



# MEMORANDUM

---

**TO:** Mayor and Members of the City Council

**FROM:** Rich Olson, City Manager  
Angela Cole, Assistant City Manager

**DATE:** November 22, 2017

**REF:** Consideration – Hold a Public Hearing to Receive Public Comment Regarding the Lease of Walnut Street Park Property to New Calvary Missionary Baptist Church

---

***BACKGROUND:***

The property for the Walnut Street Park was given to the Parks and Recreation Department to build a park in the late 1980's when the Walnut Street Development Project was built. A neighborhood community group called Northside Pride came together to improve their area. Several pieces of playground equipment were purchased by the City in 1989 along with removing several trees and constructing the fence along the property line. In 1996, the City received a Smart Start Grant to purchase playground equipment. This equipment was placed in several city parks such as Charles Creek, Walnut Street, Knobbs Creek, Gosnold and Chalk Street (Pete Hooker).

The Walnut Street Park is approximately one half acre in size. It is located behind New Calvary Missionary Baptist Church and a subsidized housing development along Third Street. The play area is small and somewhat secluded. The play apparatus has been vandalized several times and also sustained damages during Hurricane Irene in 2011. Our maintenance staff is constantly removing beer and liquor bottles from the park. Despite our ongoing policing efforts, the park has long been an area used for drug deals and gang activity. In the spring of 2012, Mr. James Turner (representing the Church) and I met at the park to discuss the possibility of the City donating the park to the Church. The Church wanted to use the park to enhance their youth programs and would resume all responsibility for upkeep and maintenance of the park.

The Recreation Advisory Board discussed this park during several of their monthly meetings. During their August 2012 meeting, it was suggested that the playground

equipment be removed and a basketball court be built on the property. It was also suggested that either the playground equipment be replaced or that the park be repurposed as an open park just like the Fish Court Park. At that time, the Recreation Advisory Board wanted to see this property remain a neighborhood park. The Recreation Advisory Board believed that a playground was needed in the Walnut Street location due to the number of children living in that area, some who walk to the Knobbs Creek Recreation Center. This walk requires them to cross at least two very heavily traveled streets (Broad and Ward).

In 2015, New Calvary Missionary Baptist Church once again reached out to the City asking that the Church be given Walnut Street Park through a Deed of Gift. (see attached letter.) The Recreation Advisory Board was given a copy of the letter from the Church written by Dr. Bonzia J. Caison during their October 22, 2015 meeting. If given the property, the Church has a plan to enclose the park with fencing and use it not only for their Church activities but for community events and activities as well. The Board reported in 2015 that the Church may be able to get a better hold on the park problems if they do take ownership of the property. Completely fencing in the park should help deter the gangs from congregating at the park and limit the "tagging" and drug deals. The City Council was asked to consider the matter, being prepared to lease the park to the Church for a period of 9 years, at a rate of a \$1.00 per year. However, during the course of their consideration, members of the Church requested the City Council table the matter due to pending lawsuit. The Council acquiesced, tabling the matter until October 2017.

### **ANALYSIS:**

During the three years from 2012 to 2015, department staff has tried to direct our efforts toward the renovation and development of the existing parks and playgrounds within our park system. Since 2015, departmental efforts have been toward developing a skate park and the Coast Guard Park, as well as establishing new departmental leadership. Walnut Park is in need of modern playground equipment to meet the needs of the younger children living in the neighborhood. In 2012, our intentions were to purchase another piece of playground equipment and relocate the playground closer to the front of the property. We wanted to relocate the swing set and build a new play area with new mulch and plastic timbers. Miracle Recreation Equipment conducts a sale each fall that offers free shipping. We speculated purchasing a similar sized piece of equipment for \$15,200 that will accommodate children ages 2 to 12. The total cost including the mulch, border, benches, trash cans, and cement at that time was estimated to be \$30,000. However, funding to renovate this small park was never allocated. Staff estimates that playground equipment purchase and installation has fluctuated upwards 20-30% since our 2015 estimates.

Parks and Recreation Department maintenance staff faces continuously the same problems of beer and liquor bottles and cans as well as profanity and gang graffiti painted on the equipment. We believe there is still a large presence of gang activity in this area due to the gang symbols still being painted on the playground equipment suggesting that a gang or gangs are trying to claim the park as their territory. This is happening quite frequently even with a surveillance camera posted in the area.

Last month representatives of the New Calvary Missionary Baptist Church contacted City Administration advising that the matter of the lawsuit had been dismissed and that the Church would once again like to lease Walnut Park from the City. A discussion meeting was held with church pastor, Dr. Caison on November 3, 2017. Staff was advised the Church maintains its desire to enclose the park with fencing and use it not only for their Church activities but for community events and activities as well. Specifically, the Church would like to start a community garden of vegetables and flowers in a portion of the park area. Dr. Caison has reiterated their written request to the City, having updated the date and signature on the original September 24, 2015 correspondence to the City.

Staff has consulted with Police Chief Eddie Buffaloe concerning the illegal activities occurring on the park property. The Police and Parks and Recreation Department both agree that having the Church fencing in the entire property may be the best way to curtail illegal activity in the area. If the Council approves the request, staff will make-ready the site by removal all play equipment, overgrown brush and vegetation, ensure proper lighting, and install the last section of fencing / gate.

***2015 RECREATION ADVISORY BOARD RECOMMENDATION:***

With the Walnut Street Park being difficult to maintain and supervise due to being secluded by the surrounding homes, apartments and the Church properties, the Recreation Advisory Board recommends to City Council that the Walnut Street Park property be given to the New Calvary Missionary Baptist Church through a Deed of Gift. This may offer the community more opportunities to control the numbers of adults and teenagers using the property improperly and actually assist the residents to feel safer at night in their community.

It should be noted that Article 12 of the North Carolina General Statutes is very specific regarding the sale and disposition of public properties and does not provide for the gifting of this property to the church. The statute does provide for both short and long term leases as provided in NCGS §160A-272, as follows:

***160A-272. Lease or rental of property.***

***(a) Any property owned by a city may be leased or rented for such terms and upon such conditions as the council may determine, but not for longer than 10 years (except as otherwise provided herein) and only if the council determines that the property will not be needed by the city for the term of the lease. In determining the term of a proposed lease, periods that may be added to the original term by options to renew or extend shall be included. Property may be rented or leased only pursuant to a resolution of the council authorizing the execution of the lease or rental agreement adopted at a regular council meeting upon 10 days' public notice. Notice shall be given by publication describing the property to be leased or rented, stating the annual rental or lease payments, and announcing the council's intent to authorize the lease or rental at its next regular meeting.***

***(b) No public notice need be given for resolutions authorizing leases or rentals for terms of one year or less, and the council may delegate to the city manager or some other city administrative officer authority to lease or rent city property for terms of one year or less. Leases for terms of more than 10 years shall be treated as a sale of property and may be executed by following any of the procedures authorized for sale of real property.***

With this statute in mind, staff recommends that the City Council pursue a lease agreement with New Calvary Missionary Baptist Church for a period not to exceed nine (9) years for \$1.00 per year.

***FINANCIAL:***

The Finance Committee discussed this matter during their November 22, 2017 meeting. No recommendation was made; however, the Committee unanimously suggested forwarding the matter to the full Council for discussion.

***STAFF RECOMMENDATION:***

***AT THE CONCLUSION OF THE PUBLIC HEARING:***

By motion, authorize the attached lease agreement of Walnut Street Park to New Calvary Missionary Baptist Church.



NORTH CAROLINA

PASQUOTANK COUNTY

**LEASE AGREEMENT**

THIS LEASE AGREEMENT, made and entered into this the \_\_\_\_ day of \_\_\_\_\_, 2017, by and between THE CITY OF ELIZABETH CITY, a North Carolina Municipal Corporation, hereinafter called Lessor, and NEW CALVARY MISSIONARY BAPTIST CHURCH, hereinafter called Lessee;

**WITNESSETH:**

**Article 1. Leased Premises:** Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the property owned by Lessor in Pasquotank County, North Carolina, more particularly identified as six individual parcels, measuring approximately 15,533.5 in total square footage, in Elizabeth City, North Carolina 27909, so depicted in Exhibit A. Parcels are individually identified, as follows:

Parcel 1

- o Parcel Id—891420910871
- o Tax Map—11-E-96
- o Square Footage—approximately 7,632 sf

· Parcel 2

- o Parcel Id—891420910960
- o Tax Map—11-C-9
- o Square Footage—approximately 817 sf

· Parcel 3

- o Parcel Id—891420910888
- o Tax Map—11-C-8
- o Square Footage—approximately 1,518.5 sf
- Parcel 4
- o Parcel Id—891420910895
- o Tax Map—11-C-14
- o Square Footage—approximately 2,295 sf
- Parcel 5
- o Parcel Id—891420911831
- o Tax Map—11-C-7
- o Square Footage—approximately 1,732 sf
- Parcel 6
- o Parcel Id—891420911768
- o Tax Map—11-C-6
- o Square Footage—approximately 1,539 sf

**Article 2. Term:** The term of this Lease shall begin on the 1st day of February 2018 and, unless terminated as provided for herein, shall expire on the 31st day of December 2027. Lessor shall have the right to terminate this lease after any rent payment specified hereinafter goes unpaid by the Lessee for fifteen (15) days. Lessor and Lessee shall also have the right to terminate this Lease upon one hundred eighty (180) days written notice to the other.

**Article 3. Rent:** Lessee shall pay as rent for the use of the leased premises annual rental payments of \$1.00 per year. All rental payments shall be due and payable on or before the first (1<sup>st</sup>) day of February of each year, beginning with February 1, 2018, and said annual rental payments shall be made to Lessor at Lessor's address of P.O. Box 347, Elizabeth City, N.C. 27907-0347 (Attention: City Manager's Office).

**Article 4. Utility Payments:** Lessee shall be responsible for any monthly payments for electricity, water, or other utility services used by Lessee in connection with the leased premises. Lessee shall pay any utility hook-up charges applicable to Lessee's use of the leased premises.

**Article 5. Ad Valorem Taxes:** Lessor shall be responsible for any ad valorem property taxes associated with the leased premises.

**Article 6. Compliance with Requirements and all Applicable Laws:** Lessee shall procure, maintain and comply with all permits, licenses, and other authorizations required for the use of the leased premises by Lessee for its intended purposes (Green space or open space being the intended use of the premises). Lessor shall join in the application for any permit or authorization with respect to any legal requirements if such joinder is necessary.

Lessee shall be responsible for procuring and maintaining all necessary local, state, and federal permits associated with or necessary as a consequence of Lessee's occupation or use of the leased premises. Additionally, Lessee shall comply with all federal, state, and local laws or ordinances pertaining to the occupation or

use of the leased premises by Lessee or by any other person or entity during the lease term. Any noncompliance by Lessee with any federal, state, or local law or ordinance shall be grounds for the termination of this lease by Lessor without any further notice to Lessee. Lessee shall further comply with all provisions of the Unified Development Ordinance in effect within the city limits of the City of Elizabeth City, and any non-compliance by Lessee, or Lessee's agents or licensees, with the Unified Development Ordinance shall be grounds for the termination of this Lease by Lessor without any further notice to Lessee.

**Article 7. Maintenance, Alterations, and Additions:** Lessee will keep the leased premises in good order and condition and shall be responsible for the upkeep of the leased premises. It is the intention of the Lessor and Lessee that Lessee use the leased premises for "green space" or "open space", with Lessee intending to plant attractive plants and shrubbery on the leased premises. Lessee shall, as soon as practicable after any storm or other significant weather event, be responsible for cleaning up the leased premises, removing all limbs, leaves, and related debris, so as to keep the leased premises in an attractive condition at all times.

Except for the foregoing additions and improvements (planting shrubs and the like upon the leased premises), Lessee shall not make any additions or improvements to the leased premises without the express written consent of the Lessor, including any temporary or semi-permanent structures and storage buildings.

Lessee shall not utilize the premises for the purpose of parking vehicles, campers, trailers or tractors.

Lessor shall not store, or allow to be stored, upon the leased premises any hazardous, flammable, or toxic materials of any kind, and Lessee's non-compliance with this requirement shall be grounds for immediate termination of this lease agreement.

Lessee shall indemnify and hold harmless the Lessor, and the Lessor's successors in interest, for any and all loss, including reasonable attorney's fees, occasioned by Lessee's failure to comply with local, state, or federal laws or ordinances associated with the use, storage, or removal of any and all hazardous or dangerous materials and petroleum products on or about the leased premises. Lessee shall also indemnify and hold harmless the Lessor, and the Lessor's successors in interest, for any and all loss, including reasonable attorney's fees, occasion by Lessee's use or occupation of the Leased premises.

**Article 8. Insurance:** Lessee will maintain with insurers authorized to do business in North Carolina liability insurance associated with the leased premises, which insurance coverage shall be in a limit of not less than \$500,000.00 per occurrence. Lessee shall provide Lessor with proof of such insurance coverage, which coverage shall name Lessor as an additional named insured as to the leased premises, within thirty (30) days of the commencement of the lease term, and Lessee shall further provide proof of such insurance coverage to Lessee by February 1<sup>st</sup> of each year during the term of this lease.

Lessee shall indemnify and hold harmless Lessor, and Lessor's successors in interest, for any and all claims arising out of or from Lessee's use of the leased premises.

**Article 9. Assignment and Subletting:** Lessee may not assign this Lease or sublet the leased premises to any other person or entity without the express written consent of Lessor, which said consent shall not be unreasonably refused.

**Article 10. Surrender of Leased Premises:** Upon the expiration or earlier termination of this Lease Agreement, Lessee shall return the leased premises to Lessor in good order and condition, except for ordinary wear and tear, and except for the results of any casualty damage caused through no fault of Lessee. Lessee shall remove from the leased premises on or prior to such expiration or earlier termination all of Lessee's property situate thereon and shall repair any damage caused by such removal. No hazardous, flammable, or toxic materials of any kind whatsoever shall be left on the leased premises by Lessee upon the expiration or earlier termination of this Lease Agreement.

**Article 11. Miscellaneous Provisions:**

**1. Lessor's Covenant as to Use of Leased Premises.** Lessor hereby covenants with Lessee that, to the best of Lessor's knowledge, the leased premises can legally be used for the purposes intended by Lessee and that such use will not violate any zoning or subdivision regulations in effect for Pasquotank County, North Carolina.

**2. Severability.** If any provision of this Lease or any application thereof shall be invalid or unenforceable, the remainder of this Lease and any other application of such provision shall not be affected thereby.

**3. Binding Effect.** This Lease shall be binding upon and inure to the benefit of and be enforceable by the respective heirs, executors, administrators, and successors in interest of the parties hereto.

**4. Quiet Enjoyment.** Upon due performance of the covenants and agreements to be performed by Lessee under this Lease, Lessor covenants that Lessee shall and may at all times peaceably and quietly have, hold and enjoy the leased premises during the term of this Lease.

**5. Captions.** The section headings in this Lease are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

**6. Duplicate originals.** This Lease Agreement shall be executed in duplicate originals, one of which shall be retained by each of the parties hereto, and each duplicate original shall constitute an original and shall be fully enforceable.

**7. Governing law.** This Lease Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

**8. Modification.** No modification in this Lease Agreement shall be binding on the parties unless the same shall be executed with the same formality as this Lease Agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals, this the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

THE CITY OF ELIZABETH CITY, a  
North Carolina Municipal Corporation

BY: \_\_\_\_\_ (SEAL)  
Joseph W. Peel, Mayor

(CORPORATE SEAL)

ATTEST:

\_\_\_\_\_  
April D. Onley  
Interim City Clerk

\_\_\_\_\_  
Dr. Bonita Caison, Pastor of New Calvary  
Missionary Baptist Church, Lessee

NORTH CAROLINA  
PASQUOTANK COUNTY

I, \_\_\_\_\_, a Notary Public for \_\_\_\_\_  
County, North Carolina, do hereby certify that April Onley, personally appeared  
before me this date and acknowledged that she is the City Clerk for The City of

Elizabeth City, a North Carolina Municipal Corporation, and that the foregoing instrument was signed in said City's name by the Mayor of said City, sealed with the corporate seal for said City, and attested by her as its City Clerk, all by authority duly given.

Witness my hand and official stamp or seal, this the \_\_\_\_ day of \_\_\_\_\_, 2017.

(Official Seal)

\_\_\_\_\_  
Notary Public

My Commission Expires:\_\_\_\_\_

NORTH CAROLINA  
PASQUOTANK COUNTY

I, \_\_\_\_\_, a Notary Public for \_\_\_\_\_ County, North Carolina, do hereby certify that Dr. Bonita Caison, Pastor of New Calvary Missionary Baptist Church, personally appeared before me this date and acknowledged the due execution of the foregoing instrument for the purposes therein expressed.

Witness my hand and official stamp or seal, this the \_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Notary Public

(Official Seal)

My Commission Expires:\_\_\_\_\_