CHAPTER 40-33
MUNICIPAL UTILITIES

40-33-01. Electric light, telephone, natural and artificial gas plants, pipelines and distribution systems, and power plants - Municipalities may purchase, erect, construct, maintain, sell, or lease.

Any municipality may purchase, erect, construct, operate, maintain, enlarge, improve and extend, or lease from any person or sell or lease to any person:

1. Any electric light and power plant, site, buildings, and equipment thereof.
2. Any electric distribution system and equipment thereof.
3. Any electric transmission line and equipment thereof.
4. Any telephone plant, equipment, and distribution system thereof.
5. Any waterworks, mains, and water distribution system and any equipment or appliances connected therewith and any property related thereto, notwithstanding any other provision of law.
6. Any heating system, gas or otherwise, and the buildings and equipment necessary to furnish heat to the public buildings of the municipality and to the inhabitants of the municipality.
7. Any natural or artificial gas pipeline transmission or distribution system or plants.

For purposes of subsection 5, the term "lease" includes any lease, sublease, purchase agreement, lease-purchase agreement, installment purchase agreement, leaseback agreement, or other contract, agreement, instrument, or arrangement pursuant to which any rights, interests, or other property are transferred to, by, or from any party to, by, or from one or more parties, and any related documents entered or to be entered, including any operating agreement, service agreement, indemnity agreement, participation agreement, loan agreement, or payment undertaking agreement. A lease obligation of a municipality under subsection 5 may not exceed a term of ninety-nine years. A lease obligation of a municipality under subsection 5 does not constitute an indebtedness of the municipality or a pledge of the full faith and credit or unlimited taxing resources of the municipality. Notwithstanding any other provision of law, a municipality may solicit and accept one or more proposals for a lease transaction, including the arrangement thereof, under subsection 5. The municipality, by resolution of its governing body upon a majority vote of the members of the governing body, may accept a proposal that it determines to be in the public interest. A lease under subsection 5, and any related documents entered or to be entered, may be authorized by resolution of the governing body of the municipality.

40-33-02. Acquiring, erecting, or improving plant, system, or line without election prohibited - Exceptions.

No municipal officers may purchase, erect, substantially enlarge, improve, or extend an existing plant, or lease from others any plant, system, or line provided for in section 40-33-01, unless the proposition has been submitted by a resolution of the governing body to the qualified electors of the city at a biennial or special election called, held, and conducted upon the notice and in the manner specified by this title for the election of the governing body of the city, and has been approved by a majority of the electors voting thereon. If the cost of any enlargement, improvement, or extension will be paid out of the earnings of the plant and the cost does not exceed the sum of five thousand dollars, or if eighty percent or more of the cost of any waterworks, mains, water system, and equipment or appliances therefor is to be paid by special assessments or by the earnings of the plant or by both, the governing body is not required to submit the proposition to the electors of the city. If the improvement and facilities are to provide for a greater and more adequate water supply to meet the needs of the city for domestic use, fire protection, or for sanitation and sewage disposal, regardless of cost the governing body thereof may by resolution provide for the needed improvement and facilities in cooperation with the state or federal government, or any agency thereof, without an election if funds for such cooperation or for defraying the entire cost thereof are available in the municipal utilities fund as defined by section 40-33-10. If the lease by the city of any plant, system, or line provided for in

subsection 5 of section 40-33-01 is from the state, or any agency or institution of the state, the governing body is not required to submit the proposition to the electors of the city.

40-33-03. Sale or lease of plant, system, or line - Offer or written proposition - Election - Proceeds.

No municipality shall sell any municipal plant, system, or line, nor lease the same, or any substantial part thereof, or interest therein, to any person, firm, corporation, or limited liability company unless the person, firm, corporation, or limited liability company shall have filed in the office of the auditor of the municipality a complete written offer or proposition, nor unless a majority of the qualified electors of the municipality shall have voted in favor of accepting the offer or proposition at an election called, held, and conducted as specified in section 40-33-02. A copy of the offer or proposition shall be published with the notice of the election. The proceeds of any sale or lease made according to this section shall be applied toward the payment of the existing indebtedness of the municipality incurred for the purpose of purchasing, erecting, operating, or enlarging, improving, or extending such plant, system, or line. The purchaser or lessee, however, shall not be required to see that the consideration of the purchase or lease is applied correctly as provided in this section, but the purchaser or lessee shall be protected fully in making the payment or payments by the receipt of the city auditor. Nothing contained in this section shall prevent the governing body from selling or disposing of any machinery, material, or other property belonging to any such utility which may have been inadequate or insufficient for the purposes for which it was intended to be used. This section does not apply to a lease by a municipality of any plant, system, or line to the state or any agency or institution of the state pursuant to subsection 5 of section 40-33-01.

40-33-04. Manner of payment of purchase, erection, improvement, or leasing of plant, system, or line.

Any municipality may pay the cost of purchasing, erecting, enlarging, improving, extending, or leasing any municipal plant, system, line, or any part thereof:

1. Out of the earnings of the plant, system, or line;
2. By issuing special assessment warrants as provided in section 40-33-05;
3. By issuing bonds of the municipality as provided in section 40-33-07;
4. Partly by such special assessment warrants and partly by such bonds; or
5. Partly out of the earnings of the plant, system, or line, and partly by such special assessments or bonds or special assessments and bonds.

A municipality may pay the cost of leasing any municipal plant, system, line, or any part thereof from the state, or any agency or institution of the state under subsection 5 of section 40-33-01 solely from revenues to be derived by the municipality from the ownership, sale, lease, disposition, and operation of the waterworks, mains, and water distribution system; the funds or any other amounts invested by the municipality pursuant to section 21-06-07, or invested on the municipality's behalf by the state, or any agency or institution of the state, in conformity with policies of the industrial commission, including investment in a guaranteed investment contract and any earnings thereon, to the extent pledged therefor; and funds, if any, appropriated annually by the governing body of the municipality or received from federal or state sources.

When such cost, or any part thereof, is to be paid out of the earnings, the cost or the part thereof payable out of the earnings shall not become a general obligation of the municipality payable out of the money raised through taxation but shall be a special obligation payable solely and exclusively out of the earnings derived from the operation of the plant, system, or line.

40-33-05. Payment of cost of plant, system, or line by special assessment warrants - Payment of assessments - Interest.

If the governing body of the municipality deems it advisable to pay the whole or any part of the cost of a municipal utility by special assessment warrants, it shall create a special assessment district by ordinance. The district shall include, as nearly as may be determined, all of the property in the municipality which will be benefited by the improvement, and may include the entire municipality or a portion thereof. The governing body thereafter shall adopt a

resolution of necessity and hold a hearing thereon, estimate the amount of the cost of the improvement, let a contract or contracts therefor, create a fund for the district, issue and sell the warrants of the municipality drawn on the fund, complete the work of the improvement, and assess the property benefited thereby upon notice and in the form and manner specified by the provisions of chapters 40-22 through 40-26 insofar as such provisions are applicable to an improvement being made under this chapter. The special assessments levied shall be payable in equal annual installments extending over a period of not more than twenty years and shall bear interest at an annual rate of not more than one and one-half percentage points above the average net annual interest rate on any warrants for the payment of which they are pledged on the total amount of the assessments remaining unpaid.

40-33-06. Payment of cost of improvement by general taxation.

Within the debt limit provision of the Constitution of North Dakota, the municipality may pay, at the option of the governing body, any portion of the cost of the improvement by general taxation upon all the taxable property in the municipality. The tax shall be levied at the time of making the improvement and shall be spread over such years and in such amounts as will meet the municipality's share of the cost represented by the principal of the warrants issued against the fund and the interest thereon. The tax, when collected, shall be paid into the fund of the district and shall be used solely for the payment of the principal and interest of the warrants issued against the district. The ordinance levying the tax shall be irrepealable so long as any warrants are outstanding against the fund.

40-33-07. Issuance of bonds - Election required.

No municipality shall issue its bonds as authorized by section 40-33-04 until the question of issuing the bonds shall have been approved by a majority of the electors of the municipality voting upon such question at an election called, held, and conducted as specified in section 40-33-02. The notice of the election shall specify the maximum amount, maximum interest rate, purpose, and maturity of the bonds. The bonds shall be sold in the manner provided by chapter 21-03. At or before the issuance of the bonds, the municipality, by ordinance, shall levy a direct, annual, and irrepealable tax upon all the taxable property in the municipality in the years and in amounts sufficient to pay the principal and interest of the bonds when due.

40-33-08. Questions and propositions may be voted upon at same election and may be contained on one ballot.

Any or all of the propositions and questions to be voted upon as specified in sections 40-33-02 and 40-33-07 may be submitted at one and the same election and upon one ballot, but the ballot shall state each of the propositions separately.

40-33-09. Extension of municipal lighting, heating, or power system, or gas works by special assessment method.

An extension to an existing municipal lighting, heating, or power system or gas works shall be considered an improvement within the provisions of this chapter.

40-33-10. Municipal utilities fund - Contents - Kept separate from other funds - Use and disbursement.

All money received by a municipality for the service of any utility owned and operated by the municipality, and all money, receipts, and returns received from any investments of the earnings of such utilities, shall be paid into the treasury of the municipality and kept in a fund known as the municipal utilities fund. All of the moneys, earnings, and receipts deposited in such fund shall be kept separate and distinct from all other funds of the municipality until used. The fund shall be used only for the purposes and disbursed only in the manner provided by this chapter.

40-33-11. Payments out of municipal utilities fund - Limitations.

Upon proper orders or warrants issued upon the authority of the governing body of the municipality, there shall be paid out of the municipal utilities fund all sums necessary for the

operation, maintenance, enlargement, repair, alteration, improvement, and extension of the plant or plants of which the earnings go into the fund, but no municipality shall pay out of nor divert from the fund any sum for any other purpose except as provided in section 40-33-12.

40-33-12. Surplus in municipal utilities fund - How expended.

When the governing body of the municipality determines that there is a cash surplus in the municipal utilities fund over and above any amount necessary to provide adequately for the operation, maintenance, repair, enlargement, alteration, improvement, and extension of the plant or plants, it may invest the surplus or transfer it or a portion thereof as follows:

1. All or any part of the surplus may be invested by the governing body in interest-bearing bonds of the United States government, the state of North Dakota, or any bonds or special improvement district warrants of the municipality in which the municipal plant is located, and all the principal and interest on the warrants and bonds, when repaid, shall be placed back in the municipal utilities fund; or
2. The governing body may transfer from the surplus in the fund to the general fund of the municipality or to any other fund of the municipality a total sum of not more than twenty percent of the gross receipts of the municipal utilities for the fiscal year of the municipality during which the transfer or transfers are made. In addition the governing body, upon adoption of a resolution declaring it necessary and upon approval of a majority of the votes cast on the question at a regular city election, may transfer to the general fund of the municipality or to any other fund of the municipality from the surplus in the municipal utilities fund at the end of any fiscal year. The resolution and ballot shall state the specific amount or percentage to be transferred as hereinbefore provided.

40-33-13. Municipality may sell surplus electricity or water outside of municipal limits.

Whenever the governing body shall deem it advisable, a municipality owning and operating its own electric lighting system or waterworks may enter into contracts with persons, corporations, or limited liability companies maintaining manufacturing plants, residences, or other buildings outside of the municipal limits, to furnish such plants or buildings with electricity or water if it can be furnished from the surplus remaining after supplying the needs of the municipality and its inhabitants.

40-33-14. Contract to supply surplus water or electricity outside of municipal limits.

If the governing body decides to furnish electricity or water outside the municipal limits, it shall be done by a contract authorized by the governing body and executed on its part by the executive officer and the city auditor and by the customer or customers to be supplied. No such contract shall be authorized or entered into at any rate or price for electricity or water which shall discriminate against the inhabitants of the municipality, or which shall impose any direct tax burden upon the taxable property in the municipality, or in such amount as will interfere with the ability of the municipality to provide adequate electricity or water for its own use and the use of the inhabitants thereof.

40-33-15. Proceedings instituted under existing law - How completed.

Any proceedings instituted under the law as it was at the time of the purchase, erection, operation, maintenance, enlargement, improvement, or extension of a municipal utility or the lease thereof from any person, firm, corporation, or limited liability company or the sale or lease of any such plant, system, or line to any person, firm, corporation, or limited liability company may be completed under the law as it existed at the time such proceedings were taken.

40-33-16. Municipality may purchase water for distribution.

Any city owning a system for the distribution of water for fire protection and other public purposes and for selling water to its inhabitants and industries, but for which the water supply is unsuitable or inadequate, may contract to purchase water at wholesale for such purposes from any person, firm, public or private corporation, or limited liability company able and willing to

furnish the same, upon such terms and during such period, not exceeding forty years, as the city governing body shall deem appropriate. Any such contract shall be authorized by an ordinance submitted to the voters for approval by a majority of those voting on the proposition before it takes effect. In and by such ordinance and contract, the city may bind itself:

1. To establish and maintain rates and charges for supplying water by it to its inhabitants and industries, either according to a prescribed schedule agreed upon or sufficient to produce net stated amounts for specified periods during the life of the contract, or both, and to appropriate and use the same for payments to become due under the contract, and, if the contract so provides, the city shall be obligated to pay for such water solely out of such net revenues;
2. To pay, at an agreed rate or rates, for all water taken by the city under such contract and not resold by it; and
3. To do and perform any other acts or things which, in the discretion of the governing body, are deemed reasonable and appropriate for the procurement of such water on the most efficient and economical basis.

If any payments under any contract are to be made solely out of net revenues, the contract may fix and prescribe the method or basis on which net revenues are to be computed.

40-33-17. City may contract for water treatment plant.

Any city owning and operating a system of waterworks supplying water for municipal purposes and to its inhabitants and industries may enter into a contract in the manner hereinafter set forth, with any person, firm, public or private corporation, or limited liability company able and willing to perform such contract, for the purchase and installation of a plant for the treatment of such water supply by the removal of minerals, gases, and other impurities therefrom, including, but without limiting the generality hereof, the construction of reservoirs or settling basins and furnishing of machinery and equipment for such purpose, the construction of buildings necessary to house the same, and any modifications, improvements, and additional mains necessary to connect such plant with the existing water supply system.

40-33-18. Resolution authorizing contract - Payment solely through net revenue - Issuance of revenue bonds or of certificates evidencing indebtedness under contract.

Any such contract shall be authorized by resolution or resolutions duly adopted by the governing body of the city. Such resolutions and contract shall provide that the cost of the plant shall be paid solely out of the net revenue thereof, to be derived from special rates and charges imposed and collected for the service thereof to users of the municipal waterworks system, after payment of the reasonable and current expenses of operation and maintenance of such plant. The governing body may provide for the payment of such cost by the issuance of revenue bonds in accordance with the provisions of chapter 40-35, which bonds may be sold as provided in said chapter or may be delivered to the contractor in payment of the contract price, or it may be provided in said resolutions and contract that such price shall be payable in stated installments over a period not exceeding ten years, with interest at a rate not exceeding eight percent per annum, payable annually or semiannually. Said payments may be evidenced by certificates executed by the executive and recording officers, and such certificates may have interest coupons attached.

40-33-19. Agreements authorized - Special rates and charges.

In and by such resolutions and contract the city may bind itself to establish and maintain special rates and charges for the service of said plant, over and above its regular water rates, sufficient to produce net revenues adequate to make all payments of principal and interest on said revenue bonds or certificates when such payments become due, or to establish and maintain a prescribed schedule of such rates and charges, to pay, at an agreed rate or rates, for treatment of all water used by the city and not resold, and to do and perform any other acts or things which, in the discretion of the governing body, are deemed reasonable and appropriate for the construction, operation, and financing of said plant on the most efficient and economical

basis, and the city may make covenants and agreements with respect to any and all of the matters stated in section 40-35-13.

40-33-20. Indebtedness not general obligation of municipality - Conditional sales authorized.

No indebtedness on the general credit of the municipality shall be deemed to be incurred by reason of any covenant or agreement contained in said contract or in the resolutions of the city with reference thereto. No revenues received from taxes or any other source, other than the revenues derived from said plant as hereinabove provided, shall be pledged for the payment of any contract executed or revenue bonds or certificates issued under the provisions of sections 40-33-17 through 40-33-21. Such contract, bonds, or certificates shall not constitute a lien or charge on any property of the city, except that if the contract price is not paid by the issuance of revenue bonds, title to the plant or any specified portion thereof may be retained by the contractor as security for the purchase price, with right of repossession in the manner provided for property sold under a conditional sales contract, until full payment of the purchase price.

40-33-21. Powers conferred are supplementary.

The powers conferred by sections 40-33-17 through 40-33-21 shall be in addition and supplemental to, and not in substitution for, and the limitations imposed by sections 40-33-17 through 40-33-21 shall not affect the powers conferred by any other law, and no other law shall be deemed repealed hereby. So far as the provisions of sections 40-33-17 through 40-33-21 are inconsistent with any other laws of this state, the provisions of sections 40-33-17 through 40-33-21 shall be controlling with reference to the making of contracts and the issuance of revenue bonds or certificates of the types and for the purposes herein mentioned.

40-33-22. Joint construction and operation of gas transmission or distribution systems or plants.

In accordance with the provisions of this chapter, any municipality within this state may join with other municipalities for the purpose of jointly constructing, acquiring, or operating natural or artificial gas transmission lines, distribution systems, and plants upon such contractual basis as may be desirable and mutually agreeable to the governing bodies of the municipalities concerned. Such lines, systems, or plants shall be jointly operated by a board consisting of such representatives of each municipality as may be agreed by the governing bodies thereof, except that each such municipality shall have at least one member on such board, as selected by the governing body thereof. The governing board of such jointly operated utilities shall have all of the powers of any utility owned or operated by a single municipality. Before any such jointly operated utility shall begin operation, it shall first secure a certificate of convenience and necessity from the public service commission, which shall issue or refuse the issuance of such certificate upon like procedure and grounds as is required for such action upon the certificates of privately owned utilities. Such jointly operated utilities shall be subject to all rules, regulations, and orders of the public service commission in the same manner as privately owned utilities.

40-33-23. Sale of gas outside municipalities.

Any jointly operated utility as provided in section 40-33-22 shall be authorized to sell and dispose of gas outside the limits of incorporated municipalities in such manner and upon such terms and conditions as may be prescribed by the public service commission.

40-33-24. Funds of jointly operated utilities.

All funds of any jointly operated utility as provided in section 40-33-22 shall not be subject to the provisions of sections 40-33-10 and 40-33-11, but shall be kept separate and apart from all other funds of any participating municipality and shall be disbursed in the manner provided by the governing board thereof.

40-33-25. Surplus funds of jointly operated utility.

Any surplus funds of any jointly operated utility, as provided for in section 40-33-22, shall be distributed to the participating municipalities ratably in proportion to their interest or ownership therein. Such surplus funds received by any municipality shall be disposed of by the governing body of the municipality in accordance with the provisions of section 40-33-12.

40-33-26. Municipal transportation system - Resolution.

Whenever the governing body of any municipality shall determine that the public convenience and necessity of the municipality require the purchase, acquisition, or establishment of a public transportation system, it may, by resolution adopted by the affirmative vote of a majority of its members, determine that the anticipated net revenues of such public transportation system would be insufficient to assure the sale of revenue bonds for the total cost thereof, and that a specific amount, in dollars, of the cost thereof should be paid for through the issuance and sale of general obligation bonds and the remainder of the cost should be paid for through the issuance and sale of revenue bonds.

40-33-27. Municipal transportation system - Bonds.

Upon the passage of a resolution as set forth in section 40-33-26, the municipality shall proceed in the manner set forth in chapter 21-03 for the issuance of the amount of general obligation bonds provided in said resolution, and if and when the issuance of general obligation bonds is authorized by the vote of the electors of the municipality as in said chapter provided, it shall proceed as provided in chapter 40-35, for the issuance of the amount of revenue bonds provided in said resolution. In all resolutions and notices of election in connection with the issuance of general obligation bonds, reference shall be made to the amount of revenue bonds which the municipality proposes to issue for the purpose in addition to the general obligation bonds.

40-33-28. Municipal transportation system - Bond limitations.

All general obligation bonds issued pursuant to sections 40-33-26 through 40-33-29 shall be subject to all the restrictions, qualifications, and limitations of chapter 21-03, as well as all constitutional limitations upon indebtedness, and all revenue bonds issued pursuant to sections 40-33-26 through 40-33-29, together with all revenues of the transportation system, shall be subject to all the limitations, qualifications, and restrictions of chapter 40-35.

40-33-29. Municipal transportation system - Application - Intent.

The provisions of sections 40-33-26 through 40-33-29 shall not apply to any case in which a municipality determines that the acquisition of a public transportation system should be financed through general obligation bonds only, or through revenue bonds only, it being the intention of the legislative assembly that sections 40-33-26 through 40-33-29 shall apply only in cases in which such financing is to be accomplished through a combination of revenue bonds and general obligation bonds.

40-33-30. Right of municipal electric utilities and municipal power agencies to construct, own, and maintain electric transmission lines.

1. For purposes of this section, the terms electric transmission provider, electric transmission line, and electric public utility, have the same meanings as in section 49-03-01.5. Municipal power agency has the meaning provided in section 40-33.2-02 and also includes a municipal power agency of which any municipality in this state is a member.
2. Except as provided in subsection 3, an electric transmission provider or designee may not construct an electric transmission line interconnecting with an existing electric transmission line owned, leased, or operated by a municipal utility or municipal power agency, unless the electric transmission provider or designee has provided written notice to the municipal utility or municipal power agency of its intention to do so. If the municipal utility or municipal power agency provides written notification to the electric

transmission provider or designee within one hundred eighty days from receipt of the written notice under this subsection, that the municipal utility or municipal power agency is willing and able to construct and operate a similar electric transmission line, the municipal utility or municipal power agency shall have the right to construct said line.

3. If an electric transmission line would interconnect facilities owned, leased, or operated by a municipal utility or municipal power agency and facilities owned, leased, or operated by a rural electric cooperative or an electric public utility doing business in this state the following conditions apply:
   a. The municipal utility or municipal power agency and the rural electric cooperative or the electric public utility shall attempt to agree on all terms and conditions, including design, construction, ownership, and operation of the electric transmission line.
   b. If parties are unable to agree, this subsection does not compel a party to participate in the project or be construed as a waiver by any party of its right to establish and enforce any requirements for interconnection of transmission facilities to its transmission system.