

Amendment No. 1 of Agreement

This is the first Amendment to Agreement No. 47-CC-001, last dated August 3, 2007 (**Agreement**) between **Suffolk County Community College (College)**, having its principal office at 533 College Road, Selden, New York 11784-2899, a chartered Community College (pursuant to New York State Education Law) under the sponsorship of the **County of Suffolk (County)**, a municipal corporation of the State of New York, and

Suffolk County Water Authority (**Contractor**), having its principal place of business at 4060 Sunrise Highway, Oakdale, NY 11769.

The parties hereto desire **Contractor** to perform a water main installation in order to increase pressure and meet fire flow demands at the Ammerman Campus in Selden New York.

Term of Agreement: August 1, 2007 through July 31, 2047

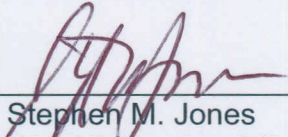
Total Cost of Amendment: Estimated entire cost of \$299,557.77 and as more fully set forth below.

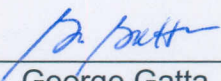
Terms and Conditions: Shall be as set forth in Exhibits A through E of the Agreement and Exhibit A-1, attached hereto.

In Witness Whereof, the parties hereto have executed this Agreement as of the latest date written below.

Suffolk County Water Authority

Suffolk County Community College

By: 
Stephen M. Jones
Chief Executive Officer

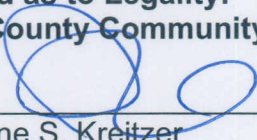
By: 
George Gatta
Interim President

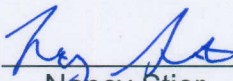
Date: 11/3/09

Date: 11/16/09

**Approved as to Legality:
Suffolk County Community College**

Approved:

By: 
Ilene S. Kreitzer
College General Counsel

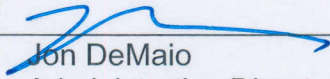
By: 
Nancy Stier
Vice President Business and
Financial Affairs

Date: 11/17/09

Date: 11/10/09

Law No. 47-CC-001
Suffolk County Water Authority
Amendment No. 1

Recommended:

By: 
Jon DeMaio
Administrative Director of
Educational Facilities

Date: 11/5/09

**Exhibit A-1
Terms and Conditions**

Whereas, the parties entered into an Agreement (Law No. 47-CC-001), last dated August 3, 2007 for Contractor to operate and maintain the College's water distribution system on its Ammerman Campus in Selden, New York and

Whereas, the College desires for Contractor to perform a water main installation in order to increase pressure and meet fire flow demands (see Schedule A) hereinafter the "Project"; and

Whereas, the Project requires the use of College property for one new SCWA water main and

Whereas, the Board of Trustees approved this amendment to the contract (Resolution No. 2009.61) and

Whereas, there exists a College capital project (CP#2129) to fund the Project

Now, therefore, the parties agree as follows:

1. The College hereby permits the Contractor to install, operate, maintain and repair the water main as shown in Exhibit A attached hereto and made a part hereof.
2. Contractor will perform the Project in order to increase pressure and meet fire flow demands at an estimated entire cost of \$299,557.77. The entire cost of the Project will be determined and payable as follows:
 - a. If the entire cost of the Project is less than the estimated entire cost, the College shall pay the entire cost which will be less than the estimated entire cost, or
 - b. If the entire cost of the Project exceeds the estimated entire cost, the College will pay the entire estimated cost and the Contractor may submit a change order to the College for payment of any additional costs incurred by the Contractor solely related to restoration costs above those estimated as part of the Project's estimated entire cost and the College's approval and payment of the change order amount will not be unreasonably conditioned or withheld, or
 - c. If the entire cost of the Project exceeds the estimated entire cost and the overage is due to costs not associated with restoration, the College will pay the Contractor the entire cost plus no more than 10% of the estimated entire cost to pay for the overages.

**Law No. 47-CC-001
Suffolk County Water Authority
Amendment No. 1**

- d. Payment will be due within forty-five (45) days after (i) the satisfactory completion of the Project and (ii) the receipt by the College of a properly completed Suffolk County Payment Voucher, together with any other form(s) reasonably required.
 - e. For purposes of this paragraph, the entire cost of the Project shall be the actual cost of the Project and the Contractor's overhead cost associated with the Project, if any. The Contractor shall submit documentation of the entire cost to the College for its review.
3. Except as herein amended, the terms and conditions shall be as set forth in Exhibits A through E as included in the original Agreement (Law No. 47-CC-001).

End of Text of Exhibit A-1

WBS# 035-10-00-0023**SCHEDULE "A"**

INSTALL THE FOLLOWING 12", 8", 6" D.I.P. & DIRECTIONAL DRILL 12" H.D.P.E.

- 1) 5' OF 8" AT THE INTERSECTION OF WAVERLY AVENUE & RUTGERS ROAD (FOR TIE-IN)
132' OF 12" ON THE W/S/O WAVERLY AVENUE N/F RUTGERS ROAD TO PROPOSED
DIRECTIONAL DRILL AT MOONEY POND ROAD.
DIRECTIONAL DRILL 125' OF 12" H.D.P.E. ACROSS MOONEY POND ROAD AT WAVERLY AVE
45' OF 12" IN S.C.C.C. EASEMENT N/F PROPOSED DIRECTIONAL DRILL TO S.C.C.C. R.O.W. "A"
430' OF 12" ON THE S/S/O S.C.C.C. R.O.W. "A" W/F EXIST. EASEMENT TO S.C.C.C. R.O.W. "B"
537' OF 12" ON THE E/S/O S.C.C.C. R.O.W. "B" N/F R.O.W. "A" TO S.C.C.C. WELL FIELD AND
PUMP STATION (FOR TIE-IN)
5' OF 6" AT THE INTERSECTION OF R.O.W. "A" AND R.O.W. "B" (FOR TIE-IN)
5' OF 6" AT THE INTERESECTION OF R.O.W. "B" AND PUMP STATION (TIE-IN)
- 2) INSTALL 10' OF 6" DUCTILE IRON PIPE IN EXISTING EASEMENT ON THE W/S/O QUADRANGLE
ROAD AT A POINT APPROXIMATELY 290' N/F CAMPUS ROAD (FOR TIE-IN)
- 3) INSTALL 1-8" VALVE & BOX IN EXISTING EASEMENT ON THE N/E/S/O THE AMMERMAN
BUILDING BY WALKWAY
ALSO, RETIRE 1 - 2" VALVE & BOX & REMOTE VAULT IN EXISTING EASEMENT APPROXIMATELY
200' E/F AMMERMAN BUILDING
- 4) 750' OF 12" IN EXISTING EASEMENT AREA AT S.C.C.C. S & W EXISTING 8" MAIN TO
EXISTING 12" MAIN AT MIDDLE CAMPUS ROAD (TIE-IN)
10' OF 12 IN EXISTING EASEMENT APPROXIMATELY 100' E/F BABYLON STUDENT CENTER
(FOR TIE-IN)
10' OF 6" AT EXISTING HYDRANT #270106-009 ON THE N/S/O BABYLON STUDENT CENTER
(FOR TIE-IN)
10' OF 6" IN EXISTING EASEMENT AT MIDDLE CAMPUS ROAD & QUADRANGLE RD (FOR TIE-IN)

TOWN: SELDEN

TOWNSHIP: BROOKHAVEN

SCWA MAP: 8-H

Water Distribution System Operation and Maintenance Agreement and License

This Agreement ("Agreement") is between **Suffolk County Community College ("College")**, having its principal office at 533 College Road, Selden, NY 11784-2899, a chartered community college (pursuant to New York State Education Law) under the sponsorship of the **County of Suffolk ("County")**, a municipal corporation of the State of New York, and

Suffolk County Water Authority ("Contractor"), having its principal place of business at 4060 Sunrise Highway, Oakdale, New York 11769.

The parties hereto desire Contractor to operate and maintain the College's water distribution system on its Ammerman Campus in Selden, New York ("Services").


Term of Agreement: August 1, 2007 through July 31, 2047.

Total Cost of Agreement: Shall not exceed the amounts, as set forth in Exhibit E, attached.


Terms and Conditions: Shall be as set forth in Exhibits A through E; attached hereto and made a part hereof.

In Witness Whereof, the parties hereto have executed this Agreement as of the latest date written below.


Name of Contractor

By: 
Stephen M. Jones
Chief Executive Officer
Fed. Tax ID # 11-6002552
Date: July 27, 2007

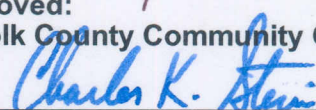
Suffolk County Community College

By: 
Ilene S. Kretzer
Executive Director of Legal Affairs
Date: 8/2/07

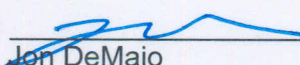
Suffolk County Community College

By: 
Dr. Shirley J. Pippins
President
Date: 8/03/07

**Approved:
Suffolk County Community College**

By: 
Charles K. Stein
Vice President for Business and
Financial Affairs
Date: 8/2/07

**Recommended:
Suffolk County Community College**

By: 
Jon DeMaio
Administrative Director of
Educational Facilities
Date: 8/2/07

List of Exhibits

Exhibit A

General Terms and Conditions

1. Responsibilities of the Parties
2. Term and Termination
3. License
4. Indemnification
5. Insurance
6. Independent Contractor
7. Severability
8. Merger; No Oral Changes
9. Set-Off Rights
10. Non-discrimination in Services
11. Governing Law
12. No Implied Waiver
13. Conflicts of Interest
14. Cooperation on Claims
15. Confidentiality
16. Assignment and Subcontracting
17. No Intended Third Party Beneficiaries
18. Certification as to Relationships
19. Publications and Publicity
20. Copyrights and Patents

Exhibit B

Suffolk County Legislative Requirements

1. Contractor's/Vendor's Public Disclosure Statement
2. Living Wage Law
3. Use of County Resources to Interfere with Collective Bargaining Activities
Local Law No. 26-2003
4. Lawful Hiring of Employees Law
5. Gratuities
6. Prohibition Against Contracting with Corporations that Reincorporate Overseas
7. Child Sexual Abuse Reporting Policy
8. Non Responsible Bidder
9. Use of Funds in Prosecution of Civil Actions Prohibited
10. Suffolk County Local Laws Website Address

Exhibit C

Notices and Contact Persons

Exhibit D

Description of Services

**Exhibit E
Payment Terms**

1. General Payment Terms and Conditions
2. Agreement Subject to Appropriation of Funds
3. Specific Payment Terms and Conditions

**Exhibit F
Suffolk County Community College Resolution No. 2006.94**

**Exhibit A
General Terms and Conditions**

WHEREAS, Suffolk County Community College's water distribution system is a critical piece of infrastructure, and

WHEREAS, the water distribution system needs to be repaired and routinely maintained to insure safe, potable water as well as fire protection, and

WHEREAS, the water distribution system is fed by the Suffolk County Water Authority ("Contractor" or "SCWA"), a sole source provider, and

WHEREAS, the Contractor offers a program for the maintenance and repair of water distribution systems,

Now Therefore, in consideration of the mutual provisions and covenants hereafter set forth, the parties hereto agree as follows:

1. Responsibilities of the Parties

The Contractor shall provide Services, as more particularly described in Exhibit D, entitled "Description of Services."

The Contractor shall perform such professional services as may be necessary to accomplish the work required to be performed under and in accordance with this Agreement. The Contractor specifically represents and warrants that it has and shall possess, and that its employees, agents and subcontractors have and shall possess, the required education, knowledge and experience, if any, necessary to qualify them individually for the particular duties they perform.

2. Term and Termination

a. Term

- i. This Agreement shall cover the period set forth on page one of this Agreement, unless sooner terminated as provided below. Upon receipt of a Termination Notice, as that term is defined below, pursuant to the following paragraphs, the Contractor shall promptly discontinue all Services affected, unless otherwise directed by the Termination Notice.

b. Termination for Cause

- ii. This Agreement may be terminated in whole or in part in writing by the College in the event of failure by Contractor to fulfill any of the terms and conditions under this agreement; provided that no such termination shall be effective unless Contractor is given five (5) calendar days' written notice of intent to terminate ("Notice of Intent to Terminate"), delivered personally or by certified mail, return receipt requested. During such five (5) day period, Contractor will be given an opportunity for consultation with the College and an opportunity to cure all failures of its obligations prior to termination. Prior to issuance of a written termination notice ("Termination Notice") by the College, Contractor shall be given an additional five (5) days to cure all failures to fulfill its obligations under this Agreement. In the event that the Contractor has not cured all its failures to fulfill its obligations to the satisfaction of the County by the end of the combined ten (10) day period, the College will issue a Termination Notice, effective immediately.

- iii. This Agreement may be terminated in whole or in part in writing by the Contractor in the event of failure by the College to fulfill any of the terms and conditions under this Agreement; provided that no such termination shall be effective unless the College is given five (5) calendar days' written notice of intent to terminate ("Notice of Intent to Terminate"), delivered personally or by certified mail, return receipt requested. During such five (5) day period, the College will be given an opportunity for consultation with the Contractor and an opportunity to cure all failures of its obligations prior to termination. Prior to issuance of a written termination notice ("Termination Notice") by the Contractor, the College shall be given an additional five (5) days to cure all failures to fulfill its obligations under this Agreement. In the event that the College has not cured all its failures to fulfill its obligations to the satisfaction of the SCWA by the end of the combined ten (10) day period, the SCWA will issue a Termination Notice, effective immediately. The Contractor shall reimburse any advanced payments made by the College, less Contractor's actual costs for its services rendered to the date of termination. In event of termination, the Contractor shall be relieved of its obligations under this Agreement and the Agreement shall cease and determine.

c. Termination for Convenience

- i. The College shall have the right to terminate this Agreement at any time and for any reason deemed to be in its best interest, provided that no such termination shall be effective unless the Contractor is given thirty (30) calendar days' written notice of termination.
- ii. Upon giving of a notice pursuant to the foregoing sub-paragraph, the Contractor shall promptly discontinue all services affected.

d. Reimbursement for Capital Improvement Repairs Upon Expiration or Termination

Upon expiration of the term or upon termination for cause or convenience, the College shall pay the Contractor for the services rendered through the date of termination. In the event the Contractor makes a repair which requires a capital improvement (hereinafter a "Capital Improvement Repair"), the College shall reimburse the Contractor the un-depreciated value of the Capital Improvement Repair upon the termination of this Agreement. For purposes of calculating the un-depreciated value of a Capital Improvement Repair, a depreciation rate of 1.5% per year shall be used. The Contractor, as soon as is practicable, shall provide notice to the College of each and every Capital Improvement Repair. A Capital Improvement Repair for the purpose of this section shall be defined to be a repair or replacement made by the Contractor to the system, the cost of which exceeds five thousand dollars (\$5,000.00). The costs shall be the cumulative total the Contractor spends to make the repair or replacement, including but not limited to, the Contractor's material, labor, overhead, and accounting costs.

3. Nature of License

- a. The College, as owner, does hereby agree to allow the Contractor a revocable non-exclusive license to use and occupy a certain portion of land located in the Town of Brookhaven, County of Suffolk, State of New York (licensed area or premises), known as the Suffolk County Community College Ammerman Campus located at 533 College Road, Selden, New York.

- b. The License is granted to the Contractor for the following uses: Installation, operation, maintenance and repair of the College's water distribution system and the right of vehicular and pedestrian access, ingress and egress over the premises to effectuate the same.
- c. The Contractor acknowledges and understands that the premises consist of a portion of property devoted to College purposes and that the use to which the Contractor devotes to the licensed premises shall in no way unreasonably limit or interfere with the College's reasonable use and enjoyment of the licensed premises, except temporarily and limited only to those periods of time necessary for installation, maintenance and repair of the water distribution system.
- d. The College covenants that the Contractor, on execution of this Agreement and performing the covenants, terms and conditions set forth herein, shall and may peaceably and quietly have, hold and enjoy the subsurface portion of the premises for the period that this Agreement remains in effect.
- e. This License is not intended to nor shall it be construed to be coupled with an interest in real property.

4. Indemnification

a. General

The Contractor agrees that it shall protect, indemnify and hold harmless the College and/or County and its officers, officials, employees, contractors, agents and other persons from and against all liabilities, fines, penalties, actions, damages, claims, demands, judgments, losses, costs, expenses, suits or actions and reasonable attorneys' fees, arising out of the acts or omissions or the negligence of the Contractor in connection with the services described or referred to in this Agreement. The Contractor shall defend the College and /or County and its officers, officials, employees, contractors, agents and other persons in any suit, including appeals, or at the College and /or County's option, pay reasonable attorney's fees for defense of any such suit arising out of the acts or omissions or negligence of the Contractor, its officers, officials, employees, subcontractors or agents, if any, in connection with the services described or referred to in this Agreement.

b. Federal Copyright Act

The Contractor hereby represents and warrants the Contractor, will not infringe upon any copyrighted work or material in accordance with the Federal Copyright Act during the performance of this Contract. Furthermore, the Contractor agrees that it shall protect, indemnify and hold harmless the College and/or County and its officers, officials, employees, contractors, agents and other persons from and against all liabilities, fines, penalties, actions, damages, claims, demands, judgments, losses, costs, expenses, suits or actions and reasonable attorney's fees, arising out of the acts or omissions or the negligence of the Contractor in connection with the services described or referred to in this Agreement. The Contractor shall defend the College and/or County and its officers, officials, employees, contractors, agents and other persons in any suit, including appeals, or, at the County's option, pay reasonable attorney's fees for defense of any such suit arising out of the acts or omissions or negligence of the Contractor, its officers, officials, employees, subcontractors, lessees, licensees, invitees or agents, if any, in connection with the services described or referred to in this Agreement.

5. Insurance

- a. The Contractor agrees to procure, pay the entire premium for and maintain throughout the term of this Agreement, insurance in amounts and types specified by the College and/or the County and as may be mandated and increased from time to time. The Contractor agrees to require that all of its subcontractors, in connection with work performed for the Contractor related to this Agreement, procure, pay the entire premium for and maintain throughout the term of this Agreement insurance in amounts and types equal to that specified by the College and/or the County for the Contractor. Unless otherwise specified by the College and/or the County and agreed to by the Contractor, in writing, such insurance shall be as follows:
 - i. **Commercial General Liability** insurance, including contractual liability coverage, in an amount not less than Two Million Dollars (\$2,000,000.00) per occurrence for bodily injury and Two Million Dollars (\$2,000,000.00) per occurrence for property damage.
 - ii. **Automobile Liability** insurance (if any vehicles are used by the Contractor in the performance of this Agreement) in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) per person, per accident, for bodily injury and not less than One Hundred Thousand Dollars (\$100,000.00) for property damage per occurrence.
 - iii. **Worker's Compensation and Employer's Liability** insurance in compliance with all applicable New York State laws and regulations and **Disability Benefits** insurance, if required by law. Contractor shall furnish to the College, prior to its execution of this Agreement, the documentation required by the State of New York Workers' Compensation Board of coverage or exemption from coverage pursuant to §§57 and 220 of the Workers' Compensation Law. In accordance with General Municipal Law §108, this Agreement shall be void and of no effect unless the Contractor shall provide and maintain coverage during the term of this Agreement for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.
- b. All policies providing such coverage shall be issued by insurance companies with an A.M. Best rating of A- or better.
- c. The Contractor shall furnish to the College Declaration Pages for each such policy of insurance and upon request, a true and certified original copy of each such policy, evidencing compliance with the aforesaid insurance requirements. In the case of commercial general liability insurance, the College and the County of Suffolk shall be named as additional insureds and the Contractor shall furnish a Declaration Page and endorsement page evidencing the College and the County's status as an additional insured on said policy.
- d. All such Declaration Pages, certificates and other evidence of insurance shall provide for the College and the County of Suffolk to be notified in writing thirty (30) days prior to any cancellation, nonrenewal or material change in said policies. Such Declaration Pages, certificates, policies and other evidence of insurance and notices shall be mailed to the College and the County at the addresses set forth in this Agreement in the exhibit entitled "Notices and Contact Persons" or at such other address of which the College and/or the County shall have given the Contractor notice in writing.
- e. In the event Contractor shall fail to provide the Declaration Pages or certificates of insurance or to maintain any insurance required by this Agreement, the College and/or the County may, but shall not be required to, obtain such policies and deduct the cost thereof from payments due Contractor under this Agreement or any other agreement between the College and/or the County and Contractor.

- f. If the Contractor is a town or other municipal corporation and has a self-insurance program under which it acts as a self-insurer for any of such required coverage, it may provide self-funded coverage and certificates or other evidence of such self-insurance in lieu of insurance issued by insurance companies.

6. Independent Contractor

It is expressly agreed that the Contractor's status hereunder is that of an independent contractor. Neither the Contractor, nor any person hired by the Contractor shall be considered employees of the College and/or the County for any purpose.

7. Severability

It is expressly agreed that if any term or provision of this Agreement, or the application thereof to any person or circumstance, shall be held invalid or unenforceable to any extent, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and every other term and provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law.

8. Merger; No Oral Changes

It is expressly agreed that this Agreement represents the entire agreement of the parties, that all previous understandings are merged in this Agreement. No modification of this Agreement shall be valid unless written in the form of an Amendment and executed by both parties.

9. Set-Off Rights

The College and/or the County shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include, but not be limited to, the College and/or the County's option to withhold, for the purposes of set-off, any moneys due to the Contractor under this contract up to any amounts due and owing to the College and/or County with regard to this contract and/or any other contract with the College or any County department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the College and/or the County for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The College and/or the County shall exercise its set-off rights in accordance with normal College and County practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the College and/or the County, their representatives, or the County Comptroller, and only after legal consultation with the Executive Director of Legal Affairs and County Attorney.

10. Non-discrimination in Services

During the performance of this Agreement:

- a. The Contractor shall not, on the grounds of race, creed, color, national origin, sex, age, disability, sexual orientation, military status or marital status:
 - i. deny any individual any services or other benefits provided pursuant to this Agreement; or
 - ii. provide any services or other benefits to an individual that are different, or are provided in a different manner, from those provided to others pursuant to this Agreement; or

- iii. subject an individual to segregation or separate treatment in any matter related to the individual's receipt of any service(s) or other benefits provided pursuant to this Agreement; or
 - iv. restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any services or other benefits provided pursuant to this Agreement; or
 - v. treat an individual differently from others in determining whether or not the individual satisfies any eligibility or other requirements or condition which individuals must meet in order to receive any aid, care, service(s) or other benefits provided pursuant to this Agreement.
- b. The Contractor shall not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, creed, color, national origin, sex, age, disability, sexual orientation, military status or marital status, or have the effect of defeating or substantially impairing accomplishment of the objectives of this Agreement in respect to individuals of a particular race, creed, color, national origin, sex, age, disability, sexual orientation, military status or marital status, in determining:
- i. the types of service(s) or other benefits to be provided, or
 - ii. the class of individuals to whom, or the situations in which, such service(s) or other benefits will be provided; or
 - iii. the class of individuals to be afforded an opportunity to receive services.

11. Governing Law

This Agreement shall be governed by the laws of the State of New York. In the event of any dispute or litigation, the venue of any proceeding to determine the rights and liabilities of the respective parties arising under this Agreement shall be in the New York Supreme Court, Suffolk County; or, in the event of a proceeding in the federal courts, in the District Court for the Eastern District of New York.

12. No Implied Waiver

No waiver shall be inferred from any failure or forbearance of the College and/or the County to enforce any provision of this Agreement in any particular instance or instances, but the same shall otherwise remain in full force and effect notwithstanding any such failure or forbearance.

13. Conflicts of Interest

- a. The Contractor agrees that it will not during the term of this Agreement engage in any activity that is contrary to and/or in conflict with the goals and purposes of the College and/or the County.
- b. The Contractor is charged with the duty to disclose to the College and/or the County the existence of any such adverse interests, whether existing or potential. This duty shall continue so long as the Contractor is retained on behalf of the College. The determination as to whether or when a conflict exists or may potentially exist shall ultimately be made by the Executive Director of Legal Affairs and the County Attorney after full disclosure is obtained.

14. Cooperation on Claims

Each of the parties hereto agrees to render diligently to the other party, without additional compensation, any and all cooperation, that may be required to defend the other party, its employees and designated representatives against any claim, demand or action that may be brought against the other party, its employees or designated representatives in connection with this Agreement.

15. Confidentiality

Any records, reports or other documents of the College and/or the County or any of its agencies used by Contractor pursuant to this Agreement or any documents created as a part of this Agreement shall remain the property of the College and/or the County and shall be kept confidential in accordance with applicable laws, rules and regulations.

16. Assignment and Subcontracting

- a. The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of this Agreement, or any of its right, title or interest therein, or its power to execute the Agreement, or assign all or any portion of the monies that may be due or become due hereunder, to any other person or corporation, without the prior consent in writing of the College, and any attempt to do any of the foregoing without such consent shall be of no effect.
- b. The Contractor shall not enter into subcontracts for any of the work contemplated under this Agreement without obtaining prior written approval of the College which approval shall not be unreasonably withheld or conditioned. Such subcontracts shall be subject to all of the provisions of this Agreement and to such other conditions and provisions as the College and/or the County may deem necessary, provided, however, that notwithstanding the foregoing, unless otherwise provided in this Agreement, such prior written approval shall not be required for the purchase of articles, supplies, equipment and services which are incidental to, but necessary for, the performance of the work required under this Agreement. No approval by the College of any subcontract shall provide for the incurrence of any obligation by the College and/or the County in addition to the total agreed upon price. The Contractor shall be responsible for the performance of any subcontractor for the delivery of service. In the event of an emergency, Contractor may subcontract without obtaining the prior written approval of the College. As soon as practicable, the Contractor shall submit the subcontract to the College for its approval which approval shall not be unreasonably withheld or conditioned.

17. No Intended Third Party Beneficiaries

This Agreement is entered into solely for the benefit of College and Contractor. No third party shall be deemed a beneficiary of this Agreement, and no third party shall have the right to make any claim or assert any right under this Agreement.

18. Certification as to Relationships

The parties to this Agreement hereby certify that, other than the funds provided in this Agreement and other valid Agreements with the College and/or the County, there is no known relationship within the third degree of consanguinity, life partner, or business, commercial, economic, or financial relationship between the parties, the signatories to this Agreement, and any partners, members, directors, or shareholders of five percent (5%) (or more) of any party to this Agreement.

19. Publications and Publicity

- a. The Contractor shall not issue or publish any book, article, report or other publication related to the Services provided pursuant to this Agreement without first obtaining written prior approval from the College. Any such printed matter or other publication shall contain the following statement in clear and legible print:

“This publication is fully or partially funded by Suffolk County Community College and the County of Suffolk.”

- b. The College shall have the right of prior approval of press releases and any other information provided to the media, in any form, concerning the Services provided pursuant to this Agreement.

20. Copyrights and Patents

a. Copyrights

If the work of the Contractor under this Agreement should result in the production of original books, manuals, films or other materials for which a copyright may be granted, the Contractor may secure copyright protection. However, the College and/or the County reserves, and the Contractor hereby gives to the College and/or the County, and to any other municipality or government agency or body designated by the College and/or the County, a royalty-free, nonexclusive license to produce, reproduce, publish, translate or otherwise use any such materials.

b. Patents

If the Contractor under this Agreement makes any discovery or invention in the course of or as a result of work performed under this Agreement, the Contractor may apply for and secure for itself patent protection. However, the College and/or the County reserves, and the Contractor hereby gives to the College and/or the County, and to any other municipality or government agency or body designated by the College and /or the County, a royalty-free, nonexclusive license to produce or otherwise use any item so discovered or patented.

End of Text for Exhibit A

Exhibit B
Suffolk County Legislative Requirements

1. Contractor's/Vendor's Public Disclosure Statement

The Contractor represents and warrants that it has filed with the Comptroller of Suffolk County the verified public disclosure statement required by Suffolk County Administrative Code Article V, Section A5-7 and shall file an update of such statement with the said Comptroller on or before the 31st day of January in each year of this Agreement's duration. The Contractor acknowledges that such filing is a material, contractual and statutory duty and that the failure to file such statement shall constitute a material breach of this Agreement, for which the College shall be entitled, upon a determination that such breach has occurred, to damages, in addition to all other legal remedies, of fifteen percent (15%) of the amount of the Agreement.

Required Form: Suffolk County Form SCEX 22; entitled "Contractor's/Vendor's Public Disclosure Statement"

2. Living Wage Law

This Agreement is subject to the Living Wage Law of the County of Suffolk. The law requires that, unless specific exemptions apply all employers (as defined) under service contracts and recipients of County financial assistance, (as defined) shall provide payment of a minimum wage to employees as set forth in the Living Wage Law. Such rate shall be adjusted annually pursuant to the terms of the Suffolk County Living Wage Law of the County of Suffolk. Under the provisions of the Living Wage Law, the County shall have the authority, under appropriate circumstances, to terminate this Agreement and to seek other remedies as set forth therein, for violations of this Law.

The Contractor represents and warrants that it has read and shall comply with the requirements of Suffolk County Code Chapter 347, Suffolk County Local Law No. 12-2001, the Living Wage Law.

Required Form: Suffolk County Living Wage Form LW-38; entitled "Suffolk County Department of Labor – Living Wage Unit Living Wage Certification/Declaration – Subject To Audit"

**3. Use of County Resources to Interfere with Collective Bargaining Activities
Local Law No. 26-2003**

The Contractor represents and warrants that it has read and is familiar with the requirements of Chapter 466, Article 1 of the Suffolk County Local Laws, "Use of County Resources to Interfere with Collective Bargaining Activities." County Contractors (as defined) shall comply with all requirements of Local Law No. 26-2003 including the following prohibitions:

- a. The Contractor shall not use County funds to assist, promote, or deter union organizing.
- b. No County funds shall be used to reimburse the Contractor for any costs incurred to assist, promote, or deter union organizing.
- c. The County of Suffolk shall not use County funds to assist, promote, or deter union organizing.
- d. No employer shall use County property to hold a meeting with employees or supervisors if the purpose of such meeting is to assist, promote, or deter union organizing.

If Contractor services are performed on County property the Contractor must adopt a reasonable access agreement, a neutrality agreement, fair communication agreement, nonintimidation agreement and a majority authorization card agreement.

If Contractor services are for the provision of human services and such services are not to be performed on County property, the Contractor must adopt, at the least, a neutrality agreement.

Under the provisions of Local Law No. 26-2003, the County shall have the authority, under appropriate circumstances, to terminate this Agreement and to seek other remedies as set forth therein, for violations of this Law.

Required Form: Suffolk County Labor Law Form DOL-LO1; entitled "Suffolk County Department of Labor – Labor Mediation Unit Union Organizing Certification/Declaration – Subject to Audit"

4. Lawful Hiring of Employees Law

This Agreement is subject to the Lawful Hiring of Employees Law of the County of Suffolk (Local Law 52-2006). It provides that all covered employers, (as defined), and the owners thereof, as the case may be, that are recipients of compensation from the County through any grant, loan, subsidy, funding, appropriation, payment, tax incentive, contract, subcontract, license agreement, lease or other financial compensation agreement issued by the County or an awarding agency, where such compensation is one hundred percent (100%) funded by the County, shall submit a completed sworn affidavit (under penalty of perjury), the form of which is attached, certifying that they have complied, in good faith, with the requirements of Title 8 of the United States Code Section 1324a with respect to the hiring of covered employees (as defined) and with respect to the alien and nationality status of the owners thereof. The affidavit shall be executed by an authorized representative of the covered employer or owner, as the case may be; shall be part of any executed contract, subcontract, license agreement, lease or other financial compensation agreement with the County; and shall be made available to the public upon request.

All contractors and subcontractors (as defined) of covered employers, and the owners thereof, as the case may be, that are assigned to perform work in connection with a County contract, subcontract, license agreement, lease or other financial compensation agreement issued by the County or awarding agency, where such compensation is one hundred percent (100%) funded by the County, shall submit to the covered employer a completed sworn affidavit (under penalty of perjury), the form of which is attached, certifying that they have complied, in good faith, with the requirements of Title 8 of the United States Code Section 1324a with respect to the hiring of covered employees and with respect to the alien and nationality status of the owners thereof, as the case may be. The affidavit shall be executed by an authorized representative of the contractor, subcontractor, or owner, as the case may be; shall be part of any executed contract, subcontract, license agreement, lease or other financial compensation agreement between the covered employer and the County; and shall be made available to the public upon request.

An updated affidavit shall be submitted by each such employer, owner, contractor and subcontractor no later than January 1 of each year for the duration of any contract and upon the renewal or amendment of the contract, and whenever a new contractor or subcontractor is hired under the terms of the contract.

The Contractor acknowledges that such filings are a material, contractual and statutory duty and that the failure to file any such statement shall constitute a material breach of this agreement.

Under the provisions of the Lawful Hiring of Employees Law, the County shall have the authority to terminate this Agreement for violations of this Law and to seek other remedies available under the law.

The Contractor represents and warrants that it has read, is in compliance with, and shall comply with the requirements of Suffolk County Code Chapter 234, Suffolk County Local Law No. 52-2006, the Lawful Hiring of Employees Law.

Required Forms: Suffolk County Lawful Hiring of Employees Law Form LHE-1; entitled "Suffolk County Department of Labor –"Notice Of Application To Certify Compliance With Federal Law (8 U.S.C. SECTION 1324a) With Respect To Lawful Hiring of Employees"

"Affidavit Of Compliance With The Requirements Of 8 U.S.C. Section 1324a With Respect To Lawful Hiring Of Employees" Form LHE-2.

5. Gratuities

The Contractor represents and warrants that it has not offered or given any gratuity to any official, employee or agent of Suffolk County or New York State or of any political party, with the purpose or intent of securing an agreement or securing favorable treatment with respect to the awarding or amending of an agreement or the making of any determinations with respect to the performance of an agreement, and that the signer of this Agreement has read and is familiar with the provisions of Local Law No. 32-1980 of Suffolk County (Chapter 386 of the Suffolk County Code).

6. Prohibition Against Contracting with Corporations that Reincorporate Overseas

The Contractor represents that it is in compliance with Suffolk County Administrative Code Article IV, §§A4-13 and A4-14, found in Suffolk County Local Law No. 20-2004, entitled "A Local Law To Amend Local Law No. 5-1993, To Prohibit The County of Suffolk From Contracting With Corporations That Reincorporate Overseas." Such law provides that no contract for consulting services or goods and services shall be awarded by the County to a business previously incorporated within the U.S.A. that has reincorporated outside the U.S.A.

7. Child Sexual Abuse Reporting Policy

The Contractor agrees to comply with Chapter 577, Article IV, of the Suffolk County Code, entitled "Child Sexual Abuse Reporting Policy", as now in effect or amended hereafter or of any other Suffolk County Local Law that may become applicable during the term of this Agreement with regard to child sexual abuse reporting policy.

8. Non Responsible Bidder

The Contractor represents and warrants that it has read and is familiar with the provisions of Suffolk County Code Chapter 143, Article II, §§143-5 through 143-9. Upon signing this Agreement the Contractor certifies that he, she, it, or they have not been convicted of a criminal offense within the last ten (10) years. The term "conviction" shall mean a finding of guilty after a trial or a plea of guilty to an offense covered under the provision of Section 143-5 of the Suffolk County Code under "Nonresponsible Bidder."

9. Use of Funds in Prosecution of Civil Actions Prohibited

Pursuant to the Suffolk County Code Section §590-3, the Contractor represents that it shall not use any of the moneys received under this Agreement, either directly or indirectly, in connection with the prosecution of any civil action against the County of Suffolk or any of its programs, funded by the County, in part or in whole, in any jurisdiction or any judicial or administrative forum.

10. Suffolk County Local Laws

Suffolk County Local Laws, Rules and Regulations can be found on the Suffolk County web site at [www.co.suffolk](http://www.co.suffolk.ny.us)<<http://www.co.suffolk.ny.us>>. Click on "Laws of Suffolk County" under "Suffolk County Links".

End of Text for Exhibit B

Exhibit C
Notices and Contact Persons

1. Notices Relating to Payments, Reports, Insurance, or Other Submissions

Any communication, notice, claim for payment, report, insurance, or other submission necessary or required to be made by the parties regarding this Agreement shall be in writing and shall be given to the College or the Contractor or their designated representative at the following addresses or at such other address that may be specified in writing by the parties and must be delivered as follows:

For the College:
**By Regular or Certified Mail in Postpaid Envelope or by
Courier Service**

Jon DeMaio
Administrative Director of Educational Facilities
Suffolk County Community College
533 College Road, NFL 11
Selden, NY 11784-2899

For the Contractor:
**By Regular or Certified Mail in Postpaid Envelope or by
Courier Service**

At the address set forth on page one of this Agreement, attention of the person who executed this Agreement or such other designee as the parties may agree in writing.

2. Notices Relating to Termination and/or Litigation

In the event the Contractor receives a notice or claim or becomes a party (plaintiff, petitioner, defendant, respondent, third party complainant, third party defendant) to a lawsuit or any legal proceeding related to this Agreement, the Contractor shall immediately deliver to the Office of Legal Affairs and the County Attorney, at the addresses set forth below, copies of all papers filed by or against the Contractor.

Any communication or notice regarding termination shall be in writing and shall be given to the College or the Contractor or their designated representative at the following addresses or at such other addresses that may be specified in writing by the parties and must be delivered as follows:

For the College and the County:
**By Regular or Certified Mail in Postpaid Envelope or by
Courier Service**

Office of Legal Affairs
Suffolk County Community College
533 College Road, NFL 230
Selden, NY 11784-2899

and

**Rev. 07/25/07; Law No. 47-CC-
Operation and Maintenance of Water Distribution System
Suffolk County Water Authority**

Christine Malafi, County Attorney
Suffolk County Department of Law
H. Lee Dennison Building
100 Veterans Memorial Highway
Hauppauge, New York 11788

**For Contractor:
By Regular or Certified Mail in Postpaid Envelope or by
Courier Service**

At the address set forth on page one of this Agreement, attention to the person who executed this Agreement or such other designee as the parties may agree in writing.

3. Notices sent shall be deemed delivered on the date they are mailed or deposited with a nationally recognized overnight courier service.
4. Each party shall give prompt written notice to the other party of the appointment of successor(s) to the designated contact person(s) or his or her designated successor(s).

End of Text for Exhibit C

Exhibit D
Description of Services

1. Water Distribution System

Contractor shall operate and maintain the College's distribution mains (approximately 3,942 feet) and individual service lines up to the shut off valves outside each of the College's buildings on the Ammerman Campus (the "Water Distribution System"). Contractor shall not be responsible for the College's infrastructure within the College's buildings and structures.

2. Inspection, Surveys and Reports

- a. Contractor will inspect and evaluate the Water Distribution System. Contractor will prepare drawings depicting the location and size of the College's mains, valves, services and appurtenances. These drawings shall be placed on College supplied drawings.
- b. Contractor will provide the College with a written report detailing the Water Distribution System capital improvements needed to bring the College's system within Contractor's standards.

3. Distribution System Capital Improvements and Repairs

- a. Contractor shall perform the Water Distribution System capital improvements identified in its written report. Contractor may perform the work itself or contract for such work. Contractor shall submit proposals/estimates for said improvements to the College before commencing work. The College shall pay the actual costs of such improvements based on competitive bidding or standard SCWA rates supported by certified payroll.
- b. Prior to Acceptance of the Water Distribution System, Contractor shall make all necessary repairs to it. The College shall pay the actual costs of such repairs based on competitive bidding or standard SCWA rates supported by certified payroll.
- c. Certified payroll records for all tradesmen must be submitted with all claim forms for work related to capital improvements and/or repairs.

4. Acceptance and Maintenance

- a. Contractor shall provide the College with written notice when the capital improvements and repairs are satisfactorily completed such that the College's Water Distribution System equals or exceeds Contractor's standards. Transmission of such notice shall constitute "Acceptance."
- b. Upon Acceptance, Contractor will be solely responsible for all subsequent costs associated with the maintenance or repair of the College's water distribution system. Notwithstanding the foregoing, Contractor reserves the right to charge the College or any responsible party the actual costs of work performed to repair damages to the Water Distribution System caused by the negligence of the College, or any person it controls, or any responsible party as the case may be.

5. System Expansion

- a. Capital improvements required to expand the College system beyond the system's capacity at Acceptance in order to satisfy increases in College water, pressure or flow demand requirements shall be made by Contractor, at the College's request and at the sole cost and expense of the College. The College shall pay the actual costs of such improvements based on competitive bidding or standard SCWA rates supported by certified payroll. The Contractor reserves the right at its sole cost and expense to connect its public water system

to the College's Water Distribution System provided the same does not cause a material decrease in the level of service provided to the College.

6. The College agrees to take and pay for water service pursuant to the Contractor Rules and Regulations, as the same may be modified from time to time.

End of Text for Exhibit D

Exhibit E
Payment Terms

1. General Payment Terms

- a. The Contractor shall prepare and present a claim form supplied by the College and approved for payment by the College ("Suffolk County Payment Voucher"). Payment by the College will be made within thirty (30) days after approval by the Comptroller of the County of Suffolk.
- b. The Contractor agrees that it shall be entitled to no more than the fees set forth in this Exhibit E for the completion of all work, labor and services contemplated in this Agreement.
- c. The charges payable to Contractor under this Agreement are exclusive of federal, state and local taxes, the College being exempt from payment of such taxes.
- d. Except as otherwise noted, the acceptance by the Contractor of full payment of all billings made on the final approved Suffolk County Payment Voucher under this Agreement shall operate as and shall be a release to the College and/or County from all claims and liability to the Contractor, its successors, legal representatives and assigns, for services rendered under this Agreement.

2. Agreement Subject to Appropriation of Funds

This Agreement is subject to the amount of funds appropriated and any subsequent modifications thereof by the Suffolk County Legislature, and no liability shall be incurred by the College and/or the County under this Agreement beyond the amount of funds appropriated by the Legislature for the Services covered by this Agreement.

3. Specific Payment Terms and Conditions

- a. The College shall pay Contractor \$2,000.00 per month during the first thirty months of the Agreement for a total payment of \$60,000.00. In the event that Acceptance occurs before the thirtieth (30th) month of the Agreement, the College shall pay Contractor the remaining unpaid monthly fee which shall be equal to the number of months before the thirtieth month multiplied by \$2,000.00.
- b. If the capital improvements and repairs needed to make the College water distribution system equal or exceed Contractor's standards are not completed within the first thirty months of this Agreement, the College shall continue to pay \$2,000.00 per month until such standards are met except as follows:
 - i. If the College has made the necessary funds for capital improvements and repairs available to Contractor prior to the end of the thirty month period, the monthly payments will cease after the thirtieth payment even if the actual capital improvements or repairs have not been completed.
 - ii. Any capital improvements needed to provide additional flow or pressure over the existing flow or pressure do not need to be completed prior to the end of the thirty month period.

End of Text for Exhibit E