

# Supplemental Lease Agreement No. 1

Regarding SFO 06-009/Lease No.GS-11B-01928 (the "Lease")

Dated as of June 21, 2006

For Property Commonly Known and Numbered as:

801 Follin Lane, Vienna, VA. (the "Property")

**This Supplemental Lease Agreement No. 1** ("Agreement") is made and entered into as of the date(s) set forth below by and between:

**Transwestern Goldstar, L.L.C.**, a Delaware Limited Liability Company

With addresses of: 4630 Montgomery Avenue, Suite 500, Bethesda, MD 20814  
and  
150 North Wacker Drive, Suite 800, Chicago, IL 60606  
(hereinafter called the "Lessor")

and

**The United States of America**, by the United States General Services Administration, National Capital Region

With an address of: General Services Administration  
National Capital Region  
Real Estate Division  
301 7<sup>th</sup> Street S.W.  
Washington, D.C. 20407

(hereinafter the "Government".)

Lessor and Government are hereinafter jointly referred to as the "Parties"

## RECITALS

1. WHEREAS, the Lessor agreed under the terms of Lease No. GS-11B-01928 ("Lease") to build out a facility in the leased premises at 801 Follin Lane, Vienna, Virginia (the "Project") consistent with the specification(s) set forth in the Lease, as those specifications were developed and refined in consultation with the Government, to be delivered as substantially complete by June 21, 2007; and
2. WHEREAS, the Lease provides at ¶5 of Lease Rider No. 1 that Lessor shall provide as part of the rental payment a Tenant Improvement Allowance of \$5,775,000 [based upon \$35.00 per rentable square foot "(RSF)" or \$40.33 per BOMA Office Usable Square Foot ("USF") for Tenant Improvements, as defined in the Lease, (the "TI Allowance"). The Lease provides at ¶2 of Lease Rider No. 1 and Section 3.1 C of SFO No. 06-009 that the Government will contribute a

lump sum payment of \$9,740,000 to pay for certain above standard security, HVAC, and electrical requirements ("Above Standard Requirements"); and

3. WHEREAS, the scope of the Above Standard Requirements has been expanded since the date of the Lease to include additional work described in the awards attached hereto as Exhibit 1 ("Expanded Above Standard Requirements"); and

4. ~~WHEREAS, the cost of the Expanded Above Standard Requirements has exceeded the Government's \$9,740,000 contribution for the Above Standard Requirements described above; and~~

5. WHEREAS, as of the date of this Agreement, the Government has made payments set forth on Exhibit 2 ("Government Payments to Lessor") to the Lessor to fund the Expanded Above Standard Requirements, and all payments to the Lessor were suspended December, 2008; and

6. WHEREAS, as of the date of this Agreement the Government has not fully awarded the work for the Expanded Above Standard Requirements, and Lessor has not been fully paid for the work which has been awarded; and

7. WHEREAS, the Parties acknowledge that the Project is in delay, that each party to the Lease has asserted or has threatened to assert claims against the other for extensions of time and/or the costs associated with delay, including claims and demands for all rights and remedies arising from delay, in equity or at law; and

8. WHEREAS, the Parties acknowledge that each party has asserted or has threatened to assert claims for monetary damages including, but not limited to, damages associated with the alleged "credit" due to the Government for the original scope of work under the Lease; damages for alleged changes outside the scope of the contract, damages for certain invoices disputed either as to timeliness, duplication, or amounts owed (if any); damages for alleged failure to construct certain aspects of the electrical systems in accordance with the specifications and construction drawings; and damages for disputes related to the allocation for maintenance of certain equipment; and

9. WHEREAS, in consideration of this Agreement and the terms hereof, the Parties intend hereby to accomplish a complete settlement of all outstanding claims between the Parties as of the date hereof (except those claims that are specifically reserved in this Agreement); and

10. WHEREAS, this Agreement includes a renewal option, an expansion option, an extension of time for delivery of the Project, payment in settlement of delay and other costs, awards and payments related to a solution to certain design and construction issues in the electrical system as currently built that includes separating certain portions of the electrical equipment ("the A/B Split"), awards for cost proposals submitted prior to the date hereof, clarification with respect to ownership and maintenance of equipment, and provision for performance based progress



payments in advance of substantial completion (as further discussed in ¶20 below); and

11. WHEREAS, The Lessor and the Government have agreed to a Construction Schedule, Exhibit 6 of this Agreement ("Construction Schedule"), that includes all design and construction activities necessary to complete the Project including the A/B Split (the "Work") and provides the critical path of all Work activities.

**NOW THEREFORE**, the undersigned parties, for the considerations hereafter mentioned, covenant and agree that the said Lease is amended effective as of the date of the latest execution date of this Agreement, the provisions of which are incorporated into this Agreement of even date herewith, as follows:

1.) Incorporation of Recitals.

Each of the foregoing recitals and representations is a material part of this Agreement and they are individually and collectively incorporated as covenants and made binding provisions hereof and of the Lease.

2.) Option to Renew.

¶1.5 "Lease Term" (of the SFO) is modified by adding sub paragraph C which shall read as follows:

C. This lease may be renewed at the Government's option for an additional [REDACTED] years (the "Renewal Option") at the rate of [REDACTED] or [REDACTED] per BOMA Office Usable Square foot ("USF") in addition to accrued operating cost escalations provided that written notice is given to the Lessor at least 180 calendar days before the end of the original lease term. The rate for the Renewal Option includes a TI Allowance of [REDACTED] USF. The Renewal Option is for the entire premises, as may be expanded, not a portion of the premises.

3.) Demised Area.

Paragraph 1 of the SF2 is deleted and restated as follows:

1. The Lessor hereby leases to the Government the following described premises:

A total of 165,000 rentable square feet (RSF) of office space yielding 151,577 BOMA office usable square feet (USF) and related space consisting of 58,457 RSF (53,326 USF) on the First floor, 41,005 RSF (36,894 USF) on the Second Floor; 60,972 RSF (56,791 USF) on the Third floor; and 4,566 RSF (4,566 USF) in the lower Level as shown on the attached Floor plans (See Exhibit 3) The Lease also includes 106 fenced parking spaces for official vehicles within the secure perimeter and 20 visitor parking spaces outside the secured fenced perimeter. The space is located at 801 Follin Lane, Vienna, Virginia 22180 to be used for such purposes as determined by the Government.



Exhibit 3 shall replace the floorplans previously submitted and incorporated into the Lease by ¶6 of the SF-2.

The percentage of occupancy is 86.82%.

Paragraph 3 of the SF2 is deleted and restated as follows:

3. The annual rent for the entire 165,000 RSF (151,577 USF) is \$ 5,737,079.52 payable at the rate of \$478,089.96 per month in arrears. Rent for a lesser period shall be prorated. The calculation of this rental amount is based on the following: The Government shall pay the Lessor annual rent of \$5,673,154.49 payable at the rate of \$35.36 per RSF (or \$38.59 per USF) payable at the rate of \$472,762.87 per month in arrears for the 147,011 USF of office space on floors 1-3. The Government shall pay the Lessor annual rent of \$63,924.00 payable at the rate of \$14.00 per RSF (or \$14.00 per USF) payable at the rate of \$5,327.00 per month in arrears for the 4,566 USF of space on the Lower Level. Rent shall be paid by electronic funds transfer payable to the account identified by the Lessor.

4) Expansion Option.

The Government shall have the option, in lieu of making certain payments described further at ¶12 of this Agreement, to lease all of the remaining USF in the Property ("Expansion Option"). Exhibit 4 details the Expansion Space ("Expansion Space").

Rent for space on floors 1-3 will be at the rate of \$38.59 per USF. In addition, the Government may rent any available space on the basement level at the rate of \$14.00 per USF.

The expansion option for the basement does not include a TI Allowance. The TI Allowance for space on floors 1-3 shall be \$35.00 per RSF for a ten year term (\$3.50 per RSF per year of lease term.) If the term is less than 10 years, then at the Government's option either: a.) the TI will be prorated based on the number of years (calculated on a monthly basis for partial years) remaining in the Lease Term; or b.) the TI will be increased to the full \$35.00 per RSF and the Government will pay interest at 7% on the portion of the outstanding TI balance that is greater than it would be entitled to if it has chosen the first option. The rental rate for the second option shall be calculated so as to allow the Lessor to recoup the additional TI allowance, plus applicable interest, within the Lease Term remaining.

Examples of the two approaches are as follows: 1.) if the term for the expansion space is 8 years and the Government chooses the first option, then the TI allowance for the expansion space will be \$28.00 (80% of the original TI Allowance of \$35.00 per RSF); 2.) if the term for the expansion space is 8 years and the Government chooses the second option (requesting TI of \$35.00 per RSF), then the TI allowance provided interest free by the Lessor shall be \$28.00, and the additional \$7.00 per RSF will be provided at 7% per annum of interest. The Government may exercise one or the other of these options by providing written notice to the Lessor at any time within thirty (30) months of the



execution of this Agreement. If the Government executes a Lease at any time later than 22 months from the date of this Agreement, Rent on the Expansion Space will commence at the earlier of Substantial Completion of the Expansion Space or the date thirty (30) months from the date hereof. If the Government executes a Lease at any time prior to 22 months from the date of this Agreement, the 30 month period will be extended by the number of days of Lessor delay or Excusable Delay, but no adjustment will be due for Government Delay. Regardless of the contract form utilized, the term for the Expansion Space shall be coterminous with the existing lease term.

5) Separation of Electrical Equipment: A/B Split.

(i) Design.

Lessor will design a solution for the integration of the A/B split with the pre-existing electrical and mechanical systems, consistent with the agreed Basis of Design described in Exhibit 5 ("BOD"). The BOD is a compromise to resolve certain alleged design inadequacies of the original electrical system and certain alleged construction deficiencies of the as-built duct banks.

(ii) A/B Split Cost.

Although the purpose of the A/B Split is to resolve the dispute about certain design and construction deficiencies, this solution will also provide better service to the Government. Therefore, in consideration of receiving an enhanced electrical system, the Government will contribute a total of \$5,400,000 to the cost of the A/B Split ("Government A/B Split Contribution"). The Lessor represents that the estimated cost to build the A/B Split as defined in the BOD is approximately \$13,700,000 (not including delay and impact costs to the Lessor and its Contractors). The Lessor will be responsible for all the costs of the A/B Split exceeding the Government A/B Split Contribution. The Lessor agrees that it bears all risk related to the accuracy of its estimate of total cost, and will be required to deliver the A/B Split to the Government in accordance with the BOD regardless of the accuracy of its estimate.

The Government will issue an award for its portion of the A/B Split costs for design and construction in an amount not to exceed \$5,400,000 within five (5) working days of the execution of this Agreement ("A/B Split Award"). The A/B Split Award shall be paid from the Government A/B Split Contribution and Lessor shall be allowed to invoice the Government against the A/B Split Award in accordance with ¶20 of this Agreement.

6) Construction Schedule.

The Lease/SFO ¶3.15 titled "Construction Schedule" is deleted in its entirety and replaced with the Construction Schedule set forth below:

The design activity shall commence two (2) working days after the receipt by the Lessor

