- d. The limits of liability shall not be less than:

Each occurrence:	Ten Million Dollars (\$10,000,000)
Personal & Advertising Injury:	Ten Million Dollars (\$10,000,000)

- e. Coverage shall contain a provision or endorsement that waives any rights of subrogation against the City, its officers, officials, employees, agents, and volunteers.
- f. The City, its officials, employees, agents and volunteers shall be covered and specifically named as additional insured as respects liability arising out of activities performed by or on behalf of the CNU, or premises owned, occupied, or used by the CNU on a separate endorsement acceptable to the City.
- g. The policy shall contain no special limitations on the scope of coverage afforded to the City, its officials, employees, agents or volunteers.
- h. Provision or endorsement stating that for any claims related to this project, the CNU's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers to the extent the City is an additional insured. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be in excess of the CNU's insurance and shall not contribute with it, to the payment or satisfaction of any defense expenses, loss or judgment.

- i. Any failure to comply with reporting or other provisions of the policies on the part of the CNU, including breaches of warranties, shall not affect CNU's requirement to provide coverage to the City, its officers, officials, employees, agents or volunteers.
2. Acceptability of Insurers: Insurance is to be placed with insurers with a **Bests' rating of no less than A: VII**.
3. Any deductibles, aggregate limits, that may diminish the aggregate limits, or self-insured retention(s), must be declared to, and approved by, the City.
4. The CNU shall furnish the City with certificates of insurance and original endorsements or insurance binders, signed by a person authorized by the insurer to bind coverage on its behalf, evidencing the coverage required by this Agreement. At the written request of the City, CNU agrees to furnish a duplicate original or certified copy of each required policy including the declaration pages, conditions, provisions, endorsements, and exclusions.
5. The City, at its discretion, may increase the amounts and types of insurance coverage required hereunder at any time during the term of the Agreement by giving 30 days written notice.
6. The CNU shall serve the City notice, in writing by certified mail, within 2 days of any notices received from any insurance carriers providing insurance coverage under this Agreement that concern the suspension, voidance, cancellation, termination, reduction in coverage or limits, non-renewal, or material changes of coverage proposed or otherwise.
7. If the CNU fails to procure or maintain insurance as required by this section, and any Supplementary Conditions, or fails to furnish the City with proof of such insurance, the City, at its discretion, may procure any or all such insurance. Premiums for such insurance procured by the City shall be deducted and retained from any sums due the CNU under the Agreement.
8. Failure of the City to obtain such insurance shall in no way relieve the CNU from any of its responsibilities under the Agreement.
9. The making of progress payments to the CNU shall not be construed as relieving the CNU or its Sub-Contractors or agents of responsibility for loss or direct physical loss, damage, or destruction occurring prior to final acceptance by the City.
10. The failure of the City to enforce in a timely manner any of the provisions of this section shall not act as a waiver to enforcement of any of these provisions at any time during the term of the Agreement.
11. The requirement as to types, limits, and the City's approval of insurance coverage to be maintained by CNU are not intended to, and shall not in any manner, limit or qualify the liabilities and obligations assumed by CNU under the Agreement.