

Port of Portland Terminal 6 Lease Agreement: Key Elements

American Association of Port Authorities
2011 Maritime Economic Development Seminar

Jeromy S. Cannon
Associate

312.701.7732
jcannon@mayerbrown.com

July 2011

Lessee Pays Rent (Upfront and Annual) to Port for Right to Collect User Fees from T6 for 25 Years

- Rent
 - Upfront Closing Payment for acquisition of rights and purchase of certain equipment
 - Annual Rent with CPI escalation
 - Annual Performance Security
 - TEU Assessment and Intermodal Assessment act as a form of revenue-sharing
- Right to Collect User Fees
 - Lessee has the right to establish and collect fees (dockage, wharfage, etc.) from users of T6
 - User Fees subject to Shipping Act constraints
- 25-Year Term

Maintenance and Capital Improvements

- Lessee is responsible for all regular maintenance and repair of the T6 facilities, except that Port is responsible for berth maintenance, certain maintenance for cranes, exterior of buildings and underlying common infrastructure and systems
- Port obligated to complete certain in-progress capital projects as of the date of the Lease and to remedy certain identified maintenance deficiencies
- Lease incentivizes cooperation and agreement for future capital improvements
- Ongoing planning for capital improvements required under Operating Standards
- Parties agree to negotiate regarding capital expansion of T6 at the reasonable request of one party or when annual throughput exceeds 400,000 TEUs

Operating Standards

- Compliance required but flexibility provided
- Lessee can propose alternatives
- Port can modify Operating Standards

Competing Container Terminal Protection

- Port agreed not to plan, construct or permit the construction of a “Competing Container Terminal” on land owned or controlled by Port until throughput at T6 reaches 700,000 TEU or 15 years after the closing.
 - “Competing Container Terminal” means those marine container shipping terminals that were not in existence at the time of the Agreement that directly compete for the same business as T6 or would reasonably be likely to have a material adverse effect on the value of Lessee’s interest under the Agreement.
- After the restricted period, Port is free to construct/operate (either itself or through contract) a Competing Container Terminal, but Lessee has a right of first negotiation. In addition, Lessee has a limited right to match an agreement resulting from a bi-lateral negotiation. The limited right to match does not extend to a competitive procurement by Port.

Lessee Exclusivity

- Lessee agreed that, during the term of the Lease, neither Lessee nor its affiliates would operate, construct, maintain or have any financial interest in any other marine container terminals in Oregon, Washington or California, without the consent of Port.

Terminal Contracts

- Port's existing customer contracts and service/warranty agreements assigned to Lessee
- Port's labor contracts retained
 - Lessee to become party to collective bargaining agreement with International Longshore and Warehouse Union by joining Pacific Maritime Association
 - Port retains collective bargaining agreement with District Council of Trade Unions because Port maintains obligation to perform certain obligations for cranes
 - Port retains collective bargaining agreement with security services personnel because Port maintains obligation to provide security services for T6

Liability and Insurance

- Port retains pre-commencement liabilities, including liabilities related to the condition of land and any environmental issues
- Lessee assumes all other ongoing liabilities
- Lessee required to comply with specific insurance requirements

Inspection and Reporting Requirements

- Port retains right to inspect
- Port retains right to repair to the extent that there is an Event of Default or to address emergency or other danger
- Lessee required to provide various reports: Terminal Characteristics Reports, Vessel Reports, Incidents/Emergencies Reports, Environmental Reports, Financial Reports, etc.

Defaults and Remedies

- Lessee Default could lead to termination by Port in certain circumstances
 - Failure to comply with material obligation
 - Reasonably long cure periods
- Port Default could lead to termination by Lessee in certain circumstances
 - Discriminatory Change in Law
 - Failure to comply with material obligation
 - Reasonably long cure periods
- Diminishing termination payment (applicable to either party) if Lease is terminated during first 10 years due to default by one party
- Informal dispute resolution, mediation, technical dispute resolution

Questions/Contact Information

Questions?

Contact Information

Jeromy Cannon
Mayer Brown LLP
71 South Wacker Drive
Chicago, Illinois 60606
312.701.7732
jcannon@mayerbrown.com
www.mayerbrown.com