

**SUB-LEASE AGREEMENT BETWEEN  
SUFFOLK COUNTY COMMUNITY COLLEGE  
AND  
LONG ISLAND UNIVERSITY**

**This Sub-Lease Agreement** ("Sub-Lease" or "Agreement") is 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, a municipal corporation of the State of New York; and

**Long Island University (LIU)**, a New York State not-for-profit educational corporation having its principal office at 700 Northern Boulevard, Brookville, New York 11548-1327.

The College desires to sub-lease to LIU the modular building to be located on the Michael J. Grant Campus in Brentwood, New York, as further described in Exhibit B, to permit LIU's usage thereof for educational and academic purposes during College-approved hours of operation, as further described herein at Exhibit C.

**Term of Sub-Lease:** The Initial Term shall commence upon a date certain ("Commencement Date") which shall be within ten (10) days from the date upon which a Certificate of Occupancy (or Temporary Certificate of Occupancy) is issued by the Suffolk County Department of Public Works, and shall terminate ten (10) years thereafter.

The Option Term or Year 10 Expansion Option Term shall commence upon the 10-year anniversary of the Commencement Date, and shall terminate five (5) years thereafter.

**Cost of Sub-Lease:** Initial Term: Ten (10) years (120 months) at \$613,884.00 per year, due and payable on the twentieth (20th) day of the preceding month in installments of \$51,157.00.

Option Term: Five (5) years (60 months) at \$329,124.00 per year, due and payable on the twentieth (20th) day of the preceding month in installments of \$27,427.00.

Year 10 Expansion Option Term: Five (5) years (60 months) at \$605,352.00 per year, due and payable on the twentieth (20th) day of the preceding month in installments of \$50,446.00.

**Terms and Conditions:** Shall be as set forth in Exhibits A through G, attached.

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

**Long Island University**

Kimberly R. Cline  
By: Dr. Kimberly R. Cline  
President

Date: 11/16/13

**Approved As To Legality:**

Gale S. Haynes  
Gale S. Haynes, Esq.  
Vice President and Chief Operating Officer  
& University Counsel

Date: 10/5/13  
(initials)

**Recommended:**

Christopher Fevola  
Christopher Fevola  
Treasurer

Date: 11/6/13

**Suffolk County Community College**

Shaun L. McKay  
By: Dr. Shaun L. McKay  
President

Date: 11/21/13

**Approved As To Legality:**

Louis J. Petruzzo  
Louis J. Petruzzo, Esq.  
College General Counsel

Date: 11/21/13

**Recommended:**

Gail E. Vizzini  
Gail E. Vizzini  
Vice President, Business  
& Financial Affairs

Date: 11-21-13

## Table of Contents

<b>Exhibit A</b>	<b>General Terms and Conditions</b>
1.	Inconsistent Provisions
2.	Description
3.	Term and Termination
4.	Sub-Lease Payments
5.	LIU's Obligations
6.	The College's Obligations
7.	Joint Obligations of LIU and the College
8.	Signage and Advertising
9.	Extension Beyond Option Term
10.	Restoration of Premises upon Termination of Sub-Lease
11.	Status of Modular Building upon Termination of Sub-Lease
12.	Quiet Enjoyment
13.	Alterations
14.	Assignment
15.	Insurance
16.	Risk of Loss or Destruction
17.	Negative Covenants
18.	Hazardous Substances
19.	Indemnification
20.	Intentionally Left Blank
21.	No Broker
22.	Notice Requirements/Contact Persons
23.	Waiver of Jury Trial
24.	Entire Agreement
<b>Exhibit B</b>	<b>Description of Premises and Plans &amp; Drawings</b>
<b>Exhibit C</b>	<b>Hours of Operation Schedule</b>
<b>Exhibit D</b>	<b>Brentwood Campus Academic Curriculum</b>
<b>Exhibit E</b>	<b>Board of Trustees Resolution No. 2013.47 Approving the Sub-Lease</b>
<b>Exhibit F</b>	<b>General Terms and Conditions</b>
<b>Exhibit G</b>	<b>Equipment Lease Agreement between Suffolk County Community College and Vanguard Modular Building Systems, LLC</b>

**Exhibit A**  
**General Terms and Conditions**

**Whereas**, the College has entered into an Equipment Lease ("Equipment Lease") with Vanguard Modular Building Systems, LLC ("Vanguard") (annexed hereto as Exhibit G), wherein Vanguard will design and construct a modular classroom building on the College's Michael J. Grant Campus in Brentwood, New York; and

**Whereas**, the modular building provides adequate classroom space to accommodate the College's academic and educational purposes during the College's established daytime classroom hours; and

**Whereas**, the modular building is available to serve a similar purpose for LIU students, faculty and office staff at other times; and

**Whereas**, LIU wishes to provide academic courses and educational programs to its students, as approved by the College, during said time periods; and

**Whereas**, the College and LIU agree that such joint utilization of the modular building will be mutually beneficial and further the educational goals and mission of each institution;

**Now, therefore**, in consideration of the promises and the mutual covenants and conditions herein contained, it is agreed by the parties hereto, as follows:

**1. Inconsistent Provisions**

The provisions of this Exhibit A shall prevail over inconsistent provisions of any other Exhibit, and over any other document not specifically referred to in this Sub-Lease or made part thereof by this Sub-Lease or by subsequent amendment in writing and signed by both parties except to the extent that such provisions of this Exhibit A are specifically referred to and amended or suspended by such Exhibit amendment or other document.

**2. Description**

The College hereby sub-leases to LIU the entire modular building located on the College's Michael J. Grant Campus in Brentwood, New York (hereinafter "Premises" or "modular building"), described herein at Exhibit B, to be used by LIU during certain time periods as approved by the College (see, Exhibit C), for the purpose of offering courses and educational programs, as approved by the College (see, Exhibit D).

**3. Term and Termination**

**a. Term**

This Sub-Lease shall cover the period set forth on page one of this Agreement, unless sooner terminated as provided below.

**b. Exercising the Option to Renew and/or Expand**

The option to renew the term of this Sub-Lease for the 5-Year Option Term or the Year 10 Expansion Option Term may be exercised only upon the mutual written agreement of the parties. A request to exercise the option to renew must be made by LIU, in writing, at least six (6) months prior to the expiration of the Initial Term. A request to exercise the Year 10 Expansion Option must be made by LIU, in writing, at least eighteen (18) months prior to the expiration of the Initial Term.

**c. Termination for Cause**

This Agreement may be terminated in whole or in part in writing by the College in the event of failure by LIU to fulfill any of the material terms and conditions under this Agreement; provided that no such termination shall be effective unless LIU is given thirty (30) calendar days' written notice of intent to terminate ("Notice of Intent to Terminate"), delivered personally or by certified mail, return receipt requested. During such thirty (30) day period, LIU 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, LIU shall be given an additional fifteen (15) days to cure all failures to fulfill its obligations under this Agreement. In the event that LIU has not cured all its failures to fulfill its obligations to the satisfaction of the College by the end of the combined forty-five (45) day period, the College may issue a Termination Notice, effective at the completion of the semester in which it is issued or within ten (10) days of its issuance, whichever is later.

**d. Sub-Lease Payment Obligations Upon Termination for Cause**

In the event of termination for cause, LIU shall remain obligated for all sub-lease payments due and owing to the College for the unexpired Initial Term or Option Term of this Sub-Lease, as applicable, in accordance with this Exhibit A, subject to College's reasonable efforts to mitigate its losses.

**e. Termination of the Equipment Lease**

Notwithstanding anything to the contrary herein, including Paragraph 3(c) (Termination for Cause) hereof, in the event that the Equipment Lease between the College and Vanguard Modular Building Systems, LLC (Exhibit G) is terminated, this Sub-Lease shall terminate on the termination date of the Equipment Lease.

**4. Sub-Lease Payments**

- a.** In consideration of the College faithfully complying with all of the covenants set forth in this Sub-Lease, LIU shall compensate the College according to the following schedule:

**For the Initial Term:**

\$613,884 per year, due and payable on the twentieth (20th) day of the month preceding in installments of \$51,157.

**For the Option Term:**

\$329,124.00 per year, due and payable on the twentieth (20th) day of the month preceding in installments of \$27,427.

**For the Year 10 Expansion Option Term:**

\$605,352.00 per year, due and payable on the twentieth (20th) day of the month preceding in installments of \$50,446.

- b. Monthly Sub-Lease payments shall be made by LIU to the College on the twentieth (20th) day of each month preceding to the following address:

Suffolk County Community College  
ATTN: Business and Financial Affairs Office  
533 College Road, NFL232  
Selden, New York 11784

Except as specifically provided otherwise in this Sub-Lease, the Sub-Lease payment will be absolute and unconditional in all events and will not be subject to any offset, defense, counterclaim, or recoupment for any reason whatsoever including, without limitation, any defects, malfunctions, breakdowns, or infirmities in the Premises or any accident, condemnation or unforeseen circumstances.

**5. LIU's Obligations**

- a. **Hours of Operation.** LIU shall be permitted to utilize the Premises in accordance with the "Hours of Operation Schedule," attached hereto as Exhibit C.
- b. **Academic Usage.** LIU's use of the Premises shall be limited to operating the educational programs set forth in the "Academic Usage Agreement," attached hereto as Exhibit D.
- c. **Duty of Care.** LIU shall, at all times, take good care of the Premises and preserve the Premises in good order and condition.
- d. **Electricity and Heat.** LIU shall be solely responsible for all charges incurred for electricity and heat utilized at the Premises.
- e. **Identification Cards.** LIU students shall obtain LIU identification cards, which shall specifically identify such students as authorized to attend the College's Grant Campus. Such students are hereinafter referred to as "LIU/Grant Campus students."

- f. **Grant Campus Library.** LIU/Grant Campus students will have use of the Grant Campus Library during the hours of operation established by the College. LIU and the College may develop a plan for placing appropriate books, journals and other materials to support LIU's programs in the Grant Campus Library. LIU will bear the expense of such acquisitions. LIU will also pay for direct costs of providing library orientation sessions to LIU's students.
- g. **Cafeterias.** LIU/Grant Campus students and staff will have access to the Grant Campus cafeterias during the hours of operation established by the College.
- h. **Academic Calendar.** LIU will provide the College with LIU's academic calendar at least six (6) months prior to the commencement of each academic year.
- i. **HSEC.** LIU/Grant Campus students and staff will have access to the Health, Sports and Education Center (HSEC), including the pool and health club, in accordance with College policy as applicable to the College's students and staff.
- j. **Postage.** LIU shall pay directly for all of its outgoing mail from the College. Daily mail pick-up and delivery will be provided to LIU by the College.
- k. **Outside Vendors.** LIU shall comply with the College's contractual obligations with outside vendors and service providers relating to the provision of food and beverage services on the Grant Campus, including vending machines and any or all other applicable services provided by such outside vendors.
- l. **Class Cancellation.** LIU shall cancel its classes at any time that the College President determines to cancel the College's classes due to extreme weather conditions or other emergency. LIU shall provide the College with appropriate contact numbers of LIU administration for this purpose and for other emergency situations.
- m. **Telecommunications and Computers.** LIU shall arrange for its own telephone, computer, data and communications networks, and cable and internet services. LIU shall coordinate with the College's Director of Networking and Telecommunications and Executive Director of Computer Information Services to ensure that such networks and services do not interfere with the College's existing services. The College shall cooperate with LIU in the making of such arrangements and, if necessary, allow LIU to use some of the College's underground wires, provided such use would not interfere with the College's use thereof.

LIU/Grant Campus students will not have access to College computing facilities as a result of this Sub-Lease, except for terminals available for general use in the Grant Campus Library.

- n. **Parking.** LIU/Grant Campus students and staff shall be required to obtain LIU-issued parking permits and to comply with all College parking and traffic policies, rules and regulations, as applicable during the term of this Sub-Lease to the College's students and staff, and shall be subject to all applicable penalties for violations of such parking and traffic policies, rules and regulations. LIU agrees to cooperate with and assist the College in obtaining student compliance with the College's parking and traffic policies.
- o. **Discipline of LIU/Grant Campus Students.** LIU shall be solely responsible for and shall maintain good discipline and proper behavior on the part of all persons in any way involved in the use of the Premises and related facilities, and agrees to discipline any personnel, including LIU/Grant Campus students, whose acts or failure to act are determined, to be detrimental to LIU and/or the College.
- p. **Other Campus Uses.** Requests for occasional, incidental or temporary use of other College space at the Michael J. Grant Campus should be submitted to the Campus Executive Dean. Should LIU require the use of other College space on a permanent basis, all arrangements shall be coordinated through the College's Associate Vice President for Economic and Workforce Development on a case-by-case basis and shall be subject to a written agreement between the parties.

#### 6. The College's Obligations

- a. **Custodial Services.** The College shall provide to the Premises all necessary custodial and janitorial services, and maintain sufficient restroom supplies, including soap, paper towels and toilet paper.
- b. **Water and Sewer Services.** The College shall be responsible for the provision of water and sewer utility services to the Premises.
- c. **Utility Services.** The College shall provide all utility services to the Premises, which shall be separately metered for LIU charge purposes.
- d. **Trash Removal.** The College shall be responsible for the collection and disposal of trash from the Premises.
- e. **Snow Removal.** The College shall provide snow removal services to the Premises, on the same basis as provided to other College buildings and programs.
- f. **Security.** The College's Office of Fire and Public Safety shall provide keys and security services to LIU on the same basis as provided to other College buildings and programs. Security services shall include monitoring the fire alarm system in the modular building situated on the Premises.



- g. **Academic Calendar.** The College will provide LIU with the College's academic calendar at least six (6) months prior to the commencement of each academic year.
- h. **Emergencies.** In the event of a medical or other emergency at the Premises, the College's Office of Fire and Public Safety and/or the Grant Campus healthcare professional(s) will provide assistance, as appropriate.
- i. **Maintenance.** The College will provide routine maintenance services not contractually required to be provided by Vanguard to the Premises, including, but not limited to, grounds-keeping, light bulb replacement, broken fixture replacement, gutter and downspout cleaning and maintenance, and general maintenance of HVAC equipment.
- j. **Compliance with Equipment Lease.** Pursuant to Paragraph 7(a) (Incorporation of Equipment Lease) of this Exhibit A, College shall comply with all its obligations as lessee pursuant to the Equipment Lease, including, but not limited to, College's obligation to make timely payments, pursuant to, *inter alia*, Paragraph 3 (Term and Termination) of Exhibit A to the Equipment Lease.

## 7. **Joint Obligations of LIU and College**

- a. **Incorporation of Equipment Lease.** This Sub-Lease is subject to all of the terms and conditions of the Equipment Lease, except for those provisions of the Equipment Lease that are directly contradicted by this Sub-Lease, in which event the terms of this Sub-Lease shall prevail. As modified by the foregoing, the terms and conditions of the Equipment Lease are incorporated herein by reference, with each reference therein to "Lessor" and "Lessee" to be deemed a reference herein to College and LIU, respectively.

In the event of the termination of College's interest under the Equipment Lease for any reason, then this Sub-Lease shall terminate coincidentally therewith.

- b. **Compliance with Laws.** LIU and College each shall be responsible for compliance with all applicable laws, rules and regulations, including, but not limited to, New York State fire prevention and building code requirements pertaining to the modular building.
- c. **Management Committee.** The College and LIU shall work cooperatively to establish a joint Management Committee, which will be comprised of three (3) representatives of each institution. Such Management Committee shall meet at least once per semester to review and resolve any issues, except for financial matters, arising from the operation of this Sub-Lease.

**8. Signage and Advertising**

- a. LIU is permitted to install signs on the Premises and/or at other locations on the Grant Campus, at its own cost, to direct students and visitors to the site of LIU's programs, provided that such signage is in keeping with the standards for the signage that the College provides for its own programs. LIU shall submit signage mockups and proposed locations to the College's Vice President for Institutional Advancement for approval. *No signage may be installed without such prior approval.*
- b. The College and LIU will cooperate and collaborate in matters of advertising and promotion. However, neither party will use the name, trademark or logo of the other without prior written permission.
- c. Any mention of the College in promotional materials or media advertising generated by or from LIU must be submitted to the College's Vice President for Institutional Advancement for prior approval.

**9. Extension Beyond Option Term**

A request to the College to extend the lease of the modular building from Vanguard subsequent to the expiration of the Option Term must be made by LIU, in writing, at least six (6) months prior to the expiration of the Option Term. The College may, within its sole and absolute discretion, deny LIU's request that the College attempt to obtain such an extension.

**10. Restoration of Premises upon Termination of Lease**

Except as provided in Paragraphs 14 (Assignment), 15 (Insurance) and 16 (Risk of Loss), upon termination of the Sub-Lease, LIU shall surrender the Premises in the same condition as when LIU took possession, reasonable wear and tear excepted. In the event that LIU takes possession of the Premises before construction is complete, LIU shall surrender possession of the Premises in the same condition as on the date construction was completed, reasonable wear and tear excepted.

**11. Status of Modular Building upon Termination of Sub-Lease**

In the event the modular building is to be dismantled and removed at the end of the Sub-Lease term or earlier termination of the Sub-Lease, LIU shall be solely responsible for any and all costs associated therewith. Upon termination of the Sub-Lease, should the College elect to maintain the modular building for its own use and/or for the use of a sub-tenant other than LIU, LIU shall have no obligation to bear any costs for the dismantling or removal of the modular building.

**12. Quiet Enjoyment**

The College covenants that if and so long as LIU tenders the required payments as required under this Sub-Lease and performs the covenants thereof, LIU shall peaceably and quietly have, hold and enjoy the Premises for the term herein provided, subject to the provisions of this Sub-Lease.

**13. Alterations**

LIU shall not make any alterations, installations, improvements, additions, renovations or physical changes to the Premises, or any part or portion thereof, without the prior written consent of the College, and, in accordance with the Equipment Lease, of Vanguard. Such consent shall not be unreasonably withheld.

**14. Assignment**

LIU shall not sell, convey, encumber or otherwise dispose of its interests, rights or obligations under this Sub-Lease. LIU may not assign this Sub-lease or further sublet the leased Premises until five (5) years after the Completion Date. Thereafter, LIU may assign this Sub-lease only with the prior written consent of College, which consent College agrees shall not be unreasonably withheld, delayed or conditioned, provided (i) such assignment is to an educational institution determined by College, in its reasonable judgment, to be of good repute, and (ii) the proposed assignee has a minimum net worth in excess of Three Million Dollars (\$3,000,000). LIU shall provide College with the identity of the proposed assignee and reasonable biographical information, including financial statements for the proposed assignee for the three (3) preceding years.

**15. Insurance**

**a. College's Policies**

The College shall obtain the following insurance policies. The premiums for such insurance shall be paid in equal parts by the College and LIU. The following policies and coverage represent the minimum level of insurance that is to be maintained for the life of the Sub-Lease. Additional policies may be needed by one or both of the parties hereto.

- i. **Property (Rented).** Coverage shall be such that the leased Premises is insured against loss or damage caused by: (a) fire, windstorm and perils generally included under all risk coverage; (b) vandalism and malicious mischief; and (c) all other events covered by an "all risk" policy, in the amount no less than full replacement cost.
- ii. **Business Interruption.** In the event that any covered peril(s) should result in an occurrence that renders the Premises unusable and results in an extended break from regular operations, coverage shall be available to ensure, at a minimum, the provision of (i) alternative accommodation; and

(ii) continuation of fixed expenses (i.e., lease payments) for the duration of the occurrence in an amount of no less than two million dollars (\$2,000,000.00).

**b. LIU's Policies**

LIU agrees to procure, pay the entire premium for and maintain throughout the term of this Sub-Lease, insurance in amounts and types specified by the College. Unless otherwise specified by the College and agreed to by LIU, in writing, such insurance will be as follows:

- i. **Property Insurance** on an all risk basis in an amount not less than the replacement cost of LIU's personal property and rents.
- ii. **Commercial General Liability** insurance, including contractual liability coverage, in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence for bodily injury and property damage combined and Three Million Dollars (\$3,000,000.00) annual aggregate.
- iii. **Automobile Liability** insurance (if any vehicles are used by Lessor in the performance of this Sub-Lease) in an amount not less than One Million Dollars (\$1,000,000) each accident for bodily injury/property damage combined.
- iv. **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 County, 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.

**c. All Policies**

- i. All policies providing such coverage shall be issued by insurance companies or an insurance reciprocal with an A.M. Best rating of A- or better.
- ii. Each party shall furnish to the other a certificate of insurance for each such policy of insurance, 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 certificate of insurance shall evidence the College and the County's status as additional insureds on the policy.

- iii. 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 the policies. Such Declaration Pages, certificates, policies and other evidence of insurance and notices shall be mailed to the College at its address set forth in the paragraph entitled "Notice Requirements/Contact Persons" or at such other address of which the College shall have given LIU notice in writing.
- iv. The College and LIU hereby waive all rights against each other as respects physical damage to the Premises to the extent such loss is covered by the insurance policy or policies herein required and such policy or policies shall be endorsed to provide a waiver of subrogation clause protecting each party from actions by any insurer for allegations of negligence or other acts that may have contributed to the damage.
- v. All insurance policies which LIU and College are required to maintain under this Sub-Lease shall contain clauses or endorsements to the effect that (i) such insurance shall not be modified or canceled or allowed to expire without at least thirty (30) days' prior written notice to the other; (ii) the coverage afforded thereby shall not be affected by any work in or about the leased Premises, (iii) LIU and both College and the County of Suffolk are expressly named as Additional Insured on the other's commercial general liability policies, which definition shall include said party's trustees, officers, agents, representatives and employees.

**16. Risk of Loss or Destruction**

Any loss or damage to the Premises is to be evaluated in accordance with all applicable insurance policies maintained by the parties under this Sub-Lease. College assumes all risk of loss or damage to the Premises, from any cause whatsoever, but no such loss of or damage to the Premises, nor unfitness or obsolescence thereof, shall relieve LIU of the obligation to make Sub-Lease Payments or to perform any other obligation under this Sub-Lease. If the Premises shall be damaged or totally destroyed by fire or by all risk perils, they shall be repaired and restored by College at the cost and expense of College, up to the limit of available insurance proceeds.

The Premises involved shall be repaired to a condition which is comparable as nearly as possible to their condition immediately prior to the damage, subject to applicable law at the time.

In the event of a partial or total destruction of the leased Premises by fire or extended coverage perils, College shall diligently repair, restore or reconstruct the affected Premises, within one hundred-eighty (180) days after the receipt by College of fire

insurance proceeds, subject to unavoidable delays for a period of not exceeding forty-five (45) days, to a condition comparable as nearly as possible to the condition at the time of such destruction.

Anything contained in this Paragraph to the contrary, in the event that a total or substantial destruction occurs for any reason, but College is unable to build as large a structure as existed formerly and LIU notifies College that LIU's Board of Trustees has determined in good faith that the leasable area after reconstruction will not be sufficient to make the operation of the Premises economically viable, College may elect not to repair, restore or reconstruct the Premises by sending written notice of such election to LIU within forty-five (45) days after the destruction occurs.

If College shall so elect not to repair, restore or reconstruct, the tenancy hereby created shall cease as of the date of said destruction and there shall be no further payment or liability on the part of either party.

In such event, the property insurance proceeds shall be applied as follows: (a) payment of the cost of removing debris and other costs caused by or left by the destruction, including the demolition and removal of the Premises, (b) payment of accrued and unpaid rent, and (c) payment of the remainder to policyholder.

**17. Negative Covenants**

LIU and College agree not to use, suffer or permit any person to use in any manner whatsoever the Premises or any part thereof for any illegal purpose, or for any purpose in violation of any federal, state, county or municipal law, ordinance, rule, order or regulation of the College now in effect or hereinafter enacted, amended or adopted.

**18. Hazardous Substances**

LIU and College shall not generate, treat, store, discharge, dispose of, transport, recycle, use, reuse or handle hazardous substances or waste on the Premises. As used herein, "hazardous substances or waste" shall include, but not be limited to, any flammable explosives, gasoline, petroleum products, polychlorinated biphenyl, radioactive materials, hazardous wastes, hazardous or toxic substances, or related or similar materials, asbestos or any material containing asbestos, or any other substance or material as defined by any federal, state or local environmental law, ordinance, rule or regulations including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. section 9601 *et seq.*), the Hazardous Materials Transportation Act, as amended (49 U.S.C. section 5101 *et seq.*), the Solid Waste Disposal Act, as amended (42 U.S.C. section 6901 *et seq.*) and the regulations adopted and publications promulgated pursuant thereto.

## **19. Indemnification**

- a.** Except to the extent arising out of or resulting from the negligent acts or omissions or willful misconduct of the College, its officers, agents, employees, invitees or contractors, LIU assumes all risks incidental to its use of the Premises and related College facilities and shall be solely responsible for any and all accidents and injuries to persons (including death) and property arising out of or in connection with its use of the Premises and related College facilities and hereby covenants and agrees to indemnify and hold harmless the College, its officers, employees and agents from any and all claims, suits, actions, damages and costs of every nature and description, including reasonable attorney's fees, arising out of the negligent acts or omissions or willful misconduct of LIU, its officers, agents, employees or invitees relating to the use of the Premises and related College facilities or the violation of any law, code, order, ordinance, rule or regulation in connection therewith by LIU, its officers, agents, employees or invitees.
- b.** Except to the extent arising out of or resulting from the negligent acts or omissions or willful misconduct of LIU, its officers, agents, employees, invitees or contractors, College assumes all risks incidental to its use of the Premises and shall be solely responsible for any and all accidents and injuries to persons (including death) and property arising out of or in connection with its use of the Premises and hereby covenants and agrees to indemnify and hold harmless LIU, its officers, employees and agents from any and all claims, suits, actions, damages and costs of every nature and description, including reasonable attorney's fees, arising out of the negligent acts or omissions or willful misconduct of the College, its officers, agents, employees or invitees relating to the use of the Premises or the violation of any law, code, order, ordinance, rule or regulation in connection therewith by the College, its officers, agents, employees or invitees.
- c.** Each party shall be responsible for any claims, liabilities, suits, proceedings or actions of any kind and of whatever name and nature as the same may relate in any manner to the use of space of the Premises and related College facilities arising from such party's negligence or willful misconduct.
- d.** To the extent permitted by law, the College shall be responsible for any claims, costs, damages or injuries to persons or property of whatever kind or nature arising out of the activities or negligence of the College, its officers, agents, employees or invitees.
- e.** To the extent permitted by law, LIU shall be responsible for any claims, costs, damages or injuries to persons or property of whatever kind or nature arising out of the activities or negligence of LIU, its officers and employees.

**20. Intentionally Left Blank**

**21. No Broker**

LIU and the College represent and warrant that all of its negotiations with respect to this Sub-Lease were conducted exclusively between LIU and the College, and neither LIU nor the College used the services of any broker or finder with respect to this Sub-Lease or the leasehold estate created by it.

**22. Notice Requirements/Contact Persons**

- a. Any communication, notice, claim for payment or other submission necessary or required to be made by the parties regarding this Sub-Lease ("Notice") shall be in writing and either (a) sent to the parties by registered or certified mail, postage prepaid or (b) delivered in person or by overnight courier with receipt acknowledged at the following addresses (or at such other address that may be specified in writing by the parties):

For the College:

Gail E. Vizzini  
Vice President for Business and Financial Affairs  
Suffolk County Community College  
533 College Road, NFL 232  
Selden, New York 11784

For LIU:

Christopher Fevola  
Treasurer  
Long Island University  
700 Northern Blvd.  
Brookville, New York 11548-1327

Each Notice mailed shall be deemed given on the third business day following the date of mailing the same and each Notice delivered in person or by overnight courier shall be deemed given when delivered.

- b. Any communication or notice regarding litigation shall be deemed to have been duly made upon receipt by the (parties at the following addresses or at such other address that may be specified in writing by the parties):

For the College:

Louis J. Petrizzo, Esq.  
College General Counsel



Suffolk County Community College  
533 College Road, NFL 230  
Seiden, New York 11784

For LIU:

Gale S. Haynes, Esq.  
Vice President and Chief Operating Officer  
& University Counsel  
Long Island University  
700 Northern Blvd.  
Brookville, New York 11548-1327

- c. Each party shall give prompt written notice to the other party of the appointment of successor(s) to the designated contract person(s) or his or her designated successor(s).

**23. Waiver of Jury Trial**

To the extent such waiver is permitted by law, LIU and the College hereby waive trial by jury in any action, proceeding or counterclaim brought by LIU or the College against the other on any matter whatsoever arising out of or in any way connected with this Sub-Lease, the relationship of lessee and sub-lessee, the use or occupancy of the Premises by LIU or any person claiming through or under LIU, any claim of injury or damages, and any emergency or other statutory remedy. The provisions of the foregoing sentence shall survive the expiration or any sooner termination of the term hereof. The venue of any such action, proceeding or counterclaim shall be Suffolk County, New York. .

**24. Entire Agreement**

It is expressly agreed that this instrument represents the entire agreement of the parties and that all previous understandings are merged in this Sub-Lease.

**End of text of Exhibit A**

**Exhibit B**  
**Description of Premises and Plans & Drawings**

As depicted in the attached Plans and Drawings (see, Exhibit G, herein), the Premises consists of a modular building of approximately 24,000 square feet, which is to be sited on the Michael J. Grant Campus of Suffolk County Community College, northeast of the Health, Sports and Education Center

Said modular building is comprised of sixteen (16) classrooms, one (1) computer classroom, an entrance lobby, a lounge, associated faculty, administrative offices and spaces, restrooms, storage rooms, and assorted building systems rooms. The structure is a single story "U" shaped facility with finished interiors, concrete stairs and ramps for access and egress, a brick façade exterior (coving the entire exterior wall from the roof line to grade), and a complete heating and ventilation system, with rooftop units. The modular building provides utility connections, concrete sidewalks, landscaping and exterior lighting, and a fire alarm system fully equipped with public address capabilities. All modifications reflected in the revised floor plan approved on September 18, 2013 are included. All aspects of the original site plan dated November 6, 2012 are included. All aspects of the College RFP, Vanguard's original proposal and Vanguard's revised cost proposal, including plans, specifications and drawings relating the expansion of the modular building, are included.

**End of text of Exhibit B**

**Exhibit C**  
**Hours of Operation Schedule**

LIU shall have use of the Premises in accordance with an Hours of Operation Schedule which is substantially similar to the LIU Brentwood Fall 2013 Classroom Schedule, attached hereto, subject to such further amendments as may be agreed to by the parties, in consultation with the Management Committee described in Section 7(c) of Exhibit A, hereof. For all subsequent semesters, an Hours of Operation Schedule will be determined by good faith cooperation between LIU and College, with the assistance, as necessary, of the Management Committee.

**End of Text for Exhibit C**

EXHIBIT C

LIU Brentwood Proposed Fall 2014 Room Schedule as of October 2013											
Room #	Type of Space	Monday	Monday	Tuesday	Tuesday	Wednesday	Wednesday	Thursday	Thursday	Thursday	Thursday
		4:20-6:10	6:15-8:05	8:15-10:55	4:20-6:10	6:15-8:05	8:15-10:55	4:20-6:10	6:15-8:05	8:15-10:55	4:20-6:10
1	Classroom	EDS 702 001		EDS 611 001 Picart	EDS 604 001 Picart	EDS 622 001	EDS 619 001	EDS 629 002	EDS 625 001		EDS 625 001
2	Classroom	EDS 600 001	EDS 624 002	EDS 703 001 Vacca	EDS 617 001 Lynn	EDS 610 001	EDS 630 001	EDC 687 002	EDC 660 001		
3	Classroom	EDS 613 001	EDS 631 001	EDS 616 001 Samacore	EDS 704 001 Smith	EDS 632 001	EDC 683 002		EDC 670 001		
4	Classroom	EDC 601 001	Pierangelo Demstock	EDS 608 001	EDS 642 001 Samacore	EDC 613 001	EDC 615 001	EDC 687 001	EDC 614 001		
5	Classroom	EDC 654 001	EDC 619 001	HIS 3 001 Adelman	HIS 3 001 Adelman	EDC 616 001	EDC 659 001		EDS 640 001		
6	Classroom	EDS 615 001	LIS 618 001 Kempfon	LIS 607 001 Westermann	EDC 702 001 Westermann	EDC 668 002	EDC 683 001	EDC 691 001	EDS 633 001		
7	Classroom	SWK 1 5:30-8:10	SWK 1 5:30-8:10	SWK 50 5:30-8:10	SWK 50 5:30-8:10	SWK 60 5:30-8:10	SWK 60 5:30-8:10		George		
8	Classroom	NUR 501 5:30-8:10	NUR 501 5:30-8:10			NUR 601 5:30-8:10					
9	Conf. Room	EDC 602 001		EDC 669 001 Ciborowski	EDC 669 001 Ciborowski	EDC 668 001	EDC 617 001	EDC 690 001	EDC 676 001		
10	Conf. Room	EDS 620 001				Goldin 4:20-8:50	Mariska	Ciborowski 4:20-8:50	Miller		
11	Conf. Room	EDC Seminar 12-4:30						EDC 668 003			
12	Classroom	ART 1 001 5:30-8:10	ART 1 001 5:30-8:10	ENG 8 001 Rock	ENG 8 001 Rock	EDS 713 001	EDS 713 001	EDS 713 001	PHY 10 001 Schmal	PHY 10 001 Schmal	PHY 10 001 Schmal
			Kelly	8:35-11:15	8:35-11:15	Alcari	Alcari	Alcari	5:30-10:55	5:30-10:55	5:30-10:55

EXHIBIT C

13	Classroom	CRJ 11 001 Ruane 5:30-8:10	CRJ 11 001 Ruane 5:30-8:10	ENG 3 001 Angelo	CRJ 631T 001 Monette 5:45-8:25	CRJ 631T 001 Monette 5:45-8:25	CRJ 708T 001 Kelly 8:40-11:25	LLS 733 001 Spanliding 001	EDC 684 001	MUS 1 001 Mobar	LLS 620 001 Baaden	LLS 622 001 Baaden	
14	Classroom	ENG 7 001 Angelo 5:30-8:10	ENG 7 001 Angelo 5:30-8:10		CRJ 631T 001 Monette 5:45-8:25	NUR 99 001 3:30-6:10pm Infantino		EDS 713 002 4:30-5:30	CJR 30 001 Berg 5:30-8:10	CRJ 68 001 Monette	NUR 90 001 3:30- 6:10pm Kapp	MTH 19 001 6:20-9:00	MTH 19 001 6:20-9:00
15	Classroom	EDI 601 001	EDI 600 001		CRJ 631T 001 Monette 5:45-8:25	POL 2 001 5:30-8:10	POL 1 001 8:15-10:55	EDI 613 001 Edwards	EDI 612 001 Ahmad		NUR 99 002 3:30- 6:10pm	CIN 11 001 Walsh 6:15-8:55	CIN 11 001 Walsh

**Exhibit D**  
**Brentwood Campus Academic Curriculum**

1. LIU shall offer undergraduate programs geared towards 3<sup>rd</sup> and 4<sup>th</sup> year students at the Michael J. Grant Campus of the College in the disciplines of criminal justice and nursing. In addition, LIU may offer graduate programs in the disciplines of childhood education, literacy, mental health counseling, library sciences and criminal justice, and such other graduate and undergraduate programs as may be determined by good faith cooperation between LIU and College, with the assistance, as necessary, of the Management Committee described in Section 7(c) of Exhibit A, hereof.
2. LIU shall not offer any undergraduate classes or programs at the College that compete with the College's classes or programs and shall not offer any other undergraduate classes or programs without the prior written approval of the College's President.
3. LIU may develop and offer upper division undergraduate courses and bachelor degree programs through articulation agreements and/or dual registration agreements with the College.
4. LIU shall be responsible for all administrative tasks associated with course development, student registration, and program management, including maintenance of its own database through the LIU's computer system, for all classes or programs offered by it.
5. Classrooms, faculty and administrative offices in the building(s) on the Premises shall be dedicated to LIU's use during the days and times as described in Exhibit C.
6. The College shall not permit other colleges or universities to offer classes or programs at its Michael J. Grant Campus that compete with classes or programs offered by LIU at the College's Michael J. Grant Campus under the terms of this Agreement.

**End of text of Exhibit D**

**Exhibit E**  
**Board of Trustees Resolution No. 2013.47 Approving the Sub-Lease**

[attached]

**End of text of Exhibit E**

# Suffolk

COUNTY COMMUNITY COLLEGE

Office of the President

BOARD OF TRUSTEES

June 20, 2013

**RESOLUTION NO. 2013.47 AUTHORIZING THE COLLEGE PRESIDENT TO EXECUTE A SUB-LEASE WITH LONG ISLAND UNIVERSITY FOR A MODULAR CLASSROOM BUILDING ON THE MICHAEL J. GRANT CAMPUS**

**WHEREAS**, the Board of Trustees of Suffolk County Community College has authorized the College President to execute an Equipment Lease with Vanguard Modular Building Systems, LLC (Vanguard), wherein Vanguard will design and construct a modular classroom building on the College's Michael J. Grant Campus in Brentwood, New York; and


**WHEREAS**, the modular building provides adequate classroom and office space to accommodate the College's academic and educational purposes during the College's established daytime classroom hours; and

**WHEREAS**, the modular building is available to serve a similar purpose for Long Island University's (LIU) students during the College's established classroom hours occurring largely in the late afternoon and evening; and

**WHEREAS**, LIU wishes to provide academic courses and educational programs to its students, as approved by the College, during said time periods; and

**WHEREAS**, this Board deems such joint utilization of the modular building to be mutually beneficial for the College and LIU, and in furtherance of the educational goals and mission of each institution, be it therefore

**RESOLVED**, that the College President is hereby authorized and empowered to execute a sub-lease agreement with Long Island University, upon such terms and conditions as approved by the College General Counsel, for a term of ten (10) years, with an option to extend the term for an additional five (5) years, for a modular classroom building on the Michael J. Grant Campus.

  
Bryan Lilly  
Secretary

Central Administration  
533 College Road  
Selden, NY 11784-2899  
(631) 451-4112

Ammerman Campus  
533 College Road  
Selden, NY 11784-2899  
(631) 451-4110

Western Campus  
Crooked Hill Road  
Brentwood, NY 11717-1092  
(631) 851-6700

Eastern Campus  
121 Spoonk-Riverhead Road  
Riverhead, NY 11901-9499  
(631) 848-2500



**Exhibit F**  
**General Terms and Conditions**

**Capacity to Contract:** LIU warrants that its entry into this Assignment was duly considered and authorized by its organizational body and pursuant to its by-laws and/or internal procedures.

**Fire, Flood, or Strike:** Neither party shall be liable for the failure to perform its part of this Sub-Lease when such failure is due to fire, flood, strikes or similar labor disturbances, industrial disturbances, wars, riots, insurrection, Acts of God and/or other causes beyond the control of the parties.

**Changes to Agreement:** To the extent permitted by law, this Sub-Lease may be modified in writing, executed by the parties hereto upon such terms and conditions as may be mutually agreed upon between the parties but no such modification shall be effective until so executed and approved.

**Not a Co-Partnership:** Nothing herein contained shall create or be construed as creating a co-partnership between the College and LIU or to constitute LIU or its officers, employees as agents or employees of the College.

**Independent Contractor:** It is expressly agreed that LIU's status hereunder is that of an independent contractor. Neither LIU nor any person authorized by LIU to use the Premises shall be considered employees of the College for any purpose. The relationship between the parties is that of Lessor – Lessee, and LIU, in accordance with its status as such, covenants and agrees that it shall conduct itself consistent with such status, that it will neither hold itself out as nor claim to be an officer or employee of the College by reason hereof, and that LIU and its officers and employees shall not, by reason hereof, make any claims, demands or application to, or for any right of privilege including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage or retirement membership credit as officers, employees or agents of the College.

**College Representatives:** It is expressly understood and agreed by and between the parties hereto that the officers, officials, employees and agents of the College are acting in a representative capacity for the College and not for their own benefit, and that LIU shall not have any claim against them or any of them as individuals in any event whatsoever.

**No Implied Waiver:** No failure or delay by either party in enforcing any right or remedy under this Sub-Lease shall be construed as a waiver of any future or other exercise of such right or remedy.

**Use of County Resources to Interfere with Collective Bargaining Activities Local Law No. 26-2003:** LIU 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. Assignee shall not use County funds to assist, promote, or deter union organizing. b. No County funds shall be

Sub-Lease, 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.

**Certification as to Relationships:** Pursuant to the Suffolk County Code Chapter 143, Article II, and Suffolk County Code §143-6(B) specifically, the parties to this Sub-Lease hereby certify that, other than the funds provided in this Sub-Lease and other valid Agreements with 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 Sub-Lease, and any partners, members, directors, or shareholders of five percent (5%) (or more) of any party to this Sub-Lease.

**Set-Off Rights:** 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 County's option to withhold, for the purposes of set-off, any moneys due to LIU under this Sub-Lease up to any amounts due and owing to the County with regard to this contract and/or any other contract with 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 County for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The County shall exercise its set-off rights in accordance with normal County practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the County agency, its representatives, or the County Comptroller, and only after legal consultation with the County Attorney.

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

**Not in Default:** No failure or delay by either party in enforcing any right or remedy under this Sub-Lease shall be construed as a waiver of any future or other exercise of such right or remedy.

**Non-Discrimination Requirements:** In accordance with Article 15 of the New York State Executive law (also known as the Human Rights Law) and all other County, State and federal administrative, statutory and constitutional nondiscrimination provisions, LIU shall not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability, sexual orientation, military service, or marital status.

**Nonsectarian Declaration:** LIU agrees that all services performed under this Sub-Lease are secular in nature, that no funds received pursuant to this Sub-Lease will be used for sectarian purposes or to further the advancement of any religion, and that no services performed under this program will discriminate on the basis of religious belief. Further, LIU agrees that all program services are and will be available to all eligible individuals regardless of religious belief or affiliation.

**Severability:** It is expressly agreed that if any term or provision of this Sub-Lease, or the application thereof to any person or circumstance, shall be held invalid or unenforceable to any

extent, the remainder of this Sub-Lease, 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 Sub-Lease shall be valid and shall be enforced to the fullest extent permitted by law.

**Governing Law:** This Sub-Lease shall be governed by and construed in accordance with the laws of the State of New York, without regard to conflict of laws. Venues shall be designated in Suffolk County, New York or the United States District Court for the Eastern District of New York.

**No Intended Third Party Beneficiaries:** This Sub-Lease entered into solely for the benefit of the College and LIU. No third party shall be deemed a beneficiary of this Sub-Lease, and no third party shall have the right to make any claim or assert any right under this Sub-Lease.

**End of text of Exhibit F**

**Exhibit G**

**Equipment Lease Agreement between Suffolk County Community College  
and Vanguard Modular Building Systems, LLC**

### EQUIPMENT LEASE AGREEMENT

This Equipment Lease Agreement (Lease) is between **Suffolk County Community College** (“Lessee” or “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

**Vanguard Modular Building Systems, LLC** (“Lessor” or “Vanguard”), a Delaware limited liability company, duly authorized to conduct business in the State of New York, having an office at 3 Great Valley Parkway, Suite 170, Malvern, PA 19355;

**Whereas**, the parties hereto desire to enter into a lease agreement whereby Vanguard will design, construct, assemble, and lease to the College a modular classroom building (“the Equipment”), as described in Exhibit B (attached).

**Term of Lease:** Ten (10) years, with one (1) five-year option to renew, which option shall be described as either the “Option Term” or the “Year 10 Expansion Option Term.”

**Cost of Lease:** Initial Term: Ten (10) years (120 months) at \$613,884.00 per year, due and payable on the first day of the month in installments of \$51,157.00.

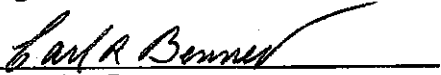
Option Term: Five (5) years (60 months) at \$329,124.00 per year, due and payable on the first of the month in installments of \$27,427.00, or

Year 10 Expansion Option Term: Five (5) years (60 months) at \$605,352.00 per year, due and payable on the first day of the month in installments of \$50,446.00.

**Terms and Conditions:** Shall be as set forth in Exhibits A through G, attached

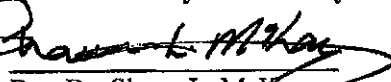
**In Witness Whereof**, the parties hereto have executed this Lease as of the latest date written below.

**Vanguard Modular Building Systems, LLC**

  
By: Carl R. Bennett  
Assistant Secretary

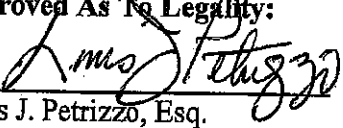
Date: 10/23/2013

**Suffolk County Community College**

  
By: Dr. Shaun L. McKay  
President

Date: 12/3/13

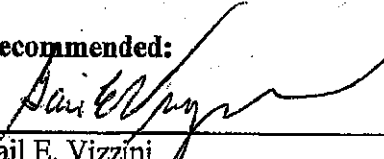
**Approved As To Legality:**



Louis J. Petrizzo, Esq.  
College General Counsel

Date: 11/21/13

**Recommended:**



Gail E. Vizzini  
Vice President, Business & Financial Affairs

Date: 11-21-13

Table of Contents

Exhibit A

General Terms and Conditions

1. Lessor's Responsibilities
2. Term, Lease Commencement Date  
and Extension of Lease After Option Term
3. Payment and Compensation
4. Dismantle and Return of Equipment
5. Utilities and Assessments
6. Lease Subject to Appropriation of Funds
7. Insurance
8. Not in Default
9. Financial Disclosure
10. Gratuities
11. Independent Contractor
12. Site Requirements
13. Sublease and Assignment of Equipment
14. Severability
15. Licenses and Certificates
16. Warranty and Maintenance
17. Title to Equipment; Security Interest
18. Alterations
19. Lessor's Access to the Equipment
20. Risk of Loss; Damage; Destruction
21. Subordination, Non-Disturbance and Attornment
22. Force Majeure
23. Indemnification
24. Personal Property
25. Liens and Taxes
26. Event of Default
27. Termination for Cause and Remedies
28. Hazardous Materials
29. Prevailing Wage
30. Notice Requirements/Contact Persons
31. No Oral Changes
32. Governing Law
33. Entire Agreement

Exhibit B

Description of Modular Building and Scope of Services

Exhibit C

Plans and Drawings

Modular Classroom Building – Michael J. Grant Campus  
Vanguard Modular Building Syst. , LLC

Exhibit D  
Delivery and Acceptance Certificate

Exhibit E  
Equipment Replacement Value Letter

Exhibit F  
Vanguard Warranties and Maintenance Agreement

Exhibit G  
Board of Trustees Resolution No. 2013.46 Authorizing Lease Agreement

Exhibit H  
Suffolk County Community College Request for Proposals to Design, Construct and Lease a  
Modular Building, advertised October 11, 2012.

Exhibit I  
Plans and Drawings of Year 10 Expansion



**Exhibit A  
General Terms and  
Conditions**

**Whereas**, the College issued a Request for Proposals, advertised October 12, 2012, to design, construct and lease to Suffolk County Community College a modular classroom building for its Michael J. Grant Campus, located in Brentwood, New York (see, Exhibit H); and

**Whereas**, Vanguard Modular Building Systems, LLC submitted a proposal that demonstrates the best relevant experience and expertise, offers the best value to the College and will best serve the public interest;

**Now, therefore**, in consideration of the promises and the mutual covenants and conditions herein contained, it is agreed by the parties hereto, as follows:

**1. Lessor Responsibilities**

- a. The duties of Lessor shall be to provide a new, high quality modular classroom building, as described in Exhibit B, entitled "Description of Modular Building and Scope of Services," which shall comply with all applicable building code provisions.
- b. The Equipment shall be delivered, constructed, assembled and installed to a completely operational building structure at the College's Michael J. Grant Campus, Crooked Hill Road, Brentwood, New York at the site described in Exhibit C, entitled "Plans and Drawings."
- c. All transportation and installation costs incurred by Lessor for the delivery and installation of the Equipment shall be borne by Lessor.
- d. Lessor shall perform such services as may be necessary to accomplish the work required to be performed under and in accordance with this Lease.
- e. Lessor 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, licenses, if necessary, experience and character required to qualify them individually for the particular duties they perform under this lease.
- f. The provisions of this Exhibit A shall prevail over inconsistent provisions of any other Exhibit, and over any other document not specifically referred to in this Lease or made part thereof by this Lease or by subsequent amendment in writing and signed by both parties except to the extent that such provisions of this Exhibit A are specifically referred to and amended or suspended by such Exhibit amendment or other document.

**2. Term, Lease Commencement Date and Extension of Lease After Option Term**

- a. This Lease shall cover the Initial Term and Option Term (or Year 10 Expansion

Option Term), as provided on the first page hereof, unless sooner terminated as provided in Paragraph 6 below, entitled "Lease Subject to Appropriation of Funds."

b. The Initial Term shall commence upon a date certain ("Commencement Date") which shall be within ten (10) days from the date upon which a Certificate of Occupancy (or Temporary Certificate of Occupancy) is issued by the Suffolk County Department of Public Works, provided the College has indicated its acceptance of the Equipment by executing a Delivery and Acceptance Certificate in substantially the form provided in Exhibit D. The Initial Term shall terminate on the tenth (10th) anniversary of the Commencement Date.

c. The Option Term (or Year 10 Expansion Option Term) shall commence upon the ten (10)-year anniversary of the Commencement Date, and shall terminate five (5) years thereafter. If Lessee, in its sole and absolute discretion, elects to exercise its option to renew the lease for the Option Term, Lessee shall notify the Lessor, in writing, at least one hundred twenty (120) days prior to the date the Initial Term ends.

d. If Lessee, in its sole and absolute discretion, elects to exercise its option to renew the lease for the Year 10 Expansion Option Term, Lessor shall expand the Modular Building in accordance with all plans and specifications detailing such expansion, and as identified in drawings specified as A5 and A6, each dated January 7, 2013, attached hereto as Exhibit I ("Plans and Drawings of Year 10 Expansion"). In order to exercise said option to renew the lease for the Year 10 Expansion Option Term, Lessee shall notify the Lessor, in writing, at least one (1) year prior to the date the Initial Term ends. Upon such notice, Lessor shall commence expansion as per Exhibit I, and such expansion shall be complete, such that Lessee shall have full use of the Equipment, by the first (1st) anniversary of such notice.

e. The Parties, at the end of the Option Term or Year 10 Expansion Option Term, may mutually agree, in writing, to a further lease term extension. If Lessee wishes to extend the lease term, Lessee must notify the Lessor, in writing, at least one hundred twenty (120) days prior to the date the Option Term or Year 10 Expansion Option Term ends. If Lessor agrees to grant such extension, Lessor shall offer to Lessee, in writing within thirty (30) days of Lessee's request, any new lease rate and/or other conditions which would become effective, under any such extended lease term. Any agreement to extend the lease subsequent to the expiration of the Option Term or Year 10 Expansion Option Term must be memorialized in writing, signed and delivered by both parties.

**3. Payment and Compensation**

a. In consideration of Lessor's faithfully complying with all the covenants set forth in this Lease, the College shall compensate Lessor according to the following schedule:

Security Deposit: \$51,157.00

Monthly Lease Payment: Initial Term- \$51,157.00  
Option Term- \$27,427.00 or  
Year 10 Expansion Option Term- \$50,466.00

Number of Months: Initial Term- 120 months (10 Years)  
Option Term- 60 months (5 Years) or  
Year 10 Expansion Option Term - 60 months (5 Years)

b. Lease Payments shall be made to:

Vanguard Modular Building Systems, LLC

And shall be remitted electronically to ABA No. 0312-0760-7, Account No. 8019338913 at PNC Bank, 38 Eastgate Drive, Moorestown, NJ 08057  
Phone: (732) 220-3803; Fax: (732) 220-3020

- c. Lessee shall tender to Lessor a security deposit in the amount of \$51,157.00 (equivalent to one monthly lease payment), which shall be due and payable at the time the first monthly lease payment is due hereunder. Such security deposit shall be refunded to Lessee at the expiration or termination of this Lease, or, in the Lessee's sole and absolute discretion, be credited as the final monthly payment due and payable under this Lease.
- d. No partial payments shall be made to Lessor.
- e. The Lease payments payable to Lessor under this Lease are exclusive of federal, state and local taxes, the College being exempt from payment of such taxes.
- f. The acceptance by Lessor of full payment of all monthly Lease payments under this Lease shall operate as and shall be a release of the College and County from all claims and liability to Lessor, its successors, legal representatives and assigns, for anything done or furnished under and by the provisions of this Lease.
- g. The Lease payments shall be payable without notice or demand at the office of Lessor (or such other place as Lessor or its assignee may from time to time designate, in writing), and will commence upon the first (1<sup>st</sup>) day of the month immediately following the Commencement Date, and on the same day in each succeeding month. There shall be a per diem adjustment to reflect the lease payment due for the month within which the Commencement Date

occurs.

**4. Dismantle and Return of Equipment**

a. Upon termination, or at the end of the Initial Term, Option Term, Year 10 Expansion Option Term, or any subsequent extension of the Lease term, Lessor shall dismantle and remove the Equipment, including any above-grade improvements/attachments, foundation piers, concrete decks and ramps, and canopies, cap utilities and shall restore surface of the site beneath the building. Lessee is responsible for all other site restoration at the end of the Lease. The removal of any below-grade improvements/attachments, footings or other site installed below-grade items is excluded from Lessor's scope of work as provided in this paragraph.

b. Lessee is responsible for payment to Lessor for such dismantling and removal of Equipment in the amount of (a) \$425,000.00, should this Lease terminate after the Initial Term; (b) \$450,000.00, should this Lease terminate after the Option Term; or (b) \$495,000 should this Lease terminate after the Year 10 Expansion Option Term.

c. At Lessee's sole option and directive, Lessor shall remove any or all below-grade improvements/attachments, footings or other site installed below-grade items for an additional charge to be determined on the basis of Cost plus Eleven Percent (Cost + 11%).

**5. Utilities and Assessments**

During the Initial Lease Term and Option Term (or Year 10 Expansion Option Term), Lessee shall be solely responsible for the payment of all utilities, including water, gas and electricity, as well as all other charges and fees associated with, or the result of, the equipment being leased and/or being placed on the real property stipulated in this Lease.

**6. Lease Subject to Appropriation of Funds**

a. It is understood by the parties hereto that this Lease is made subject to the amount of funds appropriated therefore and any subsequent modifications thereof for the period of this Lease by the Suffolk County Legislature, and no liability on account thereof shall be incurred by the College or County beyond the amount of funds appropriated by the aforesaid Legislature for this purpose.

b. The College reasonably believes that funds can be obtained sufficient to make all Lease Payments during the Lease term and hereby covenants that it will do all things lawfully within its power to obtain, maintain and properly request and pursue funds from which the Lease Payments may be made, including making provisions for such payments to the extent necessary in each budget submitted for the purpose of obtaining funding, using its bona fide best efforts to have such portion of the budget approved and exhausting all available administrative reviews and appeals in the event such portion of the budget is not approved.

It is the College's intent to make Lease Payments for the full Lease Term if funds are legally available therefore and in that regard the College represents that the use of the Equipment is essential to its proper, efficient and economic operation. Lessor and College understand and intend that the obligation of the College to pay Lease Payments hereunder shall constitute a current expense of the College and shall not in any way be construed to be a debt of the College or County in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by the College, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or monies of the College.

- c. Notwithstanding anything contained in this Lease to the contrary, in the event no funds or insufficient funds are appropriated and budgeted or are otherwise unavailable by any means whatsoever in any fiscal period for Lease Payments due under this Lease, the College shall immediately notify Lessor or its assignee of such occurrence and this Lease shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to the College of any kind whatsoever, except as to the Dismantle Fee and the portions of Lease Payments herein agreed upon for which funds have been appropriated and budgeted. In the event of such termination, the College agrees to peacefully surrender possession of the Equipment to Lessor or its assignee on the date of such termination. Lessor will have all legal and equitable rights and remedies to take possession of the Equipment. Notwithstanding the foregoing, the College agrees:
- i. that it will not cancel this Lease under the provisions of this Section if any funds are appropriated to it, or by it, for the acquisition, retention or operation of the Equipment or other Equipment performing functions similar to the Equipment for the fiscal period in which such termination occurs or the next succeeding fiscal period thereafter, and
  - ii. That it will not during the Lease Term give priority in the application of funds to any other functionally similar Equipment.

This paragraph will not be construed so as to permit the College to terminate this Lease in order to acquire or lease any other Equipment or to allocate funds directly or indirectly to perform essentially the same application for which the Equipment is intended.

## 7. Insurance

- a. **Lessor's Insurance.** The Lessor agrees to procure, pay the entire premium for and maintain throughout the term of this Lease, insurance in amounts and types specified by the College and/or County and as may be mandated and increased from time to time. Except for Owner's and Contractors' Protective Liability and Builders Risk property insurance, the Lessor agrees to require that all of its subcontractors, in connection with work performed for the Lessor related to this Lease, 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 Lessor. Unless otherwise specified by the

College and/or the County and agreed to by the Lessor, 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.
  - iv. **Owner's and Contractors' Protective Liability (OCP)** insurance in an amount not less than One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damage per occurrence and covering the liability of the College, all its employees (including but not limited to the Vice President for Business and Financial Affairs), the County of Suffolk and all its employees, both officially and personally, with respect to all work under this Agreement performed by Lessor or by its subcontractors, including omissions or supervisory acts of the College, its employees, the County of Suffolk or its employees. Lessor shall provide evidence of OCP insurance within ten (10) days of execution of the Lease, and the policy shall remain in effect until the "Commencement Date" of this Lease, as that term is defined in paragraph 2(b) herein. In no event shall Lessor be required to maintain OCP insurance subsequent to the Commencement Date.
  - v. **"All Risk" Builder's Risk Property** insurance upon the entire project on which the work of the Lease is to be done to One Hundred Percent (100%) of the completed value thereof. The completed value is Four Million Six Hundred Twenty-one Thousand Four Hundred Dollars (\$4,621,400.00). The Builder's Risk policy maintained by Lessor shall terminate on the Commencement Date.
- b. **Lessee's Insurance.** The Lessee agrees to procure, pay the entire premium for and

maintain throughout the term of this Lease, insurance in amounts and types as specified, as follows:

- i. **Property (Rented).** Coverage shall be such that the leased Premises is insured against loss or damage caused by: (a) fire, windstorm and perils generally included under "all risk" coverage; (b) vandalism and malicious mischief; and (c) all other events covered by an "all risk" policy, in the amount no less than full replacement cost or three million dollars (\$3,000,000.00), whichever is greater.
- ii. **Business Interruption.** In the event that a covered peril(s) should result in an occurrence that renders the Premises unusable and results in an extended break from regular operations, coverage shall be available to ensure, at a minimum, the provision of (i) alternative accommodation; and (ii) continuation of fixed expenses (i.e., lease payments) for the duration of the occurrence in an amount of no less than two million dollars (\$2,000,000.00).

**8. Not in Default**

Lessor warrants that it is not in arrears to the College or the County of Suffolk upon debt or contract and is not in default as a surety, contractor or otherwise on any obligation to the College or the County of Suffolk.

**9. Financial Disclosure**

Lessor represents and warrants that, unless exempt, it has filed with the Comptroller of Suffolk County the verified public disclosure statement required by Suffolk County Administrative Code, Section A5-7, and shall file an update of such statement with the Comptroller on or before the 31st day of January in each year of this Lease's duration. Lessor 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 Lease, for which the College shall be entitled, upon a determination that such breach occurred, to damages, in addition to all other legal remedies, of fifteen percent (15%) of the amount of the Lease.

**10. Gratuities**

Lessor 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 a lease or securing favorable treatment with respect to the awarding or amending of a lease or the making of any determinations with respect to the performance of a lease, and that the signer of this Lease has read and is familiar with the provisions of Local law No. 32-1980 of Suffolk County (Chapter 386 of the Suffolk County Code).

**11. Independent Contractor**

It is expressly agreed that Lessor's status hereunder is that of an independent contractor.

Neither Lessor nor any person hired by Lessor shall be considered employees of the College for any purpose.

**12. Site Requirements**

Unless provided otherwise in the Lease, Lessee shall be responsible for furnishing a suitable site for the Equipment. To be considered suitable, the Lessee must provide a site that is firm, fairly level, and clear of obstructions above and below the ground, and with suitable natural soils providing a soil compaction as required by local building codes. In the event that the natural soil bearing capacity of the soil beneath the building does not meet a minimum of 3,000 psf, the building and foundation system will be modified by Lessor at no additional cost to Lessee. Lessor excludes rock. If rock is encountered, Lessee shall be responsible for the additional cost to remove it.

**13. Assignment or Sublease of Equipment**

- a. Lessor expressly authorizes Lessee to sublet the Equipment to Long Island University, a New York State not-for-profit educational corporation, having an office at 700 Northern Boulevard, Brookville, New York 11548-1327. A copy of the Sub-Lease Agreement, and any subsequent addenda, changes or renewals, between the College and Long Island University shall be provided to Vanguard.
- b. Without Lessor's prior written consent, which consent shall not be unreasonably withheld, the College shall not assign, transfer, pledge, hypothecate, grant any security in or otherwise dispose of this Lease or the Equipment, nor sublet or lend the Equipment or permit it to be used by anyone other than the College or Long Island University.
- c. Lessor may assign its rights, title and interest in and to this Lease, the Equipment and any documents executed with respect to this Lease and/or grant or assign a security interest in this Lease and the Equipment, in whole or in part and the College's right will be subordinated thereto. Any such assignees shall have all of the rights of Lessor under this Lease. Subject to the foregoing, this Lease inures to the benefit of and is binding upon the heirs, executors, administrators, successors, and assigns of the parties hereto. Upon assignment of Lessor's interests herein, Lessor will cause a timely written notice of assignment to be sent to the College which will be sufficient if it discloses the name of the assignee, the written acceptance of the assignment by the assignee, and address to which further payments hereunder should be made. The College covenants and agrees with the Lessor and each subsequent assignee of the Lessor to maintain for the full term of this Lease a written record of each such assignment and reassignment. In compliance with Section 149 (a) of the Internal Revenue Code, the College agrees to affix a copy of each notification of assignment to its counterpart of the Lease. The College hereby designates Lessor to be its agent for the purposes of maintaining a book entry system identifying the ownership of interests in and to this Lease and the Lessor hereby accepts its duties as agent hereunder.



**14. Severability**

It is expressly agreed that if any term of provision of this Lease, or the application thereof to any person or circumstance, shall be held invalid or unenforceable to any extent, the remainder of this Lease, 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 Lease shall be valid and shall be enforced to the fullest extent permitted by law.

**15. Licenses and Certificates**

After installation of the Equipment, Lessee shall ensure that the building is in compliance at all times with all applicable ordinances. Lessee shall secure any necessary zoning permits, if required, in order for Lessor to obtain building permits. Lessor shall procure and maintain all permits required for the project, including the building permit and Certificate of Occupancy. Lessee shall be responsible for the cost of the building permit, unless such fee is waived.

**16. Warranty and Maintenance**

- a. The Lessor grants the Lessee its Warranties and Maintenance Agreement, Special Edition, Suffolk County Community College (11-19-2012) (hereinafter "Warranty and Maintenance Agreement"), attached hereto and made a part hereof as Exhibit F.
- b. The terms of this Warranty and Maintenance Agreement shall remain in force throughout the duration of the Initial Term and Option Term (or Year 10 Expansion Option Term).
- c. Lessor guarantees that in the event that the Lessor assigns the lease to a third party, unrelated to the Lessee, as a result of the sale or other disposition of the building, Lessor shall either (i) continue to administer the Warranty and Maintenance Agreement at Lessor's own cost and expense through the remaining Initial Term or Option Term (or Year 10 Expansion Option Term), as applicable; or (ii) ensure that the assignee administers the Warranty and Maintenance at its own cost and expense throughout the remaining term of the Initial Term or Option Term (or Year 10 Expansion Option Term), as applicable. If any such assignee fails to so administer the Warranty and Maintenance Agreement as provided herein, Lessor shall remain responsible to honor and comply with said Warranty and Maintenance Agreement.
- d. Lessee shall use the Equipment in a careful manner for the use contemplated by the manufacturer of the Equipment and shall comply with all laws, ordinance, insurance policies and regulations relating to such use. Except for ordinary wear and tear, and except as provided in the Warranties and Maintenance Agreement, described in Exhibit F, the Lessee, at its sole expense, shall be responsible for providing all labor, materials and equipment necessary to keep the Equipment clean and in good repair and operating condition. In addition to any other Lessee maintenance responsibilities outlined under this Lease, maintenance by Lessee shall include, janitorial maintenance, light bulb replacement, gutter and downspout cleaning and maintenance, and maintenance and replacement of HVAC filters, as well as maintaining proper thermostat

settings, in accordance with manufacturers' recommendations. Under no circumstance shall Lessor be responsible for maintenance work or repairs, or the consequence of such maintenance work or repairs, performed by Lessee, including Lessee's employees, agents, representative, contractors and subcontractors unless said work is the Lessor's responsibility under the Warranties and Maintenance Agreement and Lessor has failed or refused to perform the work..

e. **Reporting Leaks.** It is the responsibility of the Lessee to timely report to Lessor all leaks to the Equipment, including (i) plumbing leaks within the building, and (ii) all water leaks including, but not limited to, leaks at the roof and windows. Lessor shall make all necessary repairs related to such leaks within a reasonable period of time after such notification.

f. Lessor shall provide, at no additional cost to Lessee, annual testing and maintenance of the fire alarm system for the first five (5) years of the Lease. At the end of the first five years, Lessee assumes all responsibility for annual testing and maintenance of the fire alarm system.

#### **17. Title to Equipment; Security Interest**

During the term of this Lease Agreement, title to the Equipment and any and all additions, repairs replacements or modifications thereof, will rest in Lessor, subject to the rights of the Lessee under this Lease. In the Event of Default as set forth in Paragraph 20, entitled "Event of Default", or as set forth in Paragraph 6, entitled "Lease Subject to Appropriation of Funds," the Lessee will peacefully surrender possession of the Equipment to Lessor. Lessor shall have and retain a security interest under the Uniform Commercial Code in the Equipment, the proceeds thereof and any and all repairs, replacements or modifications thereto, in order to secure the Lessee's payments of all Lease Payments and the performance of all other obligations of the Lessee under this Lease. If requested by Lessor, the Lessee agrees to execute such additional documents including financing statements, affidavits, notices and similar instruments, in a form satisfactory to Lessor which Lessor deems necessary or appropriate to protect its interest in the Equipment and in this Lease.

#### **18. Alterations**

Lessee will not make any alterations, additions or improvements to the Equipment without Lessor's prior written consent, unless such alterations, additions or improvements may be readily removed without permanent damage to the Equipment.

#### **19. Lessor's Access to the Equipment**

During reasonable business hours, Lessor shall be given right of entry to the Equipment, for the purpose of inspection, evaluation, assessment, repairs and/or upgrades of the Equipment. Lessor shall give Lessee a prior forty-eight (48) hour notice of Lessor's intention to access the Equipment.

#### **20. Risk of Loss; Damage; Destruction**

Except for (a) damage to property, equipment, and injury to persons which are directly caused by Lessor's negligence, and (b) Lessor's obligations under the Warranty and Maintenance Agreement, Lessee assumes all risk of loss or damage to the Equipment from any cause whatsoever, and no such loss of or damage

to the Equipment, nor unfitness or obsolescence thereof, shall relieve the College of the obligation to make Lease Payments or to perform any other obligation under this Lease. In the event of damage to any item of Equipment, the College will immediately place the same in good repair with the proceeds of any insurance recovery applied to cost of such repair. If Lessor determines that the Equipment is lost, stolen, destroyed or damaged beyond repair, the Lessee will replace the same with like equipment in good repair, at replacement value, up to the limit of available insurance proceeds.

## **21. Subordination, Non-Disturbance and Attornment**

a. Lessee warrants that it holds such title to or other interest in the premises and other property as is necessary to the Lessor's access to the premises. Lessee agrees, in consideration of the warranties and conditions set forth in this clause, that this lease is subject and subordinate to any and all chattel mortgages, financing statements and other security agreements now or hereafter existing or imposed upon the premises by any lender of the Lessor, and to any renewal, modification or extension thereof. It is the intention of the parties that this provision shall be self-operative and that no further instrument shall be required to effect the present or subsequent subordination of this lease.

b. No such subordination, to either existing or future chattel mortgages, financing statements or other security agreements, shall operate to affect adversely any right of the Lessee under this lease so long as the Lessee is not in default under this lease. Lessor will include in any future chattel mortgages, financing statements or other security agreements to which this lease becomes subordinate, or in a separate non-disturbance agreement, a provision to the foregoing effect. Lessor warrants that the holders of all obligations secured by existing chattel mortgages, financing statements or other security agreements have consented to the provisions of this clause, and agrees to provide true copies of all such consents to the Lessee promptly upon demand.

c. In the event of foreclosure or default of any chattel mortgages, financing statements or other security agreements, Lessee will be deemed to have attorned to any transferee of the premises or any portion thereof and its successors and assigns, and any such transferee will be deemed to have assumed all obligations of the Lessor under this lease, so as to establish direct privity of estate and contract between the Lessee and such transferee, with the same force, effect and relative priority in time and right as if the lease had initially been entered into between such transferee and the Lessee, provided, further, that the Lessee and transferee shall, with reasonable promptness following any such foreclosure or default, execute all such revisions to this lease, or other writings, as shall be necessary to document the foregoing relationship.

## **22. Force Majeure**

The Lessor shall not be responsible for delays caused by events which are beyond Lessor's control including, but not limited to, Acts of God, strikes, weather, and acts of terrorism certified by the United States government.

### **23. Indemnification**

- a. The Lessor agrees that it shall protect, indemnify and hold harmless the College and/or County and their 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 Lessor, its agents, employees, subcontractors, officers, and officials in connection with the services described or referred to in this Agreement. The Lessor shall defend the College and /or County and their 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 Lessor, its officers, officials, employees, subcontractors or agents, if any, in connection with the services described or referred to in this Agreement.
- b. In addition to any other indemnities set forth in this Lease, Lessee does hereby indemnify and hold Lessor harmless from and against any and all liabilities, losses, damages, penalties, claims, suits, actions, expenses, and cost including, but not limited to, attorney fees and court cost incurred by or asserted against Lessor, which results directly from Lessee's acts, omissions, obligations, or duties under this Lease, and /or any breach or default of Lessee hereunder.

### **24. Personal Property**

The Equipment is and will remain personal property and will not be deemed to be affixed or attached to any real property, or to any building thereon.

### **25. Liens and Taxes**

The College shall keep the Equipment free and clear of all levies, liens and encumbrances, except those created under this Lease.

### **26. Event of Default**

The term "Event of Default," as used herein, means the occurrence of any one or more of the following events:

- a. Failure of Lessor or Lessee to perform any material term, condition or covenant of this Lease;
- b. The Lessee fails to make any Lease payments (or any other required payment) as it becomes due in accordance with the terms of the Lease, and any such failure continues for twenty (20) days after the applicable due date;

- c. The Lessor fails to design, deliver and install the Equipment in accordance with the terms, conditions and specifications as provided herein;
- d. The Lessor fails to honor and comply with the Warranties and Maintenance Agreement, attached hereto as Exhibit F;
- e. The commencement of proceedings for bankruptcy, insolvency, assignment for the benefit of creditors or receivership, in respect to either party to this Lease;
- f. Lessee's or Lessor's willful acts and/or omissions, which are contrary to the terms and conditions of this Lease, or a violation of the laws that govern this Lease;
- g. Lessee or Lessor permits an attachment, levy or execution threatened or levied upon or against the Equipment.

## **27. Termination for Cause and Remedies**

a. This Lease may be terminated, in whole or in part, in writing in the Event of Default, as provided herein at paragraph 26; provided that no such termination shall be effective unless the other party is given ten (10) calendar days' written notice of intent to terminate ("Notice of Intent to Terminate"), delivered personally or by certified mail, return receipt requested. During such ten (10) day period, the party alleged to have been in Default will be given an opportunity for consultation with the other party and an opportunity to cure all failures of its obligations prior to termination. Prior to issuance of a written termination notice ("Termination Notice"), the alleged defaulting party shall be given an additional five (5) days to cure all failures to fulfill its obligations under this Lease. In the event that said party has not cured all its failures to fulfill its obligations to the satisfaction of the Lessee by the end of the combined fifteen (15) day period, a Termination Notice may be issued, effective at the completion of the semester in which it is issued or within ten (10) days of its issuance, whichever is later.

b. In the event of a Termination for Cause, as provided herein, the Lessee or Lessor, at its sole option and without an obligation to do so, elect any one or more of the following remedies:

- i. Any remedy allowed under the governing law; and/or
- ii. Any remedy allowed under the terms and conditions of this Lease

c. No right or remedy is exclusive of any other right or remedy conferred herein, or by law. Nothing contained in this section is to be construed to limit the remedies available to either the Lessor or the Lessee.

## **28. Hazardous Materials**

- a. Hazardous Materials shall mean any material, substance or waste that is or has the characteristic of being hazardous, toxic, ignitable, reactive or corrosive, including, without limitation, petroleum, PCBs, asbestos, materials known to cause cancer or reproductive problems and those materials, substances and/or wastes, including infectious waste, medical waste, and potentially infectious biomedical waste, which are or later become regulated by

any governmental authority, the state in which the Equipment is located, or the United State Government.

- b. In no event shall Lessee use or store Hazardous Materials in the Equipment, except such quantities as would be normal in the operation of an educational facility. In no event shall Lessee locate the Equipment at a remediation site where contamination by Hazardous Materials is known, or reasonably anticipated to be present.
- c. Lessee's use or storage of any materials customarily utilized by educational facilities shall not be considered hazardous materials.

**29. Prevailing Wage**

In satisfying its Scope of Services, as described in Exhibit B, and in the performance of any work performed under the Warranties and Maintenance Agreement (see, Exhibit F), Lessor shall comply with the New York State prevailing wage law (NYS Constitution, Art. I., §17 and NYS Labor Law, Art. 8). Compliance with state prevailing wage law includes without limitation, payment of at least prevailing wage as applicable; overtime and working hour requirements; apprenticeship obligations; payroll recordkeeping requirements; and any other obligations, as required by law.

**30. Notice Requirements/Contact Persons**

- a. Any communication, notice, claim for payment or other submission necessary or required to be made by the parties regarding this Lease shall be deemed to have duly made upon receipt by the parties at the following addresses (or at such other address that may be specified in writing by the parties):

For the College:

Gail E. Vizzini  
Vice President for Business and Financial Affairs  
Suffolk County Community College  
533 College Road, NFL 232  
Selden, New York 11784

For Lessor:

Carl R. Bennett  
Assistant Secretary  
Vanguard Modular Building Systems, LLC  
3 Great Valley Parkway, Suite 170  
Malvern, PA 19355

- b. Any communication or notice regarding litigation shall be deemed to have been duly made upon receipt by the (parties at the following addresses or at such other address that may be specified in writing by the parties):

For the College:

Louis J. Petrizzo, Esq.  
College General Counsel  
Suffolk County Community College  
533 College Road, NFL 230  
Selden, New York 11784

For Lessor:

Carl R. Bennett  
Assistant Secretary  
Vanguard Modular Building Systems, LLC  
3 Great Valley Parkway, Suite 170  
Malvern, PA 19355

c. Each party shall give prompt written notice to the other party of the appointment of successor(s) to the designated contract person(s) or his or her designated successor(s).

**31. No Oral Changes**

No modifications of this Lease shall be valid unless written in the form of an Addendum or Amendment signed by both parties.

**32. Governing Law and Venue**

This Lease Agreement shall be construed in accordance with, and governed by, the laws of the State of New York. The venue for any legal action, arbitration, or proceeding shall be Suffolk County, New York.

**33. Entire Agreement**

This Lease, together with the Exhibits attached hereto, constitutes and represents the entire agreement between the parties, and supersedes any prior understanding or agreements, written or verbal, expressed or implied, between the parties. This Lease shall be considered for the benefit of, and shall be binding upon, the parties hereto, their respective successors, and assigns.

End of Text of Exhibit A

**Exhibit B**  
Description of Modular Building and Scope of Services

[attached]

**Exhibit C**  
Plans and Drawings

[attached]

**Exhibit D**  
Delivery and Acceptance Certificate

[attached]

**Exhibit E**  
Equipment Replacement Value Letter

[attached]

**Exhibit F**  
Warranties and Maintenance Agreement

[attached]

**Exhibit G**  
Board of Trustees Resolution No. 2013.46  
Authorizing Lease Agreement

[attached]

**Exhibit H**  
Suffolk County Community College Request for Proposals  
to Design, Construct and Lease a Modular Building, advertised October 11, 2012

[attached]

**Exhibit I**  
Plans and Drawings of Year 10 Expansion

[attached]



**EXHIBIT B**

## **EXHIBIT B**

### **Description of Modular Building and Scope of Services**

#### **1. Modular Building**

a. The modular building is approximately 24,000 square feet, and will be sited on the Michael J. Grant Campus of Suffolk County Community College, northeast of the Health, Sports and Education Center.

b. The modular building is comprised of sixteen (16) classrooms, one (1) computer classroom, an entrance lobby, a lounge, associated faculty, administrative offices and spaces, restrooms, storage rooms and assorted building systems rooms. The structure is a single story "U" shaped facility with finished interiors, concrete stairs and ramps for access and egress, a brick façade exterior (coving the entire exterior wall from the roof line to grade), and a complete heating and ventilation system with rooftop units. The modular building provides utility connections, concrete sidewalks, landscaping, exterior lighting, and a fire alarm system fully equipped with public address capabilities. All modifications reflected in the revised floor plan approved on September 18, 2013 are included. All aspects of the original site plan dated November 6, 2012, and updated site plan of October 2013, are included. All aspects of the College's RFP, Vanguard's original proposal and Vanguard's revised cost proposal, including plans, specifications and drawings relating to the expansion of the modular building, are included.

#### **2. Scope of Services**

a. The Lessor shall furnish all materials, appliances, tools, and labor, and complete in the most substantial and workmanlike manner, the construction of the Modular Building on the Michael J. Grant Campus, as shown on the Plan and Drawings annexed in Exhibit C, and shall do everything required by this Lease.

b. At the College's option, Lessor will provide the following, at no additional charge to the College:

i. The modular building courtyard can be modified by extending the courtyard width from the proposed 30' to up to 56';

ii. College is permitted to make design plan changes to the modular building, provided the changes do not significantly impact the overall square footage of the building;

iii. A roof hatch and ladder shall be provided for safe access to the roof from inside the building;

iv. Walking pads shall be provided and installed on the roof for the purpose of protecting the roof membrane during routing servicing of roof-top equipment, such as the HVAC units;

v. Lessor's price includes an allowance of seven thousand dollars (\$7,000.00) for landscaping. Any additional cost will be the responsibility of the College.

vi. Lessor shall provide the following telecommunications/data systems: Patch panels 49225-H48 system; 1U Leviton wire management panel; racks with vertical wire management by Middle Atlantic RLA—CC.

vii. Lessor shall remove and reinstall all concrete ramps, at no additional cost to the College, in the event the Lessee elects to exercise its option to renew the lease for the Year 10 Expansion Option Term.

### **3. Reports/Progress Meetings**

The Lessor will be responsible for issuing timely reports in oral presentations and in writing on the status of pending and proposed activities, as may reasonably be requested by the College. Depending upon the nature of the services provided under this Lease, the parties may meet from time to time or as specified in any attachments to this Lease; the meeting time, place and attendees shall be as mutually agreed upon by the parties. All written reports will also be made available to the College in electronic format.

### **4. Time of Completion**

The work to be performed under this Lease shall be commenced within five business days of the execution of this Lease, and will be substantially completed and the building ready for occupancy on or before July 15, 2014.

**EXHIBIT C**

**Exhibit C**  
**is drawings.**

**If you wish to see these drawings, please contact the Legal  
Affairs Department at 631-451-4235.**

**Thank you.**