

**STAFF REPORT
C16**

A 3, 12, 21
S 4, 5, 8, 12

11/29/17
PRC 9296.9
M. Schroeder

AMENDMENT OF LEASE

LESSEE:

CVIN, LLC

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in the Sacramento River, Feather River, Stanislaus River, Tuolumne River, and Merced River, in Colusa, Sutter, Yuba, San Joaquin, Stanislaus and Merced counties.

AUTHORIZED USE:

Use and maintenance of four existing 4-inch-diameter galvanized steel casing conduits, each carrying two 1.25-inch-diameter high density polyethylene (HDPE) fiber optic cable conduits, all attached to authorized existing bridges; and one existing 8-inch-diameter HDPE casing conduit carrying two 1.25-inch-diameter HDPE fiber optic cable conduits, horizontally directionally drilled (HDD) beneath the riverbed.

LEASE TERM:

20 years, beginning December 18, 2015.

CONSIDERATION:

Public benefit derived from Lessee's acceptance of franchise obligations pursuant to California Public Utilities Code section 7901.

PROPOSED AMENDMENT:

Amend the lease to:

1. Authorize the proposed installation, use and maintenance of one 4-inch-diameter HDPE conduit, carrying one 1.25-inch-diameter HDPE fiber optic cable conduit and one 1.347-inch-diameter HDPE 4-way conduit, located on the proposed Fifth Street Bridge (Bridge Number 18C-0012), also known as the Twin Cities Memorial Bridge, authorized under Lease No. PRC 1929.9 (counties of Sutter and Yuba), crossing the Feather River; and the demolition and removal of the existing 4-inch-diameter galvanized

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steel casing conduit, carrying two 1.25-inch-diameter HDPE fiber optic cable conduits.

2. Include special lease provisions related to construction.
3. Replace the existing Exhibit A, Land Description, and Exhibit B, Site and Location Map, with the attached Exhibit A, Land Description, and Exhibit B, Site and Location Map (for reference purposes only).

All other terms and conditions of the lease shall remain in effect without amendment.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, 6301, 6501.1; California Code of Regulations, title 2, section 2000, subdivision (b).

Public Trust and the State's Best Interests Analysis:

The Lessee has the right to use the uplands adjoining the lease premises. On December 18, 2015, the Commission authorized a 20-year General Lease – Right-of-Way Use to CVIN, LLC, for four existing 4-inch-diameter galvanized steel casing conduits, each carrying two 1.25-inch-diameter HDPE fiber optic cable conduits attached to authorized existing bridges ([Item C05, December 18, 2015](#)). CVIN, LLC, under the American Recovery and Reinvestment Act, received grant funds through the Broadband Technology Opportunities Program and other grants to expand intrastate access to broadband services in unserved and underserved areas of central California. Of the total 817 miles of fiber-based infrastructure, approximately 723 miles of the route required new construction. Five river crossings under the leasing jurisdiction of the Commission were within the project route and consist of four bridge attachments and an underground bored crossing beneath the bed of the Sacramento River. The project construction was completed in 2013. The lease issued in support of the project will expire on December 17, 2035.

The Lessee is now applying to amend the lease to remove the existing conduit on the Fifth Street Bridge, also known as the Twin Cities Memorial Bridge, and install a 4-inch-diameter HDPE conduit, carrying one 1.25-inch-diameter HDPE fiber optic cable conduit and one 1.347-inch-diameter HDPE 4-way conduit, on the proposed Fifth Street Bridge authorized under Lease No. PRC 1929.9, crossing the Feather River. Removal and construction of the new Fifth Street Bridge was authorized by the Commission on October 13, 2016 ([Item C11, October 13, 2016](#)).

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The proposed conduit will be attached to the structure of the Fifth Street Bridge and will not significantly alter the land nor interfere with Public Trust resources or uses on sovereign lands underlying the bridge. The lease does not alienate the State's fee simple interest, and neither permanently impairs public rights. The lease is limited to a 20-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 their original condition.

The lease requires the Lessee to insure the lease premises and indemnify the State for any liability incurred as a result of the lessee's activities thereon. For all the reasons above, staff believes the proposed lease amendment is consistent with the common law Public Trust Doctrine and in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction.
2. A Mitigated Negative Declaration (MND), State Clearinghouse No. 2013082011, was prepared by the City of Yuba City and adopted on August 19, 2014. Staff reviewed such document and the Mitigation Monitoring Program prepared pursuant to the provisions of the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21081.6) and adopted by the lead agency. The Commission considered the MND at its October 13, 2016, meeting ([Item C11, October 13, 2016](#)) for the Fifth Street Bridge Replacement Project. As part of the Commission's approval of the lease to the City of Yuba City, the Commission adopted a Mitigation Monitoring Program made in conformance with the State CEQA Guidelines (Cal. Code Regs., tit. 14, §§ 15091, 15096), as contained in Exhibit C to Item C11 at the October 13, 2016, meeting.
3. Staff reviewed the project activities associated with the removal of the one existing 4-inch-diameter galvanized steel casing conduit, carrying two 1.25-inch-diameter HDPE fiber optic cable conduits and construction and installation of the HDPE conduit, carrying an HDPE fiber optic cable conduit and an HDPE 4-way conduit, and determined that the associated direct and indirect impacts are fully contemplated within the MND and the Greenhouse Gas and Climate Change Analysis found in [Item C11, October 13, 2016](#), and thus recommends that no additional CEQA

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analysis is required as specified in Public Resources Code section 21166 and section 15162, subdivision (a) of the State CEQA Guidelines.

4. This activity involves lands identified as possessing significant environmental values 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.

APPROVALS REQUIRED:

Central Valley Flood Protection Board
Yuba City Encroachment Permit
City of Marysville Encroachment Permit

EXHIBITS:

- A. Land Description
- B. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that a Mitigated Negative Declaration, State Clearinghouse No. 2013082011, and a Mitigation Monitoring Program were prepared by the City of Yuba City and adopted on August 19, 2014, for this Project; that the Commission approved the Fifth Street Bridge Replacement Project and adopted a Mitigation Monitoring Program on October 13, 2006; that the Commission has reviewed and considered the information contained therein; that in the Commission's independent judgement, the scope of activities to be carried out under the lease to be issued by this authorization have been adequately analyzed; that none of the events specified in Public Resources Code section 21166 or the State CEQA Guidelines section 15162 resulting in any new or substantially more severe significant impact has occurred; and, therefore, no additional CEQA analysis is required.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed amendment of Lease No. PRC 9296.9 will not substantially impair public rights to navigation and fishing or substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; is consistent with the

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common law Public Trust Doctrine; 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 the amendment of Lease No. PRC 9296.9, a General Lease – Right-of-Way Use, effective November 29, 2017, to approve the proposed installation, use, and maintenance of one 4-inch-diameter HDPE conduit, carrying one 1.25-inch-diameter HDPE fiber optic cable conduit and one 1.347-inch-diameter HDPE 4-way conduit, located on the new Fifth Street Bridge, also known as the Twin Cities Memorial Bridge, authorized under Lease No. PRC 1929.9 (counties of Sutter and Yuba), crossing the Feather River, and the demolition and removal of one existing 4-inch-diameter galvanized steel casing conduit, carrying two 1.25-inch-diameter HDPE fiber optic cable conduits; to include special lease provisions related to construction; and to replace the existing Exhibit A, Land Description, and Exhibit B, Site and Location Map, with the attached Exhibit A, Land Description, and Exhibit B, Site and Location Map (for reference purposes only); all other terms and conditions of the lease shall remain in effect without amendment.

EXHIBIT A

PRC 9296.9

LAND DESCRIPTION

Five Parcels of State Owned Lands lying in the State of California, more particularly described as follows:

PARCEL 1

A 4 foot wide strip of submerged land lying in the bed of the Sacramento River, adjacent to Lot 5 of fractional Section 13, Township 15 North, Range 1 West, M.D.B. & M., according to Official Government Township Plat approved January 18, 1868, Counties of Colusa, and Sutter, State of California, the centerline of which is described as follows:

COMMENCING at the Southeast corner of said Section 13; thence N 62°27'52" W 1626 feet to the POINT OF BEGINNING; thence N 89°09'36" W 293 feet to the terminus of said strip.

EXCEPTING THEREFROM any portion lying landward of the Low Water Mark of the right and left banks of the Sacramento River.

The BASIS OF BEARINGS of this strip is California Coordinate System of 1983, Zone 2. All distances are grid distances.

PARCEL 2

A 4 foot wide strip of submerged land lying in the bed of the Feather River, adjacent to Lots 37 and 38 of New Helvetia Rancho, Counties of Yuba and Sutter, State of California, the centerline of which lies 22 feet northerly of, as measured at right angles, the following described line:

COMMENCING at the southeast corner of "Teagarden Addition to Yuba City", filed in the Office of the County Recorder of Sutter County on June 23, 1888 in Book "T" of Deeds at Page 126, said point being at the intersection of the westerly line of Sutter Street with the northerly line of Bridge Street in said Yuba City; Thence North 49°27'07" East 483.53 feet to a point at the beginning of an arc of a curve concave southeasterly having a radius of 4032.00 feet, radial line to said point bears North 21°28'57" West, said point being the TRUE POINT OF BEGINNING of the herein described lease; Thence northeasterly along the arc of said curve a distance of 426.94 feet, through a central angle of 06°04'01" being the POINT OF TERMINATION of this description.

Sidelines of said strip shall be lengthened or shortened so as to terminate at the Low Water Marks of said Feather River.

EXCEPTING THEREFROM any portion lying landward of the Low Water Mark of the right and left banks of the Feather River.

The basis of bearings for the above described parcel of land are referenced to the California Coordinate System, Zone 2 originating from found monuments KS1971 and KS1813 established by the National Geodetic Survey and part of the national readjustment of 2007. All distances are ground measurement.

PARCEL 3

A 4 foot wide strip of submerged land lying in the bed of the Stanislaus River, adjacent to fractional Sections 16 and 17, Township 2 South, Range 9 East, M.D.B. & M., according to official government township plat approved December 30, 1854, Counties of San Joaquin and Stanislaus, State of California, the centerline of which lies 15 feet westerly of, as measured at right angles, the following described line:

COMMENCING at the southwest corner of said Section 16; thence along the west line of said Section N 0°35'00" E 985.65 feet to a U.S. Meander Corner; thence continuing along said west line N 0°16'25" E 950 feet more or less to the south bank of said Stanislaus River and the POINT OF BEGINNING; thence continuing along said west line N 0°16'25" E 230 feet more or less the north bank of said Stanislaus River, and the terminus of said line.

EXCEPTING THEREFROM any portion lying landward of the Low Water Mark of the right and left banks of the Stanislaus River.

PARCEL 4

A 4 foot wide strip of submerged land lying in the bed of the Tuolumne River, adjacent to Swamp and Overflow surveys 37, 99, and 103, Township 4 South, Range 9 East, M.D.B. & M., according to official government township plat approved December 30, 1854, County of Stanislaus, State of California, the centerline of which lies 40 feet easterly of, as measured at right angles, the following described line:

BEGINNING at a point at the intersection of the west line of said Section 1, and the south bank of said Tuolumne River, bearing North 2484.80 feet from the southwest corner of said Section 1; thence North along said west line 656.00 feet to the north bank of said River, and the terminus of said line.

EXCEPTING THEREFROM any portion lying landward of the Low Water Mark of the right and left banks of the Tuolumne River.

PARCEL 5

A 4 foot wide strip of submerged land lying in the bed of the Merced River, adjacent to Swamp and Overflow surveys 52 and 96, Township 6 South, Range 12 East, M.D.B. & M., according to official government township plat approved January 31, 1853, County of Merced, State of California, the centerline of which lies 12 feet easterly of, as measured at right angles, the following described line:

COMMENCING at the North ¼ Corner of said Section 8; thence along the north line of said Section N 89°27' 00" E 104.17 feet; thence leaving said north line S 15°39'00" E 2372.98 feet, more or less, to the north bank of said Merced River, and the POINT OF BEGINNING; thence S 15°39'00" E 436 feet to the south bank of said River, and the terminus of said line.

EXCEPTING THEREFROM any portion lying landward of the Low Water Mark of the right and left banks of the Merced River.

END OF DESCRIPTION

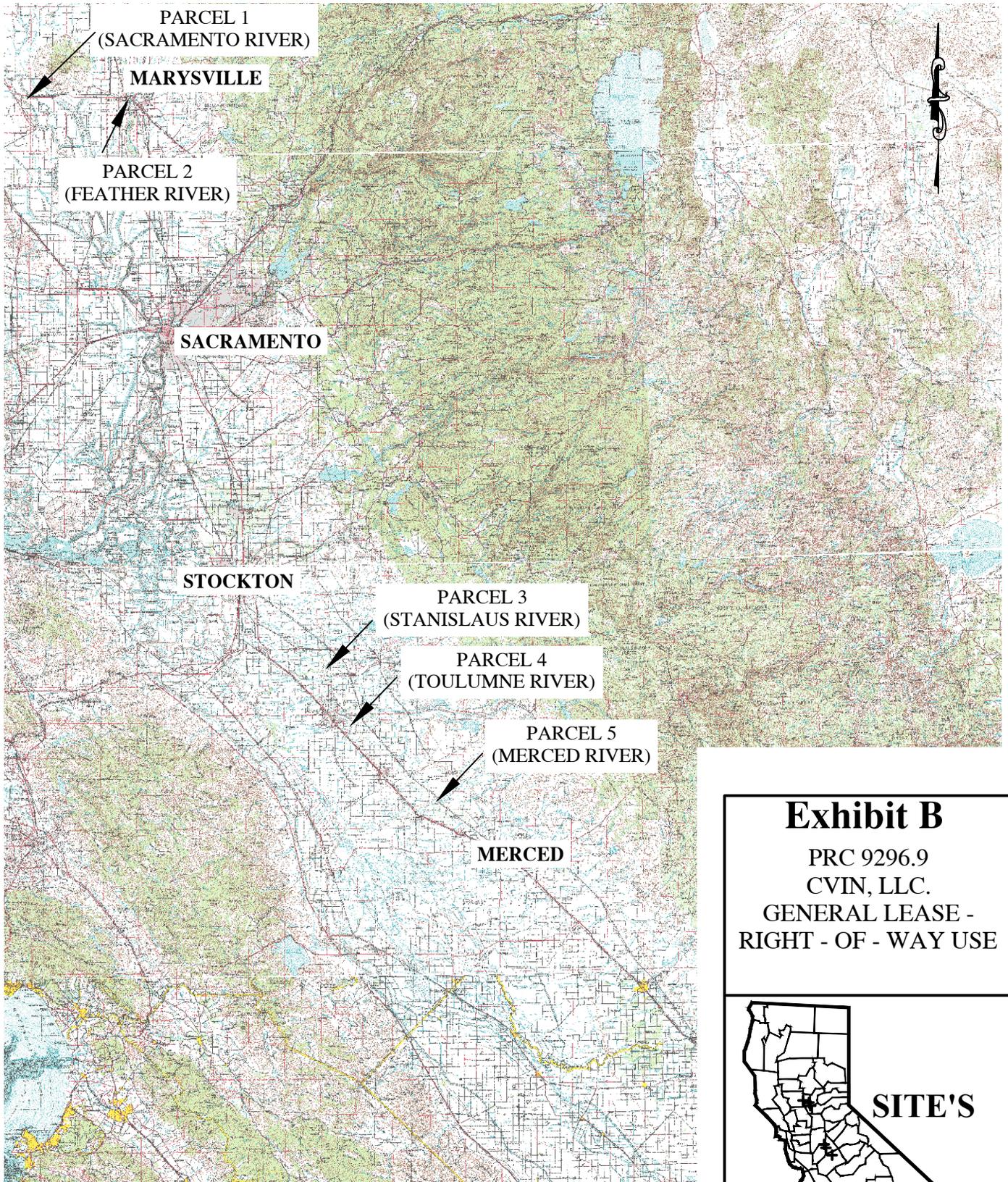
Parcels 1 and 3-5 were revised by the California State Lands Commission Boundary Unit 11/9/2015. Original description prepared by Steve Lehman on 11/17/2011 as found in W26508 file.

Parcel 2 is based on the Land Description for PRC 1929.9 (5th Street Bridge Relocation), prepared by Terry Fletcher, LS 5834 on 9/6/2016, on file in PRC 1929.9 at the Sacramento Office of the California State Lands Commission.



NO SCALE

SITE



MAP SOURCE: USGS QUAD

Exhibit B
PRC 9296.9
CVIN, LLC.
GENERAL LEASE -
RIGHT - OF - WAY USE



This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

DJF 09/22/17