**74:05:08:20.  Assistance agreements.** If an application is approved for funding, the board shall execute an assistance agreement with the sponsoring entity. The board shall establish the terms and conditions included in the assistance agreement. Assistance agreements for loans may include, but are not limited to, the following requirements of the recipient:

 (1)  To 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; to furnish title insurance, a title opinion, or other documents showing the ownership of the land, mortgages, encumbrances, or other lien defects; and to obtain and record the releases, consents, or subordinations to the property rights for holders of outstanding liens or other instruments as necessary for the construction, operation, and maintenance of the facility;

 (2)  To provide security as required in § 74:05:08:15;

 (3)  To provide for the receipt of revenues sufficient to meet the requirements of debt service, operation, and maintenance and to establish reserves in an amount sufficient to assure that expenses and payments will be paid on time for loan installments, emergency maintenance, and replacement of assets that have a useful life less than the repayment period of the loan;

 (4)  To acquire and maintain insurance coverage, including fidelity bonds;

 (5)  To establish and maintain books and records relating to the construction and operation of the facility and its financial affairs;

 (6)  To provide the secretary access to all books and records relating to the facility and access to the property of the system so that the secretary may ascertain whether the sponsoring entity is complying with the provisions of this chapter and with the funding agreement;

 (7)  To use funds that remain available after all costs to the facility have been paid for needed extensions, enlargements, and improvements of the facility with the written permission of the board;

 (8)  Not to sell, transfer, lease, or otherwise encumber the facility, any portion of the facility, or interest in the facility to a public entity without the prior written consent of the board while the funding agreement is in effect, or to a private entity;

 (9)  If the undertaking would obligate the source of funds pledged to repay the assistance agreement, to agree not to borrow money from any source, enter into an agreement, or incur other liabilities in connection with the facility, exclusive of normal maintenance, without the prior written consent of the board;

 (10)  To agree that upon default in the payments of principal and accrued interest on the loan or in the performance of any covenant or condition, the board may, at its option, do one or more of the following:

 (a)  Declare immediately due and payable the entire principal amount then outstanding and the accrued interest and all costs associated with collection of the outstanding balance;

 (b)  For the account of the borrower incur and pay reasonable expenses for repair, maintenance, and operation of the facility and other expenses necessary to cure the cause of default; or

 (c)  Take possession of the facility, repair, maintain, operate, sell, lease, or otherwise dispose of the facility to another entity;

 (11)  To secure written approval from the secretary for any changes or modifications in the plans of a facility before or during construction according to conditions and specifications set forth in the funding agreement.

 The board may amend assistance agreements as it considers necessary and circumstances warrant.

 **Source:** 15 SDR 20, effective August 7, 1988; 19 SDR 102, effective January 17, 1993; 21 SDR 97, effective November 28, 1994; 28 SDR 4, effective July 22, 2001.

 **General Authority:** SDCL 46A-1-60.3.

 **Law Implemented:** SDCL 46A-1-60.1 to 46A-1-60.3.