ALAMO COLLEGES DISTRICT	**COMPETITIVE PROCUREMENT SERVICES AGREEMENT BETWEEN ALAMO COMMUNITY COLLEGE DISTRICT AND WAY ENGINEERING, LTD.**

This Agreement is entered into by and between Alamo Community College District (ACCD), a political subdivision of the State of Texas ("Alamo Colleges District") and Way Engineering, Ltd., located at 8610 Wallisville Rd., Houston, TX ("Contractor"), collectively sometimes referred to herein as "the Parties."

WHEREAS, Alamo Colleges District is a public junior college district comprised of district services offices and five colleges, San Antonio College, St. Philip's College, Palo Alto College, Northwest Vista College, and Northeast Lakeview College; and

WHEREAS, Alamo Colleges District published a competitive procurement solicitation ("Request"), designated CSP #17M-013 to obtain Plumbing and Pipefitting Maintenance services for Alamo Colleges District at its campus locations and district offices; and

WHEREAS, Contractor responded to such Request and desires to provide such services to Alamo Colleges District according to the terms of such Request as herein augmented and/or modified.

NOW THEREFORE, in consideration of the mutual covenants set forth herein below, and for other good and valuable consideration, the receipt of which is hereby acknowledged, Alamo Colleges District and Contractor hereby agree as follows:

1. DEFINED TERMS.

1.1 "Project" means to provide Plumbing and Pipefitting Maintenance & Repair services for the Alamo Colleges District at its campus locations and district offices.

1.2 "Project Coordinator" means the designated employee of Alamo Colleges District who will manage the relationship between Alamo Colleges District and Contractor. The designated employee will be knowledgeable of the Project and be experienced in managing projects similar to the one established herein.

2. PROJECT OBJECTIVE(S) AND SCOPE.
The Project objective and scope is defined in **Exhibit A.**

3. PROJECT DELIVERABLES.
Contractor's Project deliverables are set forth in **Exhibit A.**

4. SUPPLEMENTAL DELIVERABLES OR RATE CHANGES. Additional services resulting from project modifications or changes will be performed at Contractor's discretion with Alamo Colleges District' written approval and will be invoiced at the then current Contractor service rates.

5. **ACCESS**. The Parties agree to grant one another, their employees and agents assigned to the Project reasonable access to appropriate portions of one another's facilities to the extent reasonably necessary to perform their obligations under this Agreement.

6. **COMMUNICATION**. The Parties agree to communicate in furtherance of the Project, including but not limited to setting mutually agreed upon hours in which Alamo Colleges District and Contractor will perform the Project Deliverables and notifying one another of any and all changes in personnel, operations, or policies that may affect the Project.

7. **POLICIES**. The Parties agree to advise one another, and their respective employee(s) assigned to the Project, of their responsibility for complying with one another's existing rules and regulations, and of the content of same.

8. **COMPLIANCE WITH APPLICABLE LAWS**. The Parties agree to comply with all applicable provisions of the Family Education Rights and Privacy Act 20 (USC §1232g), and all other law and regulations applicable to the operation of Alamo Colleges District and the Project. The Parties agree to have in place and abide by a policy prohibiting sexual harassment that complies with applicable federal and state standards. The Parties further agree to make no distinction on the basis of race, color, gender, sexual preference, religion, age, disability, genetic information, national origin, veteran status or political affiliation. For the purpose of this Agreement, such distinctions include, without limitation, the following: Denying a person any service or benefit or availability of a facility; providing any service or benefit to a person which is different, or is provided in a different manner or at a different time, from that provided to other persons under this Agreement; subjecting a person to segregation or separate treatment in any matter related to receipt of any advantage or privilege enjoyed by others receiving any service or benefit; treating a person differently from others in determining whether they satisfy any admission, enrollment, quota, eligibility, membership or any other requirement, or condition which individuals must meet in order to be provided any service or benefit.

9. **INSURANCE**.

9.1 Alamo Colleges District maintains insurance coverage for claims or causes of action brought for which immunity has been waived under the provisions of the Texas Tort Claims Act.

9.2 Contractor shall obtain at its own cost insurance to its activities pursuant to this Agreement at the following minimum levels of coverage:

WORKERS' COMPENSATION	STATUTORY
Must include coverage for alternate employers and borrowed servants	
EMPLOYER'S LIABILITY	
Each Accident (bodily injury)	$1,000,000.00
Policy Limit (bodily injury by disease)	$1,000,000.00
Each Employee (bodily injury by disease)	$1,000,000.00
GENERAL COMMERCIAL LIABILITY	
General Aggregate	$2,000,000.00
Each Occurrence (bodily injury/property damage)	$1,000,000.00
Each Occurrence (personal injury/advertising injury)	$1,000,000.00
Aggregate Limit (products/completed operations)	$2,000,000.00
Each Occurrence (products/completed operations)	$1,000,000.00

Each Occurrence (Damage to Premises Rented To You) All coverage must be primary and non-contributory	$1,000,000.00
BUSINESS AUTOMOBILE LIABILITY	
Combined Single Limit (bodily injury/property damage) Must include all owned, non-owned and hired vehicle	$1,000,000.00
UMBRELLA/EXCESS LIABILITY	
Each Occurrence	$1,000,000.00
POLLUTION ON-SITE LIABILITY (if services present risk)	
Each Occurrence	$1,000,000.00

Contractor shall, at the time of execution of this agreement, provide Alamo Colleges District with a copy of a certificate of insurance evidencing all applicable required policies which must list "Alamo Community College District" as a NAMED ADDITIONAL INSURED and beneficiary of contractual indemnification coverage and waiver of subrogation.

The Workers' Compensation, Commercial General Liability and Business Automobile Liability policies will, to the fullest extent allowable by Law, include a waiver of subrogation in favor of Alamo Colleges District. The Commercial General Liability policy will (i) include Alamo Colleges District as additional insured and (ii) be primary and non-contributory with respect to any insurance or self-insurance maintained by Company. The Errors and Omissions policy will include Alamo Colleges District as additional insured. Any additional insured endorsement may be either specific to the Company Insured Group or "blanket" or "automatic" (i.e., addressing any person or entity), as required by contract. Thirty (30) days' notice of cancellation should be provided for all policies. Contractor agrees to waive subrogation against the Alamo Colleges District, its officers, employees, and elected officials, and elected representative for injuries, including death, property damage, or any other loss to the same may be covered by the proceeds of insurance.

10. PAYMENT.

10.1 Contractor shall submit all invoices to Alamo Colleges District at the following address:

Alamo Colleges District
Accounts Payable
811 W. Houston, San Antonio, TX 78207-3033
Email: dst-acountspayable@alamo.edu

Invoices must include the purchase order number, date of service, name of college, and a description of service.

10.2 Alamo Colleges District will pay approved invoices within forty-five (45) days of receipt. Invoices shall be sent on a net 45 basis unless discount terms are offered.

10.3 Payments for goods and/or services may be made either by Alamo Colleges District Procurement card (Pcard) or by direct deposit to the vendor/contractor's designated banking account. Potential offerors may comment or submit questions concerning compliance with this requirement in accordance with the instructions for submission of questions prior to the receipt of proposals. Vendor/contractors wishing to participate in direct deposit may obtain the necessary form

at http://www.alamo.edu/district/fiscalaffairs.html, click on "forms" and select "direct deposit form-expenses."

10.4 Within ten (10) days after termination of this Agreement, Contractor will submit a final invoice ("Final Invoice") which will set forth all amounts due and remaining unpaid to Contractor and upon approval of the Final Invoice by Alamo Colleges District, Alamo Colleges District will pay ("Final Payment") to Contractor the amount due under the Final Invoice under the terms established by Texas law.

10.5 Notwithstanding any provision to the contrary, Alamo Colleges District will not be obligated to make any payment to Contractor if Contractor is in breach or default under this Agreement.

10.6 **Delinquency in Payment** – If the Contractor is a corporation and becomes delinquent in the payment of its Texas Margin Tax, then payments to the Contractor due under this Agreement may be withheld until such delinquency is remedied. The Contractor may not be included on a list of vendors debarred from doing business with the State of Texas or the U.S. Federal government.

11. **TERM AND TERMINATION**. The Term of this Agreement is set forth at Exhibit A hereto. The Term may be extended thereafter by written agreement signed by both parties.

11.1 **Termination without Cause**. If either Alamo Colleges District or Contractor desires to terminate this Agreement, each may do so without any liability therefore by delivering written notice to the other party no later than sixty (60) days prior to termination. Contractor's fees due on termination without cause will be prorated based on the portion of authorized work completed.

11.2 **Material Breach.** This Agreement may be terminated by Alamo Colleges District for breach of any material terms or conditions of this Agreement by Contractor, which breach is not corrected by Contractor within ten (10) calendar days after written notice thereof is given to Contractor.

11.3 **Current Revenues Only**. Alamo Colleges District commits only its current revenues hereunder, as required by Texas law. The Alamo Colleges District Board retains the continuing right to terminate the Agreement without liability for said termination at the expiration of each budget period during its initial and renewal terms. The Alamo Colleges District Board will make best efforts to obtain and appropriate funds to meet Alamo Colleges District' obligations under the Agreement, consistent with the maintenance of reasonable reserves.

12. **LICENSES, PERMITS, TAXES AND FEES.** Contractor warrants that it will obtain, maintain in effect, and pay the cost for all licenses, permits, or certifications that may be necessary for Contractor's performance of this Agreement. Contractor will be responsible for the payment of all taxes, excises, fees, payroll deductions, employee benefits (if any), fines, penalties or other payments required by federal, state, or local law or regulation in connection with Contractor's performance of this Agreement.

13. **GENERAL TERMS.**

13.1 **Notices.** All notices given pursuant to this Agreement shall be in writing and shall either be mailed by first class mail, postage prepaid, registered or certified with return receipt requested, or delivered in person to the intended addressee, or sent by fax or overnight

delivery service. Notice mailed shall be effective on mailing. Notice given in any other manner shall be effective on receipt. For purposes of notice, the addresses of the Parties shall be as stated under their names as set forth herein, provided, however, that each Party shall have the right to change its address for notice hereunder to any other location by the giving of 10 days notice to the other Parties in the manner set forth above.

Notices to Alamo Colleges District:

Dr. Diane E. Snyder, CPA, Ph.D.
Vice Chancellor for Finance & Administration
Alamo Colleges District
201 W. Sheridan, Bldg. D, Room 117
San Antonio, TX 78204
Email: dsnyder@alamo.edu

John Strybos
Associate Vice Chancellor of Facilities Operation and Construction Management
Alamo Colleges District
7990 Pat Booker Road
Live Oak, TX 78233
Email: jstrybos@alamo.edu

With Copy to College:

Department of Purchasing and Contract Administration
Gary O'Bar, C.P.M.
Alamo Colleges District
1743 N. Main Ave., Bldg. 41, Room 101
San Antonio, TX 78212-4299
Email: dst-purchasing@alamo.edu

Notices to Contractor:

Dillon Varner
Way Engineering, Ltd.
8610 Wallisville Road, Houston, TX 77029
Email: dispatch@wayeng.com

13.2 **Choice of Law.** This Agreement is made and is to be performed in Bexar County, Texas, and will be interpreted and governed by the Constitution and the internal laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this agreement shall be in Bexar County, Texas.

13.3 **Identity Theft Prevention and Notification.** Consultant's performance under this Agreement may include access to and review of confidential, personally identifying information about Alamo Colleges District' employees, students, and/or vendors. Consultant agrees to use best practices to prevent identity theft and to promptly report in writing any red flags to the Program Administrator, the Vice Chancellor for Finance and Administration, or the Project Coordinator for this Agreement.

13.4 **Successors and Assigns.** This Agreement shall be binding on and shall inure to the benefit of the Parties, and their respective heirs, legal representatives, successors and assigns. This Agreement may not, in total or part, be assigned or transferred directly or indirectly to another subsidiary/agency without prior written consent of both parties. Sixty (60) calendar days' written notice is required for any change in status.

13.5 **Entire Agreement.** This Agreement represents the entire agreement between the Parties with respect to the subject matter herein. No representations, warranties, promises, guarantees, undertakings, or agreements, oral or written, express or implied, have been made by Alamo Colleges District with respect to the subject matter herein except as expressly stated herein. Notwithstanding the foregoing, this Agreement also hereby incorporates by reference the provisions of Alamo Colleges District' Request, as well as those provisions of Contractor's response to that Request ("Response") that did not reject the requirements of that Request, to the extent that such provisions are not inconsistent with specific provisions of this Agreement.

13.6 **Amendments.** Amendments or modifications may be made to this Agreement only by setting the same forth in a written document duly executed by the Parties.

13.7 **Force Majeure.** Any party shall be temporarily excused from performance otherwise due hereunder only to the extent that, and for so long as, such performance is rendered impossible by reason of factors beyond that party's control and not occasioned by the negligence of the party or its affiliates, including, but not limited to, acts of God. Any party experiencing or anticipating a force majeure event shall promptly notify the other party in writing thereof.

13.8 **Severability.** This Agreement is to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement or the application thereof to any party or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the extent of such invalidity or unenforceability does not destroy the basis of the bargain among the Parties as expressed herein, and the remainder of this Agreement and the application of such provision to other parties or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

13.9 **Gender and Number.** Whenever required by the context, as used in this Agreement, the singular number shall include the plural and the neuter shall include the masculine or feminine gender, and vice versa.

13.10 **Captions.** The Section headings appearing in this Agreement are for convenience of reference only and are not intended, to any extent or for any purpose, to limit or define the text of any Section.

13.11 **Exhibits.** Any and each Exhibit to this Agreement is incorporated herein for all purposes.

13.12 **Drafters.** Each party to this transaction has been afforded the opportunity to negotiate the terms of this Agreement, and to consult legal counsel regarding same; therefore, the Parties waive and disclaim the application of any principle of contract interpretation that would construe any ambiguity herein against either party as drafter hereof.

13.13 **No Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon any person, firm or corporation other than the parties hereto and their respective successors or assigns, any remedy or claim under or by

reason of this Agreement or any term, covenant or condition hereof, as third party beneficiaries or otherwise, and all of the terms, covenants and conditions hereof shall be for the sole and exclusive benefit of the parties hereto and their successors and permitted assigns.

13.14 **Dispute Resolution.** In the event of any dispute, claim, question, or disagreement arising out of or relating to this Agreement, the parties agree to do all of the following before commencing legal action. First, the parties shall use their best good-faith efforts to settle such disputes, claims, questions, or disagreement. To this effect they shall first consult and negotiate with each other in good faith, recognizing their mutual interests, and attempt to reach a just and equitable solution satisfactory to both parties. If such consultation and negotiation does not fully resolve the issue, the parties agree to promptly engage in non-binding mediation in Bexar County, Texas. If such mediation does not fully resolve the issue, then either party may thereafter seek legal recourse in equity and/or at law. Notwithstanding the foregoing, either party may commence litigation for injunctive relief without having complied fully with these dispute resolution procedures, but only to require the other party to mediate, to preserve the status quo pending resolution of an issue, or to protect a vital interest of that party or of an affiliate.

13.15 **Indemnification and Release.** CONTRACTOR AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS Alamo Colleges District, its Board of Trustees, officers, employees, agents, contractors and assigns ("Protected Parties") from and against, and to pay to Protected Parties on demand the amount of, any and all costs resulting from any complaints, claims, liabilities, suits, damages, judgments, penalties, fines, settlements, losses and expenses (including legal fees, expert witness fees and other legal expenses and court costs), of whatsoever kind and nature, imposed upon, incurred by, or asserted against Protected Parties in any way related to or resulting from the execution, enforcement, or performance of this Agreement, or from Contractor's use of Alamo Colleges District' facilities("Claims"). Contractor's duty to indemnify, defend, and hold harmless Protected Parties includes, but is not limited to, Claims resulting from bodily injury or death of persons, or from damage to property and the resulting loss of its use, regardless of the ownership of such property and the identity of such persons, EVEN IF SUCH INJURY, DEATH OR DAMAGE WAS CAUSED, IN WHOLE OR IN PART, BY ANY ACT OR OMISSION, INCLUDING, WITHOUT LIMITATION, THE NEGLIGENCE, GROSS NEGLIGENCE OR STRICT LIABILITY, OF ANY PROTECTED PARTY. Alamo Colleges District is a state governmental unit that is prohibited by law from indemnifying other parties pursuant to applicable Texas Attorney-General opinions. Notwithstanding anything appearing elsewhere to the contrary, there shall be no special assumption of liability, and no indemnification or "holding harmless" of Contractor, or any other party, by Alamo Colleges District, regardless of how characterized.

13.16 **Release of Liability**. CONTRACTOR HEREBY RELEASES Protected Parties from all liability for any and all Claims arising under this Agreement, EVEN IF CAUSED, IN WHOLE OR IN PART, BY ANY ACT OR OMISSION, INCLUDING, WITHOUT LIMITATION, THE NEGLIGENCE, GROSS NEGLIGENCE OR STRICT LIABILITY, OF ANY PROTECTED PARTY, whether contributory, sole, or joint, PAST OR FUTURE, arising out of this Agreement.

13.17 **Release of Information**. Alamo Colleges District is a governmental entity in the State of Texas. Documents submitted pursuant to this Agreement become a government record. Access by the public to government records is governed by the Texas Public Information Act ("PIA"). In the event a request is made for information designated as proprietary, Alamo Colleges District may determine in its sole discretion whether sufficient legal

justification exists for withholding the information and whether an opinion should be requested from the Texas Attorney General. If an opinion is requested from the Texas Attorney General, Alamo Colleges District will notify Contractor, in accordance with PIA, to assert any arguments Contractor may have in opposition to release of the information. In the event Contractor requests judicial intervention, the party so requesting shall indemnify Alamo Colleges District for its costs (including attorney's fees) associated with the judicial action. Under no circumstances will Alamo Colleges District be liable for any costs, damages, or claims of any nature, related to release or disclosure of any information contained in documents submitted pursuant to this Agreement.

13.18 **Independent Contractors.** Contractor and Alamo Colleges District understand and agree that each performs tasks, the details of which the other does not have legal right to control and no such control is assumed by this Agreement. This Agreement does not create an employment relationship, partnership, or joint venture between Contractor, its employees, and Alamo Colleges District. Neither party nor its employees shall be deemed employees of the other for any purpose whatsoever, and neither shall be eligible to participate in any benefit program provided by the other. Contractor and Alamo Colleges District further agree that nothing in this Agreement shall be construed to create a borrowed servant status with the employees of the other party.

13.19 **Records.** Contractor agrees to keep all financial and supporting documents, statistics, and any other records pertinent to this Agreement throughout its Term and for one (1) year thereafter, but for five (5) years thereafter if any portion of any payment hereunder is made from grant-sourced funds. Contractor further agrees that Alamo Colleges District or any grantor of payment funds, or any of their duly authorized representatives, at any time, will have access to, and the right to audit and examine, any such records for the purpose of financial audit or business practice review and to refund any overpayments disclosed by any such audits.

13.20 **Assignment-Delegation**. No right or interest in this contract shall be assigned or delegation of any obligation made by Contractor without the prior written permission of Alamo Colleges District. All correspondence will be directed to the Alamo Colleges District Purchasing and Contract Administration Department, 1743 N. Main Ave., Bldg. 41, Room 101, San Antonio, Texas 78212. Any attempted assignment or delegation by Contractor shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

13.21 **Payment Card Industry Data Security Standards (PCI-DSS) Compliance.** Should any goods or services provided under this contract fall under the requirements of the PCI-DSS, the Contractor represents and warrants that for the term of the contract, the software, hardware and/or services used for processing payment card transactions shall be compliant with standards established by the PCI Security Standards Council (https://www.pcisecuritystandards.org/index/shtml) . Contractor agrees to indemnify and hold Alamo Colleges District, its officers, employees, and agents, harmless for, from and against any and all claims, causes of action, suits, judgments, assessments, costs (including reasonable attorneys' fees) and expenses arising out of or relating to any loss of Alamo Colleges District customer credit card or identity information managed, retained or maintained by Contractor, including but not limited to fraudulent or unapproved use of such card or identity information. Contractor agrees to notify the Alamo Colleges District of any security breach involving the aforementioned data within one business day after discovery of the breach. Contractor further agrees to provide Alamo Colleges District a current certificate of PCI compliance on an annual basis at the commencement and during the contract term and/or any extension thereof.

13.22 **Contractor Parking**. Contractor will abide by the Alamo Colleges District Parking Policies at http://www.alamo.edu/uploadedFiles/District/Employees/Departments/Ethics/pdf/policies/C.2.2-Policy.pdf

13.23 **Right to Audit**. For the purpose of such audits, inspections, examinations and evaluations, the Alamo Colleges District' agent or authorized representative shall have access at any time to said records from the effective date of this contract for the duration of the work and until three (3) years after the date of final payment to the Contractor by Alamo Colleges District pursuant to this contract. Alamo Colleges District' agent or its authorized representative shall have access to the Contractor's facilities, all necessary records and shall be provided adequate and appropriate work space in order to conduct audits in compliance with this article. Alamo Colleges District' agent or its authorized representative shall give Contractor reasonable advance notice of intended audits. The Contractor will provide the Alamo Colleges District with notice in writing of the location, by address, of all such books and records and the name of the custodial thereof.

Authorized signatures below constitute acceptance of the terms and conditions set forth in this Agreement.

ALAMO COMMUNITY COLLEGE DISTRICT:

By:_____

Gary O'Bar, C.P.M. Date

Director Purchasing & Contract Administration

COMPANY NAME:

By: _____

Date

Print Name: _____

Title: _____