

**MEMORANDUM**

**TO:** MAYOR AND CITY COMMISSION

**FROM:** CITY ATTORNEY'S OFFICE

**DATE:** June 6, 2016

**RE:** **Third Modification of Parking License Agreement with Branch Banking and Trust Company**

Attached hereto for your consideration is a proposed Third Modification of the Parking License Agreement ("Agreement") with Branch Banking and Trust Company (BB&T) for leased parking in City Lot C, also referred to as the BB&T lot located at the 100 Block of North Tennessee Avenue across from Munn Park. The initial Parking License Agreement with BB&T was approved by the City Commission in September 2010 and subsequently modified in April 2011 and again in September 2015, which included renewal of the Agreement for a five (5) year term.

Upon review of the Consumer Price Index (CPI) adjustment included in the Agreement, BB&T has requested the City change the CPI utilized from September to July each year due to the timing of when the CPI is published. The City currently utilizes the CPI for September for billing that is processed in August of each year. However, since the CPI is not yet available at the time BB&T is billed, City staff is required to adjust BB&T's account each year in October.

As such, it would be beneficial to both parties, from an administrative perspective, to use the July CPI since it would be available in August when the City bills BB&T and would eliminate the need for the October adjustment. In addition, this Third Modification seeks to use the month of July each year as the base index for comparison when determining the required CPI adjustment since it is more feasible to compare against the prior year's CPI for the same month. Except as otherwise specified above, all other terms, conditions and fees in the Agreement with BB&T will remain in full force and effect.

It is recommended that the appropriate City officials be authorized to execute this Third Modification of Parking License Agreement with BB&T.

RS  
attachment

## **THIRD MODIFICATION OF PARKING LICENSE AGREEMENT**

### **THIS THIRD MODIFICATION OF PARKING LICENSE AGREEMENT**

("Modification"), made and entered into this 6th day of June 2016, between the CITY OF LAKELAND, a Florida municipal corporation whose address is 228 S. Massachusetts Avenue, Lakeland, Florida 33801 (hereafter "CITY") and BRANCH BANKING AND TRUST COMPANY whose address is 2400 Reynolds Road, Winston Salem, North Carolina 27106 (hereafter "LICENSEE").

**WHEREAS**, the CITY and LICENSEE entered into a Parking License Agreement (the "License Agreement"), dated September 7, 2010 (the "Effective Date"), subsequent First Modification on April 1, 2011 and Second Modification on August 3, 2015; and

**WHEREAS**, the CITY and LICENSEE seek to now modify and clarify specified terms of the License Agreement related to adjustment of the Consumer Price Index (CPI); and

**NOW THEREFORE**, the Parties hereto do mutually agree that the License Agreement entered into between the CITY and LICENSEE dated September 7, 2010, as subsequently modified on April 1, 2011 and on August 3, 2015, shall be amended to read as follows:

1. **Section 5 of the License Agreement is amended and restated as follows:**

5. License Fees/Consideration - Throughout the term of this Agreement, the LICENSEE shall pay Two thousand forty-seven dollars and 25/100 (\$2,047.25) per month, plus the applicable Florida sales tax.

The License Fee is payable in advance on the first day of each month. Payment received after the tenth (10<sup>th</sup>) day of the month shall bear interest at the rate of one and one half percent (1.5%) per month from the eleventh (11<sup>th</sup>) day of the month until paid. LICENSEE's monthly License Fee is subject to applicable state sales tax. The LICENSEE shall pay all other applicable taxes levied as a result of this Agreement or the LICENSEE's use of the City Lot. Any other taxes levied as a result of this License Agreement or the LICENSEE's use of the City Lot shall be paid upon invoice by the LICENSEE. If for any reason, the City Commission of the City of Lakeland causes rates to change for the Parking Lot, with the exception of annual increases determined by the percentage change in the Consumer Price Index (CPI) set forth in Section 5(a) of the Agreement, then the LICENSEE shall pay additional licensee fees equal to the amount of any such increase; provided, however, LICENSEE shall have a right to terminate this Agreement by providing written notice of termination to the City no later than two (2) months after the date of the notice of license fee increase.

(a) License Fee Adjustment – On the 2<sup>nd</sup> anniversary of the initial term of this Agreement and each year thereafter, the parties shall adjust the license fee amount to be determined by the percentage change in the Consumer Price Index All Urban Consumers, US City Average, All items as published by the Bureau of Labor Statistics, United States Department of Labor (the CPI-U). Thirty (30) days prior to the beginning of each one year period, the CPI-U shall be ascertained, and the license fee amount to be paid during the next year period shall be adjusted by increasing or decreasing the initial rate set forth above the percentage equal to the percentage of change in the CPI-U in the month of July as compared with the prior year's July index. In the event the CPI-U or an equivalent or

successor thereof, is not published at the time such adjustments are made, the amount of rent shall be determined by the then available CPI-U subject to an adjustment when the actual figure becomes available. Notwithstanding the foregoing, the CPI-U will adjust a minimum of two percent (2%) annually but never greater than four percent (4%) annually.

2. **Full Force and Effect.** The terms of the License Agreement are only modified to the extent contained herein and all others shall remain in full force and effect.

**IN WITNESS WHEREOF**, the Parties hereto have entered into this Third Modification of Parking License Agreement on the day and year first above written.

**CITY OF LAKELAND, FLORIDA**

ATTEST:

\_\_\_\_\_  
Kelly S. Koos, City Clerk

\_\_\_\_\_  
R. Howard Wiggs, Mayor

APPROVED AS TO FORM AND CORRECTNESS:

BY: \_\_\_\_\_  
Timothy J. McCausland, City Attorney

**BRANCH BANKING AND TRUST COMPANY**

Signed in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
By:

\_\_\_\_\_  
Witness

As its: \_\_\_\_\_