

# Staff Report 28

## APPLICANT:

---

Bandwidth IG, LLC

## PROPOSED ACTION:

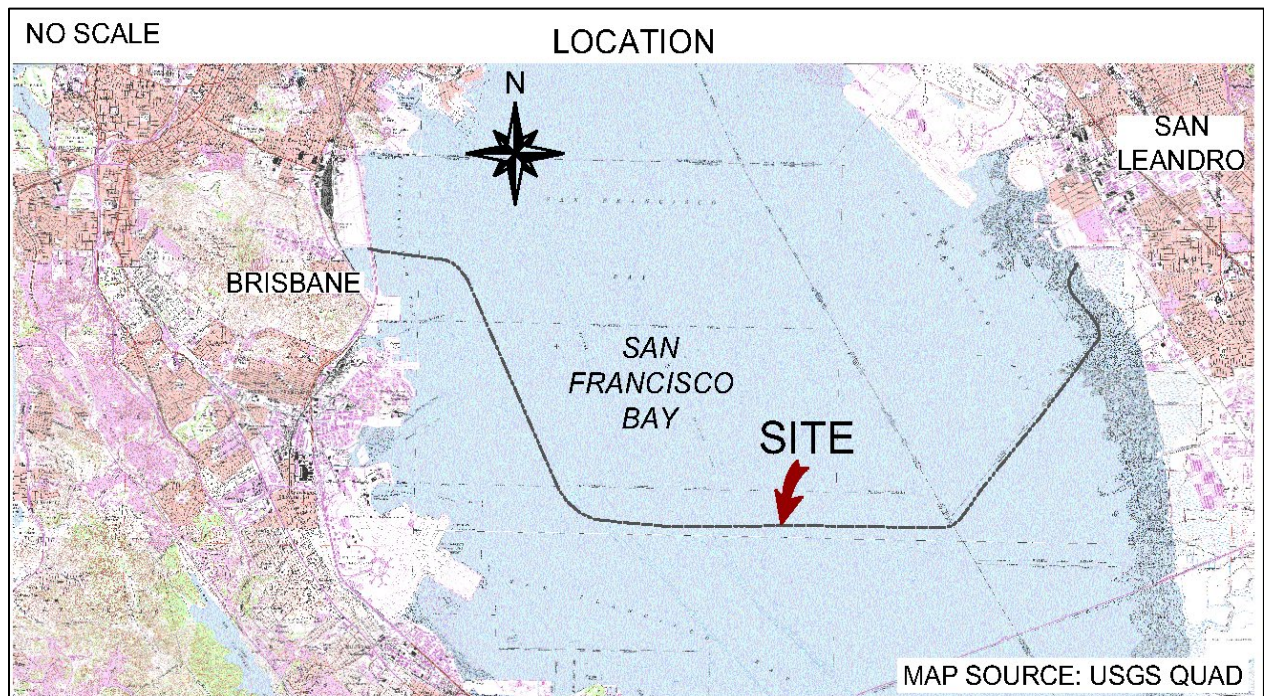
---

Consider adoption of a Mitigated Negative Declaration (MND), adoption of a Mitigation Monitoring Program, and Issuance of a General Lease – Right-of-Way Use

## AREA, LAND TYPE, AND LOCATION:

Sovereign tide and submerged land in the San Francisco Bay (SF Bay), between Brisbane in San Mateo County and San Leandro in Alameda County (as shown in Figure 1).

**Figure 1. Location**





**AUTHORIZED USE:**

Installation and use of two 2-inch-diameter buried fiber optic cables and one 8-inch-diameter high-density polyethylene (HDPE) conduit (as shown in Figure 2).

**Figure 2. Site Map**



NOTE: This depiction of the lease premises is based on unverified information provided by the applicant or other parties and is not a waiver or limitation of any State interest in the subject or any other property.

**TERM:**

25 years, beginning June 5, 2023.

**CONSIDERATION:**

\$342,452 per year, with an annual Consumer Price Index adjustment and the State reserving the right to fix a different rent periodically during the lease term, as provided for in the lease.

**SPECIFIC LEASE PROVISIONS:**

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- Contractor liability insurance in an amount no less than \$5,000,000 per occurrence.
- Bond or other surety in the amount of \$5,000,000, to be reviewed every five years.
- At least 60 days prior to the start of the Project, Lessee shall provide for Lessor's review: engineering drawings as issued for construction, certified (stamped, signed, and dated) by a California Registered Civil/Engineer; a site-specific geotechnical report certified by a California Registered Geotechnical Engineer; and a set of horizontal directional drilling calculations, certified by a California Civil/Structural Engineer.
- At least 30 days prior to start of the Project, Lessee shall provide for Lessor's review: a detailed drilling program with detailed specifications of the boring machine; detailed specifications of the mud system; detailed inadvertent return contingency plan; and abandonment contingency plan for operations should work be suspended; construction contractor's work plan; a specific hazardous spill contingency plan; a critical operations and curtailment plan; a vessel anchoring plan; a construction schedule timeline; and written consent from each utility owner of all crossings.
- Within 60 days of completing construction, Lessee shall submit: a set of "as built" drawings for the entire Project certified (stamped, signed, and dated) by a California registered Civil/Structural Engineer and showing all design changes or other amendments to the construction drawings as originally approved; a bay floor survey map that shows the final cable locations, conduits, crossings, and burial depths; a post construction diver video survey; and a post construction written narrative report.
- Based on the "as-built" drawings received, Lessor shall then replace Lease Exhibit A (Land Description) and Exhibit B (Site and Location Map) as necessary to accurately reflect the final location of the authorized improvements within the Commission's jurisdiction. Once approved by Lessor's Executive Officer or designee and Lessee, the revised Exhibits shall replace the Exhibits incorporated

in the Lease at the time of Lease execution. The replaced Exhibits shall be incorporated in the Lease as though fully set forth therein.

- Should staff's review of the as-built plans and survey identify a change in the improvements that necessitates a change in the annual rent, Lessee agrees to submit an application, within 60 days following notice from Lessor's staff, to request a lease amendment to reflect such changes.
- Within 12 months of completing construction, Lessee shall perform a cable burial depth survey in areas where water depths are between 0 and 15 feet below the Ordinary High-Water Mark.

## **BACKGROUND:**

---

As the world relies on faster and more bandwidth-intensive data transmission, the data transferring infrastructure, such as fiber optic cables, needs to be upgraded to keep up with technical advancements to transmit uninterrupted data. Virtually all communications and data transmissions are converted to digital data and transmitted across fiber optic cables. Even though radio and satellites can transmit data over long distances, only fiber optic cables presently supply the volume, speed, reliability, and cost efficiency to meet current and expected data demands.

## **STAFF ANALYSIS AND RECOMMENDATION:**

---

### **AUTHORITY:**

Public Resources Code sections 6005, 6216, 6301, 6501.1, and 6503; California Code of Regulations, title 2, sections 2000 and 2003.

### **CALIFORNIA ENVIRONMENTAL QUALITY ACT:**

The Commission, as the lead agency for the proposed Project pursuant to the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.), conducted an Initial Study to determine if the Project may have a significant effect on the environment (State CEQA Guidelines, § 15063). The Initial Study identified potentially significant impacts to Air Quality; Biological Resources; Cultural Resources; Cultural Resources – Tribal; Greenhouse Gas Emissions; Hazards and Hazardous Materials; Hydrology and Water Quality; Recreation; and Transportation. However, mitigation measures were proposed and agreed to by the Applicant prior to public review of the draft MND that would avoid or mitigate the identified

potentially significant impacts “to a point where clearly no significant effects would occur” (State CEQA Guidelines, § 15070, subd. (b)(1)). Consequently, the Initial Study concluded that “there is no substantial evidence, in light of the whole record before the agency, that the Project as revised may have a significant effect on the environment” (State CEQA Guidelines, § 15070, subd. (b)(2)), and a Mitigated Negative Declaration (MND) was prepared.

Pursuant to the Commission’s delegation of authority and the State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15025), staff prepared an MND identified as California State Lands Commission MND No. 813, State Clearinghouse No. 2023040125. The proposed MND and Initial Study were circulated for a 30-day public review period from Thursday April 6, 2023, to Monday, May 8, 2023. Staff received comments from the Department of Fish and Wildlife (CDFW), California Department of Transportation (Caltrans), and East Bay Dischargers Authority. The comments and staff’s responses are contained in the attached Exhibit B.

As requested in CDFW’s comment letter, staff revised certain sections in the [MND](#) and Mitigation Measure (MM) BIO-6 and MM BIO-7 to address concerns about impacts to longfin smelt. CDFW staff provided evidence that longfin smelt are present within the Project location year-round and thus an in-water work window, as required by MM BIO-6, would be ineffective for that species. A smaller screen-size on the jet intake, as required by revised MM BIO-7, would prevent or mitigate potential harm to longfin smelt, if present during construction. The MMs as revised are more protective of longfin smelt. Staff determined that these changes do not constitute a “substantial revision,” as defined in State CEQA Guidelines section 15073.5, subdivision (b), and that recirculation of the MND prior to Commission consideration is not required pursuant to in State CEQA Guidelines section 15073.5, subdivision (c).

Based upon the Initial Study, the MND, and the comments received in response thereto, there is no substantial evidence that the Project will have a significant effect on the environment. (Cal. Code Regs, tit. 14, § 15074, subd. (b).) A Mitigation Monitoring Program has been prepared in conformance with the provisions of CEQA (Pub. Resources Code, § 21081.6), and is contained in the attached Exhibit A.

### **PUBLIC TRUST AND STATE’S BEST INTERESTS:**

The proposed lease area consists of tide and submerged land situated in SF Bay, adjacent to the cities of San Leandro and Brisbane, in Alameda and San Mateo Counties. The Applicant proposes to utilize rights-of-way for the installation and use of two nonlinear, parallel, and close proximity fiber optic cables between cable



landing sites<sup>1</sup> in Brisbane and San Leandro as part of a transbay cable system. Construction would include installation of two buried fiber optic cables, and two HDPE pipeline conduits, one on either side of SF Bay, as analyzed in the [MND](#).

A majority of the Project components, including the HDD section in Brisbane (western side) and buried sections, would be under the Commission's jurisdiction. However, a portion of the buried cable, and the San Leandro HDD section (eastern side), including the second conduit would be outside of the Commission's jurisdiction on legislatively granted tide and submerged lands or on tidelands lots sold to private parties in the 1800s and now owned by the City of San Leandro. The landing sites would be located above the OHWM and outside of Commission jurisdiction.

The Project would connect into a partially complete terrestrial cable network that has independent utility from the Project analyzed in this MND<sup>2</sup>. This network extends throughout the SF Bay region and would connect to the Project at the landing vaults.

The Project would enhance telecommunication capacity within the greater SF Bay Area and connected regions by adding a direct telecommunications link across SF Bay. This telecommunications link would help to:

- Increase telecommunications reliability,
- Increase diversity of telecommunication pathways,
- Increase data transmission capacity and speeds to satisfy growing demand,
- Respond to increasing demand for connectivity.

The two cable landing sites would be used as staging areas to park vehicles, store communication equipment for terrestrial and marine-based work, and conduct horizontal directional drilling (HDD) to install the HDPE conduits. The landing sites would be approximately 66 feet by 66 feet. The two landing vaults, one on either side of SF Bay, would be precast concrete vaults measuring 12 feet long, 9 feet wide, and 10 feet deep, and would be installed at each cable landing site with a cast-iron vault cover. These vaults would provide access to the fiber optic cables and HDPE conduit for maintenance after construction.

---

<sup>1</sup> The landing site would be the general area where the HDD would enter into the ground and exit into SF Bay. The landing site would be used for staging during construction, and then a permanent landing vault would be installed that would be flush with the ground.

<sup>2</sup> As the MND explains, the Applicant (Corporate ID U7336C) will complete this terrestrial network project under California Public Utilities Commission authorization.

One new 8-inch-diameter HDPE conduit would be installed using HDD in Brisbane and another conduit of the same size would be installed in San Leandro of the SF Bay to house the two fiber optic cables near the shore. Even though the MND analysis included a proposed site and three alternatives for the western side, the Applicant will be building out Alternative 3<sup>3</sup> since it was preferred by Caltrans. Once the HDPE conduits are installed, the fiber optic cables would be pulled through starting from the western side of SF Bay and going towards the eastern side of the SF Bay.

The eastern HDPE conduit would be approximately 202 feet long and would exit at an average water depth of 0 feet and would then be buried under 5 feet of nearshore sediment during and after installation except when exposed to pull the fiber optic cables through. The eastern HDPE conduit would be installed seaward of the landing vault at a minimum depth of 6.5 feet under the cable landing site and shoreline using HDD to the exit point within SF Bay.

Once the HDPE conduits are installed, a portion of the fiber optic cables would be pulled through and housed in them. The rest of the fiber optic cables would be buried 3 to 6 feet deep without conduit in the SF Bay floor using a cable-lay vessel (with the help of two anchor-lay vessels) and jetting sled. A jetting sled is a burial tool that would be deployed by the cable-lay vessel. Close to the HDD exit points, the fiber optic cables would be installed via divers (with a dive support boat) with hand-jetting techniques.

The new lease will require the Applicant to conduct a cable burial verification inspection within 12 months following cable installation, and every 12 months thereafter on or before the anniversary date of the lease, and after major storm events. The new lease will also require the Applicant to submit a set of as-built plans that show where the improvements have been placed. If Lessor's staff review of the as-built plans identify a significant change in the improvements, a lease amendment would be required.

The landing conduits and fiber optic cables would be buried below the SF Bay floor within State waters and would not impede surface use or interfere with Public Trust needs and values at this location, at this time, and for the foreseeable term of the

---

<sup>3</sup> The MND analysis included four possible options for the western side: a proposed Western Cable Landing Site (along the Bay Trail at the southern corner of Lagoon Road and Sierra Point Parkway in Brisbane); Alternative 1 (south of the southern corner of Lagoon Road and Sierra Point Parkway in Brisbane); Alternative 2 (narrow parcel of land between the Bayshore Freeway and Sierra Point Parkway in Brisbane); and Alternative 3 (narrow parcel of land between the Bayshore Freeway and Sierra Point Parkway in Brisbane).

proposed lease. Additionally, the lease does not alienate the State's sovereign interest, or permanently impact public rights.

The lease is limited to a 25-year term and does not grant the lessee exclusive rights to the lease premises. Upon termination of the lease, the lessee may be required to remove any improvements and restore the lease premises to its original condition. Additionally, the proposed lease requires the lessee to maintain a surety bond in the amount of \$5,000,000 and to insure the lease premises and indemnify the State for any liability incurred as a result of the lessee's activities thereon. The lease also requires the payment of annual rent to compensate the people of the State for the occupation of the public land involved.

**CLIMATE CHANGE:**

Climate change impacts, including sea level rise, more frequent and intense storm events, and increased flooding and erosion, affect both open coastal areas and inland waterways in California. The lease area is in the SF Bay, in a tidally influenced site vulnerable to flooding at current sea levels that will be at high risk of flood exposure based on the projected scenarios of sea level rise in this area.

The California Ocean Protection Council updated the [State of California Sea-Level Rise Guidance in 2018](#) to provide a synthesis of the best available science on sea level rise projections and rates. Commission staff evaluated the "high emissions," "medium-high risk aversion" scenario to apply a conservative approach for the eastern and the western cable landing sites based on both current emission trajectories and the lease location. The San Francisco tide gauge was used for the projected sea level rise scenario for this Project as listed in Table 1.

**Table 1. Projected Sea Level Rise for San Francisco**

Year	Projection (feet)
2030	0.8
2040	1.3
2050	1.9
2100	6.9

Source: Table 13, [State of California Sea-Level Rise Guidance: 2018 Update](#)

Note: Projections are with respect to a 1991 to 2009 baseline.

Along with higher sea levels, winter storms of greater intensity and frequency resulting from climate change will further affect coastal areas. In rivers and tidally influenced waterways, more frequent and powerful storms can result in increased flooding conditions and damage from storm-generated debris. Climate change and sea level rise also will affect coastal and riverine areas by changing erosion and sedimentation rates. Beaches, coastal landscapes, and near-coastal riverine



areas exposed to increased wave force, run up, and total water levels could potentially erode more quickly than before. However, rivers and creeks also are predicted to experience flashier sedimentation pulse events from strong winter storms, punctuated by periods of drought. Therefore, depending on precipitation patterns, sediment deposition and accretion may accelerate along some shorelines and coasts.

The eastern and the western shoreline areas are armored with riprap to protect from wave impacts. The Alternative 3 western cable landing site route is in the “High Scenario” flooding area with a 1 percent chance, plus 6.6-foot sea level rise, or increased erosion with anticipated sea level rise. The eastern cable landing site is within an area subject to flooding at greater than 1 percent chance, annually plus 55 inches of sea level rise. As the western cable landing site would be on the west side of Highway 101 in the Caltrans Highway 101 Right-of-Way, it would generally benefit from any climate change/sea level rise adaptation measures that are implemented by Caltrans for this major highway. Even if the cable landing site floods due to sea level rise or storm surge, the fiber optic cables are manufactured to withstand submerged conditions. The fiber optic cables would also be installed within landing vaults, which are designed to protect them from sea level rise and flooding.

The buried portions of the fiber optic cables would not be affected by sea level rise. The fiber optic cables between the cable landing sites on land and the HDD exit points in the SF Bay would be drilled to depths of between 6.5 to 66 feet below the shoreline to account for any increased erosion over time.

A scour or erosion study ([Appendix F](#) in the MND) was done for the specific site. The analysis examined current and various climate change scenarios over the next 30 years by analyzing the following:

- Scouring potential in the near-shore regions of the proposed buried fiber optic cables in the South Bay of the SF Bay
- Impact of climate change on the scouring potential

The study suggests that there would be no significant scour or erosion that might expose the buried fiber optic cables from this Project.

## **TRIBAL CONSULTATION**

Staff contacted the [Native American Heritage Commission](#) (NAHC), which maintains two databases to assist specialists in identifying cultural resources of concern to California: the Sacred Lands File and Native American Contacts. A request was sent to the NAHC for a Sacred Lands File search of the Project area and a list of Native American representatives who may be able to provide

information about resources of concern located within or adjacent to the Project area. On September 19, 2022, the NAHC provided a letter and a list of 11 individual tribal contacts from the following eight tribes:

- Amah Mutsun Tribal Band of Mission San Juan Bautista
- Costanoan Rumsen Carmel Tribe
- Indian Canyon Mutsun Band of Costanoan
- Muwekma Ohlone Indian Tribe of the SF Bay Area
- North Valley Yokuts Tribe
- The Ohlone Indian Tribe
- Wuksache Indian Tribe/Eshom Valley Band
- The Confederated Villages of Lisjan

The NAHC's reply also stated that no records were identified in the Sacred Lands File for the Project Area.

Commission staff maintains a list of tribes that have requested to be notified under [AB 52 Tribal Consultation](#) for projects in their traditional and cultural affiliated geographic area. Although there were no tribes on the Commission's AB 52 list, Commission staff sent tribal outreach letters on October 24, 2022, to the eight tribes on the NAHC contact list about the proposed Project. The letters emphasized the Commission's interest to ensure those tribes have an opportunity to provide meaningful input on the potential for Tribal cultural resources to be found in the proposed Project area and recommend steps to be taken to ensure adverse impacts to Tribal cultural resources are avoided.

Commission staff received a response from the Confederated Villages of Lisjan on February 3, 2023, stating they did not have any information to supply about the Project site. The Tribe wishes to be contacted if there are any findings.

### **ENVIRONMENTAL JUSTICE:**

Environmental justice is defined by California law as “the fair treatment and meaningful involvement of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies” (Government Code, section 65040.12, subdivision (e)). This definition is consistent with the Public Trust Doctrine principle that the management of trust lands is for the benefit of all people. The Commission's [Environmental Justice Policy](#) ensures that environmental justice is an essential consideration in the Commission's processes, decisions, and programs. Through its policy, the Commission reaffirms its commitment to an informed and open process in which all people are treated equitably and with dignity, and in which its decisions are tempered by environmental justice considerations. Among

other goals, the Policy commits the Commission to, “Strive to minimize additional burdens on and increase benefits to marginalized and disadvantaged communities resulting from a proposed project or lease.”

The Project is needed to keep up with the technical advancements for transmitting uninterrupted data in the greater SF Bay Area and connected regions. This direct telecommunication link across the SF Bay would increase telecommunications reliability, diversity of telecommunications pathways, and help respond to growing demand for capacity and speed in the region. These Project benefits would also be realized for marginalized and disadvantaged communities in the SF Bay Area and connected regions.

**CONCLUSION:**

For all the reasons above, staff believes the issuance of the proposed lease will not substantially impair the public rights to navigation, fishing, and commerce, or substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; and is in the best interests of the State.

**OTHER PERTINENT INFORMATION:**

---

1. Approval or denial of the application is a discretionary action by the Commission. Each time the Commission approves or rejects a use of sovereign land, it exercises legislatively delegated authority and responsibility as trustee of the State’s Public Trust lands as authorized by law. If the Commission denies the application, the Applicant will not be authorized to install its landing HDPE conduits and fiber optic cables. The Lessee has no right to a new lease or to renewal of any previous lease.
2. The Applicant will be building out Alternative 3 as analyzed in the MND for the western side cable landing site, as this alternative was preferred by Caltrans. This and all other alternatives were analyzed in the MND. The proposed Project would not cross the existing Kinder Morgan pipelines, under Lease 9041, in SF Bay or on land. The proposed Project would cross an abandoned Shell pipeline, under Lease 3291, in SF Bay. This crossing is far enough away from the shoreline that only the fiber optic cables, and not the HDPE conduits, would cross the Shell pipeline. The Applicant would consult and negotiate all crossings with pipeline owners.
3. This action is consistent with the “Prioritizing Social, Economic, and Environmental Justice,” “Partnering with Sovereign Tribal Governments and Communities,”

“Meeting Evolving Public Trust Needs,” and “Committing to Collaborative Leadership” Strategic Focus Areas of the Commission’s 2021-2025 Strategic Plan.

4. This activity involves lands identified as possessing significant environmental values within the Commission’s Significant Lands Inventory, pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon staff’s consultation with the persons nominating such lands and through the CEQA review process, it is staff’s opinion that the Project, as proposed, is consistent with its use classification.

## **APPROVAL OBTAINED:**

---

California Department of Transportation

## **APPROVALS REQUIRED:**

---

United States Army Corps of Engineers  
United States Coast Guard  
United States Fish and Wildlife Service  
National Marine Fisheries Service  
California Department of Fish and Wildlife  
San Francisco Bay Conservation and Development Commission  
San Francisco Bay Regional Water Quality Control Board  
State Historic Preservation Office  
City of San Leandro  
City of Brisbane  
City of South San Francisco

## **EXHIBITS:**

---

- A. Mitigation Monitoring Program
- B. Responses to CEQA Comments

## **RECOMMENDED ACTION:**

---

It is recommended that the Commission:



**CEQA FINDING:**

Certify that the MND, MND No. 813 (June 2023), State Clearinghouse No. 2023040125, was prepared for this project pursuant to the provisions of CEQA, that the Commission has reviewed and considered the information contained therein, and in the comments received in response thereto, and that the MND reflects the Commission's independent judgment and analysis.

Find that Mitigation Measures BIO-6 and BIO-7, as amended in the final MND, are equivalent or more effective in mitigating or avoiding potential significant effects and that they in themselves will not cause any potentially significant effect on the environment.

Adopt the MND and determine that the project, as approved, will not have a significant effect on the environment.

Adopt the Mitigation Monitoring Program, as contained in the attached Exhibit A.

**PUBLIC TRUST AND STATE'S BEST INTERESTS:**

Find that the proposed lease will not substantially impair the public rights to navigation, fishing, and commerce or substantially interfere with Public Trust needs and values at this location, at this time and for the foreseeable term of the lease; and is in the best interests of the State.

**SIGNIFICANT LANDS INVENTORY FINDING:**

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

**AUTHORIZATION:**

Authorize issuance of a General Lease – Right-of-Way Use to the Applicant beginning June 5, 2023, for a term of 25 years, for the installation and use of two 2-inch-diameter buried fiber optic cables and one 8-inch-diameter HDPE conduit; annual rent in the amount of \$342,452 with an annual Consumer Price Index adjustment, and with the State reserving the right to fix a different rent periodically during the lease term, as provided for in the lease; liability insurance in an amount no less than \$1,000,000 per occurrence; contractor liability insurance in an amount no less than \$5,000,000 per occurrence; and a surety bond in the amount of \$5,000,000 to be reviewed every 5 years.