

REGIONAL TRANSIT ISSUE PAPER

| Agenda Item No. | Board Meeting Date | Open/Closed Session | Information/Action Item | Issue Date |
|-----------------|--------------------|---------------------|-------------------------|------------|
| 7 | 11/09/09 | Open | Action | 10/23/09 |

Subject: Amending and Restating Article VII of the Administrative Code Regarding Real Property

ISSUE

Whether to amend and restate Title VII of RT's administrative code to grant the General Manager/CEO authority to enter into Exclusive Negotiation Agreements (ENA) with developers selected through a competitive bid process and grant licenses and easements under certain specified conditions.

RECOMMENDED ACTION

Adopt Resolution No. 09-11-_____, Amending and Restating Article VII of the Administrative Code Regarding Real Property.

FISCAL IMPACT

None

DISCUSSION

RT routinely receives requests for grants of license and easement interests in real property either owned or controlled by RT, from both public and private entities. Generally the requesting entity requires access to RT's real property for overhead, underground transverse crossings of the right of way for water, sewer, electric, fiber optic, longitudinal uses for temporary fixtures, and improvements, vehicular crossing of the right of way at-grade on RT-owned property. Pursuant to Title VII, only the Board has authority to grant licenses and easement interests in real property owned or controlled by RT. Because granting such interests requires Board authority, approval of such agreements is often delayed. Typically, requests from the public for use of RT owned or controlled property are of a non-controversial nature, and generally, such requests are time sensitive and require immediate response from RT staff. As such, in order for RT to respond to such requests in a timely manner, staff requests that the Board authorize the General Manager/CEO or his designee the authority to grant licenses and easements to public and private entities conditioned upon the following: (1) that the term of the license or easement will be of no greater duration than 25 years; (2) that the total consideration charged for the interest be determined consistent with a fee structure to be adopted by the Board; and (3) that the total consideration does not exceed \$100,000.

Presently Article VII Section 7.5.02, General Manager/CEO Approval of Leases for Joint Development of RT Property authorizes the General Manager/CEO to enter into leases for a term not to exceed 5 years and amount not to exceed \$50,000. This provision further restricts the General Manager /CEO to entering into leases only if there is no market or anyone other than the adjacent property owner. As presently written this provision limits or prohibits RT's ability to enter into long term revenue leases. Therefore staff recommends deleting this language from this section of the Administrative Code.

Approved:



General Manager/CEO

Presented:



Director of Real Estate

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Additionally, when RT completes a solicitation to identify a developer to work on a Joint Development Project, the General Manager/CEO negotiates and executes the ENA. The practice is in place based on an understanding that the Board delegated its authority to the General Manager/CEO in a closed session discussion. However, such authority is not spelled out in Title VII or in any other authorizing document. In order to ensure that the General Manager/CEO's authority is fully understood, staff believes that Title Section 7.5.04 of Title VII should be modified to explicitly grant the General Manager/CEO authority to negotiate and execute ENAs.

Finally Chapter 7 General Manager/CEO Authority Section 7.7.01 Contract Price and Term is recommended for amendment to conform with the General Manager/CEO's contract authorization limit of \$100,000 and term of contract limit up to twenty-five (25) years.

Title VII of the RT Administrative Code has been amended twice since 1993. In order to incorporate all amendments into one comprehensive document, RT staff recommends that the Board Amend and Restate Title VII and repeal Resolutions Numbers 93-05-1925 and 99-07-0194.

RESOLUTION NO. 09-11-_____

Adopted by the Board of Directors of the Sacramento Regional Transit District on this date:

November 9, 2009

**AMEND AND RESTATE TITLE VII OF THE SACRAMENTO
REGIONAL TRANSIT DISTRICT
ADMINISTRATIVE CODE REGARDING REAL PROPERTY**

WHEREAS, *Public Utilities Code §102240* gives the District broad authority to devise or lease real property; and

WHEREAS, Title VII of the Administrative Code sets out policies and procedures pertaining to entitlements to, and disposition of, real property owned by Regional Transit; and

WHEREAS, this Board desires to amend Title VII of the Administrative Code to expand the General Manager/CEO's authority to enter into certain agreements related to real property interests owned by or to be acquired by Regional Transit without obtaining the advance approval of the Board; and

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE BOARD OF DIRECTORS OF THE SACRAMENTO REGIONAL TRANSIT DISTRICT AS FOLLOWS:

THAT, Resolution No. 93-05-1925 is hereby repealed.

THAT, Resolution No. 99-07-0194 is hereby repealed.

THAT, Title VII of the Sacramento Regional Transit District Administrative Code relating to policies and procedures for granting entitlements to, and disposing of, real property owned by the District be adopted as follows:

TITLE VII
REAL PROPERTY OF THE SACRAMENTO
REGIONAL TRANSIT DISTRICT

CHAPTER 1

DEFINITIONS

§7.1.01 DEFINITIONS

For the purposes of Title VII of the Sacramento Regional Transit District Administrative Code, the following terms shall be defined as follows:

- A. Airspace means the area above the ground or above any existing facilities which could be used for development without interference with the existing or planned operation of RT's light rail or bus transit system.
- B. Crossing Entitlement means a right granted to adjacent property owners, a city or county, or public or private utilities for vehicles and/or pedestrians to transverse the light rail right of way by virtue of a lease, easement, encroachment permit, utility permit, license or other entitlement from RT or a preservation of rights by the prior property owners.
- C. Excess Property Rights means property rights held by RT where the underlying fee, easement or lease interest must be retained because the property is or is planned to be part of the light rail or bus transit system, and there is excess land or airspace which is not needed for existing or planned transit operations.
- D. Light Rail Right of Way means the strip of land where light rail tracks are either currently located or are designated for future installation.
- E. Joint Development means surface, subsurface, and/or airspace development by a public or private entity at RT property where the RT Board determines that there are excess property rights and the proposed development will not interfere with the existing or planned transit use of the property.
- F. Longitudinal Entitlement means a right to use a portion of the light rail right of way parallel to the existing or planned light rail track either above, below or at grade, in such a manner as to prevent at grade crossing of the light rail track.
- G. Property means all interests in land held by RT, encompassing the existing and planned light rail and bus transit system, whether developed or undeveloped, including the light rail right of way, light rail stations, park-and-ride lots, administrative and maintenance facilities or other transit facilities.
- H. Surplus Property means land which the RT Board of Directors has determined is no longer needed for purposes for which RT is authorized to hold property and which RT intends to sell.

CHAPTER 2

LIGHT RAIL TRACK RIGHT OF WAY AT GRADE CROSSINGS

§7.2.01 Vehicular/Pedestrian Crossings Prohibited in Congested Areas

It is RT's policy to deny requests for leases, easements, encroachments, licenses or other entitlements to cross the light rail track right of way at grade within areas where there are currently the maximum number of at-grade vehicular/pedestrian crossings which can be safely accommodated.

§7.2.02 Crossings in Congested Areas Approved Only Under Threat of Condemnation

The Board may approve requests to cross the light rail track right of way at grade within congested areas where such entitlement could be otherwise secured through the power of eminent domain. In such cases, approval of the entitlement to cross the light rail track right of way shall, at a minimum, be subject to the following conditions:

- A. That the cost of installing and maintaining an automatic gate will be borne by the proposer; and
- B. That the orientation of the intersection of the crossing maximizes the safe operation of the light rail transit system; and
- C. That all installation and maintenance costs of the crossing are paid by the proposer.

§7.2.03 Vehicular/Pedestrian Crossings in Uncongested Areas

Within uncongested areas where the existing number of crossing of the light rail track right of way has not reached the maximum number and where such crossings can be safely accommodated, the Board may approve leases, easements, encroachments, licenses, or other entitlements for at grade crossing of the light rail track, subject to the following conditions:

- A. That its location and orientation is consistent with the safe operation of the light rail transit system.
- B. That installation of the crossing can occur without disrupting light rail transit operations.
- C. That the cost of installation and maintenance of a control gate is paid by the party proposing the crossing.
- D. That the cost of crossing materials, raising the trolley wire, and any other installation or maintenance costs be paid by the proposer.
- E. That the fair market value of the crossing entitlement is paid by the proposer, unless the Board makes a finding that there is a reason, in the public interest, said compensation should be waived.

- F. That the cost of any environmental clearance and any mitigation measures required for said crossing is paid by the proposer.
- G. That the proposer has obtained all City and County zoning and land use entitlements for its development.

CHAPTER 3

LIGHT RAIL TRACK RIGHT OF WAY ABOVE OR BELOW GRADE CROSSINGS

§7.3.01 Vehicular/Pedestrian Crossing Above or Below Grade

The Board may approve leases, easements, encroachments, licenses, or other entitlements for above or below grade crossings of the light rail track right of way, subject to the following conditions:

- A. That its location and orientation is consistent with the safe operation of the light rail transit system.
- B. That installation of the crossing can occur without disrupting light rail transit operations.
- C. That the cost of crossing materials, raising the trolley wire, and any other installation or maintenance cost be paid by the proposer.
- D. That the fair market value of the crossing entitlement is paid by the proposer, unless the Board makes a finding there is a reason, in the public interest, said compensation should be waived.
- E. That the cost of any environmental clearance and any mitigation measures required for said crossing is paid by the proposer.
- F. That the proposer has obtained all City and County entitlements for its development.

§7.3.02 Utility Permits

The General Manager/CEO may approve utility permits for above and below grade crossings of the light rail track right of way, subject to the conditions set forth in Exhibit "A-1" and "A-2" titled "General Terms and Conditions Relating to Utility Permits for Transverse Encroachments Only."

CHAPTER 4

LIGHT RAIL TRACK RIGHT OF WAY LONGITUDINAL ENTITLEMENTS

§7.4.01 Entitlements to Land Parallel to the Light Rail Track Right of Way

The Board may approve leases, easements, encroachments, licenses, or other entitlements for land located parallel to the light rail track right of way, where such entitlements do not require an at-grade crossing of the light rail track right of way, subject to the following conditions:

- A. That the cost of the entitlement may be no less than the fair market value of said property right, unless the Board finds that there is a reason, in the public interest, that the value of the property right should be at less than fair market value.
- B. That the cost of any environmental clearance and any mitigation measures required for said entitlement is paid by the proposer.
- C. That any costs to RT from installation or relocation of any improvements adjacent to the light rail track are reimbursed by the proposer.
- D. That the proposer will maintain liability insurance satisfactory to RT to cover all risks associated with its use of the right of way.

§7.4.02 Procedure for Soliciting Longitudinal Entitlement Proposals

In those cases where there is more than one potential user of a longitudinal entitlement, competitive bids or proposals must be solicited and advertised for at least thirty (30) days, subject to Board approval. If there is logically only one potential user of a longitudinal entitlement, competitive bids or proposals are not required and staff may proceed to negotiate the terms of the proposed entitlement. If the fair market value of a longitudinal entitlement cannot otherwise be determined, an appraisal must be performed.

§7.4.03 Establishment of Application Fee for Interest in RT Real Property

The General Manager/CEO, in his or her sole discretion, may establish a reasonable and non-discriminatory application fee to be imposed on any applicant seeking to use RT-owned or controlled real property, for the review by RT of each application. Once established, the General Manager/CEP may, in his or her discretion, waive such fee if the applicant is a public or non-profit entity and the entity will use RT's property for a non-revenue generating purpose.

CHAPTER 5

ENTITLEMENTS FOR JOINT DEVELOPMENT

§7.5.01 Joint Development of RT Property

The Board may approve leases, easements, encroachments, licenses, or other entitlements for establishment of joint development within portions of RT light rail right of way and property, including parking lots, station areas, and administrative and maintenance facilities, subject to the following conditions:

- A. That said joint development will not interfere with existing or planned uses of the subject property.
- B. That said joint development will not interfere with passenger waiting.
- C. That said joint development is permitted under all applicable federal, state and local laws and regulations, and that the proposer will obtain all necessary permits and approvals.
- D. That the cost of any environmental clearance and mitigation measures required for said joint development is paid by the proposer.
- E. That the propose will maintain insurance satisfactory to RT to cover all risks associated with its use of the property.

§7.5.02 General Manager/CEO Approval of Leases for Joint Development of RT Property

The General Manager/CEO is authorized to execute contracts on behalf of RT for lease of developed or undeveloped RT light rail right of way or property, subject to the following conditions:

- A. That the joint development will not interfere with existing or planned uses of the subject property.
- B. That the value of the lease is based on either fair market good faith negotiations with the proposed developer or the current fair market value of the previous lease rate paid to the prior lessor (i.e., Southern Pacific/Union Pacific Railroad).
- C. That the joint development is permitted under all applicable federal, state and local laws and regulations and that the lessee will obtain all necessary permits and approvals.
- D. That the cost for any environmental clearance and any mitigation measures required for said joint development is paid by the lessee.
- E. That the lessee will maintain insurance satisfactory to RT to cover all risks associated with its joint development of the right of way or property.

§7.5.03 Procedure for Soliciting Joint Development

- A. RT staff will define the location and types of joint development which could be accommodated within portions of RT property and light rail right of way, the maximum term of the entitlement, the potential market value, and all other related terms and conditions of the proposed entitlements. If the fair market value of the entitlement cannot otherwise be defined, an appraisal or market study will be performed. The General Manager/CEO may submit the proposal for review by a team of architects and engineers prior to submission to the Board.
- B. In those cases where there is more than one potential proposer, competitive bids or proposals must be solicited and advertised for at least thirty (30) days, subject to Board approval. Where the Board determines that it is in RT's best interest to solicit only one firm for a demonstration project, or if there is logically only one potential proposer, competitive bids or proposals are not required and staff, upon Board authorization, may proceed to negotiate the terms of the proposed entitlement.

§7.5.04 Agreement for Joint Development of Excess Property Rights

Upon selection of a conceptual joint development proposal by the Board, the General Manager/CEO may enter into an Exclusive Negotiation Agreement (ENA) with the successful proposer. During the term set out in the ENA, the General Manager/CEO and Legal Counsel will negotiate the terms of a development agreement with the successful proposer. At a minimum, such an agreement will:

- A. Identify the property right to be transferred.
- B. Establish the amount and payment terms for compensating RT for the excess property rights.
- C. Identify the responsible party for preparation of environmental, architectural and engineering plans and reports, and acquisition of all necessary governmental agency permits.
- D. Identify the method and timing of construction and interfacing of construction with light rail transit operations, including liability concerns.
- E. Identify future property management responsibilities.

§7.5.05 Use of Proceeds of Joint Development Entitlements

All revenues generated from granting a lease, easement, encroachment, license or other entitlement of RT property or light rail right of way may not be used as the local match for any grant where prohibited by applicable federal or state regulations (e.g., 1985 Full Funding Grant Agreement), and will be used exclusively for capital improvements or operating costs of RT's transit system.

CHAPTER 6

DISPOSAL OF SURPLUS PROPERTY

§7.6.01 Board Determination of Surplus Property

The Board must first make a finding that property owned by RT is surplus before any action is taken to solicit sale of the property.

§7.6.02 Appraisal to Establish Fair Market Value

After a determination is made that property is surplus, an appraisal will be conducted to determine the fair market value of the property.

§7.6.03 Offer of First Refusal to State and Local Governments

Prior to soliciting bids or proposals for sale of surplus property, the property must first be offered for sale to state and/or local governments in accordance with the provisions of *Government Code §54220*. If no interest or offer response is received within thirty (30) days, the property will be sold through the competitive bidding proposal process.

§7.6.04 Competitive Bidding Required for Property Purchased or Developed with Federal Funds

Surplus property purchased or improved with federal funds must be sold to the highest bidder by competitive bidding. The Invitation to Bid must be advertised for at least 30 days and may be sent to adjacent land owners, developers and real estate brokers. The Board reserves the right to allow bidders to override the highest bid by 10 percent and to reject all bids.

§7.6.05 Request for Proposal Allowed for Property Purchased with State or Local Funds

Surplus property purchased with state and local funds may be sold by using a Request for Proposal when the Board determines that it is in the best interest of RT to sell the property to a purchaser for development compatible with and supportive of the transit system. Under this process, the proposal award is not based solely on price.

The Request for Proposal must be advertised for at least 30 days and may be sent to adjacent land owners, developers, and real estate brokers. The Board reserves the right to reject all proposals.

CHAPTER 7

GENERAL MANAGER AUTHORITY

§7.7.01 Contract Price and Term

Except as provided in Sections 7-7.02 and 7-7.03, the General Manager/CEO is authorized to bind RT to contracts related to real property if:

- A. The price paid by or to RT, including the cost and/or expense of any obligation or liability that affects value, is \$100,000 or less; and
- B. The term of the contract is twenty-five (25) years or less; and
- C. The contract is approved as to legal form as set out in Section 7-7.07.

§7.7.02 Purchase and Sale of Real Property

The General Manager/CEO is not authorized to enter into a contract to sell a fee interest in RT's real property unless approved in advance by the RT Board. The General Manager/CEO is not authorized to purchase a fee interest in real property unless:

- A. the real property is required or necessary for an RT project approved by the Board;
- B. matters relating to title and hazardous substances and/or contamination are addressed to RT's satisfaction after appropriate due diligence is performed; and
- C. the monetary limit set out in Section 7-7.01 is applied to contiguous properties acquired by RT from the same owner(s) within any 12 calendar month period.

§7.7.03 Improvements to RT Property

The General Manager/CEO is not authorized to enter into a contract related to real property unless approved in advance by the RT Board, if the other party to the contract will improve RT property and the improvement has a useful life of more than 5 years unless:

- A. The other party to the contract is obligated to remove the improvement at its sole cost and expense and to restore RT's property to a condition satisfactory to RT at the end of the contract term or sooner upon termination or cancellation of this contract; and
- B. The other party's obligation to remove the improvement is secured by a performance bond satisfactory to RT in an amount equal to 100% of the estimated cost to remove and dispose of the improvement and to restore the property to the condition specified in the contract. The requirement for a performance bond may be waived by the General Manager/CEO if the cost of removal and disposition is estimated by RT to be less than \$25,000; and
- C. Notwithstanding the improvement's value, useful life or installation cost, the other party expressly acknowledges: (1) that it is not relying upon anything related to such value, useful life or cost to obtain a right to continue using RT's property after the expiration of the term of the contract, and (2) that it is not entitled to any compensation related to the improvement or the removal and disposal of the improvement.

§7.7.04 Licenses and Easements

Notwithstanding the limitations set forth in Section 7-7.03, the General Manager/CEO is authorized to enter into easement and license agreements under the terms and conditions

set forth in Sections 7.2.03, 7.3.01, 7.4.01, and 7.5.01, hereinabove, so long as:

- A. The value of the easement or license is established in accordance with the fee structure to be approved by the Board establishing the fair market value of an easement or license interest in RT owned or controlled real property; and
- B. The total consideration set forth in the easement or license agreement does not exceed \$100,000; and
- C. The term of the easement or license agreement does not exceed 25 years.

§7.7.05 Types of Contracts

For the purpose of Section 7.7.01, contract includes, without limitation: purchase agreement, an option, easement, lease (other than a lease of RT property described in Chapter 5), license, permit, and right-of-entry.

§7.7.06 Documents Incidental to Contract

The General Manager/CEO is authorized to sign any document incidental to a contract described in Section 7.7.01. Such documents include, without limitation, escrow instructions, a certificate of acceptance to be filed pursuant to Government Code § 27281, a notice of termination or cancellation, an eviction notice, and a relocation notice.

§7.7.07 Delegation of Authority

If the General Manager/CEO will be unavailable to sign a contract, s/he or the Board may delegate such authority in writing to a named RT employee who will be authorized to sign contracts on behalf of the General Manager/CEO. A copy of such authorization must be filed with the Clerk to the Board.

§7.7.08 Approval as to Legal Form

A contract described in Section 7.7.01 and incidental documents described in Section 7.7.06 must be approved as to legal form by the Chief Legal Counsel or his/her designee.

§7.7.09 Leases for Joint Development

The General Manager/CEO's authority to enter into leases for joint development of RT property will be set out in Chapter 5 and nothing herein must be construed to limit or expand such authority.

STEVE COHN, Chair

ATTEST:

MICHAEL R. WILEY, Secretary

By: _____
Cindy Brooks, Assistant Secretary



APPLICATION FOR PERMIT

Permit Number: _____

APPLICANT: _____ Date: _____

ADDRESS: _____

_____ Phone: (____) _____

Person familiar with details of application: Name: _____ Phone: (____) _____

APPLICATION IS HEREBY MADE FOR THE PERMIT TO PERFORM THE FOLLOWING:

1. Applicant's work order or job number: _____

2. Location of work: Name of Road _____ Between _____

3. Describe completely work to be done: _____

4. Submit Plans to Scale (3 copies) showing plan view and cross-section, indicating clearly location of work with respect to centerline of track, face of curb, edge of pavement or property line. Show clearance and type and size of facilities proposed.

5. Estimated state date: _____ Completion date: _____

6. Applicant's Inspector, Contractor, Foreman or Supervisor as appropriate:

Name: _____ Company: _____ Phone: (____) _____

Note: General Conditions on reverse side and "Special Provisions" below are a part of this Permit. By starting work applicant accepts all General Conditions and Special Provisions. Call RT Metro Wayside Maintenance Superintendent (648-8422) 24 hours prior to starting work to notify RT and request inspection.

Company: _____

Title: _____

Signed: _____ Date: _____

REVIEW (RT USE ONLY)

Engineering Services Division

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| | |
| | |

Wayside Maintenance

Permit Expires: _____

Permit Fee: \$ _____

JPA Fee: \$ _____

SPECIAL PROVISIONS (RT USE ONLY)

Approved By: _____ Date: _____

1. **DEFINITION:** Each Utility Permit is issued by the General Manager of Sacramento Regional Transit District (RT). A Utility Permit is required prior to beginning any work in RT right of way (ROW) or above or beneath RT facilities within public street ROW. Applicant understands and agrees that, except as otherwise provided, all Permits issued by RT are only for transverse encroachments and are subject to the terms and conditions contained herein.
2. **REVOCABILITY AND MODIFICATION:** This permit does not constitute a lease, deed or grant of an easement, or of a fee interest by RT. It is not transferable or assignable. Any Permits issued hereunder are revocable upon thirty (30) days' written notice by RT, and the terms and conditions thereof shall be subject to modification by RT at any time.
3. **USE OF, AND NEW WORK PERFORMED ON, PERMIT:** The use authorized by this permit is limited solely to the purposes set forth herein, and, except as expressly herein provided, construction, excavation or installation of structures is not authorized.
4. **ACCEPTANCE OF PROVISIONS:** It is understood and agreed by Permittee that signature of the Permit form shall constitute an acceptance of the terms and conditions contained herein.
5. **NO PRECEDENT ESTABLISHED:** It is understood and agreed by Permittee that approval of a particular action under a Right of Entry or Permit shall not establish a precedent for similar future requests by Permittee.
6. **NOTICE PRIOR TO STARTING WORK:** Before starting work, Permittee shall notify the RT Wayside Superintendent (648-8422) three (3) days in advance of the day work is to begin. With ongoing train operations, unauthorized access to RT ROW cannot be permitted. Prior to beginning work, Permittee shall obtain a track warrant issued from RT Metro Control, 2700 Academy Way, Sacramento, CA. The track warrant must be obtained in person, and can be obtained 24 hours per day 7 days per week.
7. **PERMIT AT SITE OF WORK:** The permit or a copy thereof shall be available at the site of the work and must be shown to any representative of RT on demand.
8. **PROTECTION OF TRAFFIC WHEN APPLICABLE:** Adequate provisions shall be made for the protection of the traveling public when construction affects cross streets along RT ROW. Warning signs, lights, safety devices and other measures required for the public safety shall conform to requirements of the Vehicle Code.
9. **RAIL CLEARANCE AT OR NEAR GRADE:** No construction material shall be stored, or equipment parked, within 10 feet measured at 90° from edge of rail.
10. **LIMIT OF EXCAVATION AT OR NEAR GRADE:** No excavation is to be made closer than 10 feet measured at 90° from the edge of rail except as specified in the Permit. Depth of excavation shall be subject to inspection and approval by RT.
11. **STANDARDS OF CONSTRUCTION:** All work performed within RT ROW shall conform to RT's Civil and Structural Design Criteria.
12. **APPROVAL BY RT:** All work shall be subject to inspection and approval by RT.
13. **CLEAN UP OF RIGHT OF WAY:** Upon completion of the work, the ROW shall be left in as presentable a condition as existed before work started.
14. **MAINTENANCE:** Permittee shall at all times keep RT's lands in good and slightly condition, so far as the same may be affected by Permittee's operation hereunder. Permittee agrees, by acceptance of a Permit, to exercise reasonable care, to properly maintain any installation placed in RT ROW and to exercise reasonable care in preventing damage to any portion of ROW or to RT's facilities as a result of work done under a Permit.
15. **RESTORATION:** In every case Permittee shall be responsible for restoration to its former condition of any portion of the ROW or of any RT facility which has been disturbed by Permittee, except where provision to the contrary is made in a Permit. If RT at its sole option elects to make repairs, Permittee agrees by acceptance of Permit to bear the cost thereof. RT may elect to make repairs in regard to any damage situation.
16. **CARE OF DRAINAGE:** If the work contemplated in any Permit interferes with established drainage, provision shall be made by Permittee to re-establish equal drainage conditions as may be directed by RT.
17. **SUBMISSION OF PLANS:** For installation of all underground facilities and surface work, Permittee shall submit for approval a plan showing location and details with its application. Three sets of as-built plans shall be filed with RT upon completion and approval of work. Any substantial change from plans submitted with the application must be approved by RT prior to the commencement of work.
18. **EXPENSE OF INSPECTION, PREPARATION, AND ADMINISTRATION:** On installations made under request of Permittee which require the presence of any employee of RT as inspector, the salary, traveling expense and other incidental expense of such inspection during the work shall be paid by Permittee. In the event RT institutes and prevails in any action for the enforcement of any of its rights hereunder, Permittee will pay to RT such reasonable attorney's fees as may be determined by the Court, as part of the costs of such action.
19. **LIABILITY FOR DAMAGES:** Permittee agrees to assume responsibility and liability for all damage, loss or injury of any kind or nature whatever to persons or property, caused by or resulting from or in connection with work done by Permittee under a Permit or which may arise out of failure on Permittee's part to perform his obligations under any Permit. In the event any claim of such liability is made against RT, or any department, officer, or employee thereof, Permittee shall defend, indemnify and hold them harmless from such claim.
20. **FUTURE MOVING OF INSTALLATION:** Permittee shall, on receipt of notice to do so and within such reasonable time limits as may be fixed by said notice, alter or remove at his own expense any of his improvements, plantings, or other property to such extent as may be required to avoid interference with any of RT pipe, power lines, or other structures now or hereafter to be constructed, with the maintenance thereof, or with any other operations or land use by RT. In the event Permittee fails to alter or remove any of his improvements, plantings, or other property within the time limit specified in said notice, said improvements, plantings, or other property may be removed by RT the reasonable expense of which shall be paid to RT by Permittee. In the event of any emergency, RT may, at its sole option and without notice, alter, remove or protect, at Permittee's expense, any improvements, plantings, or other property, except utility facilities owned either by a private company or a public agency. On notice that an emergency exists, owners of utility facilities, at their own expense, must take immediate action to protect, remove or relocate such facilities as required to meet the emergency.
21. **ROUTINE MAINTENANCE OF PERMITTEE'S FACILITIES:** Permittee may perform routine maintenance on Permittee's facilities in accordance with the Terms and Conditions set forth in the Permit. It will be necessary to obtain a track warrant prior to commencing any work within the property boundaries of RT.
22. **PIPES, CONDUITS AND MISCELLANEOUS FACILITIES:** RT's Civil and Structural Design Criteria, latest revision, sets forth specifications for installation and maintenance of all underground facilities within RT ROW. In addition to RT criteria, all installation and maintenance procedures by Permittee shall be in accordance with the applicable orders of the Public Utilities Commission of the State of California. When abandonment of facilities is contemplated, Permittee shall notify RT.
23. **POLES, WIRES, CABLES AND OVERHEAD STRUCTURES:** Poles shall be located as specifically directed in the Permit. In addition to RT's Civil and Structural Design Criteria, latest revision, all clearances and types of construction shall be in accordance with the applicable orders of the Public Utilities Commission of the State of California. Whenever it is necessary to secure permission from abutting property owners, such authority must be secured by Permittee prior to commencing work. Where removal of old poles, guys and stubs is necessary, the entire length of the abandoned pole, guy or stub shall be removed from the ground and the hole backfilled tamped to 95% compaction.
24. **TRIMMING OF TREES:** Trimming of trees will be permitted only where specifically stated in a Permit. Except when specifically authorized in the Permit, removal of trees will generally be prohibited since all trees within RT ROW have been placed as landscaping.
25. **LANDSCAPING:** Any gardening or landscaping shall be limited to low growing shrubs, grass or plants.
26. **SERVICE CONNECTIONS:** These Terms and Conditions do not authorize installation of utility service connections within RT ROW regardless of location of Permittee's facilities. All such service connections or excavations to abandon services must be covered by individual Permits.
27. **INCONSISTENCIES:** To the extent that any special conditions set forth herein conflict, or are inconsistent with the printed conditions, the special conditions shall prevail.
28. **WITNESS POSTS:** In the event the purpose of this permit is to allow Permittee to install utility facilities underground across RT's premises, Permittee shall properly mark the alignment of the underground installation with readily visible, RT approved witness post markers that identify what is underground, and where.
29. **APPROVED DRAWING:** Permittee's proposed installations within RT's ROW shall be in accordance with Permittee's drawing bearing RT's signed approval.
30. **MATERIALS:** Permittee shall use steel, ductile iron, cast iron or class C900 PVC pipe for the entire ROW crossing permitted hereunder.
31. **MINIMUM CLEARANCES:** The minimum clearance between Permittee's lines and RT facilities shall be one foot and the minimum depth of Permittee's lines shall be two feet from the top of existing grade. Permittee is required to maintain minimum clearance from all RT underground facilities.
32. **LIMITED RIGHTS:** Rights granted herein shall be limited to the area granted under this permit. Permittee shall not use the adjacent lands of RT without prior approval of RT.
33. **INSURANCE REQUIREMENTS:**
 - A. **Evidence Required** - During the performance of services hereunder, Permittee shall maintain, or shall cause to be maintained by Permittee's contractors, policies of insurance as described below. Prior to beginning work, Permittee shall furnish evidence of insurance satisfactory to RT as to content and insurance carriers which will contain a provision for 30 days' prior written notice to RT of any cancellation, reduction, or material change in coverage.
 - B. **Insurance Required of Permittee**
 1. Comprehensive General Liability insurance for bodily injury (including death) and property damage which provides total limits of not less than two million dollars (\$2,000,000) combined single limit per occurrence. Coverages included shall be:
 - a. Premises and operations;
 - b. Products/completed operations coverage which is to be maintained for three years following acceptance of work by RT;
 - c. Contractual liability expressly including liability assumed under this agreement with deletion of the exclusion as to performance of operations within the vicinity of any railroad bridge, trestle, track, roadbed, tunnel, underpass and crossway;
 - d. Explosion, collapse and underground hazards;
 - e. Independent contractors;
 - f. Broad form property damage liability; and
 - g. Cross liability clause providing that the insurance applies separately to each insured except with respect to the limits of liability.
 Such insurance shall include the following endorsements, copies of which shall be provided:
 - a. Inclusion of Sacramento Regional Transit District, its governing board, directors, officers, agents and employees as additional insured as respects services or operations under this Agreement.
 - b. Stipulation that the insurance is primary insurance and that no insurance of RT will be called upon to contribute to a loss.
 2. Comprehensive Automobile Liability Insurance for bodily injury (including death) and property damage which provides total limits of not less than two million dollars (\$2,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles.
 3. Statutory workers' compensation coverage including a broad form allstates endorsement; employer's liability insurance for not less than two million dollars (\$2,000,000) per occurrence for all employees engaged in services or operations under this agreement.
 - a. Inclusion of RT, its governing board, directors, officers, representatives, agents and employees as additional insured, or a waiver of subrogation.
 - b. Cross liability clause providing that the insurance applies separately to each insured except with respect to the limits of liability.
 4. Permittee's equipment insurance on an "all risk" basis covering equipment owned, leased or used by Permittee. Such insurance shall include an insurer's waiver of subrogation in favor of RT. Permittee hereby releases and holds harmless RT for any loss or damage to its equipment.
 - C. **Exceptions** - RT acknowledges that some insurance requirements contained in this Section may be fulfilled by self-insurance on the part of the applicant. However, this shall not limit liabilities assumed by the applicant under the terms and conditions of this agreement for Utility Permit. The responsibility remains with the Applicant to provide RT with evidence of self-insurance.