

Introduced by Presiding Officer, on request of the County Executive and Legislators Schneiderman, Anker, Calarco, Cilmi, Hahn, Horsley, Gregory, Stern, D'Amaro, Spencer

RESOLUTION NO. 1052 -2012, AUTHORIZING SUFFOLK COUNTY TO ENTER INTO AN AGREEMENT WITH THE NEW YORK INSTITUTE OF TECHNOLOGY TO SUPPLY EMERGENCY HOUSING FOR COUNTY RESIDENTS DISPLACED BY SUPERSTORM SANDY

WHEREAS, Superstorm Sandy struck Suffolk County on October 29, 2012; and

WHEREAS, the County Executive issued a Declaration of Emergency dated October 27, 2012; and

WHEREAS, many County residents have been displaced by the storm and are now in need of emergency housing; and

WHEREAS, in accordance with New York Executive Law § 24, the County Executive has reached a proposed agreement with the New York Institute of Technology (NYIT) for it to open its dormitory space to the those in need of housing in connection with the Local State of Emergency now in effect and for as long as reasonably necessary thereafter to house people who have been displaced by the Superstorm; and

WHEREAS, in exchange for supplying emergency housing assistance, the County has agreed to hold NYIT harmless against any claims arising out of placement of displaced persons; and

WHEREAS, it is in the public safety and the best interests of Suffolk County to facilitate the housing of those displaced by the Superstorm as quickly as possible; and

WHEREAS, such proposal has been set down in an agreement, a copy of which is presented with this Resolution and filed with the Clerk of the Suffolk County Legislature; now, therefore be it

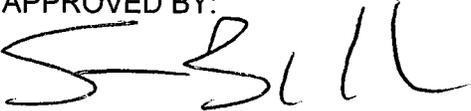
1st **RESOLVED**, the County Executive and/or his designee be and is hereby authorized to execute an agreement with NYIT, substantially in the form attached to this Resolution, with such ministerial and non-substantive changes therein as the County Executive and/or his designee may approve covering the terms and conditions of the establishment of emergency housing on a month-to-month basis for victims of Superstorm Sandy; and be it further

2nd **RESOLVED**, that this Legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this law constitutes a Type II action pursuant to Section 617.5(c)(20) and (27) of Title 6 of the NEW YORK CODE OF RULES AND REGULATIONS (6 N.Y.C.R.R.) and within the meaning of Section 8-0109(2) of the NEW YORK ENVIRONMENTAL CONSERVATION LAW as a promulgation of regulations, rules, policies, procedures, and legislative decisions in connection with continuing agency administration, management and information collection. The Suffolk County Council on Environmental Quality

(CEQ) is hereby directed to circulate any appropriate SEQRA notices of determination of non-applicability or non-significance in accordance with this law.

DATED: November 20, 2012

APPROVED BY:



County Executive of Suffolk County

Date: 11-20-2012

INDEMNIFICATION AGREEMENT

DATE:

PARTIES: County of Suffolk, a municipal corporation created under the laws of the state of New York, with offices at 100 Veterans Memorial Highway, Hauppauge, NY 11788 (the "County") and
New York Institute of Technology, a corporation formed under the Education Law of the state of New York, with offices at (the "College")

RECITALS:

A. The State and the County have recently experienced Hurricane/Tropical Storm Sandy, which has resulted loss of life and extreme devastation. Many residents of the County have been rendered displaced and homeless, without adequate shelter, clothing and food.

B. As a consequence of the disaster suffered in much of the state, the Governor has declared a State Disaster Emergency, and as a consequence of the disaster suffered by the County, its residents and its businesses, on October 27, 2012 the County Executive has issued a proclamation of a Local State of Emergency pursuant to Section 24 of the Executive Law, and has exercised the authority granted under Article 2-B of the Executive Law.

C. Recognizing its status as a responsible member of the Suffolk County community, and wishing to aid in the alleviation of the suffering being borne by many, the College has offered to provide temporary housing and shelter to residents of the County ("Displaced Residents") in vacant dormitory facilities at its Central Islip campus, without charge to the County or to the Displaced Residents.

D. In consideration of the foregoing, the County believes it to be necessary and appropriate, in accordance with the County's responsibilities to its residents and in connection with the Local State of Emergency now in effect and for as long as reasonably necessary thereafter, to provide assistance and protection to the College during the provision of shelter by the College to Displaced Residents so as to limit the College's liability in connection therewith.

E. The County and the College wish to set forth their specific rights and obligations with regard to indemnification in this agreement.

AGREEMENTS:

SECTION 1. PROVISION OF HOUSING BY COLLEGE The College agrees to provide shelter to displaced Suffolk County residents at vacant dormitory facilities at its Central Islip campus for so long as the need persists and the College is willing to do so. The County and the College will promulgate rules and procedures to reasonably protect and accommodate the residents and others present on the campus. Nevertheless, this agreement creates no obligation on the College to provide such housing for any particular period of time and creates no obligation on the County to continue to house its displaced

residents with the College and does not prohibit the County from terminating the services of the College, or the College from terminating its provision of services, with or without cause.

SECTION 2. DEFINITIONS For purposes of this agreement, the following terms will have the following meanings:

2.1 Expenses. The term "Expenses" includes, without limitation, expenses of maintenance and repairs for damage caused by Displaced Residents; judicial or administrative proceedings or appeals; attorney, accountant, and other professional fees and disbursements; and any expenses of establishing a right to indemnification under this agreement, but it does not include ordinary and customary maintenance and repairs, nor amounts paid in settlement by the College or the amount of judgments or fines against the College.

2.2 Proceeding. The term "Proceeding" includes any threatened, pending, or completed action, suit, or proceeding, whether formal or informal, and whether of a civil, criminal, administrative, or investigative nature, in which the College may be or may have been involved as a party, witness, or otherwise, by reason of the fact that the College is or was acting to provide shelter to Displaced Residents

SECTION 3. LIMITATION OF LIABILITY The College will have no monetary liability of any kind or nature whatsoever in respect of the County's errors or omissions (or alleged errors or omissions) in providing shelter to Displaced Residents at the request of the County, so long as such errors or omissions (or alleged errors or omissions) are not shown by clear and convincing evidence to have involved: (a) the College's own act or omission; (b) an act or omission that was not in good faith or involved intentional misconduct or a knowing violation of law by the College.

SECTION 4. INDEMNITY FOR PHYSICAL DAMAGE AND IN THIRD PARTY PROCEEDINGS The County shall indemnify the College in accordance with the provisions of this section if the College suffers physical damage caused by a Displaced Resident or if the College was or is a party to, or is threatened to be made a party to, any Proceeding (other than a Proceeding by or in the right of the County to procure a judgment in its favor) arising out of or related to the housing or presence of the Displaced Residents at the College, against all Expenses, judgments, fines, and amounts paid in settlement or the amount of any judgments or fines, actually and reasonably incurred by the College in connection with such Proceeding if the College acted in good faith and in a manner the College reasonably believed was in or not opposed to the best interests of the County, and, with respect to any criminal action or proceeding, the College, in addition, had no reasonable cause to believe that the College's conduct was unlawful.

SECTION 5. INDEMNITY IN PROCEEDINGS BY THE COUNTY The County shall indemnify the College in accordance with the provisions of this section if the College was or is a party to, or is threatened to be made a party to, any Proceeding by or in the right of the County to procure a judgment in its favor, against all Expenses actually and reasonably incurred by the College in connection with the defense or settlement of such Proceeding if the College acted in good faith and in a manner the College reasonably believed was in or not opposed to the best interests of the County, and the College, in addition, had no reasonable cause to believe that the College's conduct was unlawful. But the College is not entitled to indemnification under this section in connection with any Proceeding in which the College has been adjudged liable to the County unless the court conducting such Proceeding or any other court of competent jurisdiction determines upon

application that, despite such adjudication of liability, the College is fairly and reasonably entitled to full or partial indemnification in view of all the relevant circumstances of the case.

SECTION 6. INDEMNIFICATION OF EXPENSES OF SUCCESSFUL PARTY Notwithstanding any provision of this agreement other than Section 7, to the extent that the College has been successful, on the merits or otherwise, in the defense of any Proceeding or in the defense of any claim, issue, or matter in a Proceeding, including the dismissal of an action without prejudice, the County shall indemnify the College against all Expenses actually and reasonably incurred in connection with the Proceeding or the claim, issue, or matter, as the case may be.

SECTION 7. EXCLUSIONS Notwithstanding any other provision in this agreement, the County is not obligated under this Agreement to make any indemnification in connection with any claim made against the College as set forth below:

7.1 Insurance Recovery. The County will provide a certificate of insurance, naming the College as an additional insured, with a combined single limit of \$2,000,000.00 for bodily injury and property damage. Any insurance maintained by the College will be secondary to the insurance provided by the County. The County will not indemnify the College for losses for which payment is made to or on behalf of the College under any insurance policy, except with respect to any deductible amount, self-insured retention, or any excess amount to which the College is entitled under this agreement beyond the amount of payment under such insurance policy;

7.2 Dishonesty. For which recovery is sought for dishonesty or alleged dishonesty of the College or its agents or employees if the judgment or other final adjudication of the claim establishes that the College or its agents or employees committed one or more acts of active and deliberate dishonesty that were material to the adjudication of the claim or that the College or its agents or employees committed one or more acts with actual dishonest purpose or intent that were material to the adjudication of the claim;

7.3 Action Initiated by College. In connection with any Proceeding (or part of any Proceeding) initiated by the College, or any Proceeding by the College against the County or its officers, employees, or other persons entitled to be indemnified by the County, unless: (a) the County is expressly required by law to make the indemnification; (b) the Proceeding was authorized by the County Legislature; or (c) the College initiated the Proceeding under Section 11, and the College is successful in whole or in part in such Proceeding.

SECTION 8. ADVANCES FOR EXPENSES

8.1 Standards. The County shall pay the Expenses incurred and actually paid by the College, including expenses in any Proceeding in advance of the final disposition of the Proceeding at the written request of the College, if the College: (a) furnishes the County a written affirmation of the College's good faith belief that the College is entitled to be indemnified under this Agreement; and (b) furnishes the County a written undertaking to repay the advance to the extent that it is ultimately determined that the College is not entitled to be indemnified by the County (such undertaking must be an unlimited general obligation of the College but need not be secured).

8.2 Payment. Advances under this section must be made no later than 30 days after receipt by the County of paid bills for such expenses, together with the affirmation and undertaking described in the preceding subsection relating to standards, and must be

made without regard to the College's ability to repay the amount advanced and without regard to the College's ultimate entitlement to indemnification under this agreement.

SECTION 9. NONEXCLUSIVE AND CONTINUING RIGHTS The indemnification, advancement of Expenses, and exculpation from liability provided by this agreement is not exclusive of any other rights to which the College may be entitled under any other agreement, applicable law, or otherwise.

SECTION 10. APPLICATION FOR INDEMNIFICATION Any indemnification under Sections 4, 5 or 6 must be made no later than 90 days after receipt of the written request of the College, unless a determination that the College is not entitled to indemnification under this agreement is made within such 90-day period by: (a) the County Legislature; or (b) the County Attorney. In such event, the College may seek to enforce its claim for indemnification as provided in Section 11.

SECTION 11. ENFORCEMENT

11.1 Enforcement Action. The College may enforce any right to indemnification, advances, or exculpation provided by this Agreement in any court of competent jurisdiction if: (a) the County denies the claim for indemnification, advances, or exculpation, in whole or in part; or (b) the County does not dispose of such claim within the time period required by this agreement. It is a defense to any such enforcement action (other than an action brought to enforce a claim under the Section 8) that the College is not entitled to indemnification or exculpation under this agreement or otherwise. But except as provided in Section 12, the County may not assert any defense to an action brought to enforce a claim for advancement of Expenses if the College has tendered to the County the paid receipts, affirmation and undertaking required under Section 8. The burden of proving by clear and convincing evidence that indemnification or exculpation is not appropriate will be on the County. Neither the failure of the County (including the County Legislature and County Attorney) to have made a determination prior to the commencement of such action that indemnification or exculpation is proper in the circumstances because the College has met the applicable standard of conduct, nor an actual determination by the County (including the County Legislature and County Attorney) that indemnification or exculpation is improper because the College has not met such applicable standard of conduct, may be asserted as a defense to the action or will create a presumption that the College is not entitled to indemnification or exculpation. The College's expenses incurred in connection with successfully establishing the College's right to indemnification, advances, or exculpation, in whole or in part, in any Proceeding shall also be paid or reimbursed by the County.

11.2 Termination of Proceeding. The termination of any Proceeding by judgment, order, settlement or conviction, will not, of itself, create a presumption that: (a) the College is not entitled to indemnification under this agreement because the College did not act in good faith and in a manner which the College reasonably believed to be in or not opposed to the best interests of the County, and, with respect to any criminal action or proceeding, had reasonable cause to believe that the College's conduct was unlawful; or (b) the College is not entitled to exculpation under this agreement.

SECTION 12. NOTIFICATION AND DEFENSE OF CLAIM

12.1 Notification. As a condition precedent to indemnification under this agreement, not later than 30 days after receipt by the College of notice of the commencement of any Proceeding the College must, if a claim in respect of the Proceeding is to be made against the County under this agreement, notify the County in writing of the commencement of the Proceeding. But the failure to properly notify the County will not relieve the County from any liability which it may have to the College unless the County is shown to have suffered actual prejudice as a result of such failure.

12.2 Defense. With respect to any Proceeding as to which the College so notifies the County of the commencement:

12.2.1 The County is entitled to participate in the Proceeding at its own expense,

12.2.2 Except as otherwise provided in this section, the County may, at its option and jointly with any other indemnifying party similarly notified and electing to assume such defense, assume the defense of the Proceeding, with legal counsel reasonably satisfactory to the College. The College has the right to use separate legal counsel in the Proceeding, but the County will not be liable to the College under this agreement for the fees and expenses of separate legal counsel incurred after notice from the County of its assumption of the defense, unless (a) the College reasonably concludes that there may be a conflict of interest between the County and the College in the conduct of the defense of the Proceeding, or (b) the County does not use legal counsel to assume the defense of such Proceeding. The County is not entitled to assume the defense of any Proceeding brought by or on behalf of the County or any Proceeding with respect to which the College reasonably concludes that there may be a conflict of interest between the County and the College in the conduct of the defense of the Proceeding.

12.2.3 If two or more persons or entities which may be entitled to defense from the County, including the College, are parties to any Proceeding, the County may require the College to use the same legal counsel as the other persons. The College has the right to use separate legal counsel in the Proceeding, but the County will not be liable to the College under this agreement for the fees and expenses of separate legal counsel incurred after notice from the County of the requirement to use the same legal counsel as the other persons, unless the College reasonably concludes that there may be a conflict of interest between the College and any of the other persons required by the County to be represented by the same legal counsel.

12.2.4 The County is not liable to indemnify the College under this agreement for any amounts paid in settlement of any Proceeding made without the County's written consent, which consent may not be unreasonably withheld or delayed. The College must permit the County to settle any Proceeding that the County assumes the defense of, except that the County may not settle any action or claim in any manner that would impose any penalty, limitation, disqualification, or disenfranchisement on the College without the College's written consent.

SECTION 13. PARTIAL INDEMNIFICATION The fact that the College is entitled to indemnification by the County under this agreement for some but not all of the Expenses, judgments, fines, or amounts incurred by the College in a Proceeding or paid in settlement of Proceeding, will not excuse the County from its indemnification obligation, and the County must indemnify the College for the portion to which the College is entitled.

SECTION 14. SUBROGATION If any payment is made by the County to the College under this agreement, the County will be subrogated to all of the rights of recovery of the College to the extent of such payment, and the County may thereby pursue recovery against the persons and/or entities responsible for the loss, damage, act or condition for which the County has provided indemnification. The College shall execute all documents

required and must do all acts that may be necessary to secure such rights and to enable the County effectively to bring suit to enforce its rights.

SECTION 15. MISCELLANEOUS PROVISIONS

15.1 Severability. If any portion this agreement is invalidated on any ground by any court of competent jurisdiction, the remainder of this agreement will continue to be valid, and the County shall indemnify the College as to Expenses, judgments, fines, and amounts paid in settlement with respect to any Proceeding to the fullest extent permitted by any portion of this Agreement that has not been invalidated.

15.2 Binding Effect. The provisions of this agreement will be binding upon and inure to the benefit of the successors and assigns of the parties.

15.3 Notice. Any notice or other communication required or permitted to be given under this agreement must be in writing and must be mailed by certified mail, return receipt requested, postage prepaid, addressed to the parties as follows:

If to the County:

County Executive of Suffolk County
H. Lee Dennison Building
100 Veterans Memorial Highway
P.O. Box 6100
Hauppauge, NY 11788-0099

With a copy to:

Suffolk County Attorney
H. Lee Dennison Building
100 Veterans Memorial Highway
P.O. Box 6100
Hauppauge, NY 11788-0099

If to the College:

New York Institute of Technology

All notices and other communications will be deemed to be given at the expiration of three days after the date of mailing. The address of a party to which notices or other communications must be mailed may be changed from time to time by giving written notice to the other party.

15.4 Litigation Expense. In the event of a default under this agreement, the defaulting party shall reimburse the nondefaulting party or parties for all costs and expenses reasonably incurred by the nondefaulting party or parties in connection with the default, including without limitation reasonable attorney's fees. Additionally, in the event a suit

or action is filed to enforce this agreement or with respect to this agreement, the prevailing party shall be reimbursed by the other party for all costs and expenses incurred in connection with the suit or action, including without limitation reasonable attorney's fees at the trial level and on appeal.

15.5 Waiver. No waiver of any provision of this agreement may be deemed, or will constitute, a waiver of any other provision, whether or not similar, nor will any waiver constitute a continuing waiver. No waiver will be binding unless executed in writing by the party making the waiver.

15.7 Applicable Law. This agreement will be governed by and shall be construed in accordance with the laws of the state of New York.

15.8 Cross Indemnity. The College hereby agrees to indemnify and hold the County harmless from any and all claims, liability and Expenses incurred by the County due to the grossly negligent and/or intentional act and/or omission of the College, under the same terms and conditions as hereinabove set forth for the County's indemnity of the College.

15.9 Compliance with Law. The College represents and warrants that it has not offered or given any gratuity to any official, employee, or agent of Suffolk County, New York State, or of any political party, with the purpose or intent of securing favorable treatment with respect to the performance of an agreement, and is in compliance with Local Law #32-1980, which relates to such subject. Further, other than valid agreements with the County, if any, there is no known personal, business, commercial, professional, economic, or financial relationship between the parties, the signatories to this agreement, and any partners, members, directors, or shareholders of more than five per cent (5%) of any party to this agreement.

IN WITNESS WHEREOF, this agreement has been duly executed by the parties hereto.

COUNTY OF SUFFOLK

NEW YORK INSTITUTE OF
TECHNOLOGY.

By: _____

By: _____

Name: _____

Name: _____

Title: Deputy County Executive

Title: _____

Date: _____

Date: _____

Approved as to Legality:

DENNIS M. COHEN, ESQ.
County Attorney

APPROVED:

By: ROBERT A. BRAUN, ESQ. [date]
Department of Law
Deputy Bureau Chief

JILL ROSEN-NIKOLOFF [date]
Director, Division of Real Property
Acquisition and Management

Real Estate/Condemnation Bureau

Department of Economic Development and
Planning

SUFFOLK COUNTY
County Legislature
RIVERHEAD, NY



This is to Certify That I, TIM LAUBE, Clerk of the County Legislature of the County of Suffolk, have compared the foregoing copy of resolution with the original resolution now on file in this office, and which was duly adopted by the County Legislature of said County on November 20, 2012 and that the same is a true and correct transcript of said resolution and of the whole thereof.

In Witness Whereof, I have hereunto set my hand and the official seal of the County Legislature of the County of Suffolk.

Tim Laube

Clerk of the Legislature

CN 2164

1052

Motion:

Romaine, Schneiderman, Browning, Muratore, Anker
Calarco, Montano, Cilmi, Lindsay, Hahn, Barraga,
Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Spencer

Co-Sponsors:

Romaine, Schneiderman, Browning, Muratore, Anker
Calarco, Montano, Cilmi, Lindsay, Hahn, Barraga,
Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Spencer

Second:

Romaine, Schneiderman, Browning, Muratore, Anker
Calarco, Montano, Cilmi, Lindsay, Hahn, Barraga,
Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Spencer

LD	Legislator	Yes	No	Abs	NP	R
1	Edward P. ROMAINE					
2	Jay H. SCHNEIDERMAN					
3	Kate M. BROWNING					
4	Thomas MURATORE					
5	Kara HAHN					
6	Sarah S. ANKER					
7	Rob CALARCO					
9	Ricardo MONTANO					
10	Thomas CILMI					
11	Thomas F. BARRAGA					
12	John M. KENNEDY, JR.					
13	Lynne C. NOWICK					
15	DuWayne GREGORY					
16	Steven H. STERN					
17	Lou D'AMARO					
18	William SPENCER					
14	Wayne R. HORSLEY, D.P.O.					
8	William J. LINDSAY, P.O.					
	Totals	18				

MOTION
<input checked="" type="checkbox"/> Approve
Table: _____
<input type="checkbox"/> Send To Committee
<input type="checkbox"/> Table Subject To Call
<input type="checkbox"/> Lay On The Table
<input type="checkbox"/> Discharge
<input type="checkbox"/> Take Out of Order
<input type="checkbox"/> Reconsider
<input type="checkbox"/> Waive Rule
<input type="checkbox"/> Override Veto
<input type="checkbox"/> Close
<input type="checkbox"/> Recess
APPROVED <input checked="" type="checkbox"/> FAILED _____
No Motion _____ No Second _____

RESOLUTION DECLARED
<input checked="" type="checkbox"/> ADOPTED
<input type="checkbox"/> NOT ADOPTED

Roll Call _____ Voice Vote

Tim Laube

Tim Laube, Clerk of the Legislature