CHAPTER 40-22
IMPROVEMENTS BY SPECIAL ASSESSMENT METHOD

40-22-01. Power of municipalities to defray expense of improvements by special assessments.

Any municipality, upon complying with the provisions of this chapter, may defray the expense of any or all of the following types of improvements by special assessments:

1. The construction of a water supply system, or a sewerage system, or both, or any part thereof, or any improvement thereto or extension or replacement thereof, including the construction and erection of wells, intakes, pumping stations, settling basins, filtration plants, standpipes, water towers, reservoirs, water mains, sanitary and storm sewer mains and outlets, facilities for the treatment and disposal of sewage and other municipal, industrial, and domestic wastes, and all other appurtenances, contrivances, and structures used or useful for a complete water supply and sewerage system.
2. The improvement of the municipal street system and any part thereof, including any one or more of the processes of acquisition, opening, widening, grading, graveling, paving, repaving, surfacing with tar, asphalt, bituminous, or other appropriate material, resurfacing, resealing, and repairing of any street, highway, avenue, alley, or public place within the municipality, and the construction and reconstruction of overhead pedestrian bridges, pedestrian tunnels, storm sewers, curbs and gutters, sidewalks, and service connections for water and other utilities, and the installation, operation, and maintenance of streetlights and all types of decorative streetlighting, including but not restricted to Christmas streetlighting decorations.
3. The improvement of boulevards and other public places by the planting of trees, the construction of grass plots and the sowing of grass seed therein, and the maintenance and preservation of such improvements by the watering of such trees and grass, the cutting of such grass, and the trimming of such trees, or otherwise in any manner which may appear necessary and proper to the governing body of the municipality.
4. The acquiring of the necessary land and easements and the construction of the necessary works, within and without the municipality, for flood protection of properties within the municipality.
5. The acquiring or leasing of the necessary property and easements and the construction of parking lots, ramps, garages, and other facilities for motor vehicles.

In planning an improvement project of a type specified in any one of the foregoing subsections, the governing body may include in such plans any and all items of work and materials which in its judgment are necessary or reasonably incidental to the completion of an improvement project of such type.

40-22-01.1. Restoration of property damaged in flood control or during a declared disaster or emergency - Special assessments for costs.

When any city has constructed any temporary emergency flood control protection devices or works to protect property located within a portion of a city from flood damage or expended funds for the protection of the city from flood or other peril under chapter 37-17.1 or otherwise, the city may maintain and remove material used in the construction of the temporary emergency flood control protection devices or works and repair damages to land, buildings, or personal property caused by the operation of its equipment upon the property while in the process of installing or removing the temporary emergency flood protection systems. The city may create by resolution of its governing board a special assessment district encompassing the protected area. Special assessments against the property within the district must be imposed to cover the costs incurred by the city in constructing and maintaining the emergency flood protection devices or works and in removing the material used and in repairing the damages caused by the operation of equipment while installing or removing the temporary emergency flood protection systems. The amount to be assessed must be established by a resolution adopted by the governing board. Special assessments against any property in the district must be determined and made in the same manner as is provided for improvements by special assessments to the extent consistent herewith, and the certification and collection, including lien provisions,

applicable to other special assessments are applicable hereto. Provided, however, that the provisions of sections 40-22-15, 40-22-17, and 40-22-18, relating to a resolution of necessity and protests against special assessments, sections 40-22-10, 40-22-11, and 40-22-29, relating to engineers' reports, plans, and estimates, and section 40-22-19, relating to contract proposals, do not apply to special assessment districts created under this section.

40-22-01.2. Municipal policy providing special assessment determination methods for allocation of assessments among and within classes of property.

Within five months of this section becoming applicable to a city, the governing body of each city with a population exceeding ten thousand shall adopt written policies, after a public hearing for consideration of the policies, which will be applied for cost allocation among properties benefited by a special assessment project. Policies established under this section must provide separately the policy that will be applied for cost allocation for each kind of special assessment and the cost allocation method for residential, commercial, and agricultural property and for any property subject to separate or special assessment factors or assessment rates.

40-22-02. Sewerage system - Establishment, maintenance, and alteration - Vote required.

The governing body of any municipality may establish, maintain, and alter a general system of sewerage for the municipality in such manner and under such regulations as it shall deem expedient and proper. No action shall be taken for the establishment of a sewerage system except upon the affirmative vote of two-thirds of the members of the governing body. When a sewerage system is established, all measures necessary for the construction of sewers as a part of that system may be taken by a vote of the majority of the governing body.

40-22-03. Acquiring property for sewers, water mains, and water supply beyond corporate limits.

When it is necessary to conduct the sewage of a municipality beyond the municipal limits or to acquire a supply of water beyond such limits and to construct mains or aqueducts to conduct such water to the municipal limits, the governing body, by grant, purchase, or condemnation proceedings, may acquire private property over which to construct the sewer, or upon and over which to establish facilities for obtaining and storing such water supply and aqueducts or mains for conducting the same to the corporate limits. Public property may likewise be acquired for such purposes by grant or purchase from the government or public corporation owning the same. The cost of acquiring such property and of building such sewer or other facilities upon or over the property may be included in the cost of construction or acquisition of a municipal waterworks or sewerage system and in the special assessments levied therefor, or the entirety of such a project may be completed as an improvement to an existing waterworks or sewage system and special assessments may be levied therefor in accordance with the provisions of this title.

40-22-04. Discharge of sewage - Regulations governing.

Repealed by S.L. 1975, ch. 575, § 2.

40-22-05. Condemnation of land and rights of way for special improvements - Taking of possession - Trial - Appeal - Vacation of judgment.

Whenever property required to make any improvement authorized by this chapter is to be taken by condemnation proceedings, the court, upon request by resolution of the governing body of the municipality making such improvement, shall call a special term of court for the trial of the proceedings and may summon a jury for the trial whenever necessary. The proceedings shall be instituted and prosecuted in accordance with the provisions of chapter 32-15, except that when the interest sought to be acquired is a right of way for the opening, laying out, widening, or enlargement of any street, highway, avenue, boulevard, or alley in the municipality, or for the laying of any main, pipe, ditch, canal, aqueduct, or flume for conducting water, storm water, or sewage, whether within or without the municipality, the municipality may make an offer

to purchase the right of way and may deposit the amount of the offer with the clerk of the district court of the county wherein the right of way is located, and may thereupon take possession of the right of way forthwith. The offer shall be made by resolution of the governing body of the municipality, a copy of which shall be attached to the complaint filed with said clerk of court in accordance with section 32-15-18. The clerk shall immediately notify the owner or owners of the land wherein the right of way is located of the deposit, by causing a notice to be appended to the summons when served and published in said proceedings as provided in the North Dakota Rules of Civil Procedure, stating the amount deposited or agreed in the resolution to be deposited. The owner may thereupon appeal to the court by filing an answer to the complaint in the manner provided in the North Dakota Rules of Civil Procedure, and may have a jury trial, unless a jury be waived, to determine the damages. However, upon due proof of the service of said notice and summons and upon deposit of the aggregate sum agreed in said resolution, the court may without further notice make and enter an order determining the municipality to be entitled to take immediate possession of the right of way. If under laws of the United States proceedings for the acquisition of any right of way are required to be instituted in or removed to a federal court, the proceedings may be taken in that court in the same manner and with the same effect as provided in this section and the clerk of the district court of the county in which the right of way is located shall perform any and all of the duties set forth in this section, if directed to do so by the federal court. The proceedings shall be determined as speedily as practicable. An appeal from a judgment in the condemnation proceedings shall be taken within sixty days after the entry of the judgment, and the appeal shall be given preference by the supreme court over all other civil cases except election contests. No final judgment in the condemnation proceedings awarding damages to property used by a municipality for street, sewer, or other purposes shall be vacated or set aside if the municipality shall pay to the defendant, or shall pay into court for the defendant, in cash, the amount so awarded. The municipality may levy special assessments to pay all or any part of the judgment and at the time of the next annual tax levy may levy a general tax for the payment of the part of the judgment as is not to be paid by special assessment. For the purpose of providing funds for the payment of the judgment, or for the deposit of the amount offered for purchase of a right of way as provided above, the municipality may issue warrants on the fund of the improvement district as provided in section 40-24-19, in anticipation of the levy and collection of special assessments and of any taxes or revenues to be appropriated to the fund in accordance with the provisions of this title. The warrants may be issued upon the commencement of the condemnation proceedings or at any time thereafter. Upon the failure of the municipality to make payment in accordance with this section, the judgment in the condemnation proceedings may be vacated.

40-22-06. Agreement with state agency, county, water resource district, or federal agency for certain improvements.

Any municipality in this state, through its governing body, may enter into an agreement with any state agency, the board of county commissioners, or water resource board of the county in which the municipality is located, or a joint water resource board which jurisdiction includes the municipality, or any federal agency, or any combination thereof, for the improvement of streets, sewers, water mains, flood control projects, or of any of such facilities, under the terms of which the contract for such work is to be let by the state agency, the board of county commissioners, water resource board, joint water resource board, the federal agency, or any combination thereof, and for this purpose may create a special improvement district or districts. No such agreement may be entered into until and unless the governing body certifies that it has obtained authority in accordance with this section to issue improvement warrants to finance the amount that the municipality will be obligated to pay thereunder, over and above the amount of any bonds which have been voted and any other funds which are on hand and properly available for such purpose. If any portion of the cost is to be paid by the levy of special assessments, the governing body shall by resolution declare the necessity of the improvement, setting forth its general nature, the approximate amount or fraction of the cost which the municipality will be obligated to pay under the agreement, and the fact that this amount, or such lesser amount as the governing body may specify, is proposed to be paid by the levy of special assessments upon property determined to be benefited by the improvement. Any portion of the cost for which

the municipality is obligated and which is not assessed upon benefited property or paid from other funds may be agreed to be paid by general taxation of all the taxable property in the municipality, if approval for the incurring of such debt is obtained and provision for the payment thereof is made in accordance with section 40-24-10. The resolution of necessity must be published once each week for two consecutive weeks in the official newspaper of the municipality and protests may be filed and their sufficiency to bar the improvement must be determined in accordance with sections 40-22-16 through 40-22-18. However, if under the terms of the resolution of necessity the portion of the cost of the project to be assessed upon benefited property does not exceed twenty-five percent of the total cost to be paid by the state agency, county, water resource board, joint water resource board, federal agency, and municipality, written protests by the owners of seventy-five percent of the property liable to be assessed for the improvement shall be required to bar further proceedings with reference thereto. At any time after the period for filing protests has expired and the protests filed, if any, have been heard and determined to be insufficient, the governing body may issue warrants on the fund of the improvement in the total amount for which the municipality is obligated under the agreement, and may cause to be certified to the special assessment commission that portion of the cost to be borne by the property owners within the district, and the assessment of such amount may be made and such warrants may be issued as in other cases provided for in chapters 40-23 and 40-24.

40-22-06.1. Cities with population of over ten thousand may enter into agreement with highway department or county for certain improvements.

Repealed by S.L. 1963, ch. 294, § 2.

40-22-07. Dispensing with preliminary requirements in making improvements in conjunction with highway department or county.

Repealed by S.L. 1963, ch. 294, § 2.

40-22-08. Improvement districts to be created.

For the purpose of making an improvement project of one of the types specified in section 40-22-01 and defraying the cost thereof by special assessments, a municipality may create water districts, sewer districts, water and sewer districts, street improvement districts, boulevard improvement districts, flood protection districts, and parking districts, and may extend any such district when necessary. The appropriate special improvement district may be created by ordinance or resolution. The district shall be designated by a name appropriate to the type of improvement for the making of which it is created, and by a number distinguishing it from other improvement districts. Nothing herein, however, shall prevent a municipality from making and financing any improvement and levying special assessments therefor under any alternate procedure set forth in this title.

40-22-09. Size and form of improvement districts - Regulations governing.

Any improvement district created by a municipality may embrace two or more separate property areas. Each improvement district shall be of such size and form as to include all properties which in the judgment of the governing body, after consultation with the engineer planning the improvement, will be benefited by the construction of the improvement project which is proposed to be made in or for such district, or by any portion or portions of such project. A single district may be created for an improvement of the type specified in any one of the subsections of section 40-22-01, notwithstanding any lack of uniformity among the types, items, or quantities of work and materials to be used at particular locations throughout the district. The jurisdiction of a municipality to make, finance, and assess the cost of any improvement project shall not be impaired by any lack of commonness, unity, or singleness of the location, purpose, or character of the improvement, or by the fact that any one or more of the properties included in the district is subsequently determined not to be benefited by the improvement, or by a particular portion thereof, and is not assessed therefor. There may be omitted from a water or sewer district, in the discretion of the governing body, properties within

the corporate limits which are benefited by the improvement therein but do not abut upon a water or sewer main, without prejudice to the right and power of the municipality subsequently to assess such properties to the extent and in the manner permitted by law. The governing body may by resolution enlarge an improvement district in which an improvement is proposed or under construction upon receipt of a petition therefor signed by the owners of three-fourths of the area to be added to the district.

40-22-10. Engineer's report required - Contents.

After a special improvement district has been created, the governing body of a municipality, if it deems it necessary to make any of the improvements set out in section 40-22-01 in the manner provided in this chapter, shall direct the engineer for the municipality, or some other competent engineer if the municipality does not have a competent municipal engineer, to prepare a report as to the general nature, purpose, and feasibility of the proposed improvement and an estimate of the probable cost of the improvement, including:

1. A separate statement of the estimated cost of the work for which proposals must be advertised under section 40-22-19; and
2. A separate statement of all other items of estimated cost not included under subsection 1 which are anticipated to be included in the cost of the improvement under sections 40-23-05 and 40-23.1-04.

40-22-11. Approval of plans, specifications, and estimates - Approval establishes grade of street.

At any time after receiving the engineer's report required by section 40-22-10, the governing body may direct the engineer to prepare detailed plans and specifications for construction of the improvement. The plans and specifications shall be approved by a resolution of the governing body of the municipality. If the plans and specifications include the establishment of the grade of a street and such grade has not been established previously by ordinance, the resolution approving the plans, specifications, and estimates shall constitute an establishment of the grade.

40-22-12. Requirements of plans, specifications, and estimates when improvement is paving or beautification of streets.

If an improvement to be financed by special assessments consists in paving or repaving any street, alley, or public place, the governing body of the municipality may require the plans, specifications, and estimates for the improvement to be made for one kind of pavement or several different kinds of pavement as it may deem advisable. If the contemplated improvement consists of planting trees, constructing grass plots, sowing grass seed thereon, or otherwise parking or beautifying any of the streets, highways, avenues, alleys, lanes, or other public grounds within the municipal limits, the governing body may require the plans, specifications, and estimates to show the probable costs of making, constructing, or maintaining such improvements or any of them.

40-22-13. Municipal engineer to retain copy of plans, specifications, and estimates - Sale of copies.

The engineer acting for the municipality shall retain a copy of the plans, specifications, and estimates which have been prepared for any improvement on file in the engineer's office. The engineer shall furnish to any person applying therefor copies of the same, and, if the engineer is an officer of the municipality, the engineer may charge one dollar an hour for the time necessarily employed in making such copies.

40-22-14. Plans, specifications, and estimates filed in office of city auditor.

The plans, specifications, and estimates shall be the property of the municipality and shall be filed in the office of the city auditor and shall remain on file in the city auditor's office subject to inspection by any interested person.

40-22-15. Resolution declaring improvements necessary - Exception for sewer and water improvements - Contents of resolution - Publication of resolution.

After the engineer's report required by section 40-22-10 has been filed and approved, the governing body of the municipality, by resolution, shall declare that it is necessary to make the improvements described therein. However, a resolution is not required if the improvement constitutes a water or sewer improvement as described in subsection 1 of section 40-22-01, nor if the governing body determines by resolution that a written petition for the improvement, signed by the owners of a majority of the area of the property included within the district, has been received. The resolution must refer intelligibly to the engineer's report and include a map of the municipality showing the proposed improvement districts. The resolution must then be published once each week for two consecutive weeks in the official newspaper of the municipality.

40-22-16. Sewer or water improvements and parking lots in municipalities may be paid for by service charges.

A municipality constructing a sewer or water improvement or a parking lot under the special assessment method may resolve in the resolution or ordinance required by section 40-22-08 in the case of a sewer or water improvement, or in the resolution required by section 40-22-15 in the case of a parking lot, that a portion of the cost of the improvement shall be raised by service charges for the use of the improvement, and of the utility or parking system of which it forms a part. If the municipality so resolves, it may determine, in its resolutions, ordinances, and other proceedings relating to the levying of special assessments and the issuing of warrants to pay the cost of such improvement, that a specified portion or all of such cost shall be assessed specially against any property specially benefited and may cause to be assessed only the portion so determined. In such event the entire remainder of such cost, including interest as well as principal of any warrants issued, over and above the amount of special assessments actually collected and received from time to time in the fund of the improvement district, plus any general taxes pledged in accordance with section 40-24-10 and similarly collected and received, shall be paid from the net revenues derived from said service charges; provided, that nothing herein shall affect the power and duty of the governing body to levy a tax for the payment of a deficiency in the improvement district fund at the times and under the conditions set forth in section 40-26-08. All of the applicable provisions of this title relating to special assessments shall be applicable to such improvements except as to the portion of the cost thereof resolved or ordained to be paid by service charges. The governing body of the municipality shall provide for the establishment, imposition, and collection of service charges for the services furnished by such improvement and the utility or parking system of which it forms a part, and in connection therewith it shall have all the rights and powers respecting such service charges as it would have with respect to like matters if such improvement were made in accordance with chapter 40-35. The net revenues derived from the imposition and collection of such service charges, or such portion thereof as shall be determined by the governing body in said resolutions and ordinances, shall be paid into the appropriate improvement district funds created pursuant to section 40-24-18. Such revenues when collected shall be used and applied in the same manner as moneys paid into such funds from the collection of special assessments. In its resolutions and ordinances, the governing body of any municipality issuing warrants to finance any such improvement may establish an assessment reserve in the fund of the improvement district, to which it may appropriate net revenues of the utility or system from time to time received in excess of amounts required, with special assessments and taxes then on hand, to meet the principal and interest next due on such warrants. Prior to November first of any year, the governing body may by resolution determine the proportion which the amount then on hand in said assessment reserve, and irrevocably appropriated to the payment of said warrant, bears to the aggregate amount of the installment of the special assessments and taxes levied for the improvement which is payable in the following year, including interest thereon, and the governing body may direct the county auditor to reduce, by not more than a proportionate amount, the total of such installment and interest which would otherwise be placed upon the tax list of the municipality for the current year, against each lot and tract of land assessed or taxed for the improvement. If such installment of the special assessment on any property has been

prepaid, the governing body may direct the city auditor to refund, out of the assessment reserve, to the owner of the property at the time of such refund as indicated in the records of the recorder of the county, a sum not exceeding a similar proportion of the principal amount of such installment, excluding interest.

40-22-17. Protest against resolution of necessity - Meeting to hear protest.

If, within thirty days after the first publication of the resolution declaring the necessity of an improvement project of the type specified in any one of the subsections of section 40-22-01, the owners of any property within the improvement district file written protests describing the property which is the subject of the protest with the city auditor protesting against the adoption of said resolution, the governing body of the municipality, at its next meeting after the expiration of the time for filing such protests, shall hear and determine the sufficiency thereof.

40-22-18. Protest bar to proceeding - Invalid or insufficient protests - Payment of costs - Tax levy.

If the governing body finds the protests to contain the names of the owners of a majority of the area of the property included within the improvement district, the protests shall be a bar against proceeding with any special assessment for the improvement project. However, the protests do not bar proceeding with the improvement project described in the plans and specifications if the governing body funds the project with funds other than special assessments. If the governing body finds the protests to contain the names of the owners of a majority of any separate property area included within the district, such protests shall be a bar against proceeding with special assessments to be assessed in whole or in part upon property within such area, but shall not bar against proceeding with the improvement project or assessing the cost thereof against other areas within the district, unless such protests represent a majority of the area of the entire district. If the protests represent a majority of the area of the entire district, such protests bar any special assessment for the improvement project.

The termination of proceedings, by reason of protest or otherwise, shall not relieve the municipality of responsibility for payment of costs theretofore incurred and for payment of such costs a municipality may, if funds on hand and available for the purpose are insufficient, issue its certificates of indebtedness or warrants, or levy a tax which shall be considered a tax for a portion of the cost of a special improvement project by general taxation within the meaning of section 57-15-10. If the protests are found to be insufficient or invalid, the governing body may cause the improvement to be made and may contract or otherwise provide in accordance with this title for the construction thereof and the acquisition of property required in connection therewith and may levy and collect assessments therefor.

40-22-19. Contract proposals.

Proposals for the work of making improvements provided for in this chapter must be advertised for by the governing body in the official newspaper of the municipality once each week for two consecutive weeks. All other provisions for proposals under this chapter are governed by chapter 48-01.2.

40-22-20. Bid to be accompanied by a bond - Bond retained upon failure of bidder to contract - Amount of bond.

Repealed by S.L. 1995, ch. 443, § 29.

40-22-21. Bidder's bond - Required - Amount.

Repealed by S.L. 1971, ch. 403, § 2.

40-22-22. Execution of bidder's bond.

Repealed by S.L. 1995, ch. 443, § 29.

40-22-23. Conditions of bidder's bond.

Repealed by S.L. 1995, ch. 443, § 29.

40-22-24. Bids - Filing - Sealing - Endorsing - Opening - Considering.
Repealed by S.L. 1995, ch. 443, § 29.

40-22-25. Opening of bids - Bids to be entered on minutes - Final action on bids to be deferred.
Repealed by S.L. 1995, ch. 443, § 29.

40-22-26. Petition by property owners to have paving of certain material - Contents.
If the governing body has called for bids on more than one kind of pavement, after the opening of the bids in connection with an improvement consisting of paving or repaving and before the meeting of the governing body to consider the same, the owners of a majority of the property liable to be specially assessed for such paving or repaving may file a written petition with the city auditor indicating that the petitioners have a preference for a certain type of paving or paving material for which bids have been invited. Upon receiving such petition, it shall be obligatory upon the governing body to cause the paving or repaving to be constructed of a kind of paving material indicated in the petition. The petition may consist of a single petition or several separate petitions signed by the owners of a majority of the property liable to be specially assessed for such improvement or by their authorized agents.

40-22-27. Rejection of bids - Readvertising for bids or construction by municipality without contract - Re-evaluation of project.
Repealed by S.L. 1995, ch. 443, § 29.

40-22-28. Determination of kind of paving after bids are considered.
If the contemplated improvement consists of paving or repaving, the governing body, after it has opened and considered the bids, shall determine by resolution the kind or kinds of pavement to be laid, and thereafter may proceed to award the necessary contract or contracts.

40-22-29. Engineer's statement of estimated cost required - Governing body to enter into contracts.
Before adopting or rejecting any bid filed under the provisions of this chapter, the governing body shall require the engineer for the municipality to make a careful and detailed statement of the estimated cost of the work for which proposals were advertised under section 40-22-19. The governing body may not award the contract to any bidder if the engineer's estimate prepared pursuant to this section exceeds the engineer's estimate of the cost of the work prepared pursuant to subsection 1 of section 40-22-10 by forty percent or more.

40-22-30. Contractor's bond - Execution.
Repealed by S.L. 1995, ch. 443, § 29.

40-22-31. Conditions of contractor's bond.
Repealed by S.L. 1995, ch. 443, § 29.

40-22-32. Approval of bonds - Return of bidder's bond.
Repealed by S.L. 1995, ch. 443, § 29.

40-22-33. Failure to execute contractor's bond.
Repealed by S.L. 1995, ch. 443, § 29.

40-22-34. Insufficiency of bonds - New bonds required - Failure to furnish.
Repealed by S.L. 1995, ch. 443, § 29.

40-22-35. Execution and filing of contract.
All contracts entered into for any work provided for in this chapter shall be entered into in the name of the municipality and shall be executed on the part of the municipality by the

executive officer and countersigned by the auditor. After the contract is signed by the contractor, it shall be filed in the office of the city auditor.

40-22-36. Contracts - Conditions and terms.

A contract let under the provisions of this chapter shall require the work to be done pursuant to the plans and specifications on file in the office of the city auditor, subject to the approval of the engineer acting for the municipality, and shall provide further:

1. That the governing body shall have the right to suspend the work at any time for improper construction and to relet the contract therefor or to order a reconstruction of the work as to any part thereof improperly done.
2. The time within which the work shall be completed.
3. The period of time for which the work shall be guaranteed as to workmanship and materials.
4. The fund from which the contract price is to be paid by the municipality.
5. That the consideration expressed in the contract is payable only in warrants drawn on the fund described in the contract.
6. That the municipality assumes and incurs no general liability under such contract.
7. That failure of the engineer to reject work and materials which are not up to specifications and acceptance of the job by the engineer shall not release the contractor from liability for any failure on the contractor's part to perform work or furnish materials in accordance with the plans and specifications.

The engineer acting for the municipality shall supervise and inspect the work during its progress. In addition to any rights which a municipality may have under its contract for construction of part or all of an improvement after a contract has been awarded and before work thereunder has been completed a municipality may, with the consent of the contractor and without advertising for bids, order additional work done by that contractor of the same character as that which was contracted for, whether within or without the improvement district for which the original contract was made, and upon the same terms and conditions specified in the original contract except as to time of performance, and at the same prices for the additional work provided that the total price payable to the contractor for such additional work shall not exceed twenty percent of the amount estimated by the engineer for the municipality to be payable for that character of work under the original contract.

40-22-37. Contractor shall be paid during progress of work - Retainage - Failure to pay - Rate of interest - Investment of retainage.

If the contractor to whom a contract is let properly performs the work therein designated, the governing body, at least once in each calendar month during the continuance of such contract work, shall meet, receive, and consider estimates furnished by the agent, engineer, or architect acting for the municipality or if not so furnished, then by the contractor, and shall allow such estimates in an amount of the estimated value of the labor and material furnished upon such contract, and of the material then upon the ground for use in such contract, subject to retentions equal to ten percent of each estimate presented until such time as the project is fifty percent completed, with no further retainage on estimates during the continuance of the contract. The governing body may, however, upon completion of ninety-five percent of the contract according to the estimates, pay to the contractor ninety-five percent of the amount retained from previous estimates. Any amount retained after ninety-five percent completion of the contract shall be paid to the contractor in such amounts and at such times as are approved by the municipality, upon estimates by its agent, engineer, or architect or the contractor, with final payment of all moneys due to the contractor to be made immediately following completion and acceptance of the project. The governing body, immediately after considering and allowing any such estimate, shall certify and forward the same to the city auditor or other official having the power to draw warrants, who forthwith shall draw a warrant upon the proper fund and transmit the same promptly to the contractor entitled thereto. In case the governing body shall fail or neglect to receive and allow such estimate or certify any estimate or final payment upon completion and acceptance or the proper officer required to issue such warrant shall fail or neglect to issue a warrant as provided herein, for a period of more than thirty days from the date of such estimate

or completion date, then said estimate or final payment, together with any retainage properly payable, shall draw interest from its date at the rate per annum of two percentage points below the Bank of North Dakota prime interest rate as set thirty days from the date of such estimate or completion date until the issuance of a proper warrant therefor. Such interest shall be computed and added to the face of said estimate, final payment, or retainage by the officer required to issue such warrant, shall be included in the warrant when drawn, and shall be charged to the fund from which payment for the improvement is to be made. On the amounts of estimates retained, as provided herein, the governing board, authorized committee, or public body in charge of such work may invest or deposit the retained amounts in any financial association or institution in North Dakota earning interest or dividends for the benefit of the contractor. Any amounts so invested or deposited shall remain in the name of the governing board, authorized committee, or public body in charge of such work until final payment of all money due to the contractor is to be made. Further, no contractor shall use such account in any manner whatsoever until released and received by the contractor upon completion of the contract.

40-22-38. Application of chapter to waterworks and water mains - Acquisition of waterworks, sewage treatment and disposal plants, and sewer systems.

The provisions of this chapter relating to water mains and waterworks apply only to municipalities that own or contemplate owning a system of waterworks and water mains. In case of the purchase of a waterworks system or of a sewage treatment or disposal plant or of a system of sewers, either by eminent domain proceedings subject to chapter 32-15, or otherwise, a municipality may create improvement districts, direct the preparation of plans and specifications, adopt a resolution declaring the purchase of such facilities necessary, and take all other proceedings prescribed by this chapter which would be taken in case of the construction of such facilities by the municipality itself for the purpose of defraying the cost thereof by special assessment of the property benefited thereby. The property benefited may be specially assessed for the purchase of such facilities, either separately or as a part of a new system, the same as if said facilities were constructed entirely anew.

40-22-39. Abbreviations, letters, or figures may be used in proceedings for levy and collection of special assessments.

In all proceedings for the levy and collection of special assessments, abbreviations, letters, and figures may be used to denote additions, lots, lands, blocks, sections, townships, ranges, and parts thereof, years, days of the month, and amounts of money.

40-22-40. City auditor to keep complete record of improvements - Record as evidence.

The city auditor shall keep in the city auditor's office a complete record of all the proceedings taken in the matter of making any improvements under this chapter. Such record shall include all reports and the confirmations thereof, all petitions, orders, appointments of commissioners, notices and proofs of publications, and resolutions of the governing body. Such record, a certified transcript thereof, or the original papers, proofs of publications, orders, or resolutions on file in such office shall be admitted in evidence in any court or place in this state without further proof as evidence of the facts therein contained.

40-22-41. Validation.

Repealed by omission from this code.

40-22-42. Confirmation of certain proceedings for city and village improvements.

Repealed by omission from this code.

40-22-43. Defects and irregularities in improvement proceedings are not fatal.

Defects and irregularities in any proceedings had or to be had under this chapter relating to municipal improvements by the special assessment method, when the proceedings are for a lawful purpose and are unaffected by fraud and do not violate any constitutional limitation or

restriction, shall not invalidate such proceedings, and no action shall be commenced or maintained and no defense or counterclaim in any action shall be recognized in the courts of this state founded on any such defects or irregularities in such proceedings, unless commenced within thirty days of the adoption of the resolution of the governing board awarding the sale of warrants to finance the improvement.

40-22-44. Discontinuance of municipal parking lots.

The governing body of a municipality may, if it deems it in the best interests of the municipality, discontinue the operation of a municipal parking lot when there exists a higher and better use for the property. If any portion of the cost of such parking lot has been paid for by special assessment, the governing body shall, prior to making any determination to discontinue, hold a public hearing concerning the continuance or discontinuance of such parking lot. The governing body shall cause to be published once each week for two consecutive weeks in the official newspaper of the municipality a notice of the time when and the place where the governing body will meet to conduct the hearing required by this section. If the governing body, after public hearing, determines that the parking lot may be put to a higher and better use, the governing body is hereby authorized to take the necessary steps to effectuate that use. For this purpose, the governing body is authorized to, but not limited to, enter into and complete negotiations for the sale of the parking lot in question.

40-22-45. Equalization of original assessment.

Whenever any portion of the cost of a parking lot which is to be discontinued has been paid for by special assessment, the useful life of the parking lot shall be determined by the governing body. If the period of time determined to be the useful life of the parking lot has not completely elapsed, the governing body of the municipality shall direct the cancellation of uncollected installments of special assessments previously levied for the same improvement, and the refund of installments paid, plus interest calculated at four and one-half percent per annum on the refunded prepaid installments, from the general fund of the municipality to the extent determined by it to be necessary to make the original assessments and the subsequent assessments bear as nearly as possible the same relation to the total benefits derived from the improvement by the respective properties assessed.

40-22-46. Payment of outstanding warrants - Deposits of surplus in general fund - General fund liable for any outstanding warrants.

Upon the discontinuance of any municipal parking lot under the authority of sections 40-22-44 and 40-22-45, the governing body shall apply the proceeds from the sale of such property, if such property is sold, to the special assessment fund created to bear the cost of creating the parking lot. If there is any surplus after all of the outstanding special assessment warrants or bonds are redeemed, the surplus shall be transferred to the general fund of the municipality. If the proceeds from the sale of such property, if such property is sold, are insufficient to cover the cost of redeeming the outstanding special assessment warrants or bonds, the governing body shall provide for the payment of said warrants or bonds out of the general fund of the municipality.