

**CONTRACT NAME: AGREEMENT BETWEEN ALANIZ  
CONSTRUCTION, INC. AND DAVIS JOINT UNIFIED SCHOOL  
DISTRICT**

**BRIEF DESCRIPTION OF CONTRACT:** This is an agreement between Alaniz Construction, Inc. and DJUSD to provide sidewalk removal and replacement at North Davis Elementary School, Building F, due to pavement heaving which contributed to a student injury.

The cost of this repair work is \$7,200 and is included in the funding allocated for General Maintenance.

## **DAVIS JOINT UNIFIED SCHOOL DISTRICT**

### **PROFESSIONAL SERVICES AGREEMENT**

**THIS PROFESSIONAL SERVICES AGREEMENT** (the "Agreement") is made and entered into as of December 22, 2016 (the "Effective Date") by and between the Davis Joint Unified School District, a public school district of the State of California (the "District"), and ALANIZ CONSTRUCTION, INC., a California Corporation ("Provider"). The District and the Provider are collectively referred to in this Agreement individually as "Party" and collectively as the "Parties." This Agreement is made with reference to the following facts:

**WHEREAS**, the District requires services and/or advice of a highly specialized and technical nature in connection with certain financial, economic, accounting, consulting and/or administrative matters and such services and advice are not available within the District and cannot be performed satisfactorily by District employees; and

**WHEREAS**, Provider possesses the necessary expert knowledge, experience, and ability to perform services not available through District personnel, and Provider is specially experienced and competent to provide to the District certain specialized services and/or advice in one or more of the foregoing areas; and

**WHEREAS**, the District desires to engage Provider pursuant to Government Code Section 53060 because of Provider's special expertise and experience, and Provider desires to be engaged by the District; and

**WHEREAS**, the District and Provider desire to reduce to writing the terms and conditions of the District's engagement of Provider; and

**NOW, THEREFORE**, in consideration of the mutual covenants set forth below, the Parties hereby agree as follows:

#### **ARTICLE 1. SERVICES TO BE PERFORMED BY PROVIDER**

##### **Section 1.1 Performance Of Services.**

Provider agrees to perform services for the District as described in Appendix A to this Agreement (the "Services") and shall provide other services as may be requested by the District from time to time.

##### **Section 1.2 Method Of Performance And General Supervision.**

Provider will determine the methods, details, and means of performing the Services required by this Agreement. Subject to the foregoing, the District retains the right to inspect, to stop work, to prescribe alterations and generally to monitor Provider's work to ensure its conformity with the terms of this Agreement.

### **Section 1.3 Employment Of Assistants.**

Provider may, at Provider's own expense, employ such assistants as Provider deems necessary to perform the services required of Provider by this Agreement. District may not control, direct, or supervise Provider's assistants or Providers in the performance of those services.

### **Section 1.4 Provider's Certifications, Representations and Warranties**

Provider makes the following certifications, representations and warranties for the benefit of the District. Provider acknowledges and agrees that the District, in deciding to engage Provider pursuant to this Agreement, is relying upon the truth and validity of the following certifications, representation and warranties and their effectiveness throughout the term of this Agreement and the course of Provider's engagement hereunder.

(a) Provider is qualified in all respects to provide to the District all of the services contemplated by this Agreement and, to the extent required by any applicable law, Provider has all such licenses and/or governmental approvals as would be required to carry out and perform for the benefit of the District, such services as are called for hereunder.

(b) Provider, in providing the services and in otherwise carrying out its obligations to the District under this Agreement, shall, at all times, comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, including workers' compensation and equal protection and non-discrimination laws.

(c) Provider will perform their services hereunder in a professional manner, using the degree of care and skill ordinarily exercised by, and consistent with, the current professional practices and standards of a professional practicing in California. The Provider will furnish, at their expense, those services that are set forth in this Agreement and represents that such services are within the technical and professional areas of expertise of the Provider or any sub-Provider the Provider has engaged or will engage to perform the service(s).

## **ARTICLE 2. TERM AND TERMINATION**

### **Section 2.1 Term.**

(a) This Agreement shall become effective on the Effective Date and shall continue through January 3, 2017 (the "Term"), unless the Agreement is earlier terminated by either Party in accordance with Section 2.2, below. Pursuant to Education Code Section 17596, the Agreement Term including all renewals shall not exceed five (5) years.

### **Section 2.2 Termination.**

(a) This Agreement may be terminated by either Party upon fourteen (14) days written notice to the other Party in the event of a substantial failure of performance by such other Party, including insolvency of Provider or if the District should decide to abandon or indefinitely postpone the Project.

(b) In the event of a termination based upon abandonment or postponement by District, the District shall pay the Provider for all services performed and all expenses incurred under this

Agreement supported by documentary evidence, including payroll records, and expense reports up until the date of the abandonment or postponement, plus any sums due to the Provider for Board-approved extra services. In ascertaining the services actually rendered hereunder up to the date of termination of this Agreement, consideration shall be given to both completed work and work in process of completion and to complete and incomplete drawings and other documents, whether delivered to the District or in the possession of the Provider. In the event termination is for a substantial failure of performance, all damages and costs associated with the termination, including increased Provider and replacement Provider costs, shall be deducted from payments to the Provider.

(c) In the event a termination for cause is determined to have been made wrongfully, or without cause, then the termination shall be treated as a termination for convenience in accordance with Section 2.2 (d) below, and Provider shall have no greater rights than they would have had if a termination for convenience had been effected in the first instance. No other loss, cost, damage, expense or liability may be claimed, requested or recovered by Provider.

(d) This Agreement may be terminated for convenience by District without cause, upon twenty (20) days written notice to the Provider. In the event of a termination without cause, the District shall pay to the Provider for all services performed and all expenses incurred under this Agreement supported by documentary evidence, including payroll records, and expense reports up until the date of notice of termination, plus any sums due the Provider for Board-approved extra services. In ascertaining the services actually rendered hereunder up to the date of termination of this Agreement, consideration shall be given to both completed work and work in process of completion and to other documents, whether delivered to the District or in the possession of the Provider.

(e) In the event of a dispute between the Parties as to performance of the work or the interpretation of this Agreement, or payment or nonpayment for work performed or not performed, the Parties shall attempt to resolve the dispute. Pending resolution of this dispute, Provider agrees to continue the work diligently to completion. If the dispute is not resolved, Provider agrees it will neither rescind the Agreement nor stop the progress of the work, but Provider's sole remedy shall be to submit such controversy to determination by a court having competent jurisdiction of the dispute, after the Project has been completed, and not before. The Parties may agree in writing to submit any dispute between the Parties to arbitration. The District agrees to pay the Provider the undisputed amounts due under this Agreement.

The Parties understand and agree that this Termination Article shall govern all termination rights and procedures between the Parties. Any termination provision that is attached to this Agreement as an Exhibit shall be void and unenforceable between the Parties.

### **ARTICLE 3. COMPENSATION**

#### **Section 3.1 Terms Of Payment.**

**[Section 3.1 and 3.3 to be modified by the District as needed to address specific payment terms.]**

In consideration for all Services to be performed by Provider, the District agrees to pay Provider Seven Thousand Two Hundred----Dollars (\$ 7,200.00 ) for all hours & materials completed by Provider.

Provider shall submit to the District a statement of services rendered with an invoice. The District agrees to pay the amount due to Provider for the Services within 30 days after the Services are performed.

**Section 3.2 No Payroll Or Employment Taxes.**

No payroll or employment taxes of any kind shall be withheld or paid with respect to payments to Provider. The payroll or employment taxes that are the subject of this Section include, but are not limited to, FICA, FUTA, federal personal income tax, state personal income tax, state disability insurance tax, and state unemployment insurance tax.

**Section 3.3 Expenses.**

Provider shall be reimbursed for the reasonable and actual out-of-pocket expenses incurred by Provider in the performance of Provider's duties and responsibilities under this Agreement, as provided for in Appendix A, provided that Provider shall first furnish proper vouchers and expense accounts setting forth the information required by the Internal Revenue Service for deductible business expenses.

**Section 3.4 Accounting Records Of The Provider.**

Records of the Provider's direct personnel and authorized reimbursable expenses and records of accounts between the District and Provider shall be kept on a generally recognized accounting basis, and shall be available for inspection by the District at mutually convenient times.

**ARTICLE 4.  
OTHER OBLIGATIONS OF PROVIDER**

**Section 4.1 Nonexclusive Services.**

Provider may represent, perform services for, and/or be employed by such additional companies, persons, or clients as Provider, in Provider's sole discretion, chooses.

**Section 4.2 Workers Compensation And Unemployment Insurance And Licenses.**

Provider shall be responsible for providing, at Provider's own expense, disability, unemployment and other insurance, workers' compensation, training, permits and licenses for Provider and for Provider's employees, agents and independent Providers, as may be required by law.

**Section 4.3 Materials And Equipment.**

Provider shall supply all materials and equipment required to perform the Services under this Agreement, except as may be otherwise specified in Appendix A.

**Section 4.4 Licenses, Permits, Fees And Assessments.**

Provider shall obtain at Provider's sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the Services required by this Agreement. Provider shall have the sole obligation to pay for any fees, assessments, and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for Provider's performance of the Services required by this Agreement.

#### **Section 4.5 Fingerprinting.**

For any work performed by Provider at District facilities, if and when requested by the District, Provider's employees are required to submit fingerprints to the Department of Justice where an employee may come into contact with students at any District site pursuant to Education Code section 45125.1. The Department of Justice will ascertain whether the employee has a pending criminal proceeding for a violent or serious felony, or has been convicted of a violent or serious felony as those terms are defined in Penal Code sections 667.5(c) and 1192.7(c), respectively. Provider shall not permit an employee to come into contact with students until the Department of Justice has ascertained that the employee has not been convicted of a felony as defined in Education Code section 45125.1. Provider shall provide District with a list of names of employees who may come into contact with students and must certify in writing to the District that none of its employees who may come into contact with students have been convicted of a felony as defined in Education Code section 45125.1. District may request the removal of an employee from a District site at any time. Failure to comply with any of the provisions of this Section may result in termination of this Agreement.

#### **Section 4.6 Confidentiality.**

Provider acknowledges that, during the term of this Agreement, Provider may have access to privileged and confidential materials and information in the custody of clients of the District. Provider covenants and agrees to keep such information confidential and not to disclose such information directly or indirectly during, or subsequent to, the term of this Agreement. Provider further acknowledges that, during the term of this Agreement, Provider may obtain and have access to certain proprietary or confidential information, knowledge, technology, data, methods, files, records, and client lists relating to the District's business (collectively, the "Confidential Information"), which the District and Provider agree are proprietary or confidential in nature.

Provider acknowledges that:

- (a) The Confidential Information will be developed and acquired by the District at great expense, is of great significance and value to the District, and constitutes trade secrets;
- (b) The Confidential Information will be made known to the Provider in full reliance on this Agreement;
- (c) The Confidential Information is material and critically important to the effective and successful conduct of the District's business operations and activities; and
- (d) Any use of the Confidential Information by Provider other than for the District's benefit in connection with the business relationship between Provider and the District established by this Agreement will constitute a wrongful usurpation of the Confidential Information by Provider. The Provider hereby agrees to forever hold the Confidential Information in strict confidence and secret; provided, however, that Provider may disclose any or all of the Confidential Information to any corporation, partnership, trust, firm or other business entity not affiliated with the District if prior written consent of the District is obtained by Provider.

#### **Section 4.7 [Reserved]**

#### **Section 4.8 Insurance.**

Provider shall purchase and maintain policies of insurance with an insurer or insurers, qualified to do business in the State of California and acceptable to District which will protect Provider and District from claims which may arise out of or result from Provider's actions or inactions relating to the Agreement, whether such actions or inactions be by themselves or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The aforementioned insurance shall include coverage for:

(a) Workers' Compensation and Employers Liability Insurance in accordance with the laws of the State of California.

(b) Comprehensive general and auto liability insurance with limits of not less than ONE MILLION DOLLAR (\$1,000,000) combined single limit, bodily injury and property damage liability per occurrence, including:

- (i) owned, non-owned and hired vehicles;
- (ii) blanket contractual;
- (iii) broad form property damage;
- (iv) products/completed operations; and
- (v) personal injury.

#### **Section 4.9 Indemnification.**

To the fullest extent permitted by law, Provider shall fully indemnify, defend and hold harmless the District, its employees, agents and independent Providers from claims, demands, causes of actions and liabilities of every kind and nature whatsoever arising out of or in connection with Provider's services performed under this Agreement. This indemnification shall extend to claims occurring after this Agreement is terminated as well as while it is in force.

#### **Section 4.10 Return Of District Property.**

On the termination of this Agreement or whenever requested by the District, Provider shall immediately deliver to the District all property in Provider's possession or under Provider's control belonging to the District in good condition, ordinary wear and tear and damage by any cause beyond the reasonable control of Provider excepted.

### **ARTICLE 5. PROVIDER'S WORK PRODUCT**

#### **Section 5.1 Ownership Of Provider's Work Product.**

(a) Provider agrees that any and all intellectual properties, including, but not limited to, all ideas, concepts, themes, computer programs or parts thereof, documentation or other literature, or illustrations, or any components thereof, conceived, developed, written, or contributed by Provider, either individually or in collaboration with others, pursuant to this Agreement, shall belong to and be the sole property of District.

(b) Provider agrees that all rights in all works prepared or performed by Provider pursuant to this Agreement, including patent rights and copyrights applicable to any of the intellectual properties described in Subsection (a) above, shall belong exclusively to District and shall constitute “works made for hire.”

(c) The provisions of this Section shall not apply to any of Provider’s rights in any invention for which no equipment, supplies, facilities, or trade secret information of District was used, which was developed entirely on Provider’s own time, and which:

(i) Does not relate, at the time of conception or reduction to practice of the invention, to District’s business or to District’s actual or demonstrably anticipated research or development; or

(ii) Does not result from any work performed by Provider for District.

## **Section 5.2 Use Of Copyrighted Materials.**

Provider warrants that any materials provided by Provider for use by District pursuant to this Agreement shall not contain any material that is protected under the Copyright Act or any other similar law, except to the extent of “fair use,” as that concept is defined in the Copyright Act, and except to the extent that Provider has obtained permission to use such work from the copyright holder. Provider shall be solely responsible for ensuring that any materials provided by Provider for use by District pursuant to this Agreement satisfy this requirement. Provider agrees to hold District harmless from all liability or loss, including debt or exercise for attorneys’ fees to which District is exposed on account of Provider’s failure to perform this duty.

## **ARTICLE 6. GENERAL PROVISIONS**

### **Section 6.1 Disputes Resolution.**

In the event of any disputes or disagreement between the District and Provider with respect to the interpretation of any provision of this Agreement, or to the performance of the Parties under this Agreement, each Party shall appoint a designated representative to meet in good faith, to resolve the dispute or to negotiate an adjustment to any provision of this Agreement. Such negotiations shall be conducted in a timely manner to avoid undue delay in resolving the dispute. No formal proceeding for judicial resolution of any dispute or disagreement shall be commenced until a Party concludes in good faith and provides written notice to the other Party that an amicable resolution of the matter at issue through continued negotiation does not appear likely.

### **Section 6.2 Default.**

A Party will be considered in default of its obligations under this Agreement if such Party should fail to observe, to comply with, or to perform any term, condition, or covenant contained in this Agreement and such failure continues for ten (10) days after the non-defaulting Party gives the defaulting Party written notice thereof. In the event of default, the non-defaulting Party, upon written notice to the defaulting Party, may terminate this Agreement as of the date specified in the notice, and may seek such other and further relief as may be provided by law.



### **Section 6.3 Amendments.**

This Agreement may not be altered or modified, except by a writing signed by the Parties.

### **Section 6.4 Status Of Provider.**

Provider enters into this Agreement, and will remain throughout the term of the Agreement, an independent Provider. Neither Provider nor its employees, agents or independent Providers shall become an employee, joint venturer, partner, agent or principal of the District while this Agreement is in effect. Provider's employees, agents and independent Providers shall not be entitled to the rights or benefits afforded to the District's employees, including disability or unemployment insurance, workers' compensation, medical insurance, sick leave or any other employment benefit.

### **Section 6.5 Governing Law.**

This Agreement shall be governed by and construed according to the laws of the State of California that would apply if all Parties were residents of California and the Agreement was made and performed in California.

### **Section 6.6 Notices.**

All notices and demands between the Parties hereto shall be in writing and shall be served either personally or by registered or certified mail. Such notices or demands shall be deemed given when personally delivered or seventy-two (72) hours after the deposit thereof in the United States mail, postage prepaid, addressed to the Party to whom such notice or demand is to be given or made. Such notices and demands may also be sent by telex, telegraph, telecopier or other similar electronic transmission device providing for a permanent record of the notice or demand, and, if so served, such notice or demand shall be deemed given and made at the time the device confirms to the sender delivery thereof to the addressee.

All notices and demands shall be given as follows:

**To the District:**

Attn: Bruce Colby,  
Chief Business Officer

Davis Joint Unified School District  
526 B Street  
Davis, CA 95616-3811

**To the Provider:**

Attn: Edwin Martinez

ALANIZ CONSTRUCTION, INC.  
7160 Stevenson Blvd.  
Freemont, CA 94538

Each Party may designate in writing such other place or places that notices and demands may be given.

#### **Section 6.7 Assignment.**

This Agreement shall not be assigned by either Party without the prior written consent of the other Party.

#### **Section 6.8 Order Of Precedence.**

In the event of any conflict or inconsistency in the interpretation of this Agreement (including Attachments), such conflict or inconsistency shall be resolved by giving precedence to the body of this Agreement, then to the Attachments.

#### **Section 6.9 Agreement Interpretation.**

This Agreement is the result of arm's length negotiations between the Parties, and shall be construed as drafted by all Parties such that any ambiguities shall not be construed against either Party.

#### **Section 6.10 Counterparts.**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and will become effective and binding upon the Parties as of the Effective Date at such time as all signatories hereto have signed a counterpart of this Agreement.

#### **Section 6.11 Entire Agreement.**

This Agreement contains the entire agreement between the Parties with respect to the subject matter of this Agreement and it supersedes all other prior and contemporary agreements, understanding, and commitments between the Parties with respect to the subject matter of the Agreement.

#### **Section 6.12 Severability.**

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

#### **Section 6.13 Effect Of Recitals.**

The Recitals and Exhibits herein are deemed true and correct, are hereby incorporated into this Agreement as though fully set forth herein, and the Parties acknowledge and agree that they are bound by the same.

#### **Section 6.14 Force Majeure.**

Notwithstanding any other terms and conditions hereof, in the event that a Party is materially unable to perform any of its obligations hereunder because of severe weather, natural disasters, riots, wars, acts of terrorism, governmental action or other events of force majeure beyond the Party's control, then such Party shall, upon written notice to the other Party hereof, be relieved from its performance of such obligations to the extent, and for the duration, that such performance is prevented by such events; provided that such Party shall at all times use its best efforts to resume such performance.

**IN WITNESS WHEREOF**, the Parties hereto have entered into this Agreement as of the Effective Date of this Agreement.

**DISTRICT:**

**DAVIS JOINT UNIFIED SCHOOL DISTRICT**

By: \_\_\_\_\_

Name and Title: Bruce Colby, Chief Business Officer

**PROVIDER:**

\_\_\_\_\_

By: \_\_\_\_\_

Name and Title: \_\_\_\_\_

**APPENDIX A**  
**SCOPE OF SERVICES**

(attached)

**ALL WORK IDENTIFIED IN THE ATTACHED PROPOSAL #4575, dated  
11/21/2016 for work performed at North Davis Elementary School**



Alaniz Construction, Inc.  
7160 Stevenson Blvd.  
Fremont, CA 94538  
510-770-5000 Office  
510-770-5070 Fax  
CA Lic. #: 587021 A

Proposal # 4575

Date 11/21/2016

Estimator Edwin Martinez

Jobsite North Davis Middle School -  
Concrete Improvements  
555 E. 14th Street  
Davis, CA 95616

Since 1989

## Proposal & Contract

### Client

George Parker  
Davis Joint Unified School District  
1919 5th Street  
Davis, CA 95616

Contact George Parker

**Alaniz Construction, Inc. is pleased to provide you with this proposal to furnish all labor, materials, equipment and services required to perform the below specified improvements with clarifications as follows:**

Qty	Work Description	Unit Price	Cost
1 Lump Sum	<b>Concrete Remove &amp; Replace:</b>  Sawcut, demolish and excavate 200 SF of failed concrete to depth of 4" and transport spoils to recycling center. Stump grind existing tree stump 12" below grade and spread chips onsite. Re-grade and compact subgrade, set forms, dry fit dowels as necessary then pour and 4" thick concrete slab. medium broom finished. Excludes application of concrete sealer. clean up and dust control for our work		\$7,200.00

**Payment Terms:** Upon receipt of invoice.

**Total: \$7,200.00**

**Warranty:** Alaniz Construction warrants our work against failure due to poor workmanship or faulty material for a period of one year. However, we will offer a two year warranty provided that payment is made per terms. Failure to pay within the agreed upon payment terms voids the extended warrantee for this work.

**Acceptance of Proposal:** This proposal is subject to the Terms and Conditions set forth on the following pages are incorporated herein by reference and have been read and understood by the undersigned. Alaniz Construction, Inc. is hereby authorized to perform the work as specified above. Customer agrees to pay Alaniz Construction, Inc. for the specified work in accordance with Payment Terms.

**Prices are valid for 30 days**

Authorized Alaniz Representative Signature:

Executed By Client:

\_\_\_\_\_  
Signature

Company Name: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name & Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_



## TERMS AND CONDITIONS

1. **Guarantee.** All material is guaranteed to be as specified in this Proposal and Contract. The Work will be performed in a workmanlike manner according to standard practices. The Work is guaranteed to be free from defects in material or workmanship for a period of two years from the date on which the Project is completed.

2. **Governmental Requirements.** All permits, bonds, testing, soil sterilization, engineering, and other items or activities required in order for the Project to meet or be in compliance with any governmental regulation or requirement, and all fees and costs relating to same, are the responsibility of Customer. No such fees or costs are included in this Proposal.

3. **Change Orders.** Any alteration or change in the Work will be evidenced by a change order executed by Customer and Alaniz. Any change in the Total Cost due to the alteration or change will be reflected in the change order and will be paid in accordance with the Payment Terms.

4. **Additional Insurance.** If Customer requires Alaniz to maintain any special or additional insurance coverage above and beyond standard coverage, such requirement shall be evidenced by a change order. The cost of such special or additional coverage will be added to the Total Cost.

5. **Soil Conditions.** Alaniz is not liable for any cracks that may occur in the pavement surface due to earth movement, soil expansion, soil contraction, or tree roots.

6. **Limitation of Responsibility and Liability.** Alaniz assumes no responsibility or liability for any of the following:

- a. damage to underground utilities (e.g. water, gas, electric, sewer, cable) not buried to Uniform Building Code depth;
- b. damage to roots of adjacent trees or landscape during excavation;
- c. compaction and settling of any base material not prepared by Alaniz or that is below the depth specified in this Proposal;
- d. cracking from underlying base soil movement below the depth specified in this Proposal;
- e. standing water on surfaces with a slope of less than 1% (desired drainage slope is a minimum of 2%);
- f. oil spots showing through sealcoat unless the oil spots are ground out and patched with hot mix asphalt;
- g. scuffing on newly paved or seal coated surfaces from tires and turns made using power steering;
- h. damage to asphalt from hard-rubber tires or over-weighted vehicles; or
- i. edge stability or longitudinal cracking, if header boards are not placed along edges of newly installed asphalt (other than where the newly installed asphalt butts up against existing asphalt or concrete edges).

7. **Existing Asphalt; Subsurface.** If the existing asphalt or concrete at the Location is thicker than the depth reflected in this Proposal, the cost of further excavation and replacement will be agreed by Customer and Alaniz and reflected in a change order. If the subsurface at the Location is wet or inadequate and the sub-base will not stabilize after compaction, any additional cost for further excavation and replacement to stabilize the subsurface will be agreed by Customer and Alaniz and reflected in a change order.

8. **Sealcoating.** Sealcoating is a means to resurface existing asphalt pavement. It is not intended to restore badly cracked or broken base pavement or to permanently seal cracks that are subject to base movement. Cracks that are filled and covered with sealcoat will open again.

9. **Asphalt.** Alaniz will use the asphalt size(s) specified in this Proposal to perform the Work. One-half inch medium asphalt is the size most commonly used; other sizes are used depending on the application. Size variations are present in all asphalt finish surfaces due to the different sizes of aggregate within the asphalt mix.

10. **Labor Rates.** All prices for labor quoted in this Proposal are based on Alaniz's standard labor rates. Prevailing wage rates will be paid only if specifically stated.

11. **Payment Terms.** Payment of the Total Cost is due in full upon completion of the Work. If the Work is done in phases, payment for each phase is due upon completion of that phase or as otherwise stated in this Proposal. Interest at the rate of 1.5% per month will be charged on all amounts not paid within 30 days.

12. **Force Majeure.** Alaniz will have no responsibility for delay or failure in performing the Work that is not due to the fault or negligence of Alaniz and that is beyond its control, including without limitation weather, fire, flood, explosion, earthquake, subsidence of soil, failure of machinery or equipment or supply of material, court order or governmental interference, civil commotion, riot, war, strikes, labor disturbances, transportation difficulties, or labor shortages.

13. **Mechanics' Liens.** A Notice to Owner Regarding Mechanics' Lien Law is attached to this Proposal and incorporated by this reference.

14. **Attorneys' Fees.** In the event of a dispute between Customer and Alaniz with respect to any matter covered by this Proposal which leads to a proceeding, including arbitration, to resolve such dispute, the prevailing party in such proceeding shall be entitled to receive its reasonable attorneys' fees, expert witness fees, and out-of-pocket costs incurred in connection with such proceeding, including any appeal thereof, in addition to any other relief it may be awarded.

15. **Entire Agreement.** This Proposal constitutes the complete understanding and agreement of Customer and Alaniz relating to the Project and supersedes any and all prior written or oral understandings or agreements.



## NOTICE TO OWNER REGARDING MECHANICS' LIEN LAW

Under The California Mechanics' Lien Law, any contractor, subcontractor, laborer, supplier or other person or entity who helps to improve your property, but is not paid for his/her work or supplies, has a right to place a lien on your home, land, or property where the work was performed and to sue you in court to obtain payment. This means that after a court hearing, your home, land, and property could be sold by a court officer and the proceeds of the sale used to satisfy what you owe. This can happen even if you have paid your contractor in full if the contractor's subcontractors, laborers or suppliers remain unpaid.

To preserve their right to file a claim or lien against your property, certain claimants such as subcontractors or material suppliers are each required to provide you with a document called a "Preliminary Notice." Contractors and laborers who contract with owners directly do not have to provide such notice since you are aware of their existence as an owner. A preliminary notice is not a lien against your property. Its purpose is to notify you of persons or entities that may have a right to file a lien against your property if they are not paid. In order to perfect their lien rights, a contractor, subcontractor, supplier, or laborer must file a mechanics' lien with the county recorder which then becomes a recorded lien against your property. Generally, the maximum time allowed for filing a mechanics' lien against your property is 90 days after substantial completion of your project.

### **TO INSURE EXTRA PROTECTION FOR YOURSELF AND YOUR PROPERTY, YOU MAY WISH TO TAKE ONE OR MORE OF THE FOLLOWING STEPS:**

(1) Require that your contractor supply you with a payment and performance bond (not a license bond), which provides that the bonding company will either complete the project or pay damages up to the amount of the bond. This payment and performance bond as well as a copy of the construction contract should be filed with the county recorder for your further protection. The payment and performance bond will usually cost from 1 to 5 percent of the contract amount depending on the contractor's bonding ability. If a contractor cannot obtain such bonding, it may indicate his or her financial incapacity.

(2) Require that payments be made directly to subcontractors and material suppliers through a joint control. Funding services may be available, for a fee, in your area which will establish voucher or other means of payment to your contractor. These services may also provide you with lien waivers and other forms of protection. Any joint control agreement should include the addendum approved by the registrar.

(3) Issue joint checks for payment, made out to both your contractor and subcontractors or material suppliers involved in the project. The joint checks should be made payable to the persons or entities which send preliminary notices to you. These persons or entities have indicated that they may have lien rights on your property, therefore you need to protect yourself. This will help to insure that all persons due payment are actually paid.

(4) Upon making payment on any completed phase of the project, and before making any further payments, require your contractor to provide you with unconditional "Waiver and Release" forms signed by each material supplier, subcontractor and laborer involved in that portion of the work for which payment was made. The statutory lien releases are set forth in exact language in Section 3262 of the Civil Code. Most stationery stores will sell the "Waiver and Release" forms if your contractor does not have them. The material suppliers, subcontractors, and laborers that you obtain releases from are those persons or entities who have filed preliminary notices with you. If you are not certain of the material suppliers, subcontractors, and laborers working on your project, you may obtain a list from your contractor. On projects involving improvements to a single family residence or a duplex owned by individuals, the persons signing these releases lose the right to file a mechanics' lien claim against your property. In other types of construction, this protection may still be important, but may not be as complete.

To protect yourself under this option, you must be certain that all material suppliers, subcontractors, and laborers have signed the "Waiver and Release" form. If a mechanics' lien has been filed against your property, it can only be voluntarily released by a recorded "Release of Mechanics' Lien" signed by the person or entity that filed the mechanics' lien against your property unless the lawsuit to enforce the lien was not timely filed. You should not make any final payments until any and all such liens are removed. You should consult an attorney if a lien is filed against your property.

State law requires anyone who contracts to do construction work to be licensed by the Contractors' State License Board in the license category in which the contractor is going to be working -- if the total price of the job is \$500 or more (including labor and materials).

Licensed contractors are regulated by laws designed to protect the public. If you contract with someone who does not have a license, the Contractors' State License Board may be unable to assist you with a complaint. Your only remedy against an unlicensed contractor may be in civil court, and you may be liable for damages arising out of any injuries to the contractor or his or her employees.

You may contact the Contractors' State License Board to find out if this contractor has a valid license. The Board has complete information on the history of licensed contractors, including any possible suspensions, revocations, judgments, and citations. The Board has offices throughout California. Please check the government pages of the white pages for the office nearest you or call 1-800-321-CSLB for more information.

Contractors are required by law to be licensed and regulated by the Contractors State License Board, which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten years of the date of the alleged violation. Any questions concerning the contractor may be referred to the Registrar, Contractors State License Board, PO Box 26000, Sacramento, CA 95826, 1-800-321-2752.