

**Chapter 6.10**  
**RIGHTS-OF-WAY**

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## **Section 6.01.010**

### **Purpose**

(a) The Rainbow Municipal Water District (District) exists to provide our customers with reliable, high quality water and water reclamation service in a fiscally sustainable manner. In furtherance of the full exercise of its statutory purpose, the District has acquired and will acquire real property and interests therein and has acquired or constructed and will acquire and construct, and control, operate, maintain and use pipelines, associated appurtenances and facilities necessary or convenient to the full exercise of its powers. This chapter is intended to establish regulations, policies and procedures in order to protect and preserve the District's property, property interests, pipelines, associated appurtenances and facilities of the District.

(b) The District's Board of Directors (Board) finds and determines that the District's property, property interests, works and facilities must be protected and preserved against unauthorized use. The Board further finds and determines that uses of the District's rights of way which interfere with, hinder, delay or obstruct the District's ability to immediately construct, reconstruct, install, repair, maintain, remove, inspect, replace, relocate, and operate its works and facilities are detrimental to the District, to the public health, safety and welfare and to the District's regional public water and wastewater conveyance system and water and wastewater supplies. Such uses are incompatible with the District's use and ownership of its property, property interests, works and facilities. This chapter has been adopted to prohibit such incompatible uses.

(c) The District's Board also finds and determines that certain uses by other public agencies, public utilities, owners of adjoining, adjacent or underlying property, or the public generally are compatible with the District's use and ownership of its property, property interests, works and facilities or may be compatible under certain conditions and subject to certain restrictions. This chapter has been adopted to establish regulations for authorizing compatible uses or uses that may be compatible under certain conditions and subject to certain restrictions.

(d) Nothing in this chapter is intended to grant, alter, expand, or limit any title or interest in or to any District property or property interest.

(e) No permit issued pursuant to this chapter is intended to grant any title or interest in District property or create any District or independent contractor relationship between the District and any person.

## **Section 6.10.020**

### **General Authorization**

Except when authorized by Section 6.10.13, when the District's interest in property is a fee, leasehold or other possessory interest, no person shall use or occupy such property except as specifically authorized by a duly executed deed (including an easement deed), lease, license, contract or other written instrument approved by the Board of Directors.

1. Unless authorized by paragraph 2 of this subdivision, all deeds, leases, licenses, contracts or other written instruments shall be approved by the Board of Directors.
2. Except as otherwise approved by the Board, a deed, lease, license, contract or other written instrument shall be on terms and conditions governing use that are substantially similar to those established by this chapter for encroachment permits and shall include a requirement for consideration based upon fair market value or fair market rent, as appropriate, for the interest conveyed.

## **Section 6.10.030**

### **Definitions**

The following words and phrases whenever used in this chapter shall have the meaning defined in this section.

“Abatement” means action as may be necessary to remove, terminate or alleviate a nuisance, including but not limited to demolition or removal of property.

“Abatement notice” means a notice issued by the General Manager which requires a responsible person to abate a public nuisance.

“Applicant” means the person that has submitted an application to the District for any permit, license, or other authorization to use the District’s right-of-way.

“Board” means the elected Board of the Rainbow Municipal Water District, Fallbrook, California.

“Detrimental use” means any use of right-of-way or property which interferes with, impedes, hinders, delays or obstructs the District’s ability to immediately construct, reconstruct, install, repair, maintain, inspect, remove, replace, relocate, and operate its works and facilities.

“Encroachment” means a physical occupation in, on, over, across, under or upon District right-of-way or property. Encroachment also means any radio or similar telecommunication transmissions that interfere with the operation of District works.

“Engineer” means the District Engineer.

“Facility” means all assets and any other structure necessary or convenient to the full exercise of the District’s rights and purposes.

“Joint Use Agreement” means an agreement between the District and one or more public or governmental agencies or public utilities to use District’s right-of-way or property to install facilities for streets, sewer, water, cable, communications, electric or gas subject to District’s superior rights.

“Owner” means a person having an estate in land encumbered by a District easement or other interest in property. Owner also means a person entitled to exercise a reserved right pursuant to Sections 6.10.050 or 6.10.060.

“Permittee” means a person who holds or has received, pursuant to this chapter, a permit, license or other authorization to use a District right-of-way or property, and includes any agent, contractor or employee of the permittee.

“Person” means any natural person, firm, association, business, trust, organization, corporation, partnership, company, or any other entity, which is recognized by law as the subject of rights or duties. Person includes a public utility or a public or governmental agency.

“Parallel encroachment” means an encroachment by a surface or subsurface pipeline, conduit, channel, aqueduct or similar structure, overhead electrical or telecommunication wires and surface street improvements, which has an alignment parallel to a District pipeline.

“Public nuisance” means any encroachment caused, maintained or allowed to exist in violation of this Chapter. A public nuisance also has the same meaning as defined in California Civil Code Section 3479.

“Public owned utility (POU)” means a utility subject to local public control and regulation. POU's are organized in various forms including municipal districts, city departments, irrigation districts, or rural cooperatives.

“Reserved right” means a property right owned by others to make joint use of a District right-of-way, existing by virtue of a limitation or condition of the deed, order of condemnation or other instrument by which the District acquired title to a specific right-of-way.

“Responsible person” means the person committing a violation. Responsible person also means an owner or manager of a business or property who directs or permits a violation of this Chapter to be done by any other person in the course or apparent course of business of the owner or manager or on the property of the owner.

“Right-of-way” means and includes any land, easement, franchise, or other interest in real property held, owned, leased or otherwise belonging to the District.

“RMWD” means the Rainbow Municipal Water District of Fallbrook, California.

“Structure” means anything constructed or put together and includes, without limitation, a building, or building part, manufactured or mobile home, fence, gate or chain, post, wall, pipe, foundation, concrete or asphalt foundation, driveway or pad, and other similar physical constructions.

“Use” includes any use of property and placing, causing or permitting an encroachment. Use also includes any structure or thing constructed, placed, or maintained in furtherance of a use. Use includes, without limitation, excavation, grading, filling and similar earth movement activity.

“Works” means any facility or improvement to real property necessary or convenient to the full exercise of the District’s statutory purpose. Works includes, without limitation, improved or unimproved access roads, wetlands, uplands and other lands set aside for habitat or natural resource preservation.

## **Section 6.10.050**

### **Uses Allowed Without a Permit – Notice to Rainbow Municipal Water District**

(a) The Board finds and declares that underlying owners of land may have reserved rights to use District rights-of-way under the deed or final order of condemnation pursuant to which the District holds title to its rights-of-way. The purpose of this section is to provide owners having reserved rights with guidelines, terms, and conditions for the exercise of reserved rights in a manner that will not be incompatible with or detrimental to the District's property or property rights. Subject to the provisions of this section, an underlying owner may exercise a reserved right for a use without obtaining a permit from the District, except that owner shall give District a minimum of 10 calendar days' notice before exercising any reserved right. The notice shall be in writing and filed with the District Engineer.

(b) The following is a list of uses and structures generally allowed as an exercise of a reserved right subject to the provisions of this section:

1. Vegetable and flower gardens, lawns and ground cover (such as low growing vegetation, mulch, bark or crushed rock).
2. Bushes and shrubs, but not trees. Bushes and shrubs must be maintained so as not to obstruct visual inspection of the right of way. Hedges shall be trimmed to a height of thirty-six inches (36") or less.
3. Low voltage/decorative lighting (12 volt / 75 watt maximum).
4. Storage or parking of operational vehicles, trailers, or mobile equipment authorized for travel on public streets subject to the following weight and spacing limits. Single vehicles not exceeding sixteen thousand pounds or a combination of adjacent vehicles within a thirty-foot square having a combined weight that does not exceed sixteen thousand pounds. Vehicles weighing more than fourteen thousand pounds shall be spaced not less than sixty feet (60') apart.
5. Water lines to provide potable or non-potable water service (except reclaimed sewage or sewer water) to the property to which the reserved right is attached provided the lines are two inches (2") or less in diameter, have a minimum depth of twenty-four inches (24") at crossings under patrol or access roads, are installed above the District's pipeline and have a minimum vertical separation of twelve inches (12") from bottom of line to top of the District's pipeline, and are installed such that crossings of the District's pipelines are at right angles or as close to a right angle as possible. If pipelines will be installed below ground, the notice required by subdivision (a) shall be accompanied by a plan showing the proposed location of all subsurface facilities. The notice required by subdivision (a) shall be accompanied by a plan showing the location of all shut-off valves. The owner shall file a written update plan showing any changes in location of subsurface facilities or shut-off valves. Shut-off valves shall be located at the edge of the District's right-of-way.

6. Pipes, conduit, wires and cables to provide electric, gas, sewer, and communications service ("utility facilities") to the property to which the reserved right is attached. Subsurface utility facilities shall be installed above the District's pipelines and shall have a minimum vertical separation of twelve inches (12") from bottom of utility to top of the District's pipeline and be installed such that crossings of the District's pipelines are at right angles or as close to a right angle as possible. Conductor clearances for overhead electrical and telephone lines shall conform to California Public Utilities Commission General Order 95 for Overhead Electrical Line Construction or at a greater clearance if required by the District. The clearance shall not be less than thirty-five feet (35'). Overhead lines shall be located a minimum of thirty feet (30'), measured laterally, away from all aboveground facilities on the pipelines. When underground electric lines provide service at 120 volts or greater, conduits shall be encased in a minimum of three inches (3") of red concrete. Aboveground warning signs shall be placed at the right-of-way lines where subsurface utility facilities enter and exit the right-of-way. Non-metallic gas lines shall be placed with a twelve-gauge (12 gauge) tracer wire a minimum of six inches (6") above the buried utility, terminating in a District- approved junction box. If utility facilities will be installed below ground, the notice required by subdivision (a) shall be accompanied by a plan showing the proposed location of all subsurface facilities. The notice required by subdivision (a) shall be accompanied by a plan showing the location of all shut-off switches or valves. The owner shall file a written update plan showing any changes in location of subsurface facilities or shut-off switches or valves. Shut-off switches or valves shall be located to provide easy access by District personnel using the District's right-of-way. Septic systems and leach fields are not permitted. Utility poles are not permitted except pursuant to an encroachment permit or joint use agreement.
7. Storage of boxed landscape trees may be allowed under the following conditions: (a) the boxes must be no larger than 24 inches on each side, (b) the box must have a bottom, (c) the tree, including the box, must not exceed 15 feet in height, and (d) the trees can be stored no closer than 8 feet apart measured from the edges of the boxes. Boxed trees shall be set back at least 10 feet from the closest edge of a District pipeline.
8. Any other use or structure not otherwise prohibited by Section 6.01.040 that the District Engineer determines in writing not to be incompatible with or detrimental to the District's property or property rights. The District Engineer shall keep a log of written determinations made pursuant to this paragraph on file in the Engineering Department and with Secretary to the Board. The log shall be a public record.

- (c) The exercise of any reserved right within a District right-of-way as authorized by this section is subject to the following:
1. Any structure or use shall be set back a minimum of twenty (20') feet from the edge of any District surface facility, unless otherwise provided in subdivisions (b) or (c).  
  
The setback from rights of way used for access or patrol road purposes shall be 10 feet away from the centerline of the road.
  2. The District shall not be liable for any damage or injury caused by or attributable to the exercise of a reserved right.
  3. Any exercise of a reserved right shall at all times be subject to the paramount right of the District to use its property and property rights as necessary or convenient to the full exercise of the District's powers according to the terms of the District's document of title.
  4. No person shall exercise a reserved right in a manner that creates a nuisance or causes a dangerous condition of property.
  5. Any structures or uses placed or maintained pursuant to this section are subject to immediate removal by the District as may be necessary or convenient for the District's purposes. The District shall not be liable for costs of damage to or replacement of structures or uses it removes. The District may require the owner to remove or relocate a structure or use at the owner's expense.
  6. Excavation over the District's pipelines shall be done with hand tools only.
  7. The owner shall be responsible for compliance with all applicable zoning, building, grading and other laws relating to the use of property.

Before performing any excavation in the District's right-of-way the owner shall contact the District Engineer for a determination whether Dig Alert should be called.

## **Section 6.10.060**

### **Encroachment Permits – Required – Encroachments**

(a) The Board finds and declares that underlying owners of land may have reserved rights to use the District's right-of-way under the deed or final order of condemnation pursuant to which the District holds title to its right-of-way. The purpose of this section is to provide owners with an expedited process for obtaining a permit from the District when a proposed use or structure, appropriately located and conditioned, is or may be compatible with the District's property rights or interests. This section is intended to apply to uses proposed by owners that are accessory to or necessary for the owner's primary use of the parcel subject to the District's right-of-way. Except as specifically authorized pursuant to Section 6.10.050 uses of the District's rights of way by persons other than the District are generally incompatible with or detrimental to the District's property or property rights, but, unless otherwise prohibited by Section 6.10.040, such uses may be made compatible and authorized upon compliance with certain requirements and conditions set forth in this section and in the encroachment permit issued by the District Engineer after an evaluation of the facts and circumstances of the use. Subject to the provisions of this section an underlying owner may exercise a reserved right upon obtaining an encroachment permit from the District.

(b) The following requirements apply to uses authorized pursuant to this section:

1. Addition, alteration, modification or demolition of a permitted use is itself a use subject to permit.
2. The District Engineer may establish conditions limiting the time, duration and method of construction. In addition to any other condition authorized by this section, the District Engineer may establish conditions for use that are consistent with the requirements for use established by Section 6.10.050.
3. Any use or structure shall be set back a minimum of twenty feet (20') from the edge of any District surface facility unless otherwise provided in this section. The District Engineer may reduce or eliminate the setback requirement for a use if the District Engineer finds that the reduction will not be detrimental to the District. The reasons for and conditions of the reduction or elimination shall be stated in the permit issued for the use.
4. No use shall be permitted that would create an unacceptable load on a pipeline or subsurface structure as determined by the District Engineer.
5. Grading, including both excavation and fill, shall be permitted only if the District Engineer determines that the proposed grading will not pose a hazard to the integrity of the pipeline, cause an impediment to its maintenance, result in an unacceptable increase or reduction in cover, or cause ponding or erosion within the easement. Grading requiring a permit from another government agency is not allowed unless both the permit of the other agency and the permit of the District are obtained.

6. Conductor clearances for overhead electrical and telephone lines shall conform to the California State Public Utilities Commission, General Order 95, for Overhead Electrical Line Construction or at a greater clearance if required by the District. Clearance shall not be less than thirty-five feet (35'). Overhead lines shall be located at least thirty feet (30'), measured laterally, away from all aboveground structures on the pipelines. Utility poles are not permitted except pursuant to a major encroachment permit or joint use agreement.
  7. When underground electric lines provide service at one hundred twenty (120) volts or greater, conduits shall be encased in a minimum of three inches (3") of red concrete. Above-ground warning signs shall be placed at the right-of-way lines where the conduits enter and exit the right-of-way.
  8. Hard-surface, sports courts shall be of asphalt or unreinforced concrete, six inches (6") or less in thickness. Setback from centerline of pipeline shall be at least 10- feet.
  9. Unreinforced, paved driveways, walkways and parking lots may be approved subject to conditions controlling loading to pipelines, landscaping, type of light standards, depth and location of light standard foundations, drainage, access and other aspects of design and improvement. Grandfather conditions may apply.
  10. The District Engineer shall not approve a permit for a reclaimed or recycled water line unless the applicant has obtained Department of Health approval.
- (c) Encroachment permits issued under this section shall be processed as provided in this subdivision.
1. An owner may file an application for an encroachment permit with the District Engineer. The District Engineer may establish and make available guidelines for submission of applications.
  2. The application shall contain such information as the District Engineer deems appropriate for complete review of the application and shall include the address to which correspondence regarding the application shall be mailed.
  3. Within thirty calendar days following submission of an application, the District Engineer shall notify the applicant that the application is complete or the nature and extent of additional information that is required to make the application complete.
  4. If the applicant submits additional information, the District Engineer shall have thirty calendar working days to notify the applicant that the application is complete or whether further additional information is required.

5. Within thirty calendar days after the District Engineer has determined and notified the applicant that the application is complete, the District Engineer shall approve, conditionally approve or deny a permit. In addition to the information contained in the application, the District Engineer may consider any of the following: topography, soils, drainage, access or other characteristics of the property and adjacent property; community characteristics; location, condition, or nature of existing or reasonably foreseeable future works of District. The District Engineer's determination shall be in writing delivered to the applicant by personal delivery or first-class mail.
6. An applicant may appeal the denial of a permit or any condition imposed on a permit to the Board by filing a written notice of appeal with the District Engineer within thirty calendar days after the date of mailing or of personal service. The notice shall specify the particular reasons for the appeal. The Engineering and Operations Committee may play an advisory role to the Board based on the application, the written determination of the District Engineer, the notice of appeal and any written response to the notice of appeal submitted by the District Engineer. The decision of the Board shall be made in writing and delivered to the applicant by personal delivery or first- class mail. The decision of the Board is final, except for judicial review.
7. Applications, correspondence, decisions and other permit records are public records and shall be kept in the Engineering Department.

(d) The following provisions apply to all uses and structures authorized by an encroachment permit issued pursuant to this section:

1. Any use shall be located, constructed and maintained according to the terms and conditions of the use permit issued pursuant to this section. The District may (i) charge a processing fee, (ii) require a security deposit, and (iii) charge market value rent for the encroachment. The Owner shall indemnify, defend and hold the District harmless from any claims arising out of or related to the encroachment. The Owner shall add the District as additionally insured for claims related to the encroachment.
2. The District shall not be liable for any damage or injury caused by or attributable to the use or structure. The Owner will be responsible for all taxes assessed as a result of the encroachment and the Owner shall be responsible for all maintenance and repairs of the encroaching structure.
3. Any use shall at all times be subject to the paramount right of the District to use its property and property rights as necessary or convenient to the full exercise of the District's rights according to the terms of the District's document of title.
4. The Owner shall not allow the use or structure to create a nuisance or cause a dangerous condition of property. The Owner shall comply with all hazardous materials and environmental laws, and indemnify, defend and hold the District harmless from any such claims arising out of or related to the encroachment.

5. Any structures or uses placed or maintained pursuant to this section are subject to immediate removal by the District as may be necessary or convenient for the District's purposes. The District shall not be liable for costs of damage to or replacement of structures or uses it removes. District may require the owner to remove or relocate a structure or use at the Owner's expense. The Owner waives any rights to compensation or relocation benefits in the event of a termination by the District of the encroachment permit or request to remove or relocate the encroachment.
6. The District may, at the Owner's expense, cause the encroachment permit to be recorded in the Office of the County Recorder. The Owner shall not use the encroachment area to satisfy the requirements of any governmental agency or authority, including, but not limited to, zoning and/or building or other code requirements.
7. The owner shall be responsible for compliance with all applicable zoning, building, grading and other laws relating to the use of property.

The District and its officers and employees shall not be liable for any damages resulting from the issuance, denial, revocation or enforcement of an encroachment permit. The owner shall be responsible for the accuracy and completeness of the permit application and any plans, specifications or other information required by the Director pursuant to this Chapter.

**Section 6.10.070**  
**District Engineer**

(a) The Board, on an appeal, shall deny an application for an encroachment permit unless the District Engineer finds that the encroachment as proposed or subject to terms and requirements imposed as a condition of approval meets all the following:

1. The proposed encroachment will not be detrimental to the District's facilities or works, or to the general public;
2. The proposed encroachment will not materially interfere with the District's use of right-of-way;
3. The applicant has complied with the requirements of this chapter and all applicable local, state and federal laws;
4. The applicant has agreed to abide by all requirements, terms and conditions of the permit, including without limitation the provision requirement that the permittee indemnify, defend and hold harmless the District, its officers, agents, and employees from all liability occasioned from or caused by the issuance of the encroachment permit or by the construction, installation, maintenance or operation of the encroachment.

(b) In addition to other requirements, the District Engineer may impose conditions for approval of encroachment permit as follows:

1. Traffic and pedestrian safety measures;
2. Environmental impact mitigation measures;
3. Full Topographic survey including field staking of existing and proposed easements and any encroachments in easement;
4. Limits on construction times, noise, duration and method;
5. Limits on duration and requirements for removal of an encroachment; and
6. Other requirements deemed necessary by the District Engineer.

Coordination of construction with other existing encroachments or reasonably anticipated encroachments, other existing or reasonably anticipated construction pursuant to encroachment permits issued to others, and existing or reasonably anticipated District projects.

**Section 6.10.080****Assignment of Encroachment Permit**

A permittee shall not assign rights or delegate obligations of an encroachment permit without the prior written consent of the District. Any assignment or delegation in violation of this section shall constitute abandonment of the permit and relinquishment of any rights thereunder. The District may condition any assignment or delegation as necessary to protect the District's interests, including without limitations, imposition of conditions to assure faithful performance of the obligations imposed by the permit by the person assuming responsibility under the assignment or delegation.

## **Section 6.10.090**

### **Encroachment Permits – Revocation – Penalty for Violation of Terms**

(a) The District Engineer is authorized to revoke an encroachment permit upon determining that the permittee has failed to comply with one or more of the material terms, conditions or restrictions incorporated in the permit or has provided materially false or misleading information regarding the encroachment or its installation. Upon the revocation of an encroachment permit, the permittee shall immediately discontinue any work and cease and desist from further encroaching upon the District's right-of-way or property. The permittee shall restore the site to an as-near original condition as shall be feasible under the supervision and direction of the District in accordance with code and legal requirements in effect at the time of restoration. Installed encroachments shall be removed, unless authorized to be disabled and abandoned in place when determined to be feasible by the District. Except in cases where immediate revocation is necessary to protect District works or facilities, the District Engineer shall not revoke a permit except upon fifteen-calendar days written notice to the permittee. Such notice may be given by first class mail to the permittee at the address stated in the permit application or such other more recent address as provided by the permittee and on file with the District Engineer. The notice shall advise the permittee of the permittee's right to file a written statement of good cause why the permit should not be revoked within ten days following the date of the notice. A determination of revocation shall be in writing and shall state the grounds for the revocation. The determination shall be delivered to the permittee by personal delivery or mailed to the permittee by first-class mail.

(b) Any permittee who violates any of the terms, conditions or restrictions of an encroachment permit and thereby materially and adversely affects the public health and safety shall be ineligible to receive another encroachment permit from the District for a period of one year following the date of such determination, unless this restriction is waived by the Board.

(c) Any person who has received a determination of revocation of an encroachment permit may appeal the revocation to the Board. The appeal shall be in writing and filed within ten days following the date of the determination of revocation. The appeal shall state grounds upon which the appeal is based. Within twenty working days after filing, the Board of Directors shall decide the appeal. The Engineering and Operations Committee may play an advisory role to the Board based on the application, the written determination of the District Engineer, the notice of appeal and any written response to the notice of appeal submitted by the District Engineer. The decision of Board shall be made in writing and delivered to the applicant by personal delivery or first-class mail. The decision of the Board is final, except for judicial review.

**Section 6.10.100**  
**Nonexclusive Use of Right-of-Way**

(a) Encroachment permits are nonexclusive. Any permit issued by the District pursuant to this Chapter which permits the applicant to excavate, construct or remove improvements or encroachments, or grade or encroach within any public right-of-way also permits the District or other District permittee to utilize the right-of-way for its own public purposes during the same time period as the applicant's use. The District may extend the time period of the applicant's proposed use of the right-of-way to suit the District's own public purposes.

(b) Permittees shall not interfere with encroachments installed under prior permits, unless arrangements satisfactory to the District and the prior permittee are made to protect or relocate the prior encroachments at the expense of the subsequent permittee. Notwithstanding, the District shall have the right to remove, relocate or displace any previously allowed or permitted encroachment without liability to a permittee when necessitated by public emergency or the District's exercise of its rights.

**Section 6.10.110**  
**Joint Use Agreements**

(a) In lieu of an encroachment permit, public agencies and public utilities desiring to use District's rights of way and property for construction, operation and maintenance of compatible public facilities may apply to the District for a Joint Use Agreement. The District Engineer is authorized to execute Joint Use Agreements on behalf of the District.

(b) Application for Joint Use Agreements shall be submitted to the District Engineer and shall be evaluated on a case-by-case basis to determine whether such joint use is compatible with the work of the District. The applicant shall be advised of the type of joint use, if any, which will be authorized. If it is determined that joint use will not be authorized, a notice of denial shall be mailed to the applicant which explains the reason for the denial.

(c) The Joint Use Agreement shall specify the requirements, terms and conditions of construction, operation and maintenance of the compatible public facilities. Except as otherwise specifically authorized by the Board, a Joint Use Agreement shall include the following requirements:

1. The public agency or public utility shall defend, indemnify and hold the District harmless from any damage or injury to District works or facilities. The public agency or public utility shall defend, indemnify and hold the District harmless from any claim, cause of action, suit, proceeding, or liability of or to any person resulting from the construction, reconstruction, repair, maintenance, operation, condition or existence of any work or facility of the public agency or public utility, or from the acts or omissions of the public agency or public utility or its officers, employees, agents or contractors, except for liabilities resulting from the sole negligence of the District or the District's officers, employees or agents.
2. Any compatible public agency or public utility use shall at all times be subject to the paramount right of the District to use its property and property rights as necessary or convenient to the full exercise of the District's statutory purposes and rights according to the terms of the District's documents of title.
3. Any structures or uses placed or maintained pursuant to a Joint Use Agreement are subject to removal or relocation by the permittee upon reasonable demand by the District, or by the District at the permittee's cost, as may be necessary or convenient for District purposes. The District shall not be liable for costs of damage to or replacement of structures or uses it removes. The District may require the permittee to remove or relocate a structure or use at the permittee's expense. A permittee shall also be required to pay for the cost of relocating other previously permitted encroachments when necessary to accommodate the work of the District.
4. Performance of the requirements, terms or conditions of a Joint Use Agreement by a contractor shall be secured by one or more of the following, at the discretion of the permittee, subject to approval of the District:

- (A) A bond or bonds by one or more duly authorized corporate sureties authorized to do business in the State of California;
- (B) A deposit with the District of money or negotiable bonds of the kind approved for securing deposits of public moneys;
- (C) An irrevocable letter of credit from one or more financial institutions subject to regulation by the State of California or federal government and authorized to do business in the State.

5. A Joint Use Agreement shall not constitute a representation by the District that subsurface conditions are accurately reflected in the records of the District. The party requesting the agreement assumes the risk and responsibility for damage to previously installed permitted encroachments and facilities.

(d) Plans for installation of joint user's facilities including protection of District's facilities shall be approved by the District in advance of construction. Notice of construction of such facilities shall be provided to District at least two weeks in advance.

(e) An applicant denied an agreement may, within 60 days after a notice of denial is mailed, appeal in writing to the Board of Directors. The Board shall consider the information presented in the appeal, comments from the General Manager, and other such data considered appropriate. The denial will be upheld unless it is determined by the Board of Directors that it was arbitrary, or inconsistent with this Chapter.