

Non-Appropriation Addendum

Wells Fargo Equipment Finance, Manufacturer and Dealer Finance
800 Walnut Street | 4th Floor | Des Moines, IA 50309

WELLS
FARGO

Agreement Number **603-0273151-000** dated as of **November 29, 2022**

Name and Address of Customer:

CITY OF HOLLYWOOD, FLORIDA
2600 Hollywood Blvd
Hollywood, FL 33020-4807

This Addendum (this "Addendum") between the above-referenced customer ("Customer") and WELLS FARGO FINANCIAL LEASING, INC. ("Company") is made and entered into as of the date of the financing arrangement corresponding to the account number set forth above (the "Agreement").

1. INCORPORATION AND EFFECT. This Addendum is hereby made a part of, and incorporated into, the Agreement as though fully set forth therein. As modified or supplemented by the terms set forth herein, the provisions of the Agreement shall remain in full force and effect, provided that, in the event of a conflict between any provision of this Addendum and any provision of the Agreement, the provision of this Addendum shall control.

2. NON-APPROPRIATION OF FUNDS. Notwithstanding any provisions of the Agreement, in the event, notwithstanding Customer's best efforts and exhaustion of all available administrative appeals, it is not allotted funds for a fiscal period and it has no other funds from non-ad valorem sources legally available to be allocated to the payment of its obligations under the Agreement, Customer may terminate the Agreement effective on the first day of such fiscal period (the "Termination Date"), if Company has received written notice from Customer at least thirty (30) days before the Termination Date. Company acknowledges that payments are payable from sources other than ad valorem taxes. At Company's request, Customer shall promptly provide supplemental documentation as to such non-appropriation. Upon the occurrence of such non-appropriation, (i) Customer shall not be obligated for payment of any rentals and other payments for any fiscal period for which funds have not been so appropriated, and (ii) Customer shall deliver the Equipment to Company in accordance with the Agreement. In the event Customer does not return the Equipment to Company (i) on or before the effective date of termination following an event of non-appropriation, or (ii) within ten (10) days following Lessor's termination of the Agreement in connection with the exercise of its rights and remedies thereunder, Customer shall pay to Company an amount equal to the daily equivalent of the Payment for the period beginning on the first day after the effective date of termination until all such Equipment has been returned to Company in accordance with the Agreement (such amounts referred to herein as "Additional Rent") and Company may proceed by appropriate court action or actions, either at law or in equity, to recover such Additional Rent as damages.

3. GOVERNMENTAL PROVISIONS. Customer hereby represents, warrants and covenants to Company that: (a) Customer intends, subject only to the provisions of this Addendum, to remit to Company all sums due and to become due under the Agreement for the full term; (b) Customer's governing body has appropriated sufficient funds to pay all payments and other amounts due during Customer's current fiscal period; (c) Customer reasonably believes that legally available funds in an amount sufficient to make all payments for the full term of the Agreement can be obtained; (d) Customer intends to do all things lawfully within its power to obtain and maintain funds from which payments due under the Agreement may be made, including making provision for such payments to the extent necessary in each budget or appropriation request submitted and adopted in accordance with applicable law; (e) all amounts due and payable are payable from sources other than ad valorem taxes; (f) all amounts due and to become due during Customer's current fiscal year are within the fiscal budget of such year, and are included within an unrestricted and unencumbered appropriation currently available for the use of the Equipment; and (g) no Equipment subject to this Lease/Agreement, or equipment similar in form and function, has been the subject of a referendum which failed to receive the approval of Customer's voters. Customer's obligations under the Agreement shall constitute a current expense and shall not in any way be construed to be a debt in contravention of any applicable constitutional or statutory limitations or requirements concerning Customer's creation of indebtedness, nor shall anything contained herein constitute a pledge of Customer's general tax revenues, funds or monies. Customer further represents, warrants and covenants to Company that: (a) Customer has the power and authority under applicable law to enter into the Agreement and this Addendum and the transactions contemplated hereby and thereby and to perform all of its obligations hereunder and thereunder, (b) Customer has duly authorized the execution and delivery of the Agreement and this Addendum by appropriate official action of its governing body and has obtained such other authorizations, consents and/or approvals as are necessary to consummate the Agreement and this Addendum, (c) all legal and other requirements have been met, and procedures have occurred, to render the Agreement and this Addendum enforceable against Customer in accordance with their respective terms, and (d) Customer has complied with all public bidding requirements applicable to the Agreement and this Addendum and the transactions contemplated hereby and thereby.

4. NO GRANT OF SECURITY INTEREST. Notwithstanding any provision in the Agreement to the contrary, any provision of the Agreement that provides, or requires that Customer (a) grant Company a security interest in the Equipment, and/or (b) authorizes Company to file the Agreement as a financing statement, file a financing statement in respect of the Agreement, or repossess the Equipment, is hereby deleted in its entirety. With respect to taking possession of the Equipment, Company shall have no right or remedy that is unenforceable under Florida law or which if available to Company would render the Agreement unenforceable under Florida law.

5. TAX REPRESENTATIONS, WARRANTIES AND COVENANTS. Customer further represents, warrants and covenants to Company that (a) Customer is a state or political subdivision thereof within the meaning of Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"); (b) Customer will not take any action that would cause the interest component of payments due under the Agreement to become ineligible for the exclusion from Company's gross income for federal income tax purposes, nor will Customer omit to take or cause to be taken, in a timely manner, any action which omission would cause the interest component of such payments to become ineligible for the exclusion from Company's gross income for federal income tax purposes, (c) the proceeds funded by Company under the Agreement will not be used to reimburse Customer for expenditures made more than 60 days prior to the Commencement Date or, if earlier, more than 60 days prior to any official action taken to evidence an intent to finance the Equipment, (d) Customer will not permit the Equipment subject to the Agreement to be used, directly or indirectly, for a private business use within the meaning of Section 141 of the Code, and (e) Customer will comply with the information reporting requirements of Section 149(e) of the Code (such compliance shall include, but not be limited to, the completion, execution and timely filing of Form 8038-G or 8038-GC information reporting returns as appropriate). If Customer breaches any of the covenants contained in this Section, the interest component of payments due under the Agreement may become includable in Company's gross income for federal income tax purposes. In such event, Customer agrees, to the extent permitted by applicable law, to pay Company promptly after any such determination of taxability and on each payment due date thereafter an additional amount determined by Company to compensate Company for the loss of such excludability; provided however, Customer's payment of such amounts shall be subject to Section 2 hereof. Customer hereby appoints Company as its agent to maintain a record of all assignments of the Agreement in a form sufficient to comply with the registration requirements of Section 149(a) of the Code and the regulations prescribed thereunder from time to time, and Company agrees to maintain such registration record.

6. INDEMNIFICATION. To the extent Customer is or may be obligated to indemnify, defend or hold Company harmless under the terms of the Agreement, any such indemnification obligation shall arise only to the extent permitted by applicable law and shall be limited solely to sums lawfully appropriated for such purpose in accordance with Section 2 above.

7. REMEDIES. To the extent Company's remedies for a Customer default under the Agreement include any right to accelerate amounts to become due under the Agreement, such acceleration shall be limited to amounts to become due during Customer's then current fiscal period.

8. CHOICE OF GOVERNING LAW. Notwithstanding anything in the Agreement to the contrary, the Agreement and this Addendum shall be governed by, construed and enforced in accordance with the laws of the state in which the Customer is located.

9. MISCELLANEOUS. This Addendum, together with the provisions of the Agreement not expressly inconsistent herewith, constitutes the entire agreement between the parties with respect to the matters addressed herein, and shall supersede all prior oral or written negotiations, understandings © 2022 Wells Fargo Bank, N.A. All rights reserved. Wells Fargo Equipment Finance is the trade name for certain equipment leasing and finance businesses of Wells Fargo Bank, N.A. and its subsidiaries.

and commitments regarding such matters. Company may in its sole discretion, accept a photocopy, electronically transmitted, facsimile or other reproduction of this Addendum as the binding and effective record of this Addendum whether or not an ink signed copy hereof is also received by Company from Customer.

IN WITNESS WHEREOF, Customer and Company have caused this Addendum to be executed by their duly authorized representatives as of the date first above written.

Company: **WELLS FARGO FINANCIAL LEASING, INC.**

DocuSigned by:

S. Santosh

Signature of authorized signer

S. Santosh

Authorized Signer

Print Name and Title

Customer: **CITY OF HOLLYWOOD, FLORIDA**

DocuSigned by:

Josh Levy

Signature of authorized signer

Josh Levy, Mayor

Print Name and Title

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