

RESOLUTION R-2023-54
LUZERNE COUNTY COUNCIL

*A Resolution of Luzerne County Council Authorizing the County Manager
to Execute a Lease Agreement between Luzerne County and Edwardsville Borough for the Premises
Located at 59 Russell Street, Edwardsville Borough, Pennsylvania*

WHEREAS, Luzerne County Council has authority to approve of all leases concerning real property; and

WHEREAS, the Luzerne County Courts have proposed relocating Magisterial District Court 11-1-05 to 59 Russell Street, Edwardsville Borough, Pennsylvania; and

WHEREAS, Edwardsville Borough is the owner of the real property located at 59 Russell Street, Edwardsville Borough and has agreed to lease same to Luzerne County for the exclusive purpose of government/judicial related office space for Magisterial District Court 11-1-05; and

WHEREAS, the initial term of the Lease Agreement is five (5) years beginning May 1, 2023 and ending April 30, 2028 with a renewal option; and

WHEREAS, the monthly rental cost for year one is One Thousand One Hundred and 00/100 Dollars (\$1,100.00) for year 1 and Two Thousand One Hundred and 00/100 Dollars in years 2 through 5; and

WHEREAS, Luzerne County Council desires to enter into a Lease Agreement with Edwardsville Borough.

NOW, THEREFORE, BE IT RESOLVED, Luzerne County Council authorizes the County Manager to execute a Lease Agreement (attached hereto as Exhibit "A" and incorporated by reference as if fully set forth herein) with Edwardsville Borough for office space located at 59 Russell Street, Edwardsville Borough, Pennsylvania related to the operation of Magisterial District Court 11-1-05.

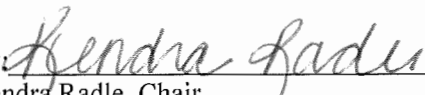
This Resolution shall become effective six days after adoption.

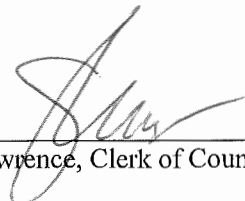
ADOPTED at a meeting of Luzerne County Council held on March 28, 2023.

ROLL CALL VOTE (11-0)

YES: Bienias, Lescavage, Lombardo, McDermott, McGinley, Mitchell, Perry, Radle, Thornton, SJ Urban and Wolovich

LUZERNE COUNTY COUNCIL

By: 
Kendra Radle, Chair

Attest: 
Sharon Lawrence, Clerk of Council

LUZERNE COUNTY MANAGER

By: 
Brian Swetz, Acting County Manager

Lease Agreement

Magisterial District Court 11-1-05

Article 1. Parties

THIS LEASE AGREEMENT, entered into this ____ day of _____, 2023, between the Borough of Edwardsville, a political subdivision of the Commonwealth of Pennsylvania, with its principal place of business at 470 Main Street, Edwardsville, Pennsylvania, 18704 (hereinafter called "LESSOR") and Luzerne County, a political subdivision of the Commonwealth of Pennsylvania, having its principal office at 200 North River Street, Wilkes-Barre, Pennsylvania, 18711 (hereinafter called "LESSEE").

R-E-C-I-T-A-L-S

WHEREAS, LESSOR is the owner of the premises located at 59 Russell Street, Edwardsville, Luzerne County, Pennsylvania, and desires to rent the building and parking spaces located thereon to LESSEE for use as government/judicial related office space, more specifically for the exclusive use by Magisterial District Court 11-1-05.

NOW, THEREFORE, the parties hereto, intending to be legally bound hereby, do agree as follows:

Article 2. Description, Use and Premises

LESSOR hereby leases to LESSEE, who hereby leases from LESSOR, the premises located at 59 Russell Street, Edwardsville, Luzerne County, Pennsylvania (Luzerne County Deed Book 2653 at Page 786, et seq. / PIN 18-G9S2-005-026-000), consisting of approximately 4,500 square feet of building space, and immediately adjacent parking areas, to be occupied and used for conducting governmental/judicial business (hereinafter called "Leased Premises").

Article 3. Term

The initial term of this Lease shall be for five (5) years commencing on May 1, 2023 and terminating on April 30, 2028.

Article 4. Rental

LESSEE agrees to pay LESSOR at such place as the LESSOR shall designate from time to time, in writing, rent for the Leased Premises. The rent provided for herein shall be paid in monthly installments by the tenth (10th) day of each month, unless otherwise agreed upon, in accordance with the following schedule:

Year 1 – (May 1, 2023 – April 30, 2024)	-	\$ 1,100.00/month
Year 2 – (May 1, 2024 – April 30, 2025)	-	\$ 2,100.00/month
Year 3 – (May 1, 2025 – April 30, 2026)	-	\$ 2,100.00/month
Year 4 – (May 1, 2026 – April 30, 2027)	-	\$ 2,100.00/month
Year 5 – (May 1, 2027 – April 30, 2028)	-	\$ 2,100.00/month

Article 5. Tenant Maintenance

LESSEE shall be responsible for all maintenance costs associated with the Leased Premises except for those costs expressly assumed by the LESSOR under the terms of this Lease and maintenance associated with the roof, foundation and structural components of walls.

Article 6. Taxes

LESSOR shall be responsible for all real estate taxes associated with the Leased Premises, if any.

Article 7. Indemnification and Insurance

LESSEE will indemnify and hold harmless LESSOR, it's elected and appointed officials and employees from and against any and all claims, actions, damages, liability and expense

(including reasonable attorneys' fees) in connection with loss of life, personal injury or damage to property occurring in or about, or arising out of, LESSEE's use of the Leased Premises (including any storage of materials used by LESSEE) and extending to any adjacent walks, parking areas, and other like areas, occasioned wholly or in part by any act or omission of LESSEE, its agents, contractors, customers, employees, visitors, Plaintiffs, Defendants or Commonwealth Parties, concessionaires, or in any way connected with LESSEE's occupancy of the Leased Premises except for any negligence caused by LESSOR, it's employees or agents.

LESSEE shall, during the entire term hereof, including any extensions, keep in force at its own expense, public liability insurance in companies acceptable to LESSOR sufficient to cover such indemnification, and naming both LESSOR and LESSEE as the insureds, with minimum limits of One Million (\$1,000,000.00) Dollars per person and Two Million (\$2,000,000.00) Dollars per accident and Fifty Thousand (\$50,000.00) Dollars for property damage. Such insurance policy or policies shall contain a clause that the insurer will not cancel or change the insurance without first giving LESSOR ten (10) days prior written notice. A copy of such policy or policies or a certificate of insurance shall be delivered to the LESSOR at or prior to the date of the commencement of the term of this Lease, and yearly thereafter.

LESSOR shall maintain fire and hazards insurance for the structural portion of the Leased Premises and common areas and LESSEE shall be responsible for fire and hazards insurance covering its property located on the Leased Premises.

LESSOR shall, during the entire term hereof, keep in force at its own expense public liability insurance, with minimum limits of One Million (\$1,000,000.00) Dollars per person and Two Million (\$2,000,000.00) Dollars per accident and at least Fifty Thousand (\$50,000.00) Dollars for property damage. Such insurance policy or policies shall contain a clause that the

insurer will not cancel or change the insurance without first giving LESSEE ten (10) days prior written notice. A copy of such policy or policies or a certificate of insurance shall be delivered to the LESSEE at or prior to the date of the commencement of the term of this Lease.

Article 8. Alterations and Surrender of Premises

LESSEE covenants and agrees that it will not make any structural change(s) without the LESSOR's written consent, which shall not be unreasonably withheld, and without first providing LESSOR with at least ten (10) days written notice, unless waived, of the proposed change(s) outlining the change(s) in detail.

The LESSEE further covenants that it will not proceed with said change(s) until written approval is received from the LESSOR. LESSEE will not in any manner deface or injure the Leased Premises or any part thereof, and will return the premises promptly to the LESSOR upon termination of this Lease. LESSOR, if changes have been approved, shall accept the Leased Premises, with the approved changes, in as good condition as the same are now in, including the changes made over the term of this Lease, loss by fire or other hazard and by ordinary wear and tear excepted.

Article 9. Fixtures and Personal Property

Any trade fixtures, equipment and other property installed in or attached to the Leased Premises by or at the expense of the LESSEE shall remain the property of the LESSEE and the LESSOR agrees that the LESSEE shall have the exclusive right at any time and from time to time to remove any and all of its trade fixtures, equipment and other property which it may have stored upon or affixed to the Leased Premises; provided, however, that in the event of such removal, LESSEE shall restore the premises to substantially the same condition in which the premises were

at the time LESSEE took possession, loss by fire or other hazard and by ordinary wear and tear excepted.

Article 10. Utilities/Services

LESSEE hereby agrees to pay all charges made by any public or private utility company for services furnished to LESSEE at the Leased Premises including all costs, to the extent applicable, for electricity, sanitary sewer and stormwater fees, water, natural gas, fuel oil, propane, all costs associated with internet, communications, telephone and television services, security to the premises, and any other services not expressly provided to be paid by the LESSOR under the terms of this Lease.

Article 11. Services/Operating Expenses

LESSOR hereby agrees to provide for and pay for the following services:

- Snow and ice removal (as set forth in Article 24)
- Grass cutting, weed and plant maintenance around the exterior of the leased building
- Refuse and recycling collection
- HVAC maintenance

Article 12. Assignment and Subletting

This Lease shall not be assigned by either party without prior written approval of both parties to this Lease. The LESSEE may not sublet any portion of the Leased Premises without the prior written approval of the LESSOR.

Article 13. Lessor's Default

If LESSOR defaults in the performance of any term, covenant, or condition required to be performed by it under this Lease, LESSEE may elect either one of the following:

(a) After not less than ten (10) days' notice to LESSOR, LESSEE may remedy such default by any necessary action, and in connection with such remedy may pay expenses and employ counsel. All reasonable sums so expended, or obligations incurred by LESSEE in connection therewith shall be paid by LESSOR to LESSEE on demand; and, on failure of such reimbursement, LESSEE may, in addition to any other right or remedy that LESSEE may have, deduct the costs and expenses thereof from rent subsequently becoming due hereunder; or

(b) Elect to terminate this Lease Agreement by giving at least ten (10) days' notice to LESSOR of such intention, thereby terminating this Lease Agreement on the date designated in such notice, unless LESSOR shall have cured such default prior to the expiration of the ten (10) day period.

Article 14. Lessee's Default

If LESSEE shall allow the rent to be in arrears more than thirty (30) days after written notice of such delinquency, or shall remain in default under any other condition of this Lease for a period of thirty (30) days after written notice from LESSOR, or should any person other than LESSEE secure possession of the premises, or any part thereof, by operation of law in any manner whatsoever, LESSOR may, at its option, with notice to LESSEE, terminate this Lease; or, in the alternative, LESSOR may reenter and take possession of said premises and remove all persons and property therefrom, without being deemed guilty of any manner of trespass, and relet the premises or any part thereof, for all or any part of the remainder of said term, to a party satisfactory to LESSOR; plus the LESSEE will reimburse the reasonable expense of reletting to the LESSOR and pay any outstanding rent and reasonable counsel fees to enforce these remedies.

Article 15. Option to Renew

Provided that LESSEE is not then in default, LESSEE shall have the right to renew or extend this Lease Agreement for a five (5) year period, under the same terms and conditions as appear herein. Rent for the renewal period shall be renegotiated prior to the commencement of the renewal period.

LESSEE shall exercise the option to renew or extend this Lease Agreement by giving written notice of LESSEE'S intent to extend no later than six (6) months prior to the expiration date of the then current initial term or renewal term.

Article 16. Quiet Enjoyment

So long as LESSEE shall perform and observe all of the conditions of this Lease on LESSEE's part to be performed and observed, the LESSEE shall have quiet, peaceful, and uninterrupted possession of the Leased Premises.

Article 17. Most Favorable Conditions

Reserved. Not applicable to this Lease.

Article 18. Notices

All notices provided or permitted to be given under this Lease Agreement shall be given by certified or registered mail, addressed to the proper party, at the following address:

If to LESSOR:

Borough of Edwardsville
Attn: Borough Manager
470 Main Street
Edwardsville, PA 18704

If to LESSEE:

Luzerne County Court House
Attn: Luzerne County Manager
200 N. River Street
Wilkes-Barre, PA 18711

Article 19. Termination

This Lease can be terminated by either party by notifying the other party at least one hundred twenty (120) days in advance of the proposed termination. The notification will be in accordance with Article 18.

Article 20. Obligations of Successors

The LESSOR and LESSEE agree that all the provisions, hereof, shall bind and inure to the benefit of both parties, hereto, their respective heirs, legal representatives, successors and assigns.

Article 21. Captions

The captions throughout this Lease are inserted as a matter of convenience, only, and in no way confine, limit, or describe the scope of the intent of any Article of this Lease.

Article 22. Renovations

See Article 8.

Article 23. Parking Easement

Throughout the term of this Lease, including any extensions or renewals of the Lease, LESSEE's agents, employees, suppliers, invitees, guests, customers, and clients have the right to use the area around the leased building, comprising of approximately twenty-five (25) parking spaces.

Use of the parking spaces by officers, agents, employees, suppliers, invitees, guests, customers, and clients must be in accordance with reasonable rules and regulations adopted by LESSOR and communicated to LESSEE by written notice.

Article 24. Lessor's Covenants

LESSOR hereby agrees and shall during the term (or any extended term) of this Lease do or perform the following:

1. Furnish sufficient light to the exterior of the building and to the adjacent parking lot.

2. Provide LESSEE with a sufficient number of keys to the outer doors of the building.

3. Place LESSEE in quiet possession of the Leased Premises and shall secure LESSEE in the quiet enjoyment thereof against all persons lawfully claiming the same during the entire lease term and any extensions thereof.

4. Be liable and responsible for any and all service and operating costs, maintenance and repairs as set forth in Article 11 of this Lease.

5. Provide parking as set forth in Article 23 of this Lease in accordance with this Lease and all federal, state and local laws and ordinances having jurisdiction.

6. Remove snow and all winter hazards within the exterior common areas of the Leased Premises and the entire parking easement within twelve (12) hours after storm termination as officially determined at the Wilkes-Barre/Scranton International Airport. During the storm, LESSOR operations shall be to periodically remove all snowfall and/or ice accumulations necessary to maintain safe ingress and egress to and from the Leased Premises during business hours. Failure by the LESSOR to conduct operations as set forth in this paragraph may result in the LESSEE removing snow and/or ice and incurring the associated charges. All incurred charges by LESSEE shall be reimbursed by LESSOR on demand within thirty (30) days of receipt.

Article 25. Lessee's Covenants

LESSEE hereby agrees and shall, during the term (or any extended term or renewal) of this Lease do or perform the following:

1. Reimburse LESSOR for any and all repairs to the building resulting from damage caused by LESSEE, its employees, servants, agents, customers or visitors.

2. Allow LESSOR or its agents, with or without workmen or others, at any reasonable time during the said term to enter upon the Leased Premises and view the state and condition thereof and shall serve on the LESSEE at the Leased Premises notice in writing of any defect requiring the LESSEE, within a reasonable time, to repair the same in so far as the LESSEE is bound to do by the terms of this Lease, provided LESSEE is given at least one (1) business days' notice prior to the visit and LESSEE agrees that the repair is valid.

Article 26. Destruction of Premises

In the event of the total destruction of the building, this Lease shall terminate on the date when destruction occurs, and the rent shall be abated, without notice or request from LESSEE, for the unexpired portion of this Lease.

"Total Destruction" shall mean such damage to the building of which the Leased Premises is a part as cannot be repaired within thirty (30) days of the date of the destruction. The Certificate of the LESSOR'S Architect or Engineer as to the length of time within which the LESSOR could repair, subject to the approval of the Luzerne County Engineer, is conclusive and binding upon both the LESSOR and the LESSEE for the purpose hereof.

In the event of the partial destruction of the building then if, in the opinion of the LESSOR'S Architect or Engineer, subject to the approval of the Luzerne County Engineer, the destruction is such that the Leased Premises cannot be used for the LESSEE'S business until repairs have been made, the rent shall abate in the proportion that the part of the Leased Premises rendered unusable bears to the whole of the Leased Premises, at the sole discretion of Luzerne County, until the repair has been made.

"Partial Destruction" shall mean any damage to the building which renders all or any part of such building unfit for use by its occupants for a period up to thirty (30) days, but which damage

is less than "total destruction" as defined above. The Certificate of the LESSOR'S Architect, subject to the approval of the Luzerne County Engineer, as to the extent of the unfitness shall be conclusive and binding upon both LESSOR and LESSEE for the purpose hereof.

In the event of partial destruction as hereinbefore defined, or of damage less than partial destruction, the LESSOR covenants with the LESSEE to repair and substantially restore the Leased Premises. The LESSOR shall pay for the cost of such repairs and restoration provided. LESSOR covenants to LESSEE that LESSOR will not move or remove any of the LESSEE'S possessions until approval is granted by the LESSEE in writing, which shall not be unreasonably withheld.

All partial or total destruction notices must be received in writing by LESSOR to LESSEE within seventy-two (72) hours of the loss. Failure to notify will be immediate cause for termination of this Lease by LESSEE without further obligation to LESSOR.

Article 27. Eminent Domain

If at any time during the term (or any extended or renewed term) of this Lease, title is taken by the right or exercise of condemnation, expropriation or otherwise to the whole or portion of the building of which the Leased Premises are a part (whether or not including the Leased Premises), the LESSOR may, at its option, give notice to the LESSEE terminating this Lease on the date stated in the notice. Upon such termination, the LESSEE shall immediately surrender the Leased Premises and all its interests therein to the LESSOR (subject to the time allowed by federal or state law prescribed by the agency enforcing the eminent domain action), or to the expropriating authority, as the law and circumstances may require, and the rent shall abate and be apportioned to the date of the termination and the LESSEE shall forthwith pay to the LESSOR the apportioned rent and all other amounts which may be due to the LESSOR up to the date of termination. The

LESSEE shall have no claim upon the LESSOR for the value of the unexpired term of this Lease, but the parties shall each be entitled to receive and retain such compensation as may be awarded to each respectively to the extent of their applicable legal interests. If an award for compensation made to the LESSOR specifically includes an award for the LESSEE, the LESSOR will pay over same to the LESSEE within five (5) days of receipt of said funds.

Article 28. Pennsylvania Law to Apply

This Lease Agreement shall be construed under and in accordance with the laws of the Commonwealth of Pennsylvania and all obligations of the parties created hereunder are performable in Luzerne County, Pennsylvania, and any suit arising hereunder shall be brought only in said County.

Article 29. Legal Construction

In case any one or more of the provisions contained in this Lease shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions hereof and this Lease shall be construed as if such invalid, illegal or unenforceable provisions had never been contained herein.

Article 30. Brokerage

The parties represent and warrant that they have dealt directly with one another so as not to give rise to any valid claim for brokerage commission.

Article 31. Amendment

No amendment, modification, or alteration of the terms hereof shall be binding unless the same be in writing, dated subsequent to the date hereof, and be duly executed by the parties hereto.

Article 32. Rights and Remedies Cumulative

The rights and remedies provided by this Lease are cumulative and the use of any one right or remedy by either party shall not preclude or waive their right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

Article 33. Waiver of Default

No waiver by the parties hereto of any default or breach of any term, condition, or covenant of this Lease shall be deemed to be a waiver of any other breach of the same or any other term, condition, or covenant contained herein.

Article 34. Excuses

Neither LESSOR nor LESSEE shall be required to perform any term, condition, or covenant in this Lease so long as such performance is delayed or prevented by any acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riot, floods, or any other cause not reasonably within the control of the parties.

Article 35. Time of Essence

Time is of the essence of this Agreement.

Article 36. Binding of Successors

This Agreement shall be binding on and shall inure to the benefit of Successors and Assigns of the parties hereto.

Article 37. Counterparts

This Lease Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any

counterpart of this Lease Agreement may be executed by facsimile or electronic signature, which shall be deemed to be an original.

IN WITNESS WHEREOF, the undersigned hereto execute this Lease Agreement as of the day and year above written.

ATTEST”

LESSEE:

LUZERNE COUNTY

BY: _____

ATTEST:

LESSOR:

BOROUGH OF EDWARDSVILLE

BY: _____

County Council Approval via Resolution # _____ passed on _____, 2023.

Borough Council Approval via Motion passed on _____, 2023.