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File ID Number	21-2448
Introduction Date	October 13, 2021
Enactment Number	21-1673
Enactment Date	10/13/2021 CJH



**OAKLAND UNIFIED
SCHOOL DISTRICT**
Community Schools, Thriving Students

Board Cover Memorandum

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Curtiss Sarikey, Chief of Staff

Meeting Date October 13, 2021

Subject Approve Services Agreement with Spartan Medical, Inc. and Resolution No. 2122-0108 - Authorizing Use of Sole Source Exception to Public Bidding

Action Approve Services Agreement with Spartan Medical, Inc. and Resolution No. 2122-0108 - Authorizing Use of Sole Source Exception to Public Bidding

Background & Discussion The Board of Education, via Resolution No. 2122-0003 - Requiring COVID-19 Testing At All School Sites, has directed the District to provide biweekly testing at each school site, with priority for unvaccinated students, schools in higher-transmission zip codes, and while maintaining the District’s current Rapid Response testing systems (which provide, among other things, the testing necessary for modified quarantine). The California Department of Public Health has a contract with Concentric by Ginkgo to provide Pooled Testing services to school districts. To ease the burden on school sites implementing Pooled Testing, the District seeks to contract with Spartan Medical, Inc., a partner of Concentric by Ginkgo, to provide on-site test administration support to schools participating in the Pooled Testing process.

Fiscal Impact Not to Exceed \$3,672,000.00
Resource 3213, ESSER III, Site 901

Attachment

- Resolution No. 2122-0108 – Authorizing Use of Sole Source Exception for Spartan Medical, Inc.
- Services Agreement with Spartan Medical, Inc.

**RESOLUTION OF THE
BOARD OF EDUCATION
OAKLAND UNIFIED SCHOOL DISTRICT**

RESOLUTION NO. 2122-0108

**AUTHORIZING USE OF SOLE SOURCE EXCEPTION TO PUBLIC BIDDING FOR
CONTRACT WITH SPARTAN MEDICAL, INC.**

WHEREAS, the Oakland Unified School District (“District”) has a need to contract with Spartan Medical, Inc to provide on-site COVID-19 Testing;

WHEREAS, the contemplated contract is in an amount of \$3,672,000.00;

WHEREAS, under Public Contracts Code section 20111, a contract in this amount would ordinarily require competitive bidding;

WHEREAS, one exception to this competitive bidding requirement is the “sole source” exception, which applies where there is only one supplier of a needed good or service (*Los Angeles Gas & Electric Corporation v. Los Angeles* (1920) 188 Cal. 307; *Hodgeman v. City of San Diego* (1942) 53 Cal.App.2d 610; *County of Riverside v. Whitlock* (1972) 22 Cal.App.3d 863); and

WHEREAS,

- The Board of Education has directed staff to set up biweekly testing at all OUSD school sites,
- The California Department of Public Health has contracted with only one company to provide Pooled testing to schools, Concentric by Ginkgo,
- Concentric by Ginkgo has partnered with Spartan Medical, as a source for staffing support of Pooled Testing, and
- The California Department of Public Health recommends Pooled Testing as a strategy for cost-effective testing at a large-scale for public school districts because it “entails minimal administrative burden compared to other testing options due to pooling multiple samples together, self-collection of samples, and staff and technological supports. Pooled testing is offered free by the state through the vendor Concentric by Ginkgo. For public schools, it is offered with operational support”;

NOW, THEREFORE, BE IT RESOLVED:

1. The Board approves waiving competitive bidding to allow the District to contract directly with Spartan Medical, Inc. for on-site COVID-19 Testing with Concentric by Ginkgo because Spartan Medical, Inc. is the sole source for this service, and
2. The Board hereby approves the Services Agreement for Spartan Medical, Inc. to provide on-site test administration support to schools participating in the Pooled Testing process with Concentric by Ginkgo.

PASSED AND ADOPTED on _____, 2021, by the Governing Board of the Oakland Unified School District by the following vote:

PREFERENTIAL AYE: None

PREFERENTIAL NOE: None

PREFERENTIAL ABSTENTION: None

PREFERENTIAL RECUSE: None

AYES: Aimee Eng, VanCedric Williams, Gary Yee, Mike Hutchinson, Clifford Thompson, Vice President Benjamin "Sam" Davis

NOES: None

ABSTAINED: None

RECUSED: None

ABSENT: Student Director Samantha Pal, Student Director Natalie Gallegos Chavez, President Shanthi Gonzales

CERTIFICATION

We hereby certify that the foregoing is a full, true and correct copy of a Resolution passed at a Regular Meeting of the Board of Education of the Oakland Unified School District held on _____, 2021.

Legislative File	
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By:	

OAKLAND UNIFIED SCHOOL DISTRICT



10/14/2021

Shanthi Gonzales
President, Board of Education



10/14/2021

Kyla Johnson-Trammell
Superintendent and Secretary, Board of Education

SERVICES AGREEMENT

This Services Agreement (this “**Agreement**”) is entered into and effective as of October 13, 2021 (the “**Effective Date**”) by and between, the Oakland Unified School District, a California entity (“**OUSD**”), and Spartan Medical, Inc. a Maryland corporation (“**Spartan**”), pursuant to the provisions of this Agreement. OUSD and Spartan are individually referred to as “**party**” or collectively as the “**parties**.”

In consideration of the mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. SERVICES

1.1. Statements of Work. Spartan shall provide the Services (as defined below) in accordance with the terms set forth in this Agreement and the applicable SOW (as defined below). Each statement of work hereunder shall be in writing and shall (a) reference this Agreement and be governed by and subject to the terms of this Agreement, (b) be executed by both parties, (c) describe the services to be performed (“**Services**”) by Spartan and the Professionals (as defined below), and (d) set forth the timelines, schedules, fees or budgets, and any other relevant information (each, a “**SOW**”). The initial SOW is attached hereto as Exhibit B (the “**Initial SOW**”). The Initial SOW and any subsequent SOW(s), when executed by the parties, shall be incorporated into and deemed part of this Agreement. In the event of any conflict between this Agreement and any SOW, this Agreement shall control, unless a SOW expressly and specifically amends or disclaims the conflicting language. Any changes or additions to a SOW, including changes to scope, fees and timing shall be made only by mutual written agreement. Spartan shall only perform, and shall ensure Professionals only perform, Services that have been agreed upon in a SOW, and OUSD shall not be obligated to compensate Spartan for any Services other than those set forth in a SOW.

1.2. Services. Spartan will employ medical, administrative or other professionals, including licensed nurses (collectively, “**Professionals**”), and deliver such Professionals to OUSD to provide the Services set forth in the applicable SOW. Spartan will perform, and will ensure that Professionals perform, the Services to OUSD (a) as set forth in this Agreement and each SOW, (b) accurately, promptly and within the time period specified in the applicable SOW, (c) at the locations requested by OUSD, and (d) in accordance with (i) the highest prevailing industry standards and practices for the performance of similar services, (ii) all applicable laws, rules and regulations, and (iii) all reasonable and applicable requirements, instructions, protocols, procedures and guidelines (including standard operating procedures and on-site health safety measures) set forth in the applicable SOW or that OUSD or any of its contractors or customers provides in writing from time to time (collectively, the “**Instructions**”). Spartan will designate a project leader (“**Project Leader**”) who will be available, as necessary, for frequent communications with OUSD regarding the Services and the Instructions. At OUSD’s request, Spartan shall take all actions necessary to remedy any Professional’s failure to perform the Services accurately and in accordance with this Agreement or the Instructions (including, if necessary, replacing any Professional if such failure cannot be remedied). Spartan agrees to assist OUSD and its contractors and customers as reasonably requested from time to time to meet the requirements of such contractors and customers or to resolve any issues relating to the Samples (as defined below), the Services or any services performed by such contractors.

1.3. Equipment and Supplies. Except as provided otherwise in the applicable SOW, Spartan and its Professionals will provide all equipment, tools, materials and supplies necessary to perform the Services, including all personal protective equipment for Professionals (“**PPE**”). Spartan will require all Professionals to wear all appropriate safety equipment, including PPE.

1.4. Records. During the Term (as defined below) and for a period of 3 years thereafter, Spartan will maintain accurate and complete records pertaining to the Services rendered, dates thereof, the applicable sites therefor and the respective Professional(s) provided. Upon the reasonable written request of OUSD, Spartan will provide OUSD or its designee access to such records.

2. PROFESSIONALS; BACKGROUND CHECKS; SUBCONTRACTING

2.1. Spartan as Independent Contractor. Spartan and each Professional shall perform the Services hereunder as an independent contractor, and not as an employee or agent of OUSD. Nothing in this Agreement shall be interpreted or construed to create any employment, partnership, joint venture or other relationship between Spartan or any Professional and OUSD. Neither Spartan nor any Professional shall have the right or authority to commit or obligate OUSD unless specifically appointed in writing by OUSD to do so.

2.2. Professionals.

(a) Spartan represents, warrants and covenants that: (i) it has engaged and will engage, and the Services will be performed only by, Professionals with the proper skill, training, qualifications, professional licensure and experience to provide the Services; and (ii) it and all Professionals who perform the Services are and will be duly qualified and licensed to perform such Services to the extent required by applicable law, rule, regulation or order, and all such licenses and certifications are and will be current and in good standing. Spartan shall provide evidence of such qualifications and licenses upon OUSD's written request.

(b) Spartan will ensure that OUSD will have access to a current listing of the names, qualifications and locations of each Professional listed and available for performing Services (the "**Listing**"). OUSD may request particular Professional(s) from the Listing and, to the extent such Professional(s) are willing and available to provide the Services, Spartan shall thereafter schedule such selected Professional(s) to fulfill OUSD's request.

(c) As between the parties, Spartan shall, with respect to Professionals, be solely responsible for providing all employee notices required by wage and hour laws, withholding taxes and making all legally-required payments, including wages (including overtime, compensatory time and shift differentials), reimbursement of expenses, remittance of federal, state and local income taxes, paying Social Security taxes, unemployment insurance payments and taxes and other statutory payments, maintaining workers' compensation insurance coverage in an amount and under such terms as required by state law, disability insurance payments and taxes and all other amounts or benefits owed or payable, including all penalties, fines and interest in connection with any such taxes and legally-required payments. Without limiting the above Spartan shall: (i) comply with all laws, rules and regulations applicable to the employment of Professionals; (ii) be solely responsible for verifying and securing Professionals' work eligibility, and confirming that all Professionals assigned to perform Services hereunder are legally qualified to work and receive compensation in the United States and in the state in which they are employed; (iii) process payroll for Professionals, including withholding and payment of federal and state taxes and any other required statutory withholdings; and (iv) issue appropriate tax reporting documentation to Professionals, and file reports with governmental agencies as required by applicable law, rule or regulation. Supplier shall maintain records of compliance with its obligations under this paragraph, along with supporting documentation (which documentation may be redacted as necessary to protect any Professionals' personally identifiable information (other than the information required for OUSD to verify such compliance)), and shall cooperate with OUSD in responding to requests to verify Spartan's compliance with this paragraph .

(d) OUSD shall have the right to request replacement of any Professional for any lawful reason, including for unsatisfactory performance (as determined by OUSD in its reasonable discretion), breach of a Spartan obligation under this Agreement or material noncompliance with the Instructions. Spartan shall remove and replace such Professional with a qualified replacement acceptable to OUSD in a timely fashion.

2.3. Background Checks. Prior to any Professional commencing performance of Services on-site at the premises or facilities of any customer of OUSD (a "**Customer Site**"), Spartan will perform, at

its own cost and expense, background checks on such Professional in accordance with the screens listed in Exhibit A hereto and applicable federal, state and local laws. In addition, Spartan agrees to perform, at OUSD's cost and expense, any additional background checks or screening reasonably requested by OUSD (which may include checks or screening required by OUSD's customers for whom Spartan or its Professionals perform Services). Spartan will, upon OUSD's request, provide OUSD with the results of a Professional's background check. OUSD agrees to use the results of any background check sent by Spartan only for the purposes of this Agreement and to hold the information obtained in the strictest confidence.

2.4. Subcontracting. Spartan shall not delegate performance of the Services or its other obligations hereunder to any subcontractor without the prior written consent of OUSD. If OUSD, its sole discretion, consents to the use of a subcontractor to perform Service, (a) Spartan will contractually require such subcontractor to comply with obligations applicable to Spartan hereunder, and (b) the acts and omissions of such subcontractor will be deemed to be those of Spartan and Spartan will be responsible therefor.

3. COMPENSATION

3.1. Invoices. Spartan shall send OUSD a written invoice for all amounts due under a SOW via email to Samantha Spielman, samantha.spielman@ousd.org. Each invoice shall (a) include detailed information as necessary to confirm what Services were performed and the amount of payment due, and (b) conform with any other requirements set forth in the applicable SOW. Payment on undisputed invoices shall be due 30 days after receipt of the invoice by OUSD.

3.2. Payments. As full consideration for Services performed under this Agreement, OUSD shall pay Spartan the amounts set forth in the applicable SOW in accordance with the schedule of payments therein, and, if applicable, in accordance with the budgets and rates set forth therein. OUSD shall reimburse Spartan for reasonable and necessary travel expenses incurred by each Professional in performance of the Services at sites more than 100 miles from such Professional's home ("**Travel Expenses**"), provided that such Travel Expenses are (a) expressly set forth in a SOW or (b) approved by OUSD in writing in advance. Except for (i) fees to be paid by OUSD as specifically set forth in the applicable SOW and (ii) Travel Expenses to be reimbursed by OUSD as set forth in this Section 3.2, Spartan shall be responsible for all of its costs and expenses in providing Services under this Agreement and each SOW. The fees set forth in each SOW will be full compensation for the Services rendered by Spartan and the Professionals. OUSD shall not be responsible for making any payment to any Professional and, as between the parties, Spartan shall be solely responsible for all payments to Professionals. Spartan shall not bill, charge, or seek reimbursement of any amount from any third-party payor (including any insurer or Medicare, Medicaid or other health plan), for or in connection with the Services or this Agreement.

3.3. Billing Practices. Spartan will charge OUSD an hourly bill rate for the time worked by each Professional as set forth in the applicable SOW. Fees billed by Spartan to OUSD shall be supported by a timesheet approved by OUSD or a representative designated by OUSD's customer at a Customer Site.

3.4. Taxes. OUSD shall pay any applicable sales taxes on payments it makes to Spartan pursuant to this Agreement. All other taxes (including any income tax, gross receipts tax or foreign withholding tax) applicable to payments OUSD makes to Spartan pursuant to this Agreement shall be the sole responsibility of Spartan.

4. TERM AND TERMINATION

4.1. Term and Termination. This Agreement shall commence on the Effective Date and continue for 12 months (the "**Initial Term**"). It may be extended for subsequent terms by written agreement of the Parties. Either party may terminate this Agreement in the event of breach by the other party of this Agreement upon at least 15 days' prior written notice, provided the breaching party does not cure such breach within such 15 day notice period. In addition, OUSD may terminate this Agreement in its entirety or any SOW individually for any reason upon thirty 30 days' prior written notice to Spartan; Spartan may

terminate this Agreement in its entirety or any SOW individually for any reason upon 90 days' prior written notice to OUSD.

4.2. Survival. Following any expiration or termination of this Agreement for any reason, any accrued obligations shall survive, as well as the following provisions of this Agreement: Sections 1.4, 2.1, 4.2, 6, 7, 8 and 9.

5. REPRESENTATIONS, WARRANTIES AND COVENANTS

5.1. Corporate Action. Each party represents and warrants to the other party that (a) it is a corporation or government entity duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, (b) the execution and delivery of this Agreement has been authorized by all requisite corporate action, and (c) this Agreement is and shall remain a valid and binding obligation of such party, enforceable in accordance with its terms. Spartan represents and warrants it has all requisite corporate power to own and operate its properties and assets and to carry on its business as presently being conducted and as proposed to be conducted.

5.2. No Conflict. Spartan represents and warrants that Spartan is not a party to, and during the Term will not enter into, any agreement, arrangement, or understanding that conflicts with is inconsistent with Spartan's execution of this Agreement, obligations under this Agreement, performance of the Services, or OUSD's rights hereunder, and will ensure that any Professional it contracts with complies with the same. Further, Spartan represents and warrants that (a) the performance of the Services does not and will not breach any agreement that obligates Spartan to keep in confidence any confidential or proprietary information of any third party, or infringe or otherwise violate any patent, trade secret or other intellectual property, proprietary or other right of any third party, and (b) Spartan will ensure that each Professional complies with the foregoing.

5.3. Industry Standards; Compliance with Law. Spartan represents and warrants that that it shall perform the Services in a professional and workmanlike manner consistent with industry standards.

5.4. Non-Solicitation. Spartan shall not, and shall use reasonable best efforts to cause its agents not to solicit, knowingly encourage, discuss or negotiate with any of OUSD's customers regarding providing goods or services that are substantially similar to the subject matter of this Agreement and the SOW. Notwithstanding the foregoing, Spartan may respond to a bona fide business proposal from a customer and engage with such customer if such business proposal was not obtained in breach of this subsection. Parties agree that irreparable damage for which monetary damages, even if available, would not be an adequate remedy, would occur in the event that Spartan breaches the covenants contained in this subsection and OUSD shall be entitled to an injunction or injunctions, or other equitable relief to remedy such breach.

5.5. Compliance.

(a) Applicable Laws. Spartan represents, warrants and covenants that Spartan will: (i) comply, in all material respects, with all federal, state and local laws, rules, regulations and orders applicable to (A) its operations and the Services, (B) the use and handling of Materials (as defined below), and (C) the security, privacy, collection, maintenance, storage, dissemination, distribution, processing, transmission or use of personal or health information, and making the same available or accessible by any means; and (ii) take commercially reasonable measures to (A) to ensure the protection, integrity and confidentiality of OUSD's client patient information in its possession or control, (B) to protect against unauthorized use or disclosure of such information, and (C) to prevent the loss, destruction or unauthorized alteration of such information. Spartan agrees to complete any forms and provide any documentation evidencing its compliance with applicable laws, rules, regulations and orders, as reasonably requested by OUSD on its own behalf or on behalf of its contractors or customers. Spartan will ensure that any Professional it contracts with complies with the foregoing.

(b) Regulatory Contacts. Spartan will notify OUSD immediately in writing, and in no event later than one (1) day, after: (i) Spartan receives any contact or communication from any regulatory authority relating in any way to the Services and will provide OUSD with copies of any such communication within one (1) day of receipt of such communication by Spartan; or (ii) any actual or notified inspection by a regulatory authority relating in any way to the Services, and Spartan will permit OUSD to have a representative present during any such inspection. Spartan will consult with OUSD regarding the response to any inquiry or observation from, or inspection by, any regulatory authority relating in any way to the Services and will allow OUSD at its discretion to control and/or participate in any further contacts or communications relating to the Services. Spartan will comply with all reasonable requests and comments by OUSD with respect to all contacts and communications with, and inspections by, any regulatory authority relating in any way to the Services.

(c) Federal and State Program Eligibility. Spartan represents and warrants that neither it nor any of its employees (including any Professional) or agents has been or currently is under investigation for any violations of the various provisions or laws governing Medicare, Medicaid, any federally funded health care benefit program or any private health care benefit program which could lead to exclusion from such programs; and neither it nor any of its employees (including any Professional) or agents has ever been: (i) convicted of (A) any offense related to the delivery of an item or service under Medicare, Medicaid, any private health care benefit program or any federally funded program, (B) a criminal offense relating to neglect or abuse of patients in connection with the delivery of a health care item or service, (C) fraud, theft, embezzlement, or other financial misconduct in connection with the delivery of a health care item or service, (D) obstructing an investigation of any crime referred to in (A), (B) or (C) above, or (E) unlawful manufacture, distribution, prescription or dispensing of a controlled substance; (ii) required to pay any civil monetary penalty regarding false, fraudulent or impermissible claims under, or payment to induce a reduction or limitation of health care services to beneficiaries of, any state, federal or private health care benefit program; (iii) excluded from participation in Medicare, Medicaid, any private health care benefit program or any other federally funded program; (iv) excluded, suspended, or debarred from doing business with the U.S. Federal Government as indicated on the System for Award Management published by the General Services Administration; or (v) debarred under 21 U.S.C. § 335a. Spartan agrees to notify OUSD immediately if Spartan or any of its employees (including any Professional) or agents becomes subject to one or more of the foregoing, or if any action, suit, claim, investigation or proceeding relating to the foregoing is pending, or to the best of Spartan's knowledge, is threatened.

6. INTELLECTUAL PROPERTY; OWNERSHIP

6.1. Materials. The parties agree, and shall at all times recognize, the validity of any and all intellectual property of the other party, including trademarks, trade names, service marks, icons, RSS feeds and copyrighted materials (collectively, "IP") of such other party and the ownership thereof by such other party and shall not at any time put in issue or contest, either directly or indirectly, the validity or ownership of such IP. In addition, nothing in this Agreement shall give either party any interest in any IP or in any design of the other party used in connection therewith. As between the parties, all (a) human specimens or samples (including saliva and nasopharyngeal samples) collected by or from patients or otherwise handled by Spartan or any Professional in connection with the Services ("Samples"), (b) documentation, information (including genetic information), and biological, chemical, and other materials owned or controlled by OUSD and furnished to Spartan or any Professional by or on behalf of OUSD, and (c) reports, summaries and other deliverables that OUSD requests Spartan or any Professional to complete (including any summary reports), or that Spartan or any Professional otherwise provides to OUSD, after rendering the Services and any and all information therein ((a)-(c), collectively, "Materials"), and all associated intellectual property rights, shall be and will remain the exclusive property of OUSD. Spartan will use, and will ensure that Professionals use, Materials only as necessary to perform the Services and will not use or evaluate such Materials or any portions thereof for any other purpose except as directed or permitted in

writing by OUSD. Spartan agrees that it will not, and will ensure that its Professionals do not, analyze any Materials or transfer or make Materials available to third parties without OUSD's prior written consent.

6.2. Work. Spartan acknowledges and agrees that all work performed in connection with or related to the Services is the sole and exclusive property of OUSD and, under all circumstances, all title thereto shall remain solely and exclusively in OUSD. To the extent the Services include any of Spartan's proprietary property, Spartan hereby grants to OUSD without restriction or further payment with respect thereto, a perpetual, world-wide, non-exclusive, irrevocable and royalty-free license to use such proprietary property solely in connection with the Services and OUSD's activities hereunder. This Section 6.2 shall apply equally to all Spartan employees (including Professionals), and Spartan shall cause its employees (including Professionals) to comply with its terms.

7. CONFIDENTIALITY

7.1. Confidential Information. "**Confidential Information**" means all scientific, technical, financial, business, personal or other information, data, materials (including Materials) or trade secrets, whether or not labeled "confidential," that are (a) owned, possessed, controlled or used by OUSD or any of its contractors, customers or their patients and made available to or observed by Spartan, or (b) developed or generated by Spartan in connection with the Services, including (i) deliverables, scientific and medical data and protocols, (ii) development and marketing plans, regulatory and business strategies, financial information, and forecasts of OUSD, and (iii) all information of OUSD's contractors, customers, their patients or other third parties that OUSD has an obligation to keep confidential; provided however, that Confidential Information shall not include information that, as documented by prior or contemporaneous written records (A) prior to disclosure by or on behalf of OUSD, was in the public domain, (B) following disclosure hereunder, enters the public domain not due to any unauthorized act or omission on the part of Spartan, its affiliates, subcontractors or their representatives, or (C) prior to disclosure by or on behalf of OUSD, was in the rightful possession of Spartan without a duty of confidentiality. Confidential Information shall include the Materials and Samples, notwithstanding the foregoing exceptions.

7.2. Use and Disclosure. Spartan shall not, without the prior written consent of OUSD, use Confidential Information other than for purposes of performing Services under this Agreement. Except as otherwise expressly set forth in this Agreement, Spartan shall not, without the prior written consent of OUSD, disclose any of the Confidential Information to any other person or entity other than to those officers, directors, employees (including Professionals), agents and consultants who (a) have a need to know such Confidential Information in order to fulfill Spartan's obligations under this Agreement, and (b) are bound by obligations of confidentiality and non-use at least as restrictive as those set forth in this Section 7.2 (and all acts and omissions of the foregoing persons or entities will be deemed to be those of Spartan and Spartan shall be responsible therefor). Spartan shall implement procedures and take steps to prevent any unauthorized disclosure or use of any Confidential Information in the same manner as it would to protect its own Confidential Information of a similar nature, which shall in no event be less than reasonable. If so requested by OUSD, Spartan will require Professionals to execute confidential agreements consistent with the terms of this Section 7.2.

7.3. Disclosure Required by Law. Notwithstanding any provision in this Agreement to the contrary, Spartan may disclose Confidential Information to the extent it is required to do so by any governmental or regulatory authority or court. In such event, Spartan shall promptly notify OUSD when such requirement to disclose has arisen, and cooperate with OUSD so as to enable OUSD to seek an appropriate protective order or otherwise quash any order or subpoena requiring production of the Confidential Information. If Spartan is nonetheless compelled by a governmental or regulatory authority or court to disclose Confidential Information, it shall limit such disclosure to only that Confidential Information that is required to be disclosed, and shall continue to treat such information as Confidential Information for all other purposes.

7.4. Return or Destruction; Injunctive Relief. Upon termination or expiration of this Agreement, or at any other time upon the request of OUSD, Spartan shall, as requested by OUSD, promptly return to OUSD, or destroy, all of the Confidential Information in its possession or control. Spartan acknowledges that money damages alone shall not adequately compensate OUSD for breach of any of Spartan's obligations under this Section 7 and, therefore, agrees that in the event of any breach or threatened breach of any such obligation, in addition to all other remedies available to OUSD, at law, in equity or otherwise, OUSD shall be entitled to injunctive relief, specific performance or other equitable relief, without the necessity of posting any bond or other security.

8. COVID-19 SAFETY PROVISIONS

8.1. Spartan agrees to notify OUSD in accordance with Section 10.6 if any Professional who reported to an OUSD location tests positive for COVID-19, and shall cooperate fully with OUSD in any of OUSD's contact tracing efforts.

8.2. Spartan agrees to immediately adhere to and follow any OUSD directives regards health and safety protocols including, but not limited to, complying with any OUSD testing and vaccination requirements.

8.3. Spartan shall bear all costs of compliance with this Paragraph, including but not limited to those imposed by this Agreement.

9. INDEMNIFICATION

9.1. Indemnification by Spartan. Spartan agrees to indemnify, defend and hold harmless OUSD, its parent and affiliates and their respective directors, officers, employees and agents (each, a "**OUSD Party**") and, collectively, the "**OUSD Parties**") from and against any and all losses, claims, actions, damages, liabilities, costs, and expenses, (including reasonable attorneys' fees and litigation costs; collectively, "**Losses**") which may be asserted against them by third parties to the extent a result of or arising out of (a) gross negligence or willful misconduct of Spartan, its directors, officers, employees (including Professionals) or agents (each, a "**Spartan Party**") and, collectively, the "**Spartan Parties**"), (b) material breach of this Agreement by any Spartan Party, (c) violation of or failure to comply with any law, rule, regulation or order applicable to the Services or Professionals by any Spartan Party, (d) material noncompliance with the Instructions, or (e) any claim, allegation or assertion that OUSD or any of its affiliates is an employer, joint employer or co-employer of any Professional, or is jointly, severally or secondarily liable for the acts or omissions of Spartan with respect to Spartan's employees (including Professionals).

9.2. Indemnification by OUSD. OUSD agrees to indemnify, defend and hold harmless the Spartan Parties from and against any and all Losses which may be asserted against them by third parties to the extent a result of or arising out of (a) gross negligence or willful misconduct of any OUSD Party or (b) material violation of any law, rule, regulation or order applicable to the Services by any OUSD Party.

9.3. Indemnification Process. To receive indemnification from a party providing indemnification (the "**Indemnifying Party**"), a party seeking indemnification (the "**Indemnitee**") hereunder must: (a) notify the Indemnifying Party promptly of the assertion of any such claims against him/her/it (an "**Indemnifiable Claim**"), provided that any delay by the Indemnitee in giving notice to the Indemnifying Party of an Indemnifiable Claim shall not affect the Indemnitee's right to be indemnified for such Indemnifiable Claim except to the extent that the Indemnifying Party is actually prejudiced in its ability to defend against such Indemnifiable Claim; (b) authorize and permit the Indemnifying Party to conduct and exercise control of the defense and disposition of such claims; provided, however, that the Indemnifying Party agrees (i) to use counsel reasonably satisfactory to the Indemnitee, (ii) to permit the Indemnitee to participate in the defense of the claim using counsel of its choice, and (iii) not to enter into

any settlement or compromise of any claim or action in a manner that admits fault or imposes any restrictions or obligations upon an Indemnitee without that Indemnitee's prior written consent, which shall not be unreasonably withheld; and (c) cooperate in all reasonable ways with the Indemnifying Party.

9.4. Disclaimer of Indirect Damages. EXCEPT FOR EACH PARTY'S INDEMNIFICATION OBLIGATIONS OR BREACH OF ITS CONFIDENTIALITY RESTRICTIONS HEREIN, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THE SERVICES OR THIS AGREEMENT, WHETHER SUCH DAMAGES ARISE IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OR IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES.

10. MISCELLANEOUS

10.1. Insurance. Spartan will maintain, at its sole expense, any insurance coverage required by applicable law as well as adequate insurance to cover any actions, errors or omissions related to its or its Professionals' performance of the Services and its indemnification obligations hereunder. Without limiting the generality of the foregoing, Spartan will maintain: (a) valid policies of insurance evidencing commercial general and professional liability coverage of not less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate, covering the acts and omissions of Spartan and its employees (including Professionals) which may give rise to liability for services provided under this Agreement; and (b) workers' compensation coverage, with statutory limits, covering all employees (including Professionals), in each applicable state for which Spartan's employees (including Professionals) reside or work. Spartan will provide a certificate of insurance evidencing such coverages upon request by OUSD. In addition, Spartan will use best efforts to update or obtain policies or coverages to the extent necessary to comply with the requirements of OUSD's customers for whom Spartan or Professionals are providing Services.

10.2. HIPAA and Confidentiality of Patient Information. The parties acknowledge and agree that (a) OUSD is not a Covered Entity (as defined by in the Health Insurance Portability and Accountability Act of 1996, as amended, and its accompanying regulations at 45 CFR Parts 160 and 164 ("HIPAA")), (b) Spartan is not acting on OUSD's behalf as a Business Associate (as defined in HIPAA), and (c) neither party shall engage the other party, any Professional, or any OUSD contractor or customer, in any "standard transaction" (as defined in HIPAA). Without limiting the foregoing, in performing its obligations hereunder, Spartan shall not, and shall not permit any third party to: (i) process health information electronically as a "standard transaction"; (ii) represent itself as a Business Associate or sign any business associate agreement with a Covered Entity in connection with the processing of health information under this Agreement; or (iii) take any other action or sign any other agreement that may result in Spartan or OUSD becoming a Covered Entity or a Business Associate.

10.3. Customer-Driven Requirements. Spartan understands and acknowledges that OUSD's customers include state and local governments, public school systems and other public and educational institutions and organizations, and that each customer may impose compliance obligations or requirements on OUSD and its subcontractors. Accordingly, Spartan agrees that it will (a) use best efforts to comply with or accommodate any compliance or other requirements imposed by any customer of OUSD for whom Spartan or any Professional provides Services hereunder and (b) cooperate with OUSD in connection therewith.

10.4. Use of Name. OUSD may use Spartan's name and logo solely for purposes of (a) disclosing to its customers, potential customers, governmental authorities and third party service providers that Spartan or any Professional is providing Services for OUSD and (b) providing a summary of the Services rendered thereby. Except for the foregoing and as required by law or stock exchange rule, neither party may use the name or logo of the other party in any public announcement, advertising, promotional

material, press release or other public disclosure, or to otherwise publicize the execution of this Agreement, without the prior written consent of the other party.

10.5. Assignment. Neither this Agreement, nor any rights or obligations hereunder, may be assigned, otherwise transferred, or delegated by Spartan, in whole or in part, without the prior written consent of OUSD. OUSD may freely assign this Agreement, or assign, transfer or delegate any rights or obligations hereunder, in its sole discretion from time to time. This Agreement shall be binding upon, and inure to the benefit of, the parties and their respective successors and permitted assigns. Any assignment, transfer or delegation in violation of the above prohibitions in this paragraph shall be null and void.

10.6. Notices. All notices hereunder shall be in writing and will be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient, provided, however, that such electronic notice shall only constitute notice if notice sent via subclause (a), (b) or (d) is received within 5 business days thereafter; or (d) on the third (3rd) day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the applicable party at the following addresses (or at such other address for such party as will be specified in a notice given in accordance with this Section 10.6):

If to Spartan, to:

Spartan Medical, Inc.
1445 Research Blvd, Suite 520
Rockville, MD 20850

If to OUSD, to:

OUSD Office of the General Counsel
1000 Broadway, Suite 300
Oakland, CA 94607

10.7. Entire Agreement; Interpretation. This Agreement and the SOWs, and all appendices, schedules, attachments and exhibits hereto or thereto, sets forth the entire agreement and understanding of the parties hereto concerning the subject matter hereof and thereof, and supersedes all prior discussion, negotiations and agreements, whether oral or written. Unless otherwise set forth herein for specific instances, use of the words “include”, “includes” and “including” herein shall not be limiting, and “or” shall not be exclusive.

10.8. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Maryland, without regard to any principles of conflicts of laws that would apply another law. All litigation arising from or relating to this Agreement shall be filed and prosecuted before any court of competent subject matter jurisdiction in the State of Maryland.

10.9. Severability. Each and every provision set forth in this Agreement is independent and severable from the others, and no provision shall be rendered unenforceable by virtue of the fact that, for any reason, any other provision may be invalid or unenforceable in whole or in part. If any provision of this Agreement is invalid or unenforceable for any reason whatsoever, that provision shall be appropriately limited and reformed so as to be retained or enforceable to the maximum extent provided by applicable law. In the event any provision of this Agreement is required to be limited or reformed under this paragraph, the parties shall make good faith effort to amend this Agreement to replace any such invalid or unenforceable

provision and to reform this Agreement in such a way that the objectives contemplated by the parties when entering into this Agreement may be realized.

10.10. Amendments; Waiver. This Agreement may be modified only by a writing signed by authorized representatives of both parties. No waiver of any provision of this Agreement (whether by conduct or otherwise) in any one or more instances shall be deemed to be or construed as a further or continuing waiver of any such provision, or of any other provision.

10.11. Counterparts. This Agreement may be executed in any number of counterparts (which may be delivered via .pdf or other format acceptable to both parties), each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument. The parties acknowledge and agree that the exchange of electronic signatures shall have the same legal validity as the parties' signatures would have if signed in hard copy form.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the Effective Date.

OAKLAND UNIFIED SCHOOL DISTRICT

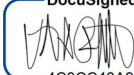
Signature: _____

Printed Name:

Title:

Date:

SPARTAN MEDICAL, INC.

DocuSigned by:

Signature: _____
4C3CC43A924547B

Printed Name: Vincent Proffitt

Title: President

Date: August 25, 2021

Approved as to form by OUSD Staff
Attorney Joanna Powell on 9/20/21.

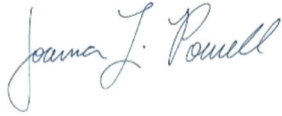


EXHIBIT A

Spartan will comply the requirements of this Exhibit A with respect to background checks and drug screens it performs as required under Section 2.3 of the Agreement. Spartan will perform the following background checks and screens:

- Criminal records search in a database with national coverage
- Criminal records search in a database covering the state where the Customer Site is located
- Department of motor vehicle search
- Sex Offender Registry search
- Drug screening, at request

EXHIBIT B

Initial SOW

Spartan will provide site coordinators or medical staff (“Professionals”) at each customer site designated by OUSD. Such Professional will assist with OUSD’s testing program to be conducted at such customer site. Spartan Medical is equipped to establish and operate test sites that offer: PCR tests, Antigen Rapid tests, Pooled tests.

Staff Required

- OUSD will identify a list of schools tiered by priority (including addresses), target date for start of testing at each priority level, and type of test to be conducted.
- Spartan Medical will need a minimum of ten (10) days to recruit staff for a school testing site. If Spartan Medical is unable to provide the minimum staffing requirements of two clinicians, OUSD can decide to push the start-date for testing to the following week.
- At least forty-eight (48) hours before the target date for start of testing, Spartan will provide a guaranteed minimum number of testers who will be available, including their assignments and contact information.
- Testing shall be conducted by a Testing Team consisting of a minimum of two (2) Professionals per location/per day, unless otherwise requested by OUSD or customer, as applicable, in writing.
- A single Testing Team may be asked to attend up to 3 sites in a day. Spartan shall be responsible for scheduling Professionals’ shifts appropriately to allow the necessary number of Professionals to attend multiple sites, based on a daily schedule set by OUSD.

Services and Responsibilities

To prepare for testing preparation day, Spartan will:

In collaboration with OUSD Central Office staff, assist with the testing onboarding process by, without limitation, registering testing site locations, confirming testing kits and supplies have been ordered, requesting access to lab’s portal and registering collected samples (for PCR and/or Pooled testing) and processing results at testing site (Antigen Rapid).

On a testing day, a Professional will

Before testing

- Conduct a walk-through of testing site, including locations where testing will take place, where tests are stored, and where materials should be disposed of;
- Confirm all registrations and consents for test participants have been captured and uploaded into OUSD’s digital portal (Primary, or other system, as specified by OUSD) or in paper format at the test site for all testers;
- Manage test day setup, including, without limitation, by answering questions regarding the test day logistics and the testing process,
- Arrive on time to testing locations with adequate PPE, including gloves, hand sanitizer, and masks, and with fully-charged devices for test registration and data entry;
- Help customer determine where the test center should be located in the customer’s premise;
- Help customer develop a plan to ensure the safety of test takers and administrators; and
- Coordinate and communicate with the district /school contacts designated to oversee testing process;

During testing

- Assist with swabbing test takers; and

- Issue and log each test sample using the tracking system or method developed by the site. Spartan shall ensure that the Professionals treat any personally identifiable information collected during the testing process as confidential, and will not copy, transmit or disclose such information in any manner;
- Ensure that each test taker's name, registration, consent, and date of birth are confirmed before testing and recording results;
- Treat all test takers with professionalism and respect;
- Flag any inconclusive tests in Primary (or appropriate system) for secondary review, or request secondary review with another Professional on site;
- Provide all equipment and technology needed to conduct testing, including but not limited to appropriate PPE such as gloves and masks, along with technology such as computers, laptops, or tablets. *NOTE: test site must provide access to Wi-Fi allowing Professionals to access lab's portal and upload information.*

After testing

- Lock/confirm all results in Primary, or other portal, as specified by OUSD;
- Scan or key in collected samples into lab's portal and pack up collected samples for Fedex, courier or any other shipping services for shipping samples to laboratory for processing;
- Dispose of any used materials properly, clean up the testing area and notify customer that testing has concluded;
- Assist and provide guidance with testing, including, without limitation, creating a plan for confirmatory PCR testing or Antigen Rapid testing at the customer's direction and helping the customer set up accounts for individual test takers in OUSD's digital portal and capturing Antigen test results;
- OUSD shall, however, provide internet access, providing Spartan Medical with access to each school's Wi-Fi.

Invoicing

- Bi-weekly, net 30
- Spartan shall issue an invoice to OUSD promptly within 4 days after the the end of each two-week period.
- Every month, Spartan shall provide OUSD with an excel spreadsheet, which shall set forth:
 - Name of OUSD schools at which Spartan is providing services
 - Date and location of services provided
 - Name of the Professional providing services
 - Hours worked by such Professional
 - Hourly rate of such Professional,
 - Net payment due in connection with services provided to a given customer, and
 - All such relevant information as OUSD may reasonably request in order for OUSD to verify amounts payable to Spartan.

Pricing

Hourly Rate of Professional by Qualification

- Registered Nurse (RN) - \$102.50
- Licensed Practical Nurse (LPN) - \$85.00/hour
- Certified Nurse Assistant (CNA) / Medical Assistant (MA) - \$58.00/hour

The total not-to-exceed amount under this contract for its one-year term shall be \$3,672,000.

Miscellaneous

- OUSD shall engage a Professional for a minimum of 6 hours per day based on agreed upon hourly rate for LPN, CNA, MA, and if requested, RN.
- The rates set forth above shall be all inclusive, except as expressly agreed upon in the Agreement or in writing. For avoidance of doubt, Spartan is responsible for providing onsite Professionals with personal protective equipment as it may deem necessary or as required by applicable public health guidelines.