Lease Security & Certificates of Insurance

AAPA Port Administration & Legal Issues Seminar

Moderator:
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Port of San Francisco

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Real Estate &
Matt Hansen, Director
Risk Management
Session Agenda

- Introduction:
  - City & County of San Francisco
    - Structure & relationship to Port
  - Port of San Francisco

- Application of Lease Security

- Certificates of Insurance:
  - Lease Compliance

- Questions & Wrap-up
The City & County of San Francisco is a California Charter City-County, a status it has had since 1856. The Mayor is also the County Chief Executive and the elected Board of Supervisors acts as the legislative branch for both City and County. City government operations are decentralized, each department is managed from within, with support from citywide departments such as the Office of the City Attorney, the Office of The Controller, and the Office of the City Administrator. The City Administrator is also the Director of the General Services Agency (GSA). GSA is comprised of a broad array of departments, divisions, programs, and offices reporting to the City Administrator which include the Real Estate and Risk Management Divisions.

Real Estate provides facilities management services to over 50 City buildings, and transaction assistance or real estate analysis for purchases, sales, exchanges and leases of a variety of properties for public purposes, through a professional workforce of 350 staff.

The Risk Management Division with a small staff of employees and consultant partners is dedicated to minimizing the risk or loss and maximizing opportunities to the City through Strategic Risk Analysis, facilitation of risk transfer, and the creation and maintenance of a culture of collaborative risk management within all City departments.
The San Francisco Port Commission was created in 1969 after the State of California transferred property previously under the jurisdiction of the State's San Francisco Port Authority to the City and County of San Francisco to be held in trust by the San Francisco Port Commission; and

The San Francisco Port Commission has authority to lease or license the transferred property for limited periods not to exceed 66 years.
Lease Security

- Types of Security
- Examples of Each
- Challenges/Concerns of Each
Lease Security
(at the Port of SF)

Port Real Estate Profile:

- Over 400 Tenants on Port Property
- Covers nearly 13,000,000 square feet
- Generates over $38,000,000 in annual revenues
- 88% of Security is Cash
- 8% of Security is Certificate of Deposit
- 3% of Security is Standby Letter of Credit
- 1% of Security is Bond
Lease Security

- Key California Civil Code Sections:
  - 1950.7 – waiver required
  - 1951.2 & 1951.4
  - All included in hand-out
Lease Security

- Cash
  - Landlord Preference
  - Simple & Direct
  - Caution on low value leases
Lease Security

- Certificates of Deposit
  - Nationally-chartered bank, accounts FDIC insured
  - Replacement/renewal CD in place no later than 10 days prior to expiration
  - Tenant waives LL responsibility for interest accrual
  - Clear cash conversion option if expired without replacement
Lease Security

- **Standby Letter of Credit**
  - Form acceptable to LL
  - Nationally-chartered bank with $100 M+ capitalization
  - Replacement/renewal in place at least 60 days prior to LC expiration
  - Remains in place at least 60 days after lease expiration
Lease Security

- Standby Letter of Credit
  - Irrevocable, unconditional independent and binding obligation to honor any draw, partial or multiple
  - Freely transferable upon delivery of successor documents
  - LC value replacement clause in event of partial draw
Lease Security

- Standby Letter of Credit
  - Retain 60 days after Expiration Date or Surrender to return LC proceeds drawn but not applied toward costs or damages
  - Insert non-interference clause – applying either prior to or following a draw
  - No entitlement to interest by Tenant
Lease Security

- Bond - Performance
  - Tenant Improvements
  - Remediation
  - Other Project Goal
Lease Security

- Bond – Lease
  - Rare
  - Costly (approx 2% of amount)
Lease Security

- General Comments
  - Program or Service Leases may require some unique language to ensure “rent” –
    - “…Tenant’s costs to perform its obligations under this Lease and to deliver any Reimbursement Amounts to City shall be deemed to be “Rent” for purposes of California Civil Code Section 1951.2 and 1951.4 …”
Lease Security

- General Comments
  - Increase security when base rent increases – often overlooked, and a very common audit finding
  - If commingling allowed by law in your state, update budget annually to ensure sufficient funds available for return of security
Lease Security

- General Comments
  - Reserve right to reasonably reject selection of financial institution and/or financial documents utilized

- QUESTIONS?
Compliance (Insurance Requirements)

- Port of SF staffing and structure
- Main “buckets” for compliance by type:
  - Property Management (Real Estate)
  - Contract Management (Professional & Other)
  - Construction Management
  - Maritime
Compliance
(Insurance Requirements)

- Process, process, process
  - The problem:
    - Manual
    - Centralized... sort of....
    - Consistent?
Compliance
(Insurance Requirements)

- Real Estate Analysis:
  - First Level Audit
    - COI vs. Insurance Requirements
      - Tenant, Sub-tenant, City Dept Tenant, Maritime
  - Second Level Audit
    - Propworks vs. COI
  - Final: Gap-Fit
Compliance
(Insurance Requirements)

- What were we looking for?
  - Standardization of Insurance Requirements
    - Coverage types & limits by use type
      - E.g. USLH, Jones Act, Watercraft or Vessel
        Pollution Liability
  - Non-compliance Issues
  - Missing Coverages
  - Missing Documents
  - Expired Coverages
  - Limit Discrepancies
Compliance
(Insurance Requirements)

- What did we find?
  - General discrepancies were all process related but no major or material findings

- What are we doing about it?
  - Automate, automate, automate!
Compliance
(Insurance Requirements)

- Benefits of Automation (besides the obvious...)
  - New version of ACORD, what’s changed?
    - Notice of Cancellation generally GONE
      - Broker & Carrier response: “we don’t care.”
  - Why do we care?
    - What do your in force agreements/leases require?
    - What are you doing about NEW agreements/leases?
Compliance
(Insurance Requirements)

- Automation Tools:
  - What did we look for?
    - Flexible
    - Scalable
    - Robust
    - Cost effective
What is the Automation Objective?

- Reduce Administration
  - Eliminate Paper & Manual Inputs
- Decrease Process Costs
  - Centralize Process Management & Oversight
- Enhance Resource Productivity
  - Automate Backend Processing, Communications & Document Tracking
- Mitigate Exposure to Potential Liabilities
  - Standardize the Application of Best Practices (including but not limited to Standardizing Insurance Requirements)
- Enhance Decision Making
  - Improve Access to Timely Data & Quantifiable Business Intelligence

...Manage by Exception
Compliance Service to Centralize the Management & Tracking of Insurance Documents & Automate the Application of Contract Standards:

• Paperless Process that Supports Paper
  • E.g. Fax Messaging & US Mail
• Integrated Benchmarking
  • AM Best Ratings
• Automatic Renewal Processing & Validation
  • For Term of Underlying Contract
• Track Supporting Documents
  • Hold Harmless, Indemnification, W-9, etc.
• Self Service Process Reporting & Analytics
  • Point and Click Audit
Compliance
(Insurance Requirements)

Vendor Goes To http://prod1.exigis.com/port
Broker(s) Input Policy Details, Attach Certificate of Insurance & Certify Information Accuracy

Customer Service Team Sends Certificate Request to Vendor(s)

General Liability Broker

Product Liability Broker

Workers Comp Liability Broker

General Liability

Product Liability

Workers Comp Liability

Email/Fax Notice Sent

rmCompliance: Automated Workflow

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Compliance
(Insurance Requirements)

Create and Import Certificate of Insurance

You will need the information contained in the following section to prepare a certificate of insurance.

Certificate Holder: [Field]
Certificate Holder Address: [Field]

Named Insured: [Field]
Print Request

Please select how you want to provide us with a copy of the Certificate of Insurance:

☑ Option 1: Attach Certificate (Preferred Method)
☐ Option 2: Email Certificate
Please send the document to the following unique email address:

☒ Option 3: Fax Certificate

Do you want to save time?
I want to learn how EXGIS can help me automate the generation of the certificate of insurance.

Professional Certification and Acknowledgement

I hereby certify to the best of my knowledge the Insurance information provided in support of my client - Wise Foods - is accurate and complete.

Do you want to review the information you provided?
☐ Review Insurance Questionnaire

Digital Signature:
Confirmation ID: 10020
Broker Licenses: JSF3178
IP Address: 24.103.218.28
Date: 6/25/2009 12:00:06 PM

Steven Miller
Steven Miller, License #JSF3178

Includes Time & Date Stamp, Computer IP Address, & Broker License Number

Broker Certifies the Accuracy of Submitted Policy Information & Certificate of Insurance

Broker is Prompted to Provide Submit Certificate of Insurance via Attachment, Email, or Fax

June 25, 2009
Compliance
(Insurance Requirements)

Next Steps:

- Real Estate
  - Registration Phase
  - Compliance Phase
  - Reporting Phase
- Contracts & Maritime
  - Phase 2
Questions?

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