



PROPOSED AGENDA ITEM

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DATE: June 25, 2009

SUBJECT: Skill Center Building lease with IU 5

CATEGORY: Operations: X Policy: Information: Personnel:

DESCRIPTION:

Northwest Tri-County Intermediate Unit is continuing to use a portion of the Skill Center Building for their Regional Choice Initiative and the Erie County Academy of Collegiate and Advanced Studies. The lease requires Operating Committee approval for 2009-10

Rent amount is maintained at the same amount as 2008-09 at \$40,000 for the year payable in monthly installments of \$3,333.

RECOMMENDATION:

**Motion to approve the lease agreement with Northwest Tri-County Intermediate Unit for a portion of the Regional Skill Center Building for use by the Regional Choice Initiative and the Erie County Academy of Collegiate and Advanced Studies at a rent amount of \$40,000 from July 1, 2009 through June 30, 2010**

## **LEASE AGREEMENT**

THIS LEASE AGREEMENT is made and entered into as of this 1<sup>st</sup> day of July, 2009, by and between **ERIE COUNTY TECHNICAL SCHOOL**, hereinafter referred to as the "Lessor", and **NORTHWEST TRI-COUNTY INTERMEDIATE UNIT**, hereinafter referred to as the "Lessee".

In consideration of the mutual covenants and promises herein contained, and with the intention to be legally bound hereby, the parties hereto agree as follows:

### **ARTICLE I LEASED PREMISES**

1. The Lessor hereby leases to the Lessee, effective July 1, 2009, and subject to the terms and conditions of this Lease, hereinafter referred to as the "Lease", certain portion of the Regional Skill Center Building with appropriate access, commonly known as a portion of the Regional Skill Center Building located at 8500 Oliver Road, Erie, Pennsylvania, hereinafter referred to as the "Leased Premises".

2. The Lessee shall have the right to use the Leased Premises for the Regional Choice Initiative.

### **ARTICLE II TERM OF LEASE**

The term of this Lease shall commence on July 1, 2009, until June 30, 2010.

### **ARTICLE III RENT**

Lessor reserves and Lessee agrees to pay to Lessor rent for the Leased Premises the following:

(a) \$40,000 per year, payable \$3,333.34 per month commencing on July 1, 2009 and continuing on the 1<sup>st</sup> day of each month thereafter to and including June 1, 2010.

ARTICLE IV  
UTILITY CHARGES

1. The Lessor shall throughout the term of this Lease, pay or cause to be paid all charges (including any assessment for improvements) incurred on and after commencement of the initial term of this Lease for gas, electricity, light, heat, power, sewer and water rent or charges, or other services used, rendered or supplied to the Lessee in connection with the Leased Premises. The Lessor shall be responsible for the cost of such charges incurred by or services used, rendered or supplied to the Lessor prior to commencement of the initial term of this Lease.

ARTICLE IV  
INSURANCE

1. The Lessor shall, throughout the term of this Lease, keep constantly insured at its full insurable value against loss or damage by fire, windstorm, lightening, riot, civil commotion, malicious mischief, vandalism and those perils included from time to time in the so-called extensive coverage insurance endorsement, the buildings and improvements including the Leased Premises.

2. The Lessee shall also be responsible for insuring all property which may be stored in or upon the Leased Premises.

3. The proceeds of the policy of insurance provided for in Paragraph 1 hereof shall be payable to the Lessor.

4. The Lessee shall, throughout the term of this Lease, maintain sufficient insurance in amounts proper (not less than \$1,000,000 per person/\$1,000,000 per occurrence) to protect the parties with respect to general public liability and property damage caused by virtue of the Lessee's use or occupancy of the Leased Premises. Such policies, by their terms, shall indemnify the Lessor and the Lessee as their respective interests may appear and the Lessee shall provide evidence thereof to the Lessor.

5. The cancellation of the insurance required hereinabove shall be construed as a breach of the Lessee's covenants and warranties hereunder and the Lessor shall have the right to eject the Lessee from the Leased Premises without losing or waiving any of its rights hereunder.

6. Upon securing the insurance coverages required pursuant to this Article, the Lessee shall give written notice thereof to the Lessor, together with a certified copy of the applicable insurance binders. Proof shall also be given by the Lessee to the Lessor that each of the policies required pursuant to this Article expressly provides that said policy shall not be cancelled or altered without thirty (30) days' prior written notice to the Lessor.

ARTICLE V  
REPAIRS AND MAINTENANCE

1. The Lessor shall at all times during the term hereof, faithfully maintain and keep in good order and repair the sewer connections, plumbing work, heating and air conditioning apparatus, gas, electric, light and water fixtures and shall pay all costs or expenses necessary for keeping the Leased Premises and the appurtenances thereto in such order and repair. The Lessee shall not be responsible for any cost for repairs or maintenance incurred by the Lessor prior to the commencement of the initial term of this Lease. The Lessee shall, at the expiration of the term hereof, surrender the Leased Premises to the Lessor in as good condition and repair as at the commencement of said term, except for reasonable wear and tear and acts of God.

2. The Lessee shall not alter, modify or improve the Leased Premises without receiving the prior written consent of the Lessor and any such alterations, additions, improvements and fixtures (except trade fixtures) made or placed in or upon the Leased Premises shall, upon expiration of this Lease, belong to the Lessor without compensation to the Lessee. The Lessee will not permit any mechanics or other liens to be established or remain against the Leased Premises for labor or materials furnished in connection with any such additions, improvements, repairs, or replacements made by the Lessee. The Lessor will not permit any mechanics or other liens to be established or remain against the Leased Premises for labor or materials furnished in connection with any such additions, improvements, repairs, or replacements made by the Lessee. The Lessor will not permit any mechanics or other liens to be established or remain against the Leased Premises for labor or materials furnished in connection with any such additions, improvements, repairs, or replacements made by the Lessor.

3. The Lessor shall not be liable for any damage or injury to the Leased Premises or any property therein contained which may be sustained by the Lessee or any other party, whether by reason of breakage, leakage, or obstruction of water pipes, gas pipes, soil pipes or other leakage in or about the Leased Premises, or the condition of any buildings thereon, or any part thereof, or from any other cause arising by virtue of the Lessee's use or occupancy of the Leased Premises; and the Lessee shall indemnify and hold harmless the Lessor from any and all damages, liabilities and expenses arising out of any improvement, alteration or repair on said building made by the Lessee, and from any and everything whatsoever arising from or out of occupancy by or under the Lessee, its employees, agents, or servants, and from any loss or damage arising from any fault or negligence or action on the part of the Lessee, its employees, agents, or servants.

4. The Lessee will not cause, or permit to be caused, any act or practice, by negligence, omission or otherwise, that would violate any federal, state or local laws, regulations or guidelines applicable to the Leased Premises, now in effect or hereafter enacted, relating to environmental protection or the disposition of hazardous substances. Any violation of this covenant shall be an event of default under this Lease. The Lessee assumes sole responsibility for, and will indemnify the Lessor with respect to, the complete clean-up of any condition on the Leased Premises arising out of Lessee's occupancy which may adversely affect the environment,

whether such clean-up is pursuant to judicial or administrative order or at the direction of the Lessor in its sole discretion. This covenant shall survive termination of this Lease.

5. The Lessee shall not be responsible for any act or practice, which occurred prior to commencement of the initial term of this Lease, that would violate any federal, state or local laws, regulations or guidelines applicable to the Leased Premises, now in effect or hereafter enacted, relating to environmental protection or the disposition of hazardous substances. The Lessor assumes sole responsibility for, and will indemnify the Lessee with respect to, the complete clean-up of any condition on the Leased Premises prior to the commencement of the initial term of this Lease which may adversely affect the environment, whether such clean-up is pursuant to judicial or administrative order. This covenant shall survive the termination of this Lease.

6. Should the Leased Premises be damaged or destroyed by fire, tornado, earthquake or other catastrophe, rendering the same unfit for conduct of the Lessee's business therein, the Lessor may elect to restore or rebuild the Leased Premises to the condition existing before such catastrophe. Any restoration so undertaken by the Lessor shall be at the Lessor's expense and shall be completed within sixty (60) days from said catastrophe, during which time this Lease shall remain in effect. Should the Lessor elect not to restore the Leased Premises, or be unable to do so, then this Lease may be terminated by either party upon written notice to the other effective as of the date of the catastrophe. The Lessor shall make any election herein granted within fifteen (15) days from the happening of the catastrophe, in default of which election, the Lessee may cancel this Lease effective at the expiration of said fifteen (15) days.

#### ARTICLE VI ASSIGNMENT

1. The Lessee shall not have the privilege of assigning this Lease, or subletting all or part of the Leased Premises.

2. The Lessor is expressly given the right to assign any or all of its interest under this Lease, provided such assignment does not unreasonably interfere with the Lessee's quiet enjoyment of the Leased Premises during the remainder of the term of this Lease.

#### ARTICLE VII INDEMNITY OF LESSOR

1. The Lessor shall not be liable to the Lessee for any damage or injury to the Lessee or its property caused by or arising from the condition of the Leased Premises, or by the act or omission of occupants of any improvements hereafter located on the Leased Premises. Nor shall the Lessor be liable to the Lessee for any damage or injury to its property occasioned by any happening (other than the Lessor's active negligence) to or upon the Leased Premises, all claims against Lessor for any such damage or injury being hereby expressly waived by the Lessee.

2. The Lessee agrees that it will save harmless and indemnify the Lessor from all losses, costs, expenses, claims, causes of action, and demands of every kind and character of, by or in favor of any person, firm or corporation whether by way of damage or otherwise, unless said loss, cost, expense, claim, cause of action, or demand arose from the Lessor's active negligence hereunder.

3. The Lessor agrees that it will save harmless and indemnify the Lessee from all losses, costs, expenses, claims, causes of action and demands of every kind and character of, by or in favor of any person, firm or corporation whether by way of damage or otherwise arising from the Lessor's active negligence hereunder.

#### ARTICLE VIII TERMINATION

Upon the termination of the Lessee's rights hereunder, the Lessee will surrender possession of the Leased Premises to the Lessor, together with the buildings and improvements thereon, in good condition and repair, pursuant to the obligations imposed by Article V hereof, which premises, buildings and improvements shall thereupon revert to and become the property of the Lessor to have and to hold in fee simple, free of all claims of the Lessee, its successors or assigns.

#### ARTICLE IX RIGHTS OF LESSOR

1. For purposes of determining the Lessee's performance of its covenants under Article V hereof, the Lessor shall have the right to inspect the Leased Premises from time to time as deemed reasonably necessary by the Lessor throughout the term of this Lease.

2. In the event that the Lessee shall make an assignment for the benefit of its creditors, or a Receiver be appointed for the Lessee, or in case a Petition for adjudication of Lessee as a voluntary or involuntary debtor shall be filed under the Acts of Congress relating to bankruptcy and the Lessee be adjudicated a debtor thereon, or because of a petition filed voluntarily or involuntarily, for reorganization under the Bankruptcy Code, during the continuance of this Lease, without having first paid and satisfied the Lessor in full for all rent, utility or maintenance costs, which may become due and payable during said term, then this Lease shall thereupon forthwith terminate, and the Lessor shall forthwith take possession of the Leased Premises, but not of the right hereunder as to the remainder of the term of this Lease as shall accrue to such assignee, Trustee in Bankruptcy, Receiver or purchaser at judicial sale and the Lessor in such case shall only be entitled to the rent, utility or maintenance costs hereunder according to law.

3. On failure of the Lessee to keep all the covenants of this Lease, and such default continues for a period of fifteen (15) days, and provided that the Lessor shall have given

to the Lessee ten (10) days written notice by registered mail, at the Lessee's office of the Lessor's intention to enter judgment under this clause, or to remove the Lessee from the Leased Premises at the termination of the same, then the Lessee hereby authorizes and empowers any attorney of any Court of Record in Pennsylvania, or elsewhere, to appear for it and confess and enter judgment for the total sum due during the term of the Lease, with or without declaration, with cost of suit and reasonable attorney's fees, release of errors, without stay of execution; and the Lessee does hereby waive and release all relief from any and all appraisal, stay and exemption laws of any state now in force or hereafter to be passed; or the Lessor may issue Landlord's warrant for collection of such rental, utility or maintenance costs in case default be not made good after such notice as aforesaid; or the Lessor at its option may proceed by action of ejectment on this Lease after default made as aforesaid, and in such case, the Lessee hereby authorizes and empowers any attorney of any Court of Record to appear for it in an amicable action of ejectment for the Leased Premises to be entered by the Prothonotary, and confess judgment therein in favor of the Lessor against the Lessee for the Leased Premises, and authorizes the issuing of a Writ of Possession with Writ of Execution for the costs.

4. If the Lessee be in default in the performance of any of its covenants hereunder, the failure to perform which would impose financial obligation or risk on the Lessor, the Lessor may pay, perform and discharge such covenant or obligation of the Lessee and the amount or amounts so paid shall be deemed and taken as additional rent due and payable from the Lessee.

5. A determining of the term, or the receipt of rent, utility or maintenance costs after default or after judgment, or after execution, shall not deprive the Lessor of other actions against the Lessee for possession, or for damages, and no waiver of a breach of any of the covenants of this Lease shall be construed to be a waiver of any succeeding breach of the same or any other covenant. The Lessor may cumulatively use any or all of the remedies herein given and those prescribed by law.

6. The Lessor shall exercise no rights accruing to the Lessor hereunder by reason of any default of the Lessee, unless prior to the exercise of such right, the Lessor shall have given ten (10) days written notice by registered mail to the Lessee, at the Lessee's office.

7. In the event that the Lessee shall breach any of the terms of this Lease and the Lessor, not being in default, shall be required to employ attorneys to protect or enforce its rights hereunder and shall prevail thereon, then the Lessee agrees to pay the Lessor's reasonable attorneys' fees so incurred.

8. In the event that the Lessor shall breach any of the terms and the Lessee, not being in default, shall be required to employ attorneys to protect or enforce its rights hereunder and shall prevail thereon, then the Lessor agrees to pay the Lessee's reasonable attorney's fees so incurred.

ARTICLE X  
MISCELLANEOUS

1. The terms and conditions of this Lease shall be construed in accordance with the laws of the Commonwealth of Pennsylvania and any action arising hereunder shall be brought in Erie County, Pennsylvania. The Lessor and the Lessee hereby consent and agree to personal jurisdiction in Erie County, Pennsylvania.

2. All notices required to be given under this Lease shall be given by certified or registered mail, addressed to the proper party at the last known address of said party.

3. This Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns (when permitted hereunder).

4. No modification, amendment or alteration of the terms of this Lease shall be binding unless the same shall be in writing, dated subsequent to the date hereof, and duly executed by the Lessor and the Lessee.

5. Time shall be of the essence for all purposes under this Lease.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by its duly authorized officers as of the day and year first above written.

ATTEST:

LESSOR:

ERIE COUNTY TECHNICAL SCHOOL

\_\_\_\_\_  
Secretary

BY: \_\_\_\_\_  
President

ATTEST:

LESSEE:

NORTHWEST TRI-COUNTY INTERMEDIATE  
UNIT

\_\_\_\_\_  
Secretary

BY: \_\_\_\_\_  
President

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