36.24.106 COVENANTS REGARDING FACILITIES FINANCED BY THE LOAN

(1) Specific requirements and covenants with respect to the system or improvements to the system being financed from the proceeds of the loan must be contained in the bond resolution of the municipality, forms of which are available from the department, and may include the requirements and covenants set forth herein. The form of bond resolution of the municipality should be consulted for more specific detail as to each of these covenants. Given that a loan agreement cannot be reduced to a general form, no such general form exists, and would need to be developed for each proposed loan to or for the benefit of each private person and the particular nonpoint source project.

(2) The borrower must:

(a) acquire all property rights necessary for the project including rights-of-way and interest in land needed for the construction, operation, and maintenance of the facility;

(b) furnish title insurance, a title opinion, or other documents showing the ownership of the land, mortgagee, encumbrances, or other lien defects; and

(c) obtain and record the releases, consents, or subordinations to the property rights from holders of outstanding liens or other instruments as necessary for the construction, operation, and maintenance of the project.

(3) The borrower shall acquire and maintain at all times with respect to the system property and casualty insurance and liability insurance with financially sound and reputable insurers, or self-insurance as authorized by state law, against such risks and in such amounts, and with such deductible provisions, as are customary in the state in the case of entities of the same size and type as the borrower and similarly situated and shall carry and maintain, or cause to be carried and maintained, and pay or cause to be paid timely the premiums for all such insurance.

(a) All such insurance policies shall name the department as an additional insured, unless the department expressly agrees otherwise.

(b) Each policy must provide that it cannot be canceled by the insurer without giving the borrower and the department 30 days' prior written notice.

(c) The borrower shall give the department prompt notice of each insurance policy it obtains or maintains to comply with this rule and of each renewal, replacement, change in coverage or deductible under or amount of or cancellation of each such insurance policy and the amount and coverage and deductibles and carrier of each new or replacement policy.

(d) The notice shall specifically note any adverse change as being an adverse change.

(4) The department, the department of environmental quality, and the EPA and their designated agents have the right at all reasonable times during normal business hours and upon reasonable notice to enter into and upon the property of the borrower for the purpose of inspecting the system or any or all books and records of the borrower relating to the system.

(5) The borrower agrees that it will comply with the provisions of the Montana Single Audit Act, Title 2, chapter 7, part 5, MCA. The municipality also agrees to provide, to the extent not required by the Single Audit Act, and the private person agrees to provide, for each fiscal year to the department, promptly when available:

(a) the preliminary budget for the system, with items for the project shown separately; and

(b) when adopted, the final budget for the system, with items for the project shown separately.

(6) The borrower shall maintain proper and adequate books of record and accounts to be kept showing complete and correct entries of all receipts, disbursements, and other transactions relating to the system, the monthly gross revenues derived from its operation, and the segregation and application of the gross revenues in accordance with this resolution, in such reasonable detail as may be determined by the borrower in accordance with generally accepted governmental accounting practice and principles. It will maintain the books on the basis of the same fiscal year as that utilized by the borrower. The borrower shall, within 120 days after the close of each fiscal year, cause to be prepared and supply to the department a financial report with respect to the system for such fiscal year. The report must be prepared at the direction of the financial officer of the borrower in accordance with applicable generally accepted governmental accounting principles and, in addition to whatever matters may be thought proper by the financial officer to be included therein, must include the following:

(a) a statement in detail of the income and expenditures of the system for the fiscal year, identifying capital expenditures and separating them from operating expenditures;

(b) a balance sheet as of the end of the fiscal year;

(c) the number of premises connected to the system at the end of the fiscal year;

(d) the amount on hand in each account of the fund at the end of the fiscal year; and

(e) a list of the insurance policies and fidelity bonds in force at the end of the fiscal year, setting out as to each the amount thereof, the risks covered thereby, the name of the insurer or surety and the expiration date of the policy or bond.

(7) The borrower shall covenant to take all necessary and legal action to collect such rates and charges, including terminating service, imposing reconnection fees and placing delinquent charges as a lien against the property and enforcing such lien to the extent permitted by law.

(8) The borrower shall also have prepared and supplied to the department within 120 days of the close of every other fiscal year, an audit report prepared by an independent certified public accountant or an agency of the state in accordance with generally accepted governmental accounting principles and practice with respect to the financial statements and records of the system. The audit report shall include an analysis of the borrower's compliance with the provisions of the resolution.

(9) The borrower shall maintain project accounts in accordance with generally accepted government accounting standards, and as separate accounts, as required by section 1382 of the federal act.

(10) After reasonable notice from the EPA, the borrower shall make available to the EPA such records as the EPA reasonably requires to review and determine compliance with Title VI of the Clean Water Act, as provided in section 1386 of the federal act.

(11) The borrower shall agree to comply with all conditions and requirements of the federal act pertaining to the loan and the project.

(12) The borrower shall agree not to sell, transfer, lease, or otherwise encumber the system, any portion of the system, or interest in the system without the prior written consent of the department while the bond resolution or loan agreement is in effect.

(13) The borrower shall agree to secure written approval from the department for any changes or modifications in the project before or during construction as set forth in the bond resolution.

Authorizing statute(s): 75-5-1105, MCA

Implementing statute(s): 75-5-1113, MCA

History: NEW, 1991 MAR p. 1952, Eff. 10/18/91; AMD, 1995 MAR p. 2423, Eff. 11/10/95; AMD, 2002 MAR p. 2213, Eff. 8/16/02.