

GENERAL SERVICES ADMINISTRATION
PUBLIC BUILDINGS SERVICE
SUPPLEMENTAL LEASE AGREEMENT

SUPPLEMENTAL AGREEMENT

DATE

No.

9

AUG 25 2011

TO LEASE NO: GS-11B-01994

ADDRESS OF PREMISES: Lincoln Place
600-700 Army Navy Drive
Arlington, VA 22202

THIS AGREEMENT made and entered into this date by and between: CSHV Lincoln Place, LLC

Whose address is: c/o F.A.P. Fund I, LLC
Spaulding & Slye Holdings, LLC
1801 K Street NW, Suite 1000
Washington, DC 20006-1303

hereinafter called the Lessor, and the UNITED STATES OF AMERICA, hereinafter called the Government.

WHEREAS, the parties hereto desire to amend the above lease.

NOW THEREFORE, these parties for the consideration hereinafter mentioned covenant and agree that the said Lease is amended, effective upon execution by the Government, as follows:

1. This Supplemental Lease Agreement (SLA) is issued to implement the terms of the Settlement Agreement, attached hereto as Exhibit "A", wherein the Government and the Lessor have reached agreement regarding a dispute as to whether the subject Lease required Lessor to provide information to facilitate government background checks of each employee of Lessor's contractors and subcontractors providing, "certain capital improvements" referenced in SF-2 Paragraph 6 (G) of the Lease and identified in Exhibit I of its SF-2. This SLA applies to this Lease the terms of the aforementioned Settlement Agreement.
2. The dispute noted in Paragraph 1 above, centered on the contracting officer's final decision that the lease obligated and required the Lessor to provide information to be used to perform background security checks of workers performing "certain capital improvements," referenced in SF-2 Paragraph 6 (G) of the Lease and identified in Exhibit I of its SF-2.
3. Lessor appealed the contracting officer's final decision to the Civilian Board of Contract Appeals on June 3, 2010, which docketed the appeal as CBCA No. 2030, attached hereto as Exhibit "B."
4. The Government and Lessor wish to resolve all disputes related to the Lessor's appeal without resorting to further administrative process or litigation and have agreed to resolve this dispute pursuant to the terms of the Settlement Agreement.
5. Upon execution of this Supplemental Lease Agreement, the Settlement Agreement attached hereto shall be incorporated into the Lease.

This document will not constitute a payment until the date of execution by the Government. As a result, even though payments will be made retroactively, no rental payments are due under this agreement until (30) days after the date of execution.

All other terms and conditions of the lease shall remain in force and effect.

IN WITNESS WHEREOF, the parties subscribed their names as of the above date.

LESSOR: CSHV Lincoln Place, LLC

By: F.A.P. Fund I, LLC

MARSHALL H. DURSTON
Authorized Manager

(Name and Title)

1801 K Street NW Suite 1000
Washington, DC 20006

(Address)

UNITED STATES OF AMERICA:

BY

Contracting Officer, Lease Executions Division

SETTLEMENT AGREEMENT BETWEEN CSHV LINCOLN PLACE, LLC AND THE UNITED STATES OF AMERICA BY AND THROUGH THE ADMINISTRATOR OF GENERAL SERVICES

THIS AGREEMENT is entered into between CSHV Lincoln Place, LLC (hereinafter "Lessor") and the United States of America, acting by and through the Administrator of General Services (hereinafter "GSA"), effective on the final date of execution by the government;

WHEREAS, GSA awarded California State Teacher's Retirement System (hereinafter "CalSTRS") Lease No. GS-11B-01994 (hereinafter "Lease") for the [REDACTED] (hereinafter "[REDACTED]") to occupy office space located at 600-700 Army Navy Drive in Arlington, Virginia (hereinafter the "building");

WHEREAS, the CalSTRS assigned the Lease to Lessor, effective August 21, 2009, resulting in Supplemental Lease Agreement (hereinafter "SLA") No. 2, wherein the parties formally recognized CSHV Lincoln Place, LLC as the Lessor under the Lease;

WHEREAS, a dispute arose as to whether the Lease required Lessor to provide information to facilitate government background checks of each employee of Lessor's contractors and subcontractors performing "certain capital improvements" referenced in SF-2 ¶ 6 (G) of the Lease and identified in Exhibit I to SF-2;

WHEREAS, on December 3, 2009, Lessor filed a request for a contracting officer's final decision on whether the Lease requires the Lessor to provide information to be used to perform security background checks of workers performing "certain capital improvements," referenced in SF-2 ¶ 6 (G) of the Lease and identified in Exhibit I to SF-2;

WHEREAS, GSA's contracting officer's May 17, 2010, final decision asserted that the Lease obligated and required the Lessor to provide information, to be used to perform security background checks of workers performing "certain capital improvements," referenced in SF-2 ¶ 6 (G) of the Lease and identified in Exhibit I to SF-2;

WHEREAS, on June 3, 2010, Lessor appealed the contracting officer's final decision to the Civilian Board of Contract Appeals (hereinafter "CBCA"), which docketed the appeal as CBCA No. 2030;

WHEREAS, the parties wish to resolve all disputes related to the Lessor's appeal without resorting to further administrative process or litigation;

NOW THEREFORE, the parties agree to the following:

1. GSA and Lessor, mutually agree to execute Supplemental Lease Agreements ("SLAs") incorporating this Settlement Agreement into the Lease and the parking garage lease, GS-11B-80209.

2. A worker performing the "capital improvement" work referenced in ¶ 6 (G) of SF-2 of the Lease and identified in Exhibit I to SF-2 must be escorted by an approved escort who has received security clearance ("security escort") and be in the presence of a security escort, at all times, while the worker is on the Leased Premises or the parking garage leased pursuant to GS-11B-80209. No worker performing "capital improvement" work, referenced in ¶ 6 (G) of SF-2 of the Lease and identified in Exhibit I to SF-2, shall be granted entrance onto the Leased Premises or parking garage without a security escort unless such worker has received a security clearance by GSA or ██████

A. In addition to the one security escort to be provided by the Lessor under paragraph 2.B, below, of this agreement, GSA shall provide up to four security escorts, as needed (as determined by the Lessor in accordance with its agreement, in Paragraph 1B of this settlement agreement to schedule and manage the "capital improvement" work referenced in SF-2 ¶ 6 (G) and identified in Exhibit I to SF-2, in such a way to minimize the number of escorts), for the performance of "capital improvements," referenced in SF-2, ¶ 6 (G) and identified in Exhibit I to SF-2. GSA shall provide escorts, in addition to the four provided for above, for "capital improvement" work identified in Exhibit I to SF-2 only if: (1) the Lessor submits the project plans and specifications to GSA at least 6 months in advance of the project's anticipated commencement date; and (2) the Lessor, GSA, and ██████ meet to collectively plan and schedule the "capital improvement" work and the plan and schedule require more than four escorts. The "capital improvement" work shall be scheduled so as to ensure efficient progress of the work while not unreasonably interfering with the tenant's work and scheduling and managing the work in such a way as to minimize the number of escorts.

B. The Lessor shall provide one security escort, at its own expense, to facilitate the performance of "capital improvements" referenced in SF-2, ¶ 6 (G) and identified in Exhibit I to SF-2. The Lessor, in addition to the terms and conditions already contained within the Lease, shall schedule and manage the aforementioned "capital improvement" work in such a way as to minimize the number of escorts.

3. Upon execution of this Agreement by both parties, the Lessor fully and completely releases the Government, its agents, servants, employees, officials, successors, and assigns from all vendor, contractor and subcontractor claims, claims for costs and interest under the Contacts Disputes Act of 1978, 41 U.S.C. §§ 601 *et seq.* and/or the Prompt Payment Act, as well as any claim of attorney's fees, in connection with the provision of information to facilitate government background checks pursuant to ¶ 9.2 of the Solicitation for Offers of the Lease and the provision of security escorts on or before the date of the Government's execution of the SLAs for workers performing "capital improvements" referenced in SF-2, ¶ 6 (G) and identified in Exhibit I to SF-2. The Lessor further agrees to execute a Joint Request For Dismissal, with prejudice, of

CBCA 2030 within three days of execution of the SLAs by GSA. This settlement is inclusive of any and all costs, interest, and attorney fees.

4. Upon execution of this Agreement by both parties, the Government fully and completely releases the Lessor, its agents, servants, employees, officials, successors, and assigns from all liability and from all known and/or unknown liabilities related to the provision of security escorts on or before the date of the Government's execution of the SLAs for workers performing "capital improvements" referenced in SF-2, ¶ 6 (G) and identified in Exhibit I to SF-2.

5. The Lessor further stipulates that a copy of this Agreement may be offered by any person as conclusive evidence of Lessor's release of claims as described in paragraph 3.

6. The parties expressly represent and warrant that they have entered into this Agreement voluntarily, with proper authority, and without reservation. The only consideration for this Agreement is expressly set forth within this Agreement, and no further inducements or representations, written or oral, have been exchanged in connection herewith. Each Party acknowledges that it has had adequate time to reflect upon and consider the terms of this Agreement; agrees that neither this Agreement, nor the settlement set forth herein, is the result of fraud, duress, coercion, or undue influence on the part of any party; and acknowledges that each has received all information and documents necessary to permit the Party to make fully informed decisions with respect to all aspects of this Agreement, and that Lessor has had the opportunity to consult counsel regarding all aspects of the Agreement, including possible tax consequences, before executing it.

7. This agreement shall be binding upon the Parties and their agents, servants, employees, officials, sureties, successors, and assigns.

8. This Agreement shall not be construed by any person as an admission of any fact or concession of liability by either party; the parties have entered into this Agreement in order to avoid the risk and burdens of further litigation.

9. Each party shall bear whatever costs and fees incurred by it in connection with the subject matter of this Agreement.

10. This agreement contains the entire understanding of the Parties with respect to the matters addressed herein and, except as set forth in this Agreement, no representations, warranties, or promises, written or oral, have been made or relied upon by the parties. No extension, modification, amendment or waiver of any terms or conditions of this Agreement will be binding upon the Parties, unless it is in writing and signed by duly authorized officer or representative of the Parties. This agreement has been prepared by the parties jointly, and accordingly, this Agreement is to be construed according to its terms and the normal rule of construction (to the effect that any

ambiguities may be resolved against the drafting party) shall not be employed in any interpretation of this Agreement.

11. The effective date of this Agreement shall be the latest date of execution by any signatory hereof.

12. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

13. The parties do not intend by any provision of this Agreement to create any third-party beneficiaries nor to confer any benefit upon, or enforceable rights under this Agreement or otherwise upon, anyone other than the parties hereto.

14. All other terms and conditions of the Lease and the parking garage lease, GS-11B-80209, remain in full force and effect.

CSHV LINCOLN PLACE, LLC
BY: FAP FUND I LLC
BY: SPAULDING & SLYE HOLDINGS, IT'S
MANAGER

By

Its: Authorized Manager

Date: 6/29/11

By:

Robert C. MacKichan, Jr., Esq.
Counsel for CSHV Lincoln Place,

Date

THE UNITED STATES OF AMERICA,
ACTING BY AND THROUGH THE
DESIGNATED REPRESENTATIVE OF THE
ADMINISTRATOR OF GENERAL SERVICES

By

Date:

Leonard E. Lucas III
Counsel for GSA

Date: