

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

August 7, 2017

SUBJECT: Lease Amendment and Extension

TO: Pam Varni
Executive Director

FROM: Emily Nauman 
Legislative Counsel

Attached please find the Wells Fargo lease amendment and extension for the Legislature's building at 1500 W. Benson Blvd., in Anchorage, Alaska. The lease amendment and extension accomplishes two things.

First, the document extends the lease on the Office Space¹ portion of the building by three and a half months. Without the extension, the lease on the Office Space will expire March 15, 2018. Under the extension, the lease on the Office Space will terminate June 30, 2018. Additional rent for the extension period will amount to \$121,270.63.

Second, the document amends the lease to allow Wells Fargo to remain a tenant under the lease even if it experiences financial distress. Wells Fargo stated its purpose in requesting the amendment was to comply with federal law. Please find attached a memo from this office, dated, July 28, 2017, explaining the changes related to this portion of the amendment.

I understand that Doug Gardner will be available during the August 17, 2017, Legislative Council meeting to answer any questions you or the committee might have related to the lease extension and amendment. In the meantime, if I can be of any assistance, please advise.

ELN:boo
17-484.boo

Attachment

¹ The Office Space is approximately 13,075 rentable square feet on the 3rd floor of the building.

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MEMORANDUM

July 28, 2017

SUBJECT: Wells Fargo proposed lease amendment

TO: Pam Varni
Executive Director

FROM: Emily Nauman 
Deputy Director

On March 28, 2017, Legislative Council (Council) discussed the request by Wells Fargo Bank, N.A. (Wells Fargo) to amend its lease with the Council for space in the Benson Building in Anchorage. The Council postponed action on this matter until a later date. You asked for a memo describing the changes to assist the Council with its review of Wells Fargo's request.

1. Background.

The Council had before it an amendment of lease ("revised version"), which is a revised version of the original amendment proposed by Wells Fargo. The revised version and the proposed original amendment essentially allow Wells Fargo, or an affiliate, to remain a tenant under the lease even if Wells Fargo experiences financial distress.¹ Wells Fargo stated that its purpose was to comply with federal requirements for developing a plan to resolve an event of financial distress of Wells Fargo² in the future.

The revised version was prepared by this office to offer Wells Fargo an alternative amendment that contained the main provisions Wells Fargo seemed to want but that was modified to make these provisions clearer and to better protect the Council's interests. Wells Fargo has indicated that it would accept the revised version.

¹ Although the amendment that the Council had before it had been clarified and adjusted to put the Council in a better position, the proposed amendment still remains a very comprehensive approach by Wells Fargo.

² February 24, 2017, letter from Wells Fargo & Co. to Legislative Council. The letter uses language that suggests that Wells Fargo may be relying on the FDIC resolution plan guidance document that speaks to updating services contracts to incorporate appropriate terms and conditions to prevent automatic termination and facilitate continued provision of the services during resolution (Guidance for 2017 sec. 165(d) Annual Resolution Plan Submission by Domestic Covered companies that Submitted Resolution Plans in July 2015, Part V on Shared and Outsourced Services). It is not clear whether a lease would be considered a "service" under that guidance document.

2. Summary of revised version. The main provisions of the revised version are contained in sec. 3 of the amendment of the lease. Section 3 amends sec. 19 (Default by Tenant) of the lease.

Section 19.5 prevents termination of, renewal of, and suspension of services under the lease by the lessor during a certain period if a resolution event (e.g., bankruptcy) occurs for the tenant or its affiliates and if the tenant otherwise complies with the lease. Otherwise, under the lease, an event like bankruptcy would be a default, unless cured in 30 days.

Section 19.5 also prevents termination of, renewal of, and suspension of services under the lease by the lessor if the tenant fails to make or delays making a payment or performing an obligation under the lease that accrued or was due before the resolution event starts, if the failure or delay is cured within a reasonable time after the resolution event starts.

Section 19.6 states that the lessor is not required to allow the tenant or an affiliate to occupy the premises after the lease would otherwise expire.

Section 19.7 states that the lessor consents to a change of control of the tenant or an affiliate due to a resolution event, and to the transfer of the tenant's rights and obligations under the lease to an affiliate or successor of the tenant.

Section 19.8 states that, if the tenant rejects the lease under the resolution event, the lease stays in effect between the lessor and a tenant affiliate who is a party to or a beneficiary of the lease as a result of the resolution event, and the lessor may not terminate, prevent renewal, or suspend services to the affiliate if the affiliate complies with the provisions of the lease. But the lessor is not required to allow the tenant or an affiliate to occupy the premises after the lease would otherwise expire (allowing for renewals).

Section 19.9 states that the lessor does not relinquish any right or remedy available to the lessor under federal law in the event of a resolution event.

Section 19.10 defines "affiliate" and "resolution event." Among other acts, "resolution event" means a proceeding under bankruptcy, debtor relief, or insolvency under federal or foreign law.

3. Comments.

There does not appear to be an express requirement in the lease that the Council accept this amendment or another version of the amendment. However, under the lease, the tenant is required to comply with federal law.³ In addition, the parties to the lease must

³ Sec. 8.1 (tenant's Compliance) of the lease.

Pam Varni
Executive Director
July 28, 2017
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act in good faith towards each other.⁴ Since the Federal Deposit Insurance Corporation (FDIC) requires Wells Fargo to develop a 2017 resolution plan,⁵ it may be possible for Wells Fargo to argue that good faith or the federal law compliance requirement in the lease requires the Council not to prevent Wells Fargo from developing a reasonable compliance plan acceptable to the FDIC.

If Wells Fargo were to become financially distressed, FDIC would have the authority to cancel the lease⁶ and to take other action as necessary to resolve the situation.⁷ Adopting an amendment that addresses the situation⁸ ahead of time may give the Council more control in the future over how the lease is handled if Wells Fargo were to experience financial distress.

4. Options

Council has several options. It may

- A. take no action on the amendment and wait to see how Wells Fargo proceeds;
- B. approve the current revised version of the amendment; or
- C. approve a different version of the requested amendment.

5. Recommendation.

I recommend that the Council approve the attached lease amendment.

If I may be of further assistance, please advise.

ELN:boo
17-486.boo

⁴ A "covenant of good faith and fair dealing is implied in all contracts in Alaska," and it "prevents each party from doing anything that will injure the right of the other to receive the benefits of the agreement." *Askinuk Corp. v. Lower Yukon Sch. Dist.* 214 P.3d 259, 267-268 (Alaska 2009) (first citing *Casey v. Semco Energy Inc.*, 92 P.3d 379, 384 (Alaska 2004); then citing *Ellingstad v. State, Dept. of Nat. Res.*, 979 P.2d 1000, 1009 (Alaska 1999)).

⁵ 12 U.S.C. 5365(d) requires bank holding companies to report "the plan of such company for rapid and orderly resolution in the event of material financial distress or failure. . ." (resolution plan").

⁶ 12 U.S.C. 1821(e).

⁷ 12 U.S.C. 1821(d).

⁸ The rules would not have to be what Wells Fargo has proposed so far.

AMENDMENT AND EXTENSION OF LEASE
LEASE AMOUNT FOR EXTENSION PERIOD: \$121,270.63

THIS AMENDMENT AND EXTENSION OF LEASE, made and entered into the date the Legislative Affairs Agency Executive Director or her designee signs the Amendment and Extension of Lease, by and between STATE OF ALASKA, LEGISLATIVE COUNCIL, whose address is State Capitol, Room 3, Juneau, Alaska 99801-2918, hereinafter referred to as "Lessor," and WELLS FARGO BANK, N.A., a national banking association, whose address is 1525 West W.T. Harris Blvd., Charlotte, North Carolina 28262, hereinafter referred to as "Tenant," hereby amends and extends the Lease between Lessor and Tenant dated September 15, 2016, in Anchorage, Alaska.

W I T N E S S E T H

WHEREAS, under the Lease, Lessor is leasing to Tenant and Tenant is leasing from Lessor the premises, hereinafter "premises," described in no. 5 of the Key Provisions Summary of the Lease, which is located at 1500 W. Benson Blvd., Anchorage;

WHEREAS, Tenant has requested that the Lease be amended to enable Tenant to comply with the federal requirement that Tenant file an Annual Resolution Plan to demonstrate Tenant's strategy for facilitating the rapid and orderly resolution of an event involving Tenant's material financial distress or failure;

WHEREAS, the FDIC guidance for the 2017 Annual Resolution Plan indicates that Tenant should update contracts to incorporate appropriate terms and conditions to prevent automatic termination and facilitate continued provision of services during the resolution;

WHEREAS, the Tenant has requested an extension of the Office Space Term for an additional 3.5 months, to June 30, 2017;

WHEREAS, the Office Space Term under the Lease terminates March 15, 2018.

NOW, THEREFORE, LESSOR AND TENANT AGREE AS FOLLOWS:

1. That the Office Space Term is extended for a term of three and a half (3.5) months beginning March 15, 2018 and terminating at 11:59 p.m. on June 30, 2018.
2. The monthly rental rate for the extension is \$34,648.75 per month and \$17,324.38 for the half month.
3. Section 19 (Default by Tenant) of the Lease is amended by adding new subsections that read as follows:

19.5. Notwithstanding the other provisions of subsections 19.1 - 19.4 of this Lease, Lessor agrees that if a Resolution Event occurs with respect to Tenant or Tenant's Affiliates, until 18 months after the later of the final conclusion of the Resolution Event or the last Resolution Event, not to terminate the Lease,

prevent renewal of the Lease, or suspend services to Tenant under the Lease, because of

(i) the Resolution Event, if Tenant otherwise complies with the covenants, conditions, and provisions of the Lease, including, but not limited to, paying rent and other charges under the Lease in a timely manner and maintaining and repairing the Premises; or

(ii) for a failure or delay by Tenant or Tenant's Affiliate to make a payment or perform an obligation under the Lease that accrued or was due before the commencement of the Resolution Event, if the failure or delay is cured within a reasonable period following the commencement of the Resolution Event.

19.6. Notwithstanding subsection 19.5, Lessor is not required, even during a Resolution Event, to allow Tenant or an Affiliate of Tenant to occupy the Premises after the date that the Lease would otherwise expire without opportunity for further renewal.

19.7. Notwithstanding the provisions of section 16 (Assignment and Subletting) and other provisions of this Lease, if a Resolution Event occurs with regard to Tenant or Tenant's affiliates, Lessor consents to

(i) a change of control of Tenant or an Affiliate of Tenant arising out of the Resolution Event; and

(ii) the assignment, delegation, novation, or transfer of any or all of Tenant's rights and obligations under the Lease, in whole or in part, to an entity that is or becomes as a result of the Resolution Event, or was immediately before the Resolution Event, an Affiliate of Tenant or a successor to all or part of the business of Tenant or an Affiliate of Tenant.

19.8. Notwithstanding the provisions of subsections 19.1 - 19.4, if a Resolution Event occurs with respect to Tenant, and if Tenant, under the law applicable to the Resolution Event, rejects, disclaims, or repudiates the Lease, or fails or refuses to perform its obligations under the Lease,

(i) the Lease shall nevertheless remain in full force and effect between Lessor and an Affiliate of Tenant, if the Affiliate is a party to or a beneficiary of the Lease (e.g., a subtenant) as a result of the Resolution Event; and

(ii) Lessor may not terminate the Lease, prevent renewal of the Lease, or suspend Lease services to the Affiliate identified in (i) of this subsection as long as the Affiliate identified in (i) of this subsection 19.8 complies with the covenants, conditions, and provisions of the Lease; this compliance includes, but is not limited to, paying rent and other charges under the Lease and maintaining and repairing the Premises. However, Lessor is not required to allow the Affiliate to occupy the Premises after the date that the Lease would otherwise expire without opportunity for further renewal.

19.9. Notwithstanding subsections 19.5 - 19.8, Lessor does not relinquish and may exercise any right available to Lessor under federal law in the event of a

Resolution Event and may seek any remedies available to Lessor under federal law in the event of a Resolution Event.

19.10. In subsections 19.5 - 19.10 of this Lease,

(A) "affiliate" has the meaning given in 12 U.S.C. 1841(k);

(B) "Resolution Event" means

(i) a proceeding under a bankruptcy, debtor relief, or insolvency law, including, but not limited to, a case under the U.S. Bankruptcy Code, a proceeding under the Securities Investor Protection Act, or the appointment of a receiver or conservator under the Federal Deposit Insurance Act or Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act; or

(ii) a proceeding under another U.S. or foreign law that is equivalent to a proceeding identified in (i) of this definition of "Resolution Event."

4. All other provisions of the Lease will remain the same.

AUTHORIZATION; CERTIFICATION: A majority of the members of the Alaska Legislative Council authorized the execution of this Amendment of Lease at a meeting on August 17, 2017.

IN WITNESS WHEREOF, Lessor and Tenant have executed this Amendment of Lease on the day, month, and year indicated below.

LESSOR:
STATE OF ALASKA
LEGISLATIVE AFFAIRS AGENCY

Representative Sam Kito Date
Chair
Alaska Legislative Council
Procurement Officer

CERTIFYING AUTHORITY

Pamela A. Varni Date
Executive Director
Legislative Affairs Agency

TENANT:
WELLS FARGO BANK, N.A.,
a national banking association

By: _____
Printed Name: _____
Title: _____
Tax identification No. _____
Date: _____

APPROVED AS TO FORM

Theresa L. Sannister 7-27-17

Legal Counsel Date