



## AGENDA SUBMITTAL TO LUZERNE COUNTY COUNCIL

<b>ITEM TITLE</b>	<b>COUNCIL MEETING DATE</b>	<b>AGENDA NUMBER</b>
Flower Tent Lease - WBW Airport	2020-0310	
<b>Dept:</b>	Engineering	
<b>Contact:</b>	Eddie O'Neill	
<b>Phone:</b>	570-237-1082	

### **DEPARTMENTAL RECOMMENDATION:**

Request for approval to authorize the County Manager to execute a lease agreement for an area approximately 30' x60' in the Wilkes-Barre Wyoming Valley Airport parking area with Tom and Tim Ansilio of "Flower Tent".

### **SUMMARY:**

The county owns a parking lot located in front of the main hangar located at the Wilkes-Barre Wyoming Valley Airport that is not included in the lease with the fixed based operator for the airport. The lot is used for business at the Forty Fort Annex, primarily by visitors to the Magisterial District 11-1-06 Office for District Judge David Barilla and the Veteran Affairs office. On occasion, the building is also used by the District Attorney for the purpose of holding Grand Jury testimony hearings. After sending inquiries regarding the area being requested by the prospective lessee, District Attorney Stefanie Salvantis, Magistrate David Barilla and Veteran affairs Director Jim Spagnola have indicated that the loss of the area for parking would not impact their operations and have given their approval for the leasing the space.

### **FINANCING:**

The Ansilios' have offered to pay Luzerne County the fee of \$3,870.00 to lease the space in question for the period April 1, 2020 through June 25, 2020 (\$45.00/day).

### **DISCUSSION:**

Is County Council willing to lease county-owned property to a small business for the purpose of operating a seasonal business for a temporary period, and will this establish a precedent that may warrant consideration for similar requests going forward?

### **ALTERNATIVES:**

Without approval of the requested lease, the Flower Tent would need to seek an alternate location near the Midway Shopping Center to house and operate their seasonal business for the time period specified.

### **OTHER AGENCY INVOLVEMENT:**

N/A

**RESOLUTION R-2020-  
LUZERNE COUNTY COUNCIL**

***A Resolution of the Luzerne County Council Entering into a Lease for a  
Portion of Land at the Luzerne County Annex for use by the Flower Tent***

WHEREAS, the Home Rule Charter, Section 2.09(B)(6), Powers and Duties, requires Luzerne County Council to approve by Resolution adopted by affirmative vote of at least a majority of its current members, agreements to acquire, lease, sell convey, vacate, or abandon land, buildings, or other real property; and

WHEREAS, the Flower Tent desires to lease form Luzerne County real property located within the Luzerne County Annex at Wyoming Avenue, Forty Fort Borough, namely a portion of the parking lot specifically designated in the lease and the attachments thereto which are incorporated herein by reference, for use selling flowers during the fall season; and

WHEREAS, the term of the lease shall be from April 1, 2020 through June 25, 2020; and

WHEREAS, the consideration for the lease shall be \$3,870.00 and Luzerne County shall incur no cost or expense as a result of the operation of the Flower Tent; and

WHEREAS, Luzerne County Council also desires to lease the above specified property to the Flower Tent subject to the terms and conditions contained in the lease which is incorporated herein by reference; and

NOW, THEREFORE, BE IT RESOLVED, the portion of parking lot specifically identified on the map attached to the lease and located within the Luzerne County Annex property within the Borough of Forty Fort shall be leased to the Flower Tent, subject to the terms and conditions in the lease; and

BE IT FURTHER RESOLVED, County Manager C. David Pedri shall have the authority to execute the lease agreement.

This Resolution shall become effective upon adoption.

ADOPTED at a meeting of Luzerne County Council held on \_\_\_\_\_.

**LUZERNE COUNTY COUNCIL**

By \_\_\_\_\_  
Tim McGinley, Chair

ATTEST: \_\_\_\_\_  
Sharon Lawrence, Clerk of Council

\_\_\_\_\_  
C. David Pedri, County Manager

## LEASE AGREEMENT

This LEASE AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2020 by and between the COUNTY OF LUZERNE (“COUNTY”), the FLOWER TENT (“LESSEE”).

WHEREAS, COUNTY is the owner of real property (“PROPERTY”) situate in the Borough of Forty Fort, County of Luzerne, Commonwealth of Pennsylvania, as described in Exhibit A which is attached to and incorporated into this LEASE AGREEMENT; and

WHEREAS, the LESSEE desires to lease the PROPERTY to be used solely for the purposes of erecting a tent and related structures for the purpose of selling flowers and plants to the general public and the COUNTY in turn, desires to lease the PROPERTY to LESSEE under the terms and conditions detailed in this LEASE AGREEMENT; and

NOW, THEREFORE, and in consideration of rental detailed below, the COUNTY and LESSEE agree as follows:

1. COUNTY does demise, let, lease the PROPERTY to the LESSEE for use solely for the purposes of erecting a tent and related structures for the purpose of selling flowers and plants to the general public.
2. The term of the lease agreement shall be from April 1, 2020 through June 25, 2020.
3. LESSEE shall pay COUNTY as rent for the PROPERTY the amount of \$3,870.00 which covers the entire lease term. The COUNTY and LESSEE agree that it is the absolute responsibility of the LESSEE to pay all costs, expenses, and obligations related to the PROPERTY that arise or come due during the time this LEASE AGREEMENT is in effect. COUNTY is indemnified and held harmless by LESSEE for any such costs, expenses, obligations.
4. Should LESSEE not vacate the Property by the end of the Lease Term, LESSEE shall be a day-to-day holdover LESSEE and shall pay a holdover rate in the amount of fifty dollars (\$50.00) per day for every day LESSEE occupies the Property after November 4, 2019. In the event LESSEE owes LESSOR a holdover sum as set forth in this paragraph, such sum shall be paid to Luzerne County within ten (10) days of vacating the Property without any further notice required to be sent by LESSOR.
5. No improvements or alterations to the PROPERTY may be made.
6. LESSEE, at its sole cost, shall secure and maintain, throughout the term of this LEASE AGREEMENT, general public personal liability insurance in the amount of \$250,000 per occurrence, and \$500,000 in the aggregate and property insurance in the amount of \$50,000. LESSEE shall name the COUNTY as additional insured. LESSEE shall promptly provide to COUNTY the certificate of insurance or a copy of the certificate once it receives it from the insurance carrier. This insurance policy shall not be cancelled until the expiration of the lease term.
7. LESSEE shall be responsible for maintaining the premises, shall keep the premises free and clean of all garbage and debris, at the expiration of this Agreement shall deliver the premises back to the landlord in as good a condition as at the commencement hereof, notwithstanding ordinary wear and tear.

8. LESSEE shall comply with all requirements of duly constituted public authorities, and with the terms of any state or federal statute or regulation, or any local ordinance applicable to the LESSEE or the PROPERTY. LESSEE shall indemnify and save COUNTY harmless from any and all penalties, fines, costs, or other damage resulting from its failure to do so.
9. LESSEE agrees, without further notice or demand, to promptly surrender possession of the PROPERTY to COUNTY at the expiration of this LEASE AGREEMENT.
10. COUNTY shall not be held liable for any person using the PROPERTY or any damage to personal property while on the PROPERTY. LESSEE shall indemnify and hold harmless COUNTY for any injury to a person that occurs on the PROPERTY or for damage to personal property while located on the PROPERTY whether caused by or resulting from any act or omission that is the result of LESSEE or any third party's negligence. This includes LESSEE paying any and all legal fees of the COUNTY.
11. LESSEE shall not assign, mortgage or pledge this LEASE AGREEMENT, or sublet the PROPERTY without the prior written consent of the COUNTY.
12. In the event of a default by LESSEE, LESSEE empowers the Prothonotary or any attorney of any court of record in the Commonwealth of Pennsylvania to appear on behalf of LESSEE and to agree to the entry of an amicable action for the recovery of rents and other charges. LESSEE also empowers the Prothonotary or attorney to confess judgment against the LESSEE for all or any portion of the rent unpaid including the rent due for the remaining unexpired term of this LEASE AGREEMENT. This authority is granted from time to time as often as any of the said rent, damages or charges shall be due and in arrears. This power shall continue after the expiration of the term of this LEASE AGREEMENT.
13. Upon the expiration of the term of this LEASE AGREEMENT, or upon termination of this LEASE AGREEMENT by COUNTY, it shall be lawful for any attorney of record of the Commonwealth of Pennsylvania, and LESSEE does hereby authorize said attorney, to appear on behalf of LESSEE to agree on behalf of LESSEE for the entry of an Amicable Action in Ejectment against LESSEE and all persons claiming under LESSEE for recovery by COUNTY or persons claiming under COUNTY possession of the PROPERTY; and LESSEE does hereby confess judgment against itself and all persons claiming under LESSEE for the recovery of the possession of the PROPERTY; and LESSEE does further agree that a Writ of Possession may be issued without any prior writ or proceeding; and LESSEE does hereby release to COUNTY all errors and defects whatsoever in entering such action of judgment and ejectment or causing such Writ of Possession to be issued or any proceeding concerning the same; and LESSEE agrees that no appeal or exception shall be made or taken to the action and/ or writ, or any law or rule of court contrary to LESSEE's possession.
14. All powers to COUNTY under this LEASE AGREEMENT shall be cumulative and concurrent. The COUNTY's decision to exercise any of these powers does not limit COUNTY's right or ability to exercise the same power or the other powers at future times.
15. 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 demised premises.
16. The LESSEE shall not discriminate against any employee, volunteer, applicant, or participant because of race, religion, national origin, sex, age, or physical ability.

17. The COUNTY 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.
18. This LEASE AGREEMENT shall be subject to, construed and interpreted according to the law of the Commonwealth of Pennsylvania. Any action arising under this LEASE AGREEMENT shall be brought in the Luzerne County Court of Common Pleas.
19. 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.
20. 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.
21. The rights and remedies provided in 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.
22. If any paragraph of this LEASE AGREEMENT shall be declared contrary to law, the paragraph shall be severed from the LEASE AGREEMENT and the rest shall remain in full effect as if the unlawful paragraph was never a part of the initial LEASE AGREEMENT.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties have caused this LEASE AGREEMENT to be duly executed as of the day and year first above written.

**ATTEST:**

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**WITNESS:**

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**LESSOR:  
COUNTY OF LUZERNE**

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**C. David Pedri, Esq.  
County Manager**

**THE FLOWER TENT**

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**Timothy Ansilio**

*Approved by Luzerne County Council at a Public Meeting Held on \_\_\_\_\_ day of \_\_\_\_\_, 2020 through Resolution No. 2020-\_\_\_\_\_.*