


LUCIA MAR UNIFIED SCHOOL DISTRICT
BOARD OF EDUCATION

Date: February 5, 2019
 To: Board of Education
 From:  Andy Stenson, Superintendent
 Subject: Approval, Award Contract to Quincon, Inc. to Install Concrete Foundation for New Storage Buildings at Arroyo Grande High School, Stadium/Track Project No. 0459, Bond Fund 21

Background:

The District requires a General Contractor to furnish all labor, materials, equipment, tools, utility/transportation services, and perform/complete all work to install a concrete foundation for new storage buildings at Arroyo Grande High School, Stadium/Track Project No. 0459, in strict accordance with the Contract Bid No. 19-09 document.

This project includes grading and installation of foundation specified in the foundation plan for three (3) Simpson steel buildings, two (2) conduits, a new 10 ft. wide drive, and a new concrete walk. The concrete for this project will be purchased by the school district and is not included in the bid.

After careful consideration, staff would like to award General Contractor for the Project to Quincon, Inc. at P.O. Box 1029 in Grover Beach, California 93483.

BID TABULATION	
Quincon, Inc.	\$123,031
Raminha Construction, Inc.	\$134,900
Maino Construction Company	\$155,000
R. Burke Corporation	\$198,000
Newton Construction Management	\$219,000
Unlimited Engineering	\$315,000

Upon receiving approval/award of Contractor from the Board, the project may commence on February 7, 2019. The completion date for this project is March 7, 2019.

Recommendation:

Staff recommends the Lucia Mar Board of Education approve and award General Contractor to install concrete foundation for new storage buildings at Arroyo Grande High School, Stadium/Track Project No. 0459 / Bid No. 19-09, to Quincon, Inc.

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Fiscal Impact:

\$123,031 from Bond Fund 21

Board Goal:

Student & Staff Success

Attachment:

Form Agreement, AGHS Foundation for Storage Buildings

Contact Person:

Andy Stenson
Superintendent

AGREEMENT FORM

THIS AGREEMENT ("Agreement" or "Contract"), entered into this 6 day of FEBRUARY, 2019 in the County of SAN LUIS OBISPO of the STATE OF CALIFORNIA, by and between the Lucia Mar Unified School District, hereinafter called the "Owner" or the "District", and QUINCON, INC., hereinafter called the "Contractor".

WITNESSETH that the Owner and the Contractor for the consideration stated herein agree as follows:

ARTICLE 1 - SCOPE OF WORK: The Contractor shall furnish all labor, materials, equipment, tools, and utility and transportation services, and perform and complete all work required in connection with the **AGHS FOUNDATION FOR STORAGE BUILDINGS** ("Project") in strict accordance with the Contract Documents enumerated in Article 9 below.

Contractor to provide all necessary labor and materials for grading and installation of foundation specified in the foundation plan for three Simpson steel buildings, utility trench and conduits, new concrete drive and new concrete walk.

The Contractor shall be liable to the District for any damages arising as a result of a failure to comply with that obligation, and the Contractor shall not be excused with respect to any failure to so comply by an act or omission of the Architect, Engineer, Inspector, Division of the State Architect (DSA), or representative of any of them, unless such act or omission actually prevents the Contractor from fully complying with the Contract Documents and the Contractor protests, in accordance with the Contract Documents, that the act or omission is preventing the Contractor from fully complying with the Contract Documents. Such protest shall not be effective unless reduced to writing and filed with the District office within seven (7) days of the date of occurrence of such act or omission preventing the Contractor from fully complying with the Contract Documents.

ARTICLE 2 - TIME OF COMPLETION: The Owner may give notice to proceed within ninety (90) days of the award of the bid by the Owner. **ONCE THE CONTRACTOR HAS RECEIVED A NOTICE TO PROCEED, THE CONTRACTOR SHALL REACH FINAL COMPLETION OF THE PROJECT BY MARCH 7, 2019.** It is expressly understood that time is of the essence.

Contractor has thoroughly studied the Project and has satisfied itself that the time period for this Project is adequate for the timely and proper completion of the Project within the Contract time.

In the event that the Owner desires to postpone giving the notice to proceed beyond this ninety (90) day period, it is expressly understood that with reasonable notice to the Contractor, giving the notice to proceed may be postponed by the Owner. It is further expressly understood by the Contractor, that the Contractor shall not be entitled to any claim of additional compensation as a result of the Owner's postponement of giving the notice to proceed.

If the Contractor believes that a postponement will cause hardship to it, the Contractor may terminate the Contract with written notice to the Owner within ten (10) days after receipt by the Contractor of the Owner's notice of postponement. It is further understood by the Contractor that in the event that the Contractor terminates the Contract as a result of postponement by the Owner, the Owner shall only be obligated to pay the Contractor for the work performed by the Contractor at the time of notification of postponement. Should the Contractor terminate the Contract as a result of a notice of postponement, the District shall have the authority to award the Contract to the next lowest responsible bidder.

ARTICLE 3 - LIQUIDATED DAMAGES: It being impracticable and infeasible to determine the amount of actual damage, it is agreed that the Contractor will pay the Owner the sum of Five Hundred Dollars (\$500.00) per calendar day for each and every day of delay beyond the Contract Time set forth in Article 2 of this Agreement as liquidated damages and not as a penalty or forfeiture. In the event Liquidated Damages are not paid, the Contractor further agrees that the Owner may deduct such amount thereof from any money due or that may become due the Contractor under the Contract. This Article shall not be construed as preventing the Owner from the recovery of damages (actual or other) under the Contract Documents.

ARTICLE 4 - CONTRACT PRICE:

4.1 Contract Price. The Owner shall pay to the Contractor as full consideration for the faithful performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, the sum of **ONE HUNDRED TWENTY-THREE THOUSAND AND THIRTY-ONE DOLLARS (\$123,031.00)**, said sum being the total amount stipulated in the Bid Contractor submitted. Payment shall be made as set forth herein.

Should any Change Order result in an increase in the Contract Price, the cost of such Change Order shall be agreed to in advance by the Contractor and the Owner, subject to the monetary limitations set forth in Public Contract Code Section 20118.4. In the event that the Contractor proceeds with a Change in work without an agreement between the Owner and Contractor regarding the cost of a Change Order, the Contractor waives any Claim of additional compensation for such additional work.

4.2 Warranty of Title. The Contractor warrants title to all work. The Contractor further warrants that all work is free and clear of liens, claims, security interests, or encumbrances in favor of the Contractor, Subcontractors, material and equipment suppliers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Project. If a lien or stop notice of any nature should at any time be filed against the Project or any Owner property,

Owner and at Contractor's and own expense, take any and all action necessary to cause any such lien or stop notice to be released or discharged immediately. If the Contractor fails to furnish to the Owner within five (5) calendar days after demand by the Owner, satisfactory evidence that a lien or stop notice has been so released, discharged, or secured, then Owner may discharge such indebtedness and deduct the amount required, together with any and all losses, costs, damages, and attorney's fees and expense incurred or suffered by Owner from any sum payable to Contractor under the Contract.

4.3 **Payment Applications.** On or before the fifth (5th) day of each calendar month during the progress of the work, Contractor shall submit to the Architect (or District if there is no Architect), an itemized application for payment for all work completed. Such application shall be notarized, if required, and supported by the information and documents as Architect or District requires. All payment applications shall be on forms approved by the District or Architect.

4.4 **Reasons to Withhold Payment.** The Owner may withhold payment, in whole, or in part, to such extent as may be necessary to protect the Owner from loss because of, but not limited to:

- (a) Defective work not remedied;
- (b) Stop notices served upon the Owner;
- (c) Liquidated damages assessed against the Contractor;
- (d) Damage to the Owner or other contractor;
- (e) Unsatisfactory prosecution of the work by the Contractor;
- (f) Failure of the Contractor to prosecute the work in a timely manner.
- (g) Failure to properly pay prevailing wages as defined in Labor Code section 1720, et seq.;
- (h) Failure to properly maintain or clean up the site;
- (i) Payments to indemnify, defend, or hold harmless the Owner; or
- (j) Failure to pay Subcontractors or suppliers.

4.5 **Nonconforming Work.** If Contractor defaults or neglects to carry out the work required to complete the Project or fails to perform any provision hereof, Owner may, after 48 hours' written notice to the Contractor and without prejudice to any other remedy make good such deficiencies. The Owner shall adjust the total Contract price by reducing the amount thereof by the cost of making good such deficiencies. If Owner deems it inexpedient to correct work which is damaged, defective, or not done in accordance with Contract provisions, an equitable reduction in the Contract price (of at least 150% of the estimated reasonable value of the nonconforming work) shall be made.

ARTICLE 5 - HOLD HARMLESS/ INDEMNITY: Contractor shall defend, indemnify and hold harmless Owner, Architect, Inspector, the State of California and their officers, employees, agents and independent contractors from all liabilities, claims, actions, liens, judgments, demands, damages, losses, costs or expenses of any kind arising from death, personal injury, property damage or other cause based or asserted upon any act, omission, or breach connected with or arising from the progress of work or performance of service under this Agreement or the Contract Documents. As part of this indemnity, Contractor shall protect and defend, at its own expense, Owner, Architect, Construction Manager, Inspector, the State of California and their officers, employees, agents and independent contractors from any legal action including attorney's fees or other proceeding based upon such act, omission, breach or as otherwise required by this Article.

Furthermore, Contractor agrees to and does hereby defend, indemnify and hold harmless Owner, Architect, Construction Manager, Inspector, the State of California and their officers, employees, agents and independent contractors from every claim or demand made, and every liability, loss, damage, expense or attorney's fees of any nature whatsoever, which may be incurred by reason of:

- (a) Liability for (1) death or bodily injury to persons; (2) damage or injury to, loss (including theft), or loss of use of, any property; (3) any failure or alleged failure to comply with any provision of law or the Contract Documents; or (4) any other loss, damage or expense, sustained by any person, firm or corporation or in connection with the work called for in this Agreement or the Contract Documents, except for liability resulting from the sole or active negligence, or the willful misconduct of the Owner.
- (b) Any bodily injury to or death of persons or damage to property caused by any act, omission or breach of Contractor or any person, firm or corporation employed by Contractor, either directly or by independent contract, including all damages or injury to or death of persons, loss (including theft) or loss of use of any property, sustained by any person, firm or corporation, including the Owner, arising out of or in any way connected with work covered by this Agreement or the Contract Documents, whether said injury or damage occurs either on or off Owner property, but not for any loss, injury, death or damages caused by the sole or active negligence or willful misconduct of the Owner.
- (c) Any dispute between Contractor and Contractor's subcontractors/supplies/ Sureties, including, but not limited to, any failure or alleged failure of the Contractor (or any person hired or employed directly or indirectly by the Contractor) to pay any Subcontractor or Materialman of any tier or any other person employed in connection with the work and/or filing of any stop notice or mechanic's lien claims.

Contractor, at its own expense, cost, and risk, shall defend any and all claims, actions, suits, or other proceedings that may be brought or instituted against the Owner, its officers, agents or employees, on account of or founded upon any cause, damage, or injury identified herein Article 5 and shall pay or satisfy any judgment that may be rendered against the Owner, its officers, agents or employees in any action, suit or other proceedings as a result thereof.

The Contractor's and Subcontractors' obligation to defend, indemnify and hold harmless the Owner, Architect, Inspector, the State of California and their officers, employees, agents and independent contractors hereunder shall include, without limitation, any and all claims, damages, and costs for the following: (1) any damages or injury to or death of any person, and damage or injury to, loss (including theft), or loss of use of, any property; (2) breach of any warranty, express or implied; (3) failure of the Contractor or Subcontractors to comply with any applicable governmental law, rule, regulation, or other requirement; (4) products installed in or used in connection with the Project; and (5) any claims of violation of the Americans with Disabilities Act ("ADA").

ARTICLE 6 – INSURANCE & BONDS:

6.1 **Insurance Requirements.** Before the commencement of the work, the Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in California with a financial rating of at least an A-VIII status as rated in the most recent edition of Best's Insurance Reports or as amended by the Supplementary General Conditions, such insurance as will protect the Owner from claims set forth below, which may arise out of or result from the Contractor's work under the Contract and for which the Contractor may be legally liable, whether such work are by the Contractor, by a Subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Any required insurance shall not contain any exclusion that applies to the type of work performed by the Contractor under the Contract Documents.

- (a) Claims for damages because of bodily injury, sickness, disease, or death of any person Owner would require indemnification and coverage for employee claim;
- (b) Claims for damages insured by usual personal injury liability coverage, which are sustained by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor or by another person;
- (c) Claims for damages because of injury or destruction of tangible property, including loss of use resulting therefrom, arising from operations under the Contract Documents;
- (d) Claims for damages because of bodily injury, death of a person, or property damage arising out of the ownership, maintenance, or use of a motor vehicle, all mobile equipment, and vehicles moving under their own power and engaged in the work;
- (e) Claims involving contractual liability applicable to the Contractor's obligations under the Contract Documents, including liability assumed by and the indemnity and defense obligations of the Contractor and the Subcontractors; and
- (f) Claims involving Completed Operations, Independent Contractors' coverage, and Broad Form property damage, without any exclusions for collapse, explosion, demolition, underground coverage, and excavating. (XCU)
- (g) Claims involving sudden or accidental discharge of contaminants or pollutants.

6.2 **Specific Insurance Requirements.** Contractor shall take out and maintain and shall require all Subcontractors, if any, whether primary or secondary, to take out and maintain:

Comprehensive General Liability Insurance with a combined single limit per occurrence of not less than \$1,000,000.00 or Commercial General Liability Insurance which provides limits of not less than:

(a) Per occurrence (combined single limit)	\$1,000,000.00
(b) Project Specific Aggregate (for this Project only)	\$1,000,000.00
(c) Products and Completed Operations (aggregate)	\$1,000,000.00
(d) Personal and Advertising Injury Limit	\$1,000,000.00

Insurance Covering Special Hazards. The following Special hazards shall be covered by riders or riders to above mentioned public liability insurance or property damage insurance policy or policies of insurance, in amounts as follows:

(a) Automotive and truck where operated in amounts	\$1,000,000.00
(b) Material Hoist where used in amounts	\$1,000,000.00
(c) Explosion, Collapse and Underground (XCU coverage)	\$1,000,000.00
(d) Hazardous Materials	\$1,000,000.00

In addition, provide Excess Liability Insurance coverage in the amount of Two Million Dollars (\$2,000,000.00).

6.3 Subcontractor Insurance Requirements. The Contractor shall require its Subcontractors to take out and maintain public liability insurance and property damage insurance required under this Article in like amounts. A "claims made" or modified "occurrence" policy shall not satisfy the requirements of this Article without prior written approval of the Owner.

6.4 Additional Insured Endorsement Requirements. The Contractor shall name, on any policy of insurance required under Articles 6.1 and 6.2 above, the Owner, CM, Architect, Inspector, the State of California, their officers, employees, agents, volunteers and independent contractors as additional insureds. Subcontractors shall name the Contractor, the Owner, Architect, Inspector, the State of California, their officers, employees, agents, volunteers and independent contractors as additional insureds. The Additional Insured Endorsement included on all such insurance policies shall be an ISO CG 20 10 (04/13), or an ISO CG 20 38 (04/13), or their equivalent as determined by the Owner in its sole discretion, and must state that coverage is afforded the additional insured with respect to claims arising out of operations performed by or on behalf of the insured. If the additional insureds have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis. The insurance provided by the Contractor pursuant to 11.1 must be designated in the policy as primary to any insurance obtained by the Owner. The amount of the insurer's liability shall not be reduced by the existence of such other insurance.

6.5 Workers' Compensation Insurance. During the term of this Contract, the Contractor shall provide workers' compensation and employer's liability insurance for all of the Contractor's employees engaged in work under this Contract on or at the Site of the Project and, in case any of the Contractor's work is subcontracted, the Contractor shall require the Subcontractor to provide workers' compensation insurance for all the Subcontractor's employees engaged in work under the subcontract. Any class of employee or employees not covered by a Subcontractor's insurance shall be covered by the Contractor's insurance. In case any class of employees engaged in work under this Contract on or at the Site of the Project is not protected under the Workers' Compensation laws, the Contractor shall provide or cause a Subcontractor to provide insurance coverage for the protection of those employees not otherwise protected. The Contractor shall file with the Owner certificates of insurance. Workers' compensation limits as required by the Labor Code, but not less than \$1,000,000 and employers' liability limits of \$1,000,000 per accident for bodily injury or disease.

6.6 Automobile Liability. The Owner, Architect and Construction Manager, Inspectors, their directors, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Contractor or for which the Contractor is responsible. Such insurance coverage shall be primary and non-contributory insurance as respects the Owner, Architect, Construction Manager, Project Inspector, their directors, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the Owner, Architect, Construction Manager, Project Inspector, their directors, officers, employees, agents and volunteers shall be excess of the Contractor's insurance and shall not be called upon to contribute with it. The insurer shall agree to waive all rights of subrogation against the Owner, Architect, Construction Manager, Project Inspector, their directors, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy that arise from work performed by the Contractor. Insurance Services Office Business Auto Coverage Form Number CA 0001, Code 1 (any auto) is required. Comprehensive Automobile Liability insurance to include all autos, owned, non-owned, and hired, with limits of \$1,000,000 per accident for bodily injury and property damage

6.7 Other Insurance. The Contractor shall provide all other insurance required to be maintained under applicable laws, ordinances, rules, and regulations.

6.8 Proof of Insurance. The Contractor shall not commence work nor shall it allow any Subcontractor to commence work under this Contract until all required insurance and certificates have been obtained and delivered in duplicate to the Owner for approval subject to the following requirements:

- (a) Certificates and insurance policies shall include the following clause:

"This policy and any coverage shall not be suspended, voided, non-renewed, canceled, or reduced in required limits of liability or amounts of insurance or coverage until notice has been mailed via certified mail to the Owner. Date of cancellation or reduction may not be less than thirty (30) days after the date of mailing notice."

- (b) Certificates of insurance shall 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.
- (c) Certificates of insurance shall clearly state that the Owner and the Architect are named as additional insureds under the policy described and that such insurance policy shall be primary to any insurance or self-insurance maintained by Owner.
- (d) The Contractor and its Subcontractors shall produce a certified copy of any insurance policy required under this Section upon written request of the Owner.

6.9 **Compliance.** In the event of the failure of Contractor to furnish and maintain any insurance required by this Article, the Contractor shall be in default under the Contract. Compliance by Contractor with the requirement to carry insurance and furnish certificates or policies evidencing the same shall not relieve the Contractor from liability assumed under any provision of the Contract Documents, including, without limitation, the obligation to defend and indemnify the Owner and the Architect.

6.10 **Waiver of Subrogation.** Contractor waives (to the extent permitted by law) any right to recover against the Owner for damages to the work, any part thereof, or any and all claims arising by reason of any of the foregoing, but only to the extent that such damages and/or claims are covered by property insurance and only to the extent of such coverage (which shall exclude deductible amounts) by insurance actually carried by the Owner. The provisions of this section are intended to restrict each party to recovery against insurance carriers only to the extent of such coverage and waive fully and for the benefit of each, any rights and/or claims which might give rise to a right of subrogation in any insurance carrier. The Owner and the Contractor shall each obtain in all policies of insurance carried by either of them, a waiver by the insurance companies thereunder of all rights of recovery by way of subrogation for any damages or claims covered by the insurance.

6.11 **Performance and Payment Bond Requirements.** Prior to commencing any portion of the work, the Contractor shall furnish separate payment and performance bonds for its portion of the work which shall cover 100% faithful performance of and payment of all obligations arising under the Contract Documents and/or guaranteeing the payment in full of all claims for labor performed and materials supplied for the work. All bonds shall be provided by a corporate surety authorized and admitted to transact business in California as sureties. To the extent, if any, that the Contract Price is increased in accordance with the Contract Documents, the Contractor shall, upon request of the Owner, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the Owner. To the extent available, the bonds shall further provide that no change or alteration of the Contract Documents (including, without limitation, an increase in the Contract Price, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Contractor will release the surety. If the Contractor fails to furnish the required bonds, the Owner may terminate the Contract for cause. Only bonds executed by admitted Surety insurers as defined in Code of Civil Procedure § 995.120 shall be accepted. Surety must be a California-admitted surety and listed by the U.S. Treasury with a bonding capacity in excess of the Project cost. If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with § 995.660 of the California Code of Civil Procedure and proof of such is provided to the Owner.

ARTICLE 7 - PROVISIONS REQUIRED BY LAW: Each and every provision of law and clause required to be inserted in this Contract shall be deemed to be inserted herein, and this Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted or is not inserted correctly, then upon application of either party the Contract shall forthwith be physically amended to make such insertion or correction.

ARTICLE 8 - COMPONENT PARTS OF THE CONTRACT: The Contract entered into by this Agreement consists of the following Contract Documents, all of which are component parts of the Contract as if herein set out in full or attached hereto:

- Notice Inviting Bids
- Instructions to Bidders
- Designation of Subcontractors
- Non-Collusion Declaration
- Bid Bond
- Bid Form
- Contractor's Certificate Regarding Worker's Compensation
- Agreement Form
- Payment Bond
- Performance Bond
- Guarantee
- Escrow Agreement for Security Deposit In Lieu of Retention
- Workers' Compensation/Employers Liability Endorsement
- General Liability Endorsement
- Automobile Liability Endorsement
- Supplementary and Special Conditions (if any)
- Specifications
- All Addenda as Issued
- Drawings/Plans
- Requirements, Reports and/or Documents in the Project Manual or Other Documents Issued to Bidders

All of the above named Contract Documents are intended to be complementary. Work required by one of the above named Contract Documents and not by others shall be done as if required by all.

ARTICLE 9 - PREVAILING WAGES: Wage rates for this Project shall be in accordance with the general prevailing rate of holiday and overtime work in the locality in which the work is to be performed for each craft, classification, or type of work needed to execute the Contract as determined by the Director of the Department of Industrial Relations. Copies of schedules of rates so determined by the Director of the Department of Industrial Relations are on file at the administrative office of the Owner and are also available from the Director of the Department of Industrial Relations.

The following are hereby referenced and made a part of this Agreement and Contractor stipulates to the provisions contained therein.

1. Chapter 1 of Part 7 of Division 2 of the Labor Code (Section 1720 et seq.)
2. California Code of Regulations, Title 8, Chapter 8, Subchapters 3 through 6 (Section 16000 et seq.)

ARTICLE 10 – TERMINATION OF THE CONTRACT:

10.1 Termination for Cause. The Owner may terminate the Contractor and/or this Contract for the following reasons:

- (a) Persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- (b) Persistently or repeatedly is absent, without excuse, from the job site;
- (c) Fails to make payment to Subcontractors, suppliers, materialmen, etc.;
- (d) Persistently disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction;
- (e) Becomes bankrupt or insolvent, including the filing of a general assignment for the benefit of creditors; or
- (e) Otherwise is in substantial breach of a provision of this Agreement.

10.2 Notification of Termination. When any of the above reasons set forth in Article 10.1 above exists, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety written notice of five (5) days, terminate the Contractor and/or this Contract and may, subject to any prior rights of the surety:

- (a) Take possession of the Project and of all material, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- (b) Accept assignment of Subcontracts. Contractor acknowledges and agrees that if the Owner (in its sole and absolute discretion) decides to takeover completion of the Project, the Contractor agrees to immediately assign all subcontracts to the Owner which the Owner has chosen to accept; and
- (c) Complete the work by any reasonable method the Owner may deem expedient, including contracting with a replacement contractor or contractors.

10.3 Payments Withheld. If the Owner terminates the Contract for one of the reasons stated in Article 10.1 above, the Contractor shall not be entitled to receive further payment until the work is complete. All costs associated with the termination and completion of the Project shall be the responsibility of the Contractor and/or its surety.

10.4 Payments Upon Completion. If the unpaid balance of the Contract Sum exceeds costs of completing the Project, including compensation for professional services and expenses made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This payment obligation shall survive completion of the Contract.

10.5 Termination for Convenience. Owner may terminate the Contract upon five (5) calendar days of written notice to the Contractor and use any reasonable method the Owner deems expedient to complete the Project, including contracting with replacement contractor or contractors, if it is found that reasons beyond the control of either the Owner or Contractor make it impossible or against the Owner's interest to complete the work. In such a case, the Contractor shall have no claims against the Owner except: (1) the actual cost for labor, materials, and services performed and completed in accordance with the Contract Documents and approved by the District as documented through timesheets, invoices, receipts, or otherwise, and (2) ten percent (10%) profit and overhead of all remaining work as determined by the Owner, and (3) five percent (5%) termination cost of the total of item (2). Contractor acknowledges and agrees that if the Owner (in its sole and absolute discretion) decides to takeover completion of the Project, the Contractor agrees to immediately assign all subcontracts to the Owner which the Owner has chosen to accept.

ARTICLE 11 – MISCELLANEOUS PROVISIONS:

11.1 Record Audit. In accordance with Government Code Section 8546.7 (and Davis Bacon, if applicable), records of both the Owner and the Contractor shall be subject to examination and audit for a period of five (5) years after a Final Retention Payment or the Recording of a Notice of Completion, whichever occurs first.

11.6 The Owner and Contractor, respectively, bind themselves, their partners, officers, successors, assigns and legal representatives to the other party to this Agreement with respect to the terms of this Agreement. Contractor shall not assign this Agreement.

11.7 This Agreement shall be governed by the laws of the State of California.

11.8 This Agreement represents the entire agreement between the Owner and Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended or modified only by an agreement in writing signed by both the Owner and the Contractor

IN WITNESS WHEREOF, this Agreement has been duly executed by the above named parties, on the day and year first above written.

LUCIA MAR UNIFIED SCHOOL DISTRICT
602 Orchard Street, Arroyo Grande, CA 93420

QUINCON, INC.(Contractor)
P.O. Box 1029, Grover Beach CA 93483

Andy Stenson

Typed or Printed Name of Authorized Agent

Typed or Printed Name of Authorized Agent

Title: Superintendent

Title: _____

Signature

Signature

Date: _____

Date: _____

LMUSD BOARD APPROVED: _____

Typed or Printed Name of Authorized Officer or Agent

Title: _____

Signature

Date: _____

(CORPORATE SEAL)