MEMORANDUM

To: Mayor and Members of the City Council

From: Rich Olson, City Manager

Date: February 22, 2019

Subj: Consideration – Lease Agreement Terms and Conditions for Homeless Shelter

BACKGROUND:

During the Closed Session of September 10, 2018, the City Council discussed the status of 709 Herrington Road as a homeless shelter. Due to issues with the structure at 709 Herrington Road, it was determined that it could no longer be used as a homeless shelter. The City Council challenged staff to find an alternate site for the homeless shelter. City staff has only been able to identify suitable location. The property is owned by Pasquotank County and is the site of the former Health Department. It is located at the corner of Harney and Cedar Street. The building consists of 10,923 sq. feet. Over the years, the building has been modified to meet the needs of our community. The original structure was built in 1960 and consisted of the west side of the existing building. The second section was added to the original structure in the 1970’s, and lastly, a third section was added by tying into the structure a double wide modular building. The building has been vacant for three years and housed the home health division of the Health Department.

The County has been trying to sell the property for the last 2 1/2 years with no success. The existing building has a strong structure but is in need of major cosmetic improvements. In my opinion the building layout is very segmented and not suited for commercial use; however, it could be utilized as a homeless shelter. The building does not have a set of building plans; although there is a set of fire escape plans, they are not up to scale (see attached). Contingent on the building configuration, there should be no problem in creating up to eight bedrooms and a suite for the resident manager. At almost 11,00 sq. foot, this building is too large to only be used for a homeless shelter.

At the direction of the City Council, Mayor Parker sent a letter to Cecil Perry who was County Chairman at that time, requesting that the City be allowed to lease the modular section of the former Health Department. The Board of County Commissioners offered to lease the
entire building to the City. The County Attorney, Mike Cox has drafted a lease agreement (attached), which has been reviewed by City staff and City Attorney Bill Morgan.

**ANALYSIS:**

The term of the lease is for five years. The term will begin once a Special Use Permit (SUP) has been granted by the Board of Adjustments. Earlier, I provided you with a proposed timeline provided to me by the Planning Department. I have revised the timeline to reflect the March 1, 2019 start date.

- Applicant submits by TRC deadline of March 1, 2019
- TRC meeting March 26, 2019
- PC submission deadline is April 1, 2019
- BOA submission deadline April 9, 2019
- PC meeting May 7, 2019
- BOA Meeting with final decision May 21, 2019

As stated earlier, the City will not spend any money on modifying the building until the SUP is granted; however, we will be developing the scope of work and cost estimate in the meantime.

The remainder of the lease agreement is fairly straight forward with standard terms and conditions. The County’s lease agreement makes the City responsible for the upkeep and maintenance on the whole 10,000 sq. ft. of the building, although we will only be utilizing 2000 sq. ft. The building shows a lot of deferred maintenance. Under the proposed lease agreement, the City will be responsible for bringing those sections of the building up to par. Staff has no way of quantifying this cost, but realistically the cost could be over several hundreds of thousands of dollars. The City’s exposure associated with the lease far exceeds the benefits of providing a homeless shelter to a limited number of occupants.

**FINANCIAL:**

The Finance Committee discussed this matter during their February 21, 2019 meeting. Upon motion made by Councilwoman Young, seconded by Councilwoman Hummer, a majority of the Committee recommended that the City Council not approve the lease for the homeless shelter.

**STAFF RECOMMENDATION:**

By motion, deny approval of the lease agreement between the City and the County. Additionally, task City staff with finding an alternate site for the homeless shelter.
NORTH CAROLINA

PASQUOTANK COUNTY

This Lease made and entered into this ______ day of ________, 2019 by and between COUNTY OF PASQUOTANK, a body politic and corporate existing under the laws of the State of North Carolina (hereinafter referred to as the “COUNTY”); and CITY OF ELIZABETH CITY, a municipal corporation under the laws of the State of North Carolina (hereinafter referred to as the “CITY”);

WITNESSETH:

That for and in consideration of the rental hereinafter reserved and the covenants and agreements herein contained, COUNTY has agreed to lease and does hereby demise and lease unto CITY, and CITY has agreed to take and lease and does hereby lease from COUNTY, the premises located at 311 Cedar Street, Elizabeth City, North Carolina 27909, (also known as the “Old Health Department” and identified as PIN #’s 8914 19702271 (33-C-9B) and 8914 19703290 (33-C-9C) in the Pasquotank County Tax Office):

1. TERM AND TERMINATION OF LEASE

The term of this Lease shall be good for a period of five (5) years commencing upon the Elizabeth City Board of Adjustment’s approval of the premises as a homeless shelter. Either party may terminate this Lease by providing ninety (90) days written notice to the other party.

2. RENTAL

The total amount of rent for this Lease shall be One Dollar ($1.00).

3. UTILITIES

The CITY shall pay for all utilities associated with the use of the leased premises.

4. TAXES

The premises are currently not taxable however, should the property become taxable due to the CITY’S use the CITY shall pay all taxes and assessments. CITY shall also be responsible for all storm water fees during the term of this lease.

5. ALTERATIONS

CITY accepts premises “as-is.” CITY may, at its sole cost and expense, from time to time during the term of this Lease, make such alterations, additions or minor modifications as it finds necessary or desirable upon approval by the COUNTY.
6. ASSIGNMENT AND SUBLETTING

CITY may not assign or sublet this Lease without the written consent of the COUNTY.

7. RESTRICTIVE COVENANTS

The leased premises shall be used only as a homeless shelter and for no other use without the consent of the COUNTY.

8. INSURANCE

CITY agrees that it will at all times during the term hereof, at its own expense, maintain and keep in force liability insurance against claims for bodily injury, death or property damage occurring in or on or about the demised premises and will also provide at its sole cost and expense, such fire and extended coverage and vandalism and malicious mischief insurance covering the contents of the demised premises as the CITY deems advisable.

9. DAMAGE AND DESTRUCTION

If the leased premises be damaged or destroyed in whole or in part at any time during the term of this Lease by fire or other casualty, COUNTY will within sixty (60) days of the destruction or damage to the property notify the CITY in writing whether it elects to restore the property or terminate the Lease. If the COUNTY elects to not restore the demised premises, then this Lease shall thereupon terminate and become null and void.

10. REPAIRS

CITY will keep the leased premises in good order and repair. CITY agrees to be solely responsible for the maintenance and repair of the entire demised premises during the term of this Lease. The COUNTY will not make any repairs or replace any items, fixtures, etc. during the term of this Lease. All repairs, maintenance and replacements shall be done by and paid for by the CITY. CITY agrees to surrender the demised premises at the expiration or early termination of this Lease in as good a condition as when received, except only deterioration caused by ordinary wear and tear. If CITY refuses or neglects to repair property as required hereunder and to the reasonable satisfaction of the COUNTY, as soon as reasonably possible after written demand, COUNTY may make such repairs (but is not required to do so). CITY shall pay COUNTY’S cost for making such repairs or replace any items, fixtures, etc.

11. INDEMNITY AND HOLD HARMLESS

CITY, to the extent permitted by law, shall indemnify and hold harmless COUNTY from and against any and all claims, costs, expenses and/or liability for damage to persons or property arising from or relating to the use or occupancy of the demised premises, the conduct of CITY’S business or anything done or permitted to be done by the CITY in or about the demised premises, or otherwise resulting from any breach or default in the performance of CITY’S obligation under this Lease, including attorney’s fees and cost. Should COUNTY’s insurance be triggered as a
result of CITY’S use or occupancy of the demised premise the CITY agrees to pay the COUNTY’s then insurance deductible.

12. COOPERATION

County agrees to join in the execution of any and all documents necessary for the CITY to receive the special use permit from the Elizabeth City Board of Adjustment.

13. NOTICES

Notices regarding this Lease may be sent as follows:

City Manager
306 E. Colonial Avenue
Elizabeth City, NC 27909

County Manager
P.O. Box 39
Elizabeth City, NC 27907

14. MISCELLANEOUS

This agreement shall be binding upon the parties, their heirs, assigns, personal representatives and successors in interest. This agreement may be executed in one or more counterparts each of which shall be deemed to be an original.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the day and year first above written.

PASQUOTANK COUNTY

BY:

Jeff Dixon, Chairman
Pasquotank County Board of Commissioners

ATTEST:

Lynn B. Scott
Clerk to the Board

(SEAL)
CITY OF ELIZABETH CITY

BY: ________________________________
Bettie J. Parker, Mayor

ATEST:

______________________________
City Clerk

(SEAL)

This ______ day of ________________, 2019 at ______ __.m.

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

______________________________
City Finance Officer

This ______ day of ________________, 2019 at ______ __.m.