

# Agenda of Special Meeting

## The Board of Trustees Splendora ISD

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A Special meeting of the Board of Trustees of Splendora ISD will be held May 28, 2024, beginning at 5:00 PM in the Administration Building Boardroom, 23419 FM 2090, Splendora, Texas 77372.

The subjects to be discussed or considered or upon which any formal action may be taken are as listed below. Items do not have to be taken in the order shown on this meeting notice.

Unless removed from the consent agenda, items identified within the consent agenda will be acted on at one time.

1. ROLL CALL
2. INVOCATION
3. U.S. & STATE OF TEXAS PLEDGE OF ALLEGIANCES
4. GOOD THINGS
5. AUDIENCE
6. ACTION ITEM(S)
  - A. Discussion and Possible Action to Approve the School Building Bond Consulting Agreement 3
7. WORKSHOP
  - A. Budget
8. CLOSED SESSION ITEM(S)
  - A. Personnel - Section 551.074
    1. Superintendent Evaluation
9. POSSIBLE ACTION ARISING FROM CLOSED SESSION
10. ADJOURN

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*If, during the course of the meeting, discussion of any item on the agenda should be held in a closed meeting, the Board will conduct a closed meeting in accordance with the Texas Open Meetings Act, Government Code, Chapter 551, Subchapters D and E. Before any closed meeting is convened, the presiding officer will publicly identify the section or sections of the Act authorizing the closed meeting. All final votes, actions, or decisions will be taken in open meeting.*

The notice for this meeting was posted in compliance with the Texas Open Meeting Act on \_\_\_\_\_, at \_\_\_\_\_

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For the Board of Trustees



**Splendoria ISD Board of Trustees  
Agenda Item Information Form**

**Board Meeting Date: May 28, 2024**

**Submitted Date: May 24, 2024**

**Agenda Business Items:**

- Consent Agenda Item  
(Board has acted on items such as this previously)
- New Action  
(Board has not seen information previously and allows for more time to discuss)

**Information Only Items:**

- Presentation
- Recognition
- Information

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Name of Person Responsible:

Dr. Burke

Department or Campus:

Operations

Topic:

Contracted Services for Bond Projects and Construction

Background Information:

The district is currently in the construction phase of our 2022 Bond. The District would like to consider hiring Lynch'd Facility Solutions for continuity of current Bond projects and construction.

(We are currently waiting on Exhibit C)

Attachments:

[School Building Bond Consulting Agreement](#)

Superintendent's Resolutions: The District recommends hiring Lynch'd Facility Solutions to manage our Bond Projects and construction.

## **AGREEMENT FOR SCHOOL BUILDING BOND CONSULTANT**

This Agreement is made and entered into by and between the **Splendora Independent School District** (“District” or “Owner”), an Independent School District and political subdivision of the State of Texas and **Lynch'd Facility Solutions, LLC** (“Consultant”), both of which may be referred to herein collectively as the “Parties,” whereby Consultant shall provide professional services for the below identified projects in the Splendora Independent School District (“Professional Services” or “Services”). This Agreement is made pursuant to scope of services proposal submitted by Consultant to District (“Proposal”), Attachment B, which is incorporated herein. In the event of any conflict between the Proposal and this Agreement, this Agreement shall control.

### **I. PERIOD OF SERVICE**

1.1 This Agreement shall take effect upon execution by both Parties and continue in full force and effect for a period of one year from the effective date, unless terminated sooner pursuant to the terms herein. The administration of the District is authorized to enter into two additional one-year renewal terms, subject to mutual agreement by Consultant.

### **II. NON-EXCLUSIVE**

2.1 This Agreement is non-exclusive, and the District may enter agreements with other service providers and contractors related to the Project (defined below).

### **III. SCOPE OF SERVICES**

3.1 Consultant, in consideration for the compensation herein provided, shall render the Services in connection with the District’s bond program and any other construction and related projects listed on the Project and Payment Schedule, attached hereto as Exhibit C and incorporated herein, or as may be identified in writing by the District’s Superintendent from time to time during the term of the Agreement (the “Project”).

3.2 Consultant’s role in connection with the provision of Professional Services shall be to act as one of the District’s consultants to provide the required Services related to the scope of work listed in the Proposal to help ensure the successful facilitation and completion of the Project. The District shall provide relevant program information to the Consultant, and Consultant shall comply with any such program requirements provided by the Owner and accepted by Consultant.

3.3 Persons retained by Consultant to perform work pursuant to this Agreement shall be employees or subcontractors of Consultant.

3.4 Consultant shall complete all Services in compliance with this Agreement, in a timely fashion consistent with the construction schedule and agrees to staff the Project with sufficient and sufficiently qualified personnel in order not to delay or disrupt the progress of the Project.

3.5 Services will be performed in accordance with instructions of the District's Project representative. Reports will be written for each day Consultant provides Services, unless the District's Project representative specifies otherwise.

#### **IV. COORDINATION WITH THE DISTRICT**

4.1 Consultant shall hold periodic conferences with District's representative, so that the Project, as developed, will have the full benefit of District's experience and knowledge of existing needs and facilities and be consistent with the District's current policies and standards. Conferences shall be held at the District's request. The District may make available for Consultant's use, all existing plans, maps, field notes, statistics, computations, and other data in its possession relative to existing facilities and to a particular Project as may be requested by Consultant and approved by the District at no cost to Consultant but does not warrant the accuracy of such documents.

4.2 Consultant shall complete all Services and furnish all required data compiled by Consultant for District's use as may be necessary for completion of the Project.

#### **V. COMPENSATION**

5.1 For and in consideration of the Services to be rendered by Consultant, District shall pay Consultant a fee as set forth in Exhibit "C". Nothing contained in this Agreement shall require District to pay for any work not performed in accordance with the terms of this Agreement. The District shall not be required to make any payments to Consultant at any time Consultant is in default under this Agreement.

5.2 Basis for Compensation and Invoicing. While work is in progress, Consultant will submit invoices monthly for work performed and completed which has not been included on previous invoices. Payment of invoices shall be due and payable upon the later to occur of the deadline in the Texas Prompt Payment Act or thirty (30) days after the District representative's receipt of Consultant's invoice for Services. Interest may accrue on overdue balances in accordance with the provisions of the Texas Prompt Payment Act. Payments will be based upon the fees as set forth in the Proposal.

5.2 Compensation for Additional Professional Services. Compensation for additional services ("Additional Services") shall be subject to prior approval of the District. Should Consultant be directed in writing by District's representative to perform Additional Services, compensation shall be paid by District to Consultant as authorized in writing by District's representative in accordance with the fee agreed to in advance and in writing.

#### **VI. OWNERSHIP AND RETENTION OF DOCUMENTS AND ACCESS TO LAB RESULTS**

6.1 Upon completion or termination of the Project, or upon request by the District, all documents and information, in whatever form, given to, prepared or assembled by the Consultant in connection with its performance of its duties under this Agreement shall become the sole property of the District and shall be delivered at no cost to the District. The District shall assume

all risk and release Consultant from liability for the use of any documents, as relevant, that are not sealed and signed or designated as final. Additionally, any modifications or reuse of any documents or information without the written verification or adaptation by the Consultant for the specific intended purpose shall be without liability or legal exposure to the Consultant. Documents and information covered by this paragraph shall include, but not be limited to, reports, test results, field notes and other data. The District shall have free and immediate access to all such information at all times during the term of this Agreement with the right to make and retain copies of documents, notes and data, whether or not the Project has been completed. Prior to surrender of the documents and information, Consultant may make copies of any and all documents for its files, at its sole cost and expense. Neither the Consultant nor any other consultant or professional or employee of the Consultant shall own or claim any right in any documents, information, or reports created pursuant to this Agreement. Consultant hereby confirms the District shall own all right, title, interest in and to, including the right to use, reproduce, and display publicly any document and information, in whatever form, created pursuant to this Agreement and that all such documents and information are prepared as a "Work for Hire". To any extent such documents and information are not the property of the District, the Consultant hereby grants a permanent perpetual license to Owner for use of same, subject to the terms herein. The terms of this section survive the termination of this Agreement for any reason.

6.2 The Consultant agrees to maintain all books, records and reports required under this Agreement for a period of not less than seven (7) years after final payment is made and all pending matters are closed, unless required to do so for a longer time period under the terms herein.

6.3 In addition, the Consultant shall maintain an acceptable cost accounting system during the term of this Agreement. The Consultant agrees to provide the District, or any of their duly authorized representatives, access to any books, documents, papers and records of the Contractor which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcriptions.

6.4 Consultant shall notify District, immediately, in the event Consultant receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Consultant understands and agrees that the District will process and handle all such requests.

## **VII. TERMINATION OF AGREEMENT**

### **7.1 Termination Without Cause.**

7.1.1 This Agreement may be terminated by the District at any time for the District's convenience upon written notice by the District. Upon receipt of such notice, Services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this Agreement, whether completed or in progress, delivered to the District. The Consultant shall bill and be compensated for all undisputed work accomplished up until the date of termination, except as provided in Section 7.1.2.

7.1.2 Consultant shall not be entitled to lost or anticipated profit on unperformed Services, should District choose to exercise its option to terminate without cause, nor shall

Consultant be entitled to compensation for any unnecessary or unapproved work performed during time between the issuance of the District's notice of termination and the actual termination date.

7.1.3 The rights and remedies of the District provided in this clause are in addition to any other rights and remedies provided by law or under this Agreement.

7.2 Termination for Cause. Upon the occurrence of one (1) or more of the following events, and following written notice to Consultant given in accordance with the notice provisions contained in this Agreement, the District may terminate this Agreement, in whole or in part, "for cause" if Consultant fails to cure after thirty (30) days written notice by District:

a. Consultant makes, directly or indirectly through its employees or representatives, any misrepresentation or provides any misleading information to District in connection with this Agreement or its performance hereunder; or

b. Consultant violates or fails to perform any covenant, provision, obligation, term or condition contained in this Agreement; or

c. Consultant fails to cure, or initiate steps reasonably calculated to cure, a default as required by this Agreement, within the time period required for cure; or

d. Consultant violates any rule, regulation or law to which Consultant is bound or shall be bound under the terms of this Agreement; or

e. Consultant attempts the sale, transfer, pledge, conveyance or assignment of this Agreement contrary to the terms of this Agreement; or

f. Consultant ceases to do business as a going concern; makes an assignment for the benefit of creditors; admits in writing its inability to pay debts as they become due; files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this Agreement shall continue) and such petition is not dismissed within forty-five (45) days of filing; or if a receiver, trustee or liquidator is appointed for it, or its joint venture entity, or any substantial part of Consultant's assets or properties; or

g. Any other material breach of this Agreement by the Consultant.

7.2.1 Upon termination for cause, the District may take over the work and prosecute the same to completion by contract or otherwise. In such case, the Consultant shall be liable to the District for any additional cost occasioned to the District thereby. The District shall also have the right to offset the cost of said new agreement with a new Consultant against Consultant's future or unpaid invoice(s), subject to any statutory or legal duty, if any, on the part of District to mitigate its losses.

7.2.2 If, after notice of termination for cause, it is determined that the Consultant had not so failed, the termination shall be deemed to have been effected for the convenience of the District.

In such event, an equitable adjustment in the amount owed, if any, shall be made consistent with Paragraph 7.1 of this Article.

7.2.3 The rights and remedies of the District provided in this clause are in addition to any other rights and remedies provided by law or under this Agreement.

7.3 Termination by Consultant for Cause. Consultant may move to terminate this Agreement for cause if the District fails to cure any event of default below within 30 days of receipt of notice from Consultant formally stating the event of default. Events of default for the District are:

7.3.1 Failure to pay valid amounts authorized in this Agreement for Services performed without errors, omissions, or defects on time and documented with appropriate written records of the Services; or

7.3.2 Requests for Services or methods that are prohibited under law; or

7.3.3 Failure to provide construction documents necessary to perform the Services if such documents exist and are in the possession of the District and if the provision of these documents would not violate law or any of the District's contractual obligations; or

7.3.4 Any other material breach of this Agreement by the District.

7.4 Orderly Transfer Following Termination. Regardless of how this Agreement is terminated, Consultant shall effect an orderly transfer to the District or to such person(s) or firm(s) as the District may designate, at no additional cost to District. Upon the effective date of expiration or termination of this Agreement, Consultant shall cease all operations of work being performed by Consultant, or any of its subcontractors, pursuant to this Agreement. All completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced, or provided to Consultant, in connection with the Services rendered by Consultant under this Agreement, regardless of storage medium, shall be transferred to the District. Such record transfer shall be completed within thirty (30) calendar days of the termination date and shall be completed at Consultant's sole cost and expense. Payment of compensation due or to become due to Consultant is conditioned upon delivery of all such documents. The District shall assume all risk and release Consultant from liability for the use of any documents, as relevant, that are not sealed and signed or designated as final

7.5 Claims for Outstanding Fees. Within forty-five (45) calendar days of the effective date of completion, or termination, or expiration of this Agreement, Consultant shall submit to the District its claims, in detail, for the monies owed by the District for Services performed under this Agreement through the effective date of termination.

7.6 Termination Not Sole Remedy. In no event shall the District's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of the District's remedies, nor shall such termination limit, in any way, at law or at equity, the District's right to seek damages from or otherwise pursue Consultant for any default hereunder or other action.

## VIII. SUSPENSION OF WORK UNDER AGREEMENT

8.1 Right of District to Suspend. The District may suspend work for any reason, with or without cause, upon the issuance of written Notice of Suspension in accordance with the Notice provisions contained in this Agreement. Such suspension shall take effect upon the date specified in such notice; provided, however, such date shall not be earlier than the tenth (10th) day following receipt by Consultant of said notice.

8.2 Consultant's Right to Terminate in Event of Suspension. In the event such suspension exceeds one hundred and twenty (120) calendar days, Consultant shall have the right to terminate this Agreement. Consultant may exercise this right to terminate by issuing a written Notice of Termination to the District, delivered in accordance with the Notice provisions contained in this Agreement after the expiration of one hundred and twenty (120) calendar days from the effective date of the suspension. Termination pursuant to this paragraph shall become effective immediately upon receipt of said written notice by District and such termination shall be subject to all the requirements set out in Article 7 above, related to the Orderly Transfer and fee Payment.

8.3 Procedures Upon Receipt of Notice of Suspensions.

8.3.1 Upon receipt of a notice of suspension and prior to the effective date of the suspension, Consultant shall, unless otherwise directed, immediately begin to phase-out and discontinue all Services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement.

8.3.2 Consultant shall prepare a statement showing in detail the Services performed under this Agreement prior to the effective date of suspension.

8.3.3 During the period of Suspension, Consultant shall have the option to at any time submit the above referenced statement to the District for payment of any unpaid portion of the prescribed fee for Services which have actually been performed to the benefit of the District under this Agreement, adjusted for any previous payments of the fee in question.

8.3.4 In the event Consultant exercises its right to terminate at any time after the effective Suspension date, Consultant shall submit, within forty-five (45) calendar days after receipt by the District of Consultant's notice of termination (if it has not previously done so) the above referenced statement showing in detail the Services performed under this Agreement prior to the effective date of suspension.

8.3.5 Upon the above conditions being met, the District's review of the submissions and finding the claimed compensation to be appropriate to the terms of this Agreement, the District shall pay Consultant that portion of the agreed prescribed fee for those as yet uncompensated Services actually performed under this Agreement to the benefit of the District, adjusted for any previous payments of the fee in question.

## **IX. INSURANCE REQUIREMENTS**

9.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish an original completed Certificate of Insurance to District's representative, which shall be clearly labeled with the Project name and which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon. The original certificate must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the District. The District shall have no duty to pay or perform under this Agreement until such certificate shall have been delivered to the District's representative, and no officer or employee shall have authority to waive this requirement.

9.2 Consultant's financial integrity is of interest to the District, therefore, subject to Consultant's right to maintain reasonable deductibles in such amounts as are approved by the District, Consultant shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Consultant's sole expense, insurance coverage written on an occurrence basis, except for professional liability, by companies authorized, approved or admitted to do business in the State of Texas and rated A-or better by A.M. Best Company and/or otherwise acceptable to the District, in the types and amounts listed on Attachment A or other supplement to this Agreement, or as may be required by law, whichever coverage is greater.

9.3 The District shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the District.

9.4 When there is a cancellation, non-renewal or material change in coverage which is not made pursuant to a request by the District, Consultant shall notify the District of such and shall give such notices not less than thirty (30) days prior to the change, if Consultant knows of said change in advance, or ten (10) days' notice after the change, if the Consultant did not know of the change in advance. In the event of cancellation or non-renewal, such notice must be accompanied by proof of equivalent replacement insurance in the form of a Certificate of Insurance. All notices under this Article shall be given to the District at the address provided in the Notice section of this Agreement.

9.8 If Consultant fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the District may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement; however, procuring of said insurance by the District is an alternative to other remedies the District may have, and is not the exclusive remedy for failure of Consultant to maintain said insurance or secure such endorsement. In addition to any other remedies the District may have upon Consultant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the District shall have the right to order Consultant to stop work hereunder, and/or withhold any payment(s) which become due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof. A stop work order given to Consultant by the District in accordance with this Article shall not constitute a Suspension of Work under this Agreement.

9.9 Nothing herein contained shall be construed as limiting in any way the extent to which Consultant may be held responsible for payments of damages to persons or property resulting from Consultant's or its subcontractors' performance of the work covered under this Agreement.

9.10 It is agreed that Consultant's insurance shall be deemed primary with respect to any insurance or self-insurance carried by the District for liability arising out of operations under this Agreement.

## **X. INDEMNIFICATION**

**10.1 CONSULTANT, WHOSE WORK PRODUCT IS THE SUBJECT OF THIS AGREEMENT FOR PROFESSIONAL SERVICES, AGREES TO INDEMNIFY AND HOLD THE DISTRICT, ITS OFFICERS AND EMPLOYEES, HARMLESS AGAINST CLAIMS, LAWSUITS, JUDGMENTS, COSTS, LIENS, LOSSES, EXPENSES, FEES (INCLUDING REASONABLE ATTORNEY'S FEES AND COSTS OF DEFENSE), PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE, OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES CAUSED BY A NEGLIGENT ACT, ERROR, OR OMISSION MADE BY CONSULTANT, OR CONSULTANT'S AGENT, OFFICER, EMPLOYEE, CONSULTANT OR SUBCONSULTANT AND THEIR RESPECTIVE OFFICERS, AND AGENTS, WHILE IN THE EXERCISE OF PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS AGREEMENT.**

10.2 The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of the District, its trustees, officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONSULTANT AND THE DISTRICT ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE DISTRICT UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

10.3 Consultant shall promptly advise the District, in writing, of any claim or demand against the District or Consultant known to Consultant related to or arising out of Consultant's Services under this Agreement.

10.4 The provisions of this section are solely for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

## **XI. CONSULTANT'S LIABILITY AND STANDARD OF CARE**

11.1 Services provided by Consultant under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Acceptance of reports or other documents by District shall not constitute nor be deemed a release of the responsibility and liability

of Consultant, its employees, associates, agents or subcontractors for the accuracy and competency of their testing, reports, assessments or other documents and work; nor shall such acceptance be deemed an assumption of responsibility or liability by District for any defect or error in testing, reports, or assessments and work performed by Consultant, its employees, subcontractors, and agents. Further, Consultant shall exercise the standard of care to perform the Services in accordance with all applicable federal, state, county, city, and/or other governmental entity statutes, rules, regulations, standards, codes and ordinances, as applicable. No pleas of misunderstanding will be considered on account of ignorance thereof.

## **XII. ASSIGNMENT OF RIGHTS OR DUTIES**

12.1 By entering into this Agreement, the District has approved the use of subcontractors, if any, identified in Consultant's Proposal. No further approval shall be needed for Consultant to use such subcontractors as are identified in Consultant's Proposal.

12.2 Except as otherwise required herein, Consultant may not sell, assign, pledge, transfer or convey any interest in this Agreement nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the prior written consent of the District. Services required by law to be performed by a licensed professional, or Services which, by law, require the supervision and approval of a licensed professional, may only be subcontracted upon the prior written approval of the District. Any other Services to be performed under this Agreement may be subcontracted upon the written approval of the District's representative. As a condition of consent, if same is given, Consultant shall remain liable for completion of the Services outlined in this Agreement in the event of default by the successor consultant, assignee, transferee or subcontractor. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the District in accordance with this Article.

## **XIII. INDEPENDENT CONTRACTOR**

13.1 Consultant covenants and agrees that it, along with any of its employees, offices, agents, volunteers, or contractors, is an independent contractor and not an officer, agent, servant, or employee of the District; that Consultant shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors; that the doctrine of respondent superior shall not apply as between the District and Consultant, its officers, agents, employees, contractors, and subcontractors, and nothing herein shall be construed as creating a partnership or joint enterprise between the District and Consultant. Consultant is also solely liable for wages and other payments to its employees, offices, agents, volunteers, or contractors.

## **XIV. NOTICES**

14.1 Unless otherwise expressly provided elsewhere in this Agreement, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or on receipt after mailing the same by certified mail, return receipt request with proper postage prepaid, or three (3) days after mailing the same by first class U.S. mail, postage prepaid (in

accordance with the “Mailbox Rule”), or when sent by a national commercial courier service such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, or when sent via email to the below addresses, respectively.

**If intended for District, to:**

Splendora ISD  
Attn: Dr. Jeffrey Burke, Superintendent  
and District Representative  
23419 FM 2090  
Splendora, TX 77372  
Email: [jburke@splendoraisd.org](mailto:jburke@splendoraisd.org)

**If intended for Consultant, to:**

Lynch'd Facility Solutions, LLC  
Attn: Kevin Lynch, Representative  
25840 Hickory Knoll Court  
Cleveland, TX 77328-6980  
Email: **NEED**

**XV. WORK ON SCHOOL DISTRICT PREMISES**

15.1 To the extent that the Services may, of necessity, be performed in connection with an educational facility which is currently occupied and in use, it is imperative that Consultant’s operations and the performance of the work not interfere with, interrupt, disturb, or disrupt the District’s normal operations or facilities. Consultant agrees to and shall comply with all rules, regulations and requirements of the District and the school campus on which the work is to be performed, and shall take all steps necessary to protect and guard the safety of the employees, students and invitees of the District. Consultant shall exercise customary skill and judgment to ensure that testing activities will not interfere with the use, occupancy and quiet enjoyment of facilities in use on the site. Consultant recognizes that the ongoing District activities in proximity with its activities shall result in the need for prompt and effective coordination of its Services with those involved in the ongoing utilization of the premises. Such coordination and adequate site access shall be the responsibility of Consultant. Consultant understands and accepts the difficulties and the cost associated with working in an existing facility and the potential delays and disruptions in its work, and has considered such constraints in the negotiation of this Agreement.

15.2 The Consultant shall be responsible for the actions of Consultant’s agents, employees and all sub-consultants working under it. The Contractor agrees that it shall prohibit the possession or use of alcohol, controlled substances, tobacco, and any prohibited weapons on the Project Site and shall require adequate dress of the Consultant’s forces consistent with the nature of the work being performed, including wearing shirts at all times. Sexual harassment of employees of the Consultant, or employees or students of the District by employees of the Consultant is strictly forbidden. Any employee of the Consultant who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by the Consultant, including removal from the job site.

**XVI. CONTRACT CONSTRUCTION**

16.1 All parties have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement.

## **XVII. FAMILIARITY WITH LAW AND CONTRACT TERMS**

17.1 Consultant represents that, prior to signing this Agreement; Consultant has become thoroughly acquainted with all matters relating to the performance of this Agreement, all applicable laws, and all of the terms and conditions of this Agreement.

## **XVIII. APPLICABLE LAW AND VENUE**

18.1 This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

18.2 The obligations of the Parties to this Agreement shall be performable in Splendora, Montgomery County, Texas, and if legal action, such as civil litigation, is necessary in connection therewith, exclusive venue shall lie in Montgomery County, Texas.

## **XIX. SEVERABILITY**

19.1 In the event any one or more paragraphs or portions of this Agreement are held invalid or unenforceable, such shall not affect, impair or invalidate the remaining portions of this Agreement, but such shall be confined to the specific section, sentences, clauses or portions of this Agreement held invalid or unenforceable.

## **XXI. SUCCESSORS**

21.1 This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, successors and, except as otherwise provided in this Agreement, their assigns.

## **XXII. NON-WAIVER OF PERFORMANCE**

22.1 A waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged.

22.2 No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

### **XXIII. NO THIRD PARTY BENEFICIARIES AND IMMUNITY**

23.1 For purposes of this Agreement, including its intended ,operation and effect, the Parties specifically agree and contract that: (1) this Agreement only affects matters/disputes between the Parties to this Agreement, and is in no way intended by the Parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with the District or Consultant or both, or that such third parties may benefit incidentally by this Agreement; and (2) the terms of this Agreement are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either the District or Consultant. Nothing in this Agreement shall be deemed to relinquish, waive, modify or amend any immunity or legal defense available at law or in equity. No provision of this Agreement is consent to suit.

### **XXIV. LEGAL AUTHORITY**

24.1 The signer of this Agreement for the District and Consultant each represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of the District and Consultant respectively, and to bind the District and Consultant to all of the terms, conditions, provisions and obligations herein contained.

### **XXV. ENTIRE AGREEMENT**

25.1 This Agreement, together with its Attachments embodies the complete Agreement of the Parties hereto, superseding all oral or written previous and contemporary agreements between the Parties relating to matters herein; and except as otherwise provided herein, cannot be modified without written consent of the Parties.

25.2 It is understood and agreed by the Parties hereto that changes in local, state or federal rules, regulations or laws applicable hereto may occur during the term of this Agreement and that any such changes shall be automatically incorporated into this Agreement without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

### **XXVI. CONFIDENTIALITY**

27.1 Unless required by law, information obtained by Consultant during the term of this Agreement that the District intends to keep confidential may not be disclosed by Consultant to any third party without the prior written consent of the District. Consultant may not publish or use any publicity materials relating to this Agreement or use the District's name without the written consent of the District. Consultant understands and agrees that any information shared with the District may be subject to the Texas Freedom of Information Act and other required government disclosures.

27.2 All work shall be deemed "Work Made For Hire" as defined by the United States Copyright Law, and the District retains for itself sole ownership of all proprietary rights in and to all designs, engineering details and other data pertaining to any discoveries, inventions, patent rights, software, improvements and the like made by Consultant personnel in the course of performing the work.

**XXVIII. ISRAEL/TERRORIST ORGANIZATION/  
ANTI-BOYCOTT/DISCRIMINATION**

28.1 Pursuant to Texas Government Code Chapter 2271, the Consultant represents and warrants to the Owner that the Consultant does not boycott Israel and will not boycott Israel during the term of this Agreement.

28.2 Consultant verifies and affirms that it is not a foreign terrorist organization as identified on the list prepared and maintained by the Texas Comptroller of Public Accounts. If Consultant has misrepresented its inclusion on the Comptroller's list such omission or misrepresentation will void this Agreement.

28.3 The Consultant represents and warrants to the Owner that the Consultant does not boycott energy companies as contemplated by Chapter 809 of the Government Code and will not boycott energy companies during the term of this Agreement.

28.4 The Consultant represents and warrants to the Owner that the Consultant does not discriminate against firearm and ammunition companies and trade associations as contemplated by Chapter 2274 of the Government Code and will not so discriminate during the term of this Agreement.

**XXIX. CRIMINAL HISTORY RECORD CHECKS**

29.1 To the extent permitted by law, Consultant shall obtain all criminal history information required by Texas Education Code Chapter 22 regarding its "covered employees," as defined below. If Consultant is required by Chapter 22 to obtain the information from the Fingerprint-based Applicant Clearinghouse of Texas, then Consultant, to the extent permitted by law, will also subscribe to that person's criminal history record information. Before beginning any Work on the Project, Consultant will provide written certification to the District that Consultant has complied with the statutory requirements as of that date, or, in the event Consultant is not legally permitted to comply with such requirements, Consultant shall cooperate with the Owner as set forth below. Upon request by Owner, Consultant will provide, in writing, updated certifications and the names of any other requested information regarding covered employees, so that the Owner may obtain criminal history recommended information to the covered employees. Consultant shall assume all expenses associated with obtaining criminal history record information.

29.2 Consultant will not assign any "covered employee" with a "disqualifying criminal history," as those terms are defined below, to work on the Project. If Consultant receives information that a covered employee has a reported disqualifying criminal history, including any such information shared by Owner, then Consultant will immediately remove the covered employee from the Project and notify the Owner in writing within three (3) business days. If the Owner objects to the assignment of any covered employee on the basis of the covered employee's criminal history record information, then Consultant agrees to discontinue using that covered employee to provide services on Owner's Project. If Consultant has taken precautions or imposed conditions to ensure that the employees of Consultant and any of Consultant's own consultants will not become covered employees, Consultant will ensure that these precautions or conditions continue throughout the time the contracted services are provided.

29.3 For the purposes of this Section, "covered employees" means employees, agents, or subcontractors of Consultant or any of Consultant's consultants who has or will have continuing duties related to the services to be performed on Owner's Project and has or will have direct contact with Owner's students. The Owner will decide what constitutes direct contact with Owner's students. "Disqualifying criminal history" means any conviction or other criminal history information designed by the Owner, or one of the following offenses; if at the time of the offense, the victim was under 18 years of age or enrolled in a public school; a felony offense under Texas Penal Code Title 5 Offense Against Persons; an offense for which a defendant is required to register as a sex offender under Texas Code of Criminal Procedure Chapter 62; or an equivalent offense under federal law or the laws of another state.

29.4 Any subcontractor entity, as defined by Texas Education Code § 22.08341(a)(3), shall be, to the extent permitted by law, required by the terms of their contract with Consultant or any other contracting entity (as defined in Texas Education Code § 22.08341(a)(1)), and by Texas law, to obtain the required criminal history record information on their employees, agents, or applicants, to give required certification to Owner and the contracting entities, and to obtain required certifications from the subcontracting entity's subcontractors.

29.5 On request of Owner, Consultant and/or its consultants shall provide all necessary identifying information to allow Owner to obtain criminal history record information for covered employees of the Consultant and all subcontracting entities, Consultant shall update this list on Owner's request. Consultant and/or its consultants shall further cooperate in all respects with any reasonable request by Owner to assist Owner in obtaining criminal history record information on the employees of Consultant and/or its consultants, including without limitation paying any fees or costs reasonably requested by Owner to enable Owner to obtain needed criminal history record information

EXECUTED ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2024.

SPLENDORA INDEPENDENT SCHOOL DISTRICT

By: \_\_\_\_\_  
Dr. Jeffrey Burke, Superintendent

LYNCH'D FACILITY SERVICES, LLC

By: \_\_\_\_\_  
Kevin Lynch, Owner/Managing Member

## EXHIBIT A

This Exhibit A is attached to and a part of the professional services agreement between the Owner and Consultant, (“Agreement”) for all services to be performed by the Consultant under the Agreement for each Task (incorporated into the Agreement by task orders) between **Splendora Independent School District** (“Owner”) and **Lynch’d Facility Services, LLC**, as consultant, (“Consultant”). The Consultant will furnish insurance that meets the requirements set forth below:

### 1. Insurance.

1.1. Consultant shall maintain, for the full term of the Agreement:

- 1.1.1. Comprehensive or commercial general liability insurance, with limits not less than \$1,000,000 per each occurrence, combined single limit, and \$2,000,000 general aggregate limit, for bodily injury (including emotional distress), sickness, disease, or death of any person other than Consultant’s employers and property damage, contractual liability products, completed operations, independent contractors, broad form property damage, pollution, fire damage, medical expenses and damages arising from personal or advertising injury applicable to the Consultant’s obligations under the Agreement, including liability assumed by and the indemnity and defense obligations of the Consultant (see Certificate of Insurance attached).
- 1.1.2. Comprehensive or business automobile liability insurance, with limits not less than \$1,000,000 combined single limit, for bodily injury and property damage, including coverage for owned, non-owned, and hired automobiles.
- 1.1.3. Workers’ Compensation, including employers’ liability insurance, as required by applicable law, including, Title 5 of the Texas Labor Code and its implementing regulations, with limits not less than \$500,000 each accident, occurrence or disease. Consultant shall require Consultant’s consultants, if any, to provide Workers’ compensation insurance for all consultants’ employees engaged in work under the subcontract. Consultant shall comply with all applicable requirements of Texas Labor Code Title 5.
- 1.1.4. Professional Liability, with limits not less than \$1,000,000 each claim and \$1,000,000 in the aggregate.
- 1.1.5. Employers’ Liability with policy limits not less than \$1,000,000.00 each accident, \$1,000,000.00 each employee, and \$1,000,000.00 policy limit.
- 1.1.6. The Consultant may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance

provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

- 1.2. The coverage afforded under the Consultant's insurance shall be primary and non-contributory to any other existing valid and collectable insurance to the full limit of liability stated in the declaration, and such insurance shall apply separately to each insured against whom claim is made or suit is brought, but the inclusion of more than one (1) insured shall not operate to increase the insurer's limits of liability.
- 1.3. Insurance companies shall be legally licensed and admitted through the Texas Department of Insurance to engage in the business of furnishing insurance in the State of Texas. All insurance companies shall have an "A-VIII" in Bests Rating Guide and shall be satisfactory to the Owner.
- 1.4. Before commencement of the work under the Agreement, certificates of insurance and copies of endorsements shall be furnished to the Owner, with complete copies of policies to be furnished to Owner promptly upon request.
- 1.5. All original and copies of certificates of insurance, endorsements, and policies shall (a) state in particular those insured, the extent of insurance, location and operation to which the insurance applies, the expiration date, and cancellation and reduction notices; (b) except Worker's compensation and professional liability insurance, add Owner, Owner's members, directors, officers, trustees and employees of any of them as named additional insureds on all policies; (c) include a waiver of subrogation in favor of the Owner; (d) include the assigned Project and purchase order number, if applicable; and (e) include the following clause: "This policy shall not be non-renewed, canceled, or reduced in required limits of liability or amounts of insurance until notice has been mailed to Comal Independent School District. Date of cancellation or reduction may not be less than thirty (30) days after the date of mailing notice."
- 1.6. Should any of the required insurance be provided under a form of coverage that includes an annual general aggregate limit or provides that claims investigation or legal defense costs be included in such annual general aggregate limit, such annual general aggregate limit shall apply separately to the Task (with the insurer's endorsement provided to the Owner) or shall be two times the occurrence limits stipulated.
- 1.7. If Consultant fails to maintain any required insurance, the Owner, at its sole option and without incurring any further obligation to provide insurance, may take out insurance in such type and amount and to deduct the amount of the premium for such insurance from any sums due the Consultant.
- 1.8. Deductibles or self-insured retention limits for all policies (except for errors and omissions insurance) shall not exceed \$25,000.00 for a project budgeted at \$4 million or less, or \$50,000.00 for a project budgeted at more than \$4 million.

2. All capitalized terms used in this Exhibit A that are not otherwise defined herein shall have the same meaning as such terms in the Agreement.

## EXHIBIT B: SCOPE OF SERVICES

1. **Project Planning and Design Review:** Collaborate with architects, engineers, and other stakeholders to review project plans and designs. Ensure that proposed construction meets the requirements outlined in the bond measure and aligns with the school district's goals and objectives.
2. **Cost Estimation and Budgeting:** Provide expertise in cost estimation and budgeting for construction projects. This includes preparing detailed cost estimates, analyzing bids from contractors, and developing project budgets that are within the allocated bond funds.
3. **Bid Process Management:** Manage the competitive bidding process for selecting contractors and subcontractors. This involves soliciting bids, evaluating proposals, conducting bid openings, and recommending the award of contracts to qualified vendors.
4. **Contract Negotiation and Administration:** Negotiate contracts with construction firms, vendors, and suppliers on behalf of the school district. Ensure that contracts contain clear terms, specifications, and deliverables, and oversee contract administration throughout the construction process.
5. **Construction Oversight and Quality Assurance:** Provide onsite supervision and oversight to ensure that construction activities adhere to approved plans, specifications, and industry standards. Conduct regular inspections, monitor progress, and address any issues or discrepancies that arise during construction.
6. **Schedule Management:** Develop and maintain construction schedules to ensure that projects are completed on time and within budget. Identify critical milestones, track progress, and implement strategies to mitigate delays or disruptions to the construction timeline.
7. **Change Order Management:** Evaluate proposed changes to construction plans, specifications, or scope and assess their impact on project cost, schedule, and quality. Manage the change order process, including negotiating change orders with contractors and obtaining approval from the school district.
8. **Risk Management and Compliance:** Identify potential risks and hazards associated with construction projects and implement strategies to mitigate them. Ensure compliance with applicable building codes, regulations, and safety standards to minimize liability and ensure the safety of students, staff, and visitors.
9. **Communication and Reporting:** Provide regular updates and reports to school district officials, project stakeholders, and the community on the progress of construction projects. Facilitate communication between all parties involved in the construction process and address any concerns or inquiries in a timely manner.
10. **Closeout and Handover:** Coordinate the final inspection, testing, and commissioning of completed construction projects. Ensure that all contractual obligations are fulfilled, punch list items are addressed, and necessary documentation is provided for project acceptance and handover to the school district.

Overall, the scope of work for a school building bond construction consultant revolves around managing the planning, execution, and delivery of construction projects funded by bonds, while ensuring compliance with regulations, quality standards, and budgetary constraints.

EXHIBIT C  
TO BE DETERMINED