

**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 District-wide concrete sidewalk grinding.

The term of this agreement is from February 16, 2017 to December 31, 2017.

The cost of this service will be \$3,600 per day, not to exceed a total of \$40,000, and is allocated in the annual District budget for maintenance and operations.

DAVIS JOINT UNIFIED SCHOOL DISTRICT
MASTER
PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (the "Agreement") is made and entered into as of February 16, 2017 (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 **CA Licensed Contractor** ("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.

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 Not to Exceed Forty Thousand ----- Dollars (\$ 40,000.00) for all hours & materials completed by Provider.

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]

(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 6.7 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.

APPENDIX A

SCOPE OF SERVICES

(attached)

Districtwide - Concrete Sidewalk Grinding: Daily Rate \$3,600/Day

Mobilization, provide labor to setup & lay out, supervision; 2 men - concrete grinding crew through out school campus (8 hour day). Vacuum, materials clean up and dust control.

Scope of work shall deemed as "*Repair*" work, pursuant to Public Contract Code 20115 as defined in Public Contract Code 22002(c) and shall be as dictated by District's Maintenance Manager and approved by District's Chief Business Officer. Proposals are based on current prevailing wages, weekday work, supervision, mobilization and any concrete debris removal and recycled.



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

Proposal # 4624

Date 12/21/2016

Estimator Edwin Martinez

Jobsite Failed Concrete Sidewalk
Grinding

Since 1989

Proposal & Contract

Client

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

Contact

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 Each	<u>Failed Concrete Sidewalk Grinding:</u> mobilization, concrete failed lay out and supervision. 2 men crew concrete grinding through out school campus (8 hour day). vacumm, clean up and dust control. proposal based on prevailing wages, weekday work, supervision, mobilization and any concrete debri removal and recycled.	\$3,600.00	\$3,600.00

Payment Terms: Upon receipt of invoice.

Total: \$3,600.00

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:

Company Name: _____

Print Name & Title: _____

Signature: _____

Date: _____

Signature

Date: _____



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.