19061

Prepared by the North Dakota Legislative Council staff for Representative Dalrymple
June 1999

REQUEST FOR BUDGET SECTION APPROVAL OF THE SALE OF THE CORPORATE CENTER IN GRAND FORKS - BACKGROUND INFORMATION

Section 5 of 1999 Senate Bill No. 2188 provides that the Corporate Center in Grand Forks may not be voluntarily sold without the prior approval of the Budget Section. A copy of Senate Bill No. 2188 has been attached as Appendix A. The agenda for the June 9, 1999, meeting of the Budget Section includes time for the committee to consider approval of the future sale of the Corporate Center. This memorandum provides background information relating to the Corporate Center and its proposed future sale.

DESCRIPTION OF CORPORATE CENTER

The Corporate Center consists of two buildings located at 401 and 402 DeMers Avenue in Grand Forks. The two buildings, which will be connected by a skywalk, will consist of approximately 69,000 square feet. Construction began in March 1998 and is anticipated to be completed by September 1, 1999. The city of Grand Forks owns the Corporate Center, but is not anticipated to occupy space in either building. Construction and related costs are approximately $15.2 million, as follows:

Architectural and engineering fees	$1,077,880
Construction costs	13,934,955
Bond issue costs	142,643
Total project costs	$15,155,478

The project funding is from the following sources:

Federal community development block grant	$5,250,000
Federal Department of Commerce - Economic Development Agency grant	3,500,000
First National Bank - Payment for improvements	742,536
Bond proceeds	5,662,942
Total project funding	$15,155,478

PROPOSED SALE

The city has negotiated lease agreements with three tenants for occupancy of the building located at 401 DeMers Avenue. The three tenants are Brady, Martz & Associates, P.C.; Camrud, Maddock, Olson, & Larson, Ltd.; and First National Realty Corporation. The lease agreements provide the following:

Tenant	Leased Area - Including Common Area	Base Lease Rate	Additional Rent
Brady, Martz & Associates, P.C.	22,844 square feet	$13,801.58 per month for 96 months $14,220.39 per month for 60 months	$951.83 per month for heating system improvements $906.63 per month for “fit up” costs incurred in making the space ready for occupancy
Camrud, Maddock, Olson, & Larson, Ltd.	10,942 square feet	$6,610.79 per month for 96 months $6,811.40 per month for 60 months	$455.92 per month for heating system improvements $1,875.96 per month for “fit up” costs incurred in making the space ready for occupancy
First National Realty Corporation	27,966 square feet	$19,115.88 per month for 96 months $19,695.18 per month for 60 months	$1,165.25 for heating system improvements

The city is proposing to enter into purchase agreements with the three tenants. Three separate identical purchase agreements have been issued to the three tenants. A copy of the agreement sent to Brady, Martz & Associates, P.C., is attached as Appendix B. The purchase agreement includes the following provisions:

- The purchase option may not be exercised unless the lease has been in effect for at least 21 but not more than 23 years. (The initial term of the leases is 13 years, with two 5-year optional renewal periods.)
- The city’s initial equity in 401 DeMers Avenue is listed as $5,392,625. In the event the

purchase option is exercised, the purchase price will be the fair market value, less the following amounts:

The city's initial equity plus interest at the rate of 2.5 percent per year (based on 2.5 percent interest per year, the value of the city's initial equity will increase to approximately $9.5 million after 23 years).

One-half of the difference between the fair market value and the amount of the city's equity plus interest, as calculated above.

- The purchase option is granted to each tenant for their respective leased space.

The city of Grand Forks, Office of Urban Development, has indicated that the terms of the leases and the optional purchase agreements were arrived at through negotiations with the three tenants. The Office of Urban Development indicated that the negotiations took place at a time of uncertainty in the city's central business district due to the effects of the 1997 flood, and the terms were arrived at to encourage the three tenants to remain in the central business district rather than relocate their offices to another part of town.

The city will maintain a bond reserve account until retirement of the bonds (estimated at 18 years) and will also maintain a "capital reserve for replacement account." The Office of Urban Development has indicated that the city anticipates a minimal cash flow from leasing the building, and consequently, the bond reserve and capital reserve for replacement accounts will be funded at least partially from city economic development (sales tax) funds, rather than building revenues. The Office of Urban Development has indicated that in the event of sale of the building, the city will retain ownership of the balances of these accounts. No estimate was available as to the possible balances of these accounts at the time of the proposed sale.

The Office of Urban Development has provided the following information on estimated cash flows for the Corporate Center:

	Annual Net Cash Flow (After Debt Service and Operating/Maintenance Costs) - Based on Revenue From Pending or Negotiated Leases[1,2]	**Annual Net Cash Flow (After Debt Service and Operating/Maintenance Costs) - Based on Full Occupancy[2]**
Years 1-8	$37,240	$115,394
Years 9-13	$53,732	$134,383
Years 14-18	$70,668	$153,919
Years 19-23	$21,683	$107,638

[1] Leases have been negotiated with the three main tenants listed previously in this memorandum. The city is currently negotiating with the Bremer Corporation for occupancy of the first floor of the 402 DeMers building. Leases to those four tenants would encompass approximately 87 percent of the rentable square footage in the two buildings.

[2] Bond payments are estimated to be between $575,000 and $580,000 per year for 18 years. For years 19-23, this amount has been deducted from the Corporate Center revenues to arrive at the net cash flow amounts shown. For years 19-23, unless the purchase options are exercised, the amounts that were previously paid to retire the revenue bonds issued for the building's construction will be paid to the water development trust fund pursuant to Section 5 of 1999 Senate Bill No. 2188.

ATTACH:2

Fifty-sixth Legislative Assembly, State of North Dakota, begun in the Capitol in the City of Bismarck, on Tuesday, the fifth day of January, one thousand nine hundred and ninety-nine

SENATE BILL NO. 2188
(Senator Traynor)
(Representatives Brekke, Grosz, D. Johnson)

AN ACT to create and enact a new section to chapter 61-01 and chapter 61-02.1 of the North Dakota Century Code, relating to statewide water development goals and the issuance of bonds to finance construction of flood control projects, the southwest pipeline project, a Devils Lake outlet, and a statewide water development program; to amend and reenact subdivision d of subsection 5 of section 61-02-02 of the North Dakota Century Code, relating to the definition of works; to require the pledging of funds for certain water projects; to allocate funds from settlements with tobacco product manufacturers; to provide a statement of legislative intent; to provide for reports to the legislative council; to provide for development of a statewide water development program; to provide an appropriation; to provide an effective date; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 61-01 of the North Dakota Century Code is created and enacted as follows:

Statewide water development goals. The legislative assembly will support to the extent funds are available from the water development trust fund the comprehensive statewide water development program developed pursuant to section 2 of chapter 587 of the 1995 Session Laws and to the state water management plan established under section 61-01-26. In order to implement the state water management plan, the legislative assembly will support the following:

1. During the 1999-2001 biennium:

   a. Southwest pipeline project: Six million dollars in state funds and eleven million five hundred thousand dollars in federal funds, assuming Perkins County water system payment to the state water commission of four million five hundred thousand dollars.

   b. Northwest area water supply project: Eight million two hundred thousand dollars in local funds and fourteen million eight hundred thousand dollars in federal funds, with an option being considered of the state water commission bonding the local cost-share with local repayment of the total principal, interest, and cost of issuance of the bonds to the state water commission.

   c. Other municipal, rural, and industrial projects: Twenty-five million five hundred thousand dollars in local funds and thirty-nine million nine hundred thousand dollars in federal funds.

   d. Grand Forks flood control: Twenty-five million dollars in local funds, twenty-five million dollars in state funds, and thirty-eight million five hundred thousand dollars in federal funds. The state total cost-share of fifty-two million dollars or so much of the total cost-share that is required may be bonded, requiring a loan repayment estimated at three million nine hundred thousand dollars per year with repayment beginning in 2001.

   e. Devils Lake outlet to the Sheyenne River and to west Stump Lake: Seventeen million five hundred thousand dollars in state funds and thirty-two million five hundred thousand dollars in federal funds. The total state cost-share of seventeen million five hundred thousand dollars includes mitigation costs and will be bonded, requiring a local repayment estimated at one million five hundred thousand dollars per year, with the split between state and local loan repayment to be determined. Before bonds may be issued for a Devils Lake outlet, construction of the outlet must be approved by the state water commission and the federal government must have agreed to participate in construction of the outlet.

2. During the 2001-03 biennium:

a. Water to eastern North Dakota: Seventeen million dollars in federal funds appropriated under the Garrison Diversion Unit Reformulation Act of 1986 [Pub. L. 99-294; 100 Stat. 418], Dakota Water Resources Act of 1998, or other federal Act. The local cost has not been determined and will be determined after project configuration is complete.

b. Southwest pipeline project: Five hundred thousand dollars in local funds, one million seven hundred thousand dollars in state funds, and twelve million five hundred thousand dollars federal funds.

c. Northwest area water supply project: Eight million seven hundred thousand dollars in local funds and sixteen million three hundred thousand dollars in federal funds.

d. Other municipal, rural, and industrial projects: Seventeen million seven hundred thousand dollars in local funds and thirty-two million eight hundred thousand dollars in federal funds.

e. Grand Forks flood control: Thirty-five million seven hundred thousand dollars in local funds, twenty-seven million dollars in state funds, and sixty-two million nine hundred thousand dollars in federal funds; annual bond payments of three million nine hundred thousand dollars. Components of the Grand Forks flood control project involve water treatment plant improvements. Those federal costs are reflected in subdivision d because of potential cost-sharing using Garrison diversion municipal, rural, and industrial funds. Other projects, such as greenway, are listed under subdivision g.

f. Devils Lake outlet to Sheyenne River and to west Stump Lake: Bond repayments of one million five hundred thousand dollars per year.

g. General projects: Thirty-one million seven hundred thousand dollars in local funds, twenty-five million nine hundred thousand dollars in state funds, and thirty-nine million eight hundred thousand dollars in federal funds.

3. During the 2003-05 biennium:

a. Water to eastern North Dakota: Six million dollars in federal funds appropriated under the Garrison Diversion Unit Reformulation Act of 1986 [Pub. L. 99-294; 100 Stat. 418], Dakota Water Resources Act of 1998, or other federal Act. The local cost has not been determined and will be determined after project configuration is complete.

b. Southwest pipeline project: One million dollars in local funds, five million dollars in state funds, and eleven million four hundred thousand dollars in federal funds.

c. Northwest area water supply project: Eleven million eight hundred thousand dollars in local funds and twenty-one million eight hundred thousand dollars in federal funds.

d. Other municipal, rural, and industrial projects: Seventeen million seven hundred thousand dollars in local funds and thirty-two million eight hundred thousand dollars in federal funds.

e. Grand Forks flood control: Annual bond payments of three million nine hundred thousand dollars.

f. Devils Lake outlet to Sheyenne River and to west Stump Lake: Bond repayments of one million five hundred thousand dollars per year.

g. General projects: Twenty-four million dollars in local funds, eighteen million four hundred thousand dollars in state funds, and five million five hundred thousand dollars in federal funds.

4. During the 2005-07 biennium:

a. Water to eastern North Dakota: Eighty-four million dollars in federal funds appropriated under the Garrison Diversion Unit Reformulation Act of 1986 [Pub. L. 99-294; 100 Stat. 418], Dakota Water Resources Act of 1998, or other federal Act. The local cost has not been determined and will be determined after project configuration is complete.

b. Southwest pipeline project: One million dollars in local funds, nine million five hundred thousand dollars in state funds, and nineteen million five hundred thousand dollars in federal funds.

c. Northwest area water supply project: Five million eight hundred thousand dollars in local funds and ten million nine hundred thousand dollars in federal funds.

d. Other municipal, rural, and industrial projects: Seventeen million seven hundred thousand dollars in local funds and thirty-two million eight hundred thousand dollars in federal funds.

e. Grand Forks flood control: Annual bond payments of three million nine hundred thousand dollars.

f. Devils Lake outlet to Sheyenne River and to west Stump Lake: Bond repayments of one million five hundred thousand dollars per year.

g. General projects: Twenty-four million dollars in local funds, eighteen million four hundred thousand dollars in state funds, and five million five hundred thousand dollars in federal funds.

5. During the 2007-09 biennium:

a. Water to eastern North Dakota: Fifty-nine million dollars in federal funds appropriated under the Garrison Diversion Unit Reformulation Act of 1986 [Pub. L. 99-294; 100 Stat. 418], Dakota Water Resources Act of 1998, or other federal Act. The local cost has not been determined and will be determined after project configuration is complete.

b. Northwest area water supply project: Three million seven hundred thousand dollars in local funds and seven million dollars in federal funds.

c. Other municipal, rural, and industrial projects: Seventeen million seven hundred thousand dollars in local funds and thirty-two million eight hundred thousand dollars in federal funds.

d. Grand Forks flood control: Annual bond repayments of three million nine hundred thousand dollars.

e. Devils Lake outlet to Sheyenne River and to west Stump Lake: Bond repayments of one million five hundred thousand dollars per year.

f. General projects: Twenty-four million dollars in local funds, eighteen million four hundred thousand dollars in state funds, and five million five hundred thousand dollars in federal funds.

6. During the 2009-11 biennium:

a. Water to eastern North Dakota: Two million dollars in federal funds appropriated under the Garrison Diversion Unit Reformulation Act of 1986 [Pub. L. 99-294; 100

Stat. 418], Dakota Water Resources Act of 1998, or other federal Act. The local cost has not been determined and will be determined after project configuration is complete.

b. Northwest area water supply project: One million seven hundred thousand dollars in local funds and three million three hundred thousand dollars in federal funds.

c. Other municipal, rural, and industrial projects: Seventeen million seven hundred thousand dollars in local funds and thirty-two million eight hundred thousand dollars in federal funds.

d. Grand Forks flood control: Annual bond repayments of three million nine hundred thousand dollars.

e. Devils Lake outlet to Sheyenne River and to west Stump Lake: Bond repayments of one million five hundred thousand dollars per year.

f. General projects: Twenty-four million dollars in local funds, eighteen million four hundred thousand dollars in state funds, and five million five hundred thousand dollars in federal funds.

7. Beyond the year 2011:

a. Water to eastern North Dakota: The local cost has not been determined and will be determined after project configuration is complete.

b. Northwest area water supply project: Eight million seven hundred thousand dollars in local funds and sixteen million three hundred thousand dollars in federal funds.

c. Other municipal, rural, and industrial projects: One hundred thirty million two hundred thousand dollars in local funds and two hundred forty-one million two hundred thousand dollars in state funds. The anticipated three hundred forty-five million dollars in federal cost-share has been used in the previous bienniums and the remaining cost-share for projects has been identified as a potential state cost-share.

d. Grand Forks flood control: A total of fifty-eight million five hundred thousand dollars in bond repayments is anticipated.

e. Devils Lake outlet to Sheyenne River and to west Stump Lake: A total of fifteen million dollars in bond repayments.

f. General projects: Two hundred twenty million two hundred thousand dollars in local funds, one hundred fifty-six million four hundred thousand dollars in state funds, and thirty-four million three hundred thousand dollars in federal funds.

SECTION 2. AMENDMENT. Subdivision d of subsection 5 of section 61-02-02 of the North Dakota Century Code is amended and reenacted as follows:

d. All works for the conservation, control, development, storage, treatment, distribution, and utilization of water including, without limiting the generality of the foregoing subdivisions, works for the purpose of irrigation, flood control, watering stock, supplying water for public, domestic, industrial, and recreational use, fire protection, and the draining of lands injured or in danger of injury as a result of such water utilization.

SECTION 3. Chapter 61-02.1 of the North Dakota Century Code is created and enacted as follows:

61-02.1-01. Legislative findings and intent - Authority to issue bonds.

1. The legislative assembly finds that some cities suffered serious economic and social injuries due to the major flood disaster in 1997 and other recent floods and are at

significant risk for future flooding; and that construction of flood control or reduction projects is necessary for the protection of health, property, and enterprises and for the promotion of prosperity and the general welfare of the people of the state and that construction of any such projects involves and requires the exercise of the sovereign powers of the state and concerns a public purpose. Therefore, it is declared necessary and in the public interest that the state by and through the state water commission assist in financing the costs of constructing flood control or reduction projects through the issuance of bonds.

2. The legislative assembly finds that continued construction of the southwest pipeline project is necessary for the protection of health, property, and enterprises and for the promotion of prosperity and the general welfare of the people of the state and that continued construction of the southwest pipeline project involves and requires the exercise of the sovereign powers of the state and concerns a public purpose. The legislative assembly also finds that current funding for the southwest pipeline project has become uncertain, and therefore, it is declared necessary and in the public interest that the state by and through the state water commission assist in financing the costs of continued construction of the southwest pipeline project through the issuance of bonds.

3. The legislative assembly finds that the Devils Lake basin is suffering and facing a worsening flood disaster; and that construction of an outlet from Devils Lake is necessary for the protection of health, property, and enterprises and for the promotion of prosperity and the general welfare of the people of the state; and that construction of the outlet involves and requires the exercise of the sovereign powers of the state and concerns a public purpose. Therefore, it is declared necessary and in the public interest that an outlet from Devils Lake be constructed with financing from the state water commission to provide flood relief to the Devils Lake basin.

4. The legislative assembly finds that there is a critical need to develop a comprehensive statewide water development program to serve the long-term water resource needs of the state and its people and to protect the state's current usage of, and the state's claim to, its proper share of Missouri River water.

5. In furtherance of the public purpose set forth in subsection 1, the state water commission may issue bonds under chapter 61-02 and the proceeds are appropriated for flood control projects authorized and funded in part by the federal government and designed to provide permanent flood control or reduction to cities that suffered severe damages as a result of the 1997 flood or other recent floods and to repay the line of credit extended to the state water commission under section 4 of this Act. The commission may issue bonds for a flood control or reduction project only:

   a. When:

      (1) A flood control or reduction project involves a city that suffered catastrophic flood damage requiring evacuation of the major share of its populace;

      (2) A flood control or reduction project includes interstate features and requires acquisition of private property to build permanent flood protection systems to comply with federal flood protection standards;

      (3) The governing body of a city provides a written certification to the state water commission that the city has committed itself to contribute one-half or more of the North Dakota project sponsor's share of the nonfederal share of the cost to construct the project;

      (4) The United States army corps of engineers issues its approval of the flood control or reduction project;

      (5) A project cooperation agreement, which contains provisions acceptable to the state engineer and is approved by the governor, is entered by the state of

Minnesota or one of its political subdivisions in which the flood control or reduction project is to be constructed;

(6) A project cooperation agreement, which contains provisions acceptable to the state engineer and is approved by the governor, is entered by the state or one of its political subdivisions in which the flood control or reduction project is to be constructed;

(7) The governing body of the city has approved a financing plan for all amounts of the nonfederal share of a flood control or reduction project in excess of the amounts to be paid by the state;

(8) That no order for injunctive relief has been issued by a court of competent jurisdiction enjoining construction of the flood control or reduction project; and

(9) That the flood control or reduction project is designed to be cost-effective and that any impact on residential neighborhoods is minimized in an amount reasonably practicable as determined by the state engineer and approved by the governor;

b. When a flood control or reduction project in a city with a population as of the 1990 federal decennial census of at least eight thousand and not more than ten thousand has received significant federal funding through federal grants and funds from the United States army corps of engineers and the federal emergency management agency; or

c. When a flood control or reduction project in a city with a population as of the 1990 federal decennial census of at least four thousand five hundred and not more than six thousand has at least seventy percent of the land within the boundaries of the city located within the one hundred year floodplain as designated on a flood insurance rate map and the United States army corps of engineers issues its approval of the flood control or reduction project.

6. In furtherance of the public purpose set forth in subsection 2, the state water commission may issue bonds under chapter 61-02 and the proceeds are appropriated for construction of the southwest pipeline project and to repay the line of credit extended to the state water commission under section 4 of this Act. The commission may only issue bonds under this chapter for continued construction of the southwest pipeline project when it is determined that the Perkins County water system will not make payment to the state water commission in the amount of four million five hundred thousand dollars or on January 1, 2000, whichever occurs earlier. If the Perkins County water system makes payment to the state water commission after January 1, 2000, the payment must be used to pay principal and interest on bonds issued for continued construction of the southwest pipeline project as provided in subsection 2 of section 61-02.1-04. If the Perkins County water system does not make payment to the state water commission, no benefits may accrue to the Perkins County water system.

7. In furtherance of the public purposes set forth in subsections 3 and 4, the state water commission may issue bonds under chapter 61-02 to finance the cost of one or more of the projects identified in this subsection, provided that:

a. (1) The state water commission may only issue bonds for construction of an outlet from Devils Lake when the United States authorizes construction of an outlet and either the state water commission or a federal agency has developed a plan addressing damage to basic infrastructure such as roads, culverts, and bridges; riverbank erosion; downstream flooding; and increased water treatment costs caused by or resulting from construction of the outlet;

(2) The state water commission or the project sponsor must sign a project cooperation agreement with the United States army corps of engineers;

(3) The outlet from Devils Lake to west Stump Lake must comply with any environmental impact statement or National Environmental Policy Act provisions required under federal law; and

(4) Bonds may not be issued if an order for injunctive relief has been issued by a court of competent jurisdiction enjoining construction of an outlet from Devils Lake to the Sheyenne River or to west Stump Lake.

b. The state water commission may only issue bonds to finance the nonfederal cost-share of the Garrison diversion unit when the Congress of the United States enacts legislation for the completion of the Garrison diversion unit, which may include the delivery of water to the northwest area water supply project; southwest pipeline project; Turtle Lake irrigation district; Nesson-Valley irrigation district; Elk Charbon irrigation district; the Williston irrigation project; the Oakes irrigation project; other irrigation, municipal, rural, and industrial water supply projects; augmented streamflow and ground water recharge projects; development of a Red River valley water supply; and delivery of Missouri River water to the Sheyenne River.

8. This chapter does not affect the state water commission's authority to otherwise issue bonds pursuant to chapter 61-02 or 61-24.3-01.

9. Notwithstanding this section, the state water commission may not issue bonds authorized under subsection 5 or subdivision a of subsection 7 for a project unless federal funds have been appropriated for that project.

10. Notwithstanding this section, if bonds are issued under this chapter, any bonds subsequently issued after the first issuance must meet the same conditions as the bonds initially issued.

11. Notwithstanding this section, except for a project listed in subdivision a of subsection 7 the state water commission may not issue bonds under this chapter unless the local project sponsor has agreed to repay the local project sponsor's share of any bonds issued for the entire nonfederal share of the cost of a project.

61-02.1-02. Bond issuance amount limited.

1. The state water commission bonds issued for flood control or reduction projects meeting the requirements of subdivision a of subsection 5 of section 61-02.1-01 may not exceed forty-five percent and bonds issued for flood control or reduction projects meeting the requirements of subdivision b or c of subsection 5 of section 61-02.1-01 may not exceed one-half of the North Dakota project sponsor's share of the nonfederal share of the cost to construct the flood control or reduction project or, in the aggregate, sixty million three hundred thousand dollars plus the costs of issuance of the bonds, capitalized interest, and reasonably required reserves, whichever is less. Of the sixty million three hundred thousand dollars authorized in this subsection for flood control or reduction projects under subsection 5 of section 61-02.1-01, fifty-two million dollars must be allocated for flood control or reduction projects meeting the requirements of subdivision a of subsection 5 of section 61-02.1-01, three million five hundred thousand dollars must be allocated for flood control or reduction projects meeting the requirements of subdivision b of subsection 5 of section 61-02.1-01, and four million eight hundred thousand dollars must be allocated for flood control or reduction projects meeting the requirements of subdivision c of subsection 5 of section 61-02.1-01.

2. The state water commission bonds issued as provided in subsection 6 of section 61-02.1-01 for continued construction of the southwest pipeline project may not exceed, in the aggregate, four million five hundred thousand dollars plus the costs of issuance of the bonds, capitalized interest, and reasonably required reserves.

3. The state water commission bonds issued as provided in subsection 7 of section 61-02.1-01 for a Devils Lake outlet to the Sheyenne River and to west Stump Lake or other

projects listed in subdivision b of subsection 7 of section 61-02.1-01 may not exceed, in the aggregate, twenty million dollars, plus the costs of issuance of the bonds, capitalized interest, and reasonably required reserves. The state water commission may use all or part of the proceeds of bonds issued as provided in subsection 7 of section 61-02.1-01 and the proceeds are appropriated to match, in a ratio no greater than required by the federal government, any federal funds available for the projects identified in subsection 7 of section 61-02.1-01 and to repay the line of credit extended to the state water commission under section 4 of this Act. The commission may require any political subdivision affected by Devils Lake flooding to participate in the cost of construction of an outlet from Devils Lake to the Sheyenne River and to west Stump Lake by providing matching funds in a percentage of the construction costs determined by the commission to be reasonable in light of the benefits to be received by that political subdivision in relation to benefits received by all benefited political subdivisions. Any local matching fund requirement must be determined by the commission and the affected political subdivisions must be informed of their matching fund obligation prior to issuance of bonds pursuant to this chapter.

4. For any project that requires federal participation, the state water commission may issue bonds equal to the estimated project costs less any local participation. Except for a project listed in subdivision a of subsection 7 of section 61-02.1-01, if the state water commission issues bonds for both the state and local cost-share, an agreement for the local repayment of the local cost-share must be a part of an agreement between the state water commission and the local project sponsor to issue bonds for the nonfederal share.

61-02.1-03. Limitation of action. An action may not be brought or maintained in any court in this state questioning the validity of any bonds issued as provided in this chapter unless the action is commenced within thirty days after the adoption of the resolution of the state water commission authorizing the sale of the bonds. The state water commission may commence a special proceeding any time after the effective date of this chapter in and by which the constitutionality and validity of the bonds to be issued pursuant to this chapter may be judicially examined, approved and confirmed, or disapproved and disaffirmed. Proceedings must comply as nearly as possible with the procedure required for declaratory judgment proceedings.

61-02.1-04. Bonds payable from appropriations and other revenues.

1. Principal and interest on bonds issued for flood control or reduction projects as provided in this chapter are payable from transfers to be made and appropriated by the legislative assembly from the water development trust fund as provided in section 61-02.1-05, then from transfers to be made and appropriated by the legislative assembly from revenues in the resources trust fund other than revenues from state taxes, then from appropriations of other available revenues in the then current biennium, and then from any other revenues the state water commission makes available during the then current biennium for that purpose, including any federal moneys received by the state for the construction of flood control or reduction projects to pay bonds issued for that project. If sufficient funds from these sources are not available, then from transfers to be made and appropriated by the legislative assembly from the first available current biennial earnings of the Bank of North Dakota not to exceed six million five hundred thousand dollars per biennium prorated with any other bonds payable from transfers to be made and appropriated by the legislative assembly from the available current biennial earnings of the Bank of North Dakota, to be credited by the trustee to the fund established for paying principal and interest on the bonds under a trust indenture.

2. Principal and interest on bonds issued for continued construction of the southwest pipeline project are payable from transfers to be made and appropriated by the legislative assembly from the water development trust fund as provided in section 61-02.1-05, then from transfers to be made and appropriated by the legislative assembly from revenues in the resources trust fund other than revenues from state taxes, then from appropriations of other available revenues in the then current biennium, or from payment from the Perkins County rural water system, and then from any other revenues the state water commission makes available during the then current biennium for that purpose, including any federal

moneys received by the state for the construction of the southwest pipeline project to pay bonds issued for the project. If sufficient funds from these sources are not available, then from transfers to be made and appropriated by the legislative assembly from the first available current biennial earnings of the Bank of North Dakota not to exceed six million five hundred thousand dollars per biennium prorated with any other bonds payable from transfers to be made and appropriated by the legislative assembly from the available current biennial earnings of the Bank of North Dakota, to be credited by the trustee to the fund established for paying principal and interest on the bonds under a trust indenture.

3. Principal and interest on bonds issued under subsection 7 of section 61-02.1-01 are payable from transfers to be made and appropriated by the legislative assembly from the water development trust fund as provided in section 61-02.1-05, then from transfers to be made and appropriated by the legislative assembly from revenues in the resources trust fund other than revenues from state taxes, then from appropriations of other available revenues in the then current biennium, and then from any other revenues the state water commission makes available during the then current biennium for that purpose, including any federal moneys received by the state for the construction of an outlet to Devils Lake to pay bonds issued for that project, or financing a statewide water development program to pay bonds issued for that project. If sufficient funds from these sources are not available, then from transfers to be made and appropriated by the legislative assembly from the first available current biennial earnings of the Bank of North Dakota not to exceed six million five hundred thousand dollars per biennium prorated with any other bonds payable from transfers to be made and appropriated by the legislative assembly from the available current biennial earnings of the Bank of North Dakota, to be credited by the trustee to the fund established for paying principal and interest on the bonds under a trust indenture.

4. Obligations issued as provided in this chapter do not constitute a debt, liability, or obligation of the state of North Dakota or a pledge of the faith and credit of the state of North Dakota, but are payable solely from the sources as described in this chapter.

5. The state water commission shall include in its submission to the governor for inclusion by the governor in the biennial executive budget of the state for each year of the respective biennium during the term of any bonds issued as provided in this chapter an amount fully sufficient to pay the principal and interest required to be paid in each year of the biennium, if any, from moneys from nongeneral fund sources. Provided, that should the governor not include in the executive budget for any reason the amounts required to be included by this section, the state water commission shall request independently that the legislative assembly amend the executive budget appropriation so as to include the amounts.

61-02.1-05. Water development trust fund. Moneys received by the state pursuant to the 1998 settlement agreement with tobacco product manufacturers, or any successor agreement, and any earnings on these moneys, must be deposited in the water development trust fund in the state treasury for use in paying for bonds issued as provided in this chapter and for other water projects as provided in 1999 House Bill No. 1475.

SECTION 4. LINE OF CREDIT - APPROPRIATION. The Bank of North Dakota shall extend a line of credit not to exceed $84,800,000, which is hereby appropriated for the biennium beginning July 1, 1999, and ending June 30, 2001, to the state water commission for the purpose of interim financing until bonds are issued under chapter 61-02.1. Advances on the line of credit may be made only when a source of repayment has been identified and determined to be available.

SECTION 5. CORPORATE CENTER - CONTRACT TO PLEDGE REVENUES. Before the issuance of any bonds for any flood control or reduction project in Grand Forks as provided in chapter 61-02.1, the state water commission shall require a contract be entered with the city of Grand Forks pledging revenue from the corporate center in that city as follows:

1. After all moneys pledged for the repayment of revenue bonds for the corporate center project have been paid, the city must pledge revenue from the project to the water development trust fund as repayment for the flood control or reduction project to facilitate

economic development in this state. This contract must be in compliance with all applicable federal requirements.

2. If the corporate center is voluntarily sold, the city must pledge the proceeds of the sale, subject to the rights of bondholders and all applicable federal requirements, to the water development trust fund as repayment for the flood control or reduction project to facilitate economic development in this state. The corporate center may not be voluntarily sold without the prior approval of the budget section of the legislative council.

3. The revenue to be pledged must be in amounts similar to the amounts previously dedicated each year for the repayment of the revenue bonds.

4. The period during which revenue must be pledged under this section is from the date of the final payment of the revenue bonds until the end of the projected life of the corporate center, which must be not less than forty years from the date of initial occupancy.

5. Any refinancing of debt or any improvements to the corporate center requiring the incurring of indebtedness cannot be entered without prior approval of the budget section of the legislative council.

SECTION 6. LEGISLATIVE INTENT. It is the intent of the fifty-sixth legislative assembly that a total of six million dollars of funding be provided to the state water commission for the southwest pipeline project through a combination of funding sources. The potential funding source must include payment from the Perkins County rural water system, bonds issued by the state water commission, or other available resources.

SECTION 7. APPROPRIATION. There is hereby appropriated out of any moneys in the water development trust fund, not otherwise appropriated or from bond proceeds, the sum of $84,800,000, or so much of the sum as may be necessary, to the Bank of North Dakota for the purpose of repaying the line of credit extended to the state water commission under section 4 of this Act, for the biennium beginning July 1, 1999, and ending June 30, 2001. It is the intent of the legislative assembly that the funds appropriated in this section are from transfers to be made and appropriated by the legislative assembly from the water development trust fund as provided in section 61-02.1-05.

SECTION 8. EFFECTIVE DATE. The authority of the commission to issue bonds as provided in subsection 2 of section 61-02.1-01 becomes effective on the date the state engineer certifies to the state water commission that the Perkins County water system will not make a payment to the state water commission in the amount of four million five hundred thousand dollars or January 1, 2000, whichever occurs earlier.

SECTION 9. REPORTS TO LEGISLATIVE COUNCIL AND STANDING COMMITTEES - COMPREHENSIVE STATEWIDE WATER DEVELOPMENT PROGRAM AND STATE WATER MANAGEMENT PLAN IMPLEMENTATION - BOND ISSUANCE. The state engineer shall report periodically to the budget section, any other interim committee designated by the legislative council, and to the house of representatives and the senate standing committees on natural resources and appropriations regarding implementation of the comprehensive statewide water development program and state water management plan and the issuance of bonds to finance construction of flood control projects, the southwest pipeline project, a Devils Lake outlet, and a statewide water development program during the 1999-2000 interim. The report must include information on the funding sources used to repay any bonds issued under chapter 61-02.1.

SECTION 10. STATEWIDE WATER DEVELOPMENT PROGRAM - LEGISLATIVE INTENT. The state water commission shall develop a new comprehensive statewide water development program with priorities based upon expected funds available from the water development trust fund for water development projects. It is the intent of the legislative assembly that the state water commission consider the delivery of water for usable purposes a priority for water development projects after the projects authorized in section 3 of this Act are completed.

SECTION 11. EXPIRATION DATE. The authority of the commission to issue bonds as provided in chapter 61-02.1 is effective through June 30, 2001, and after that date is ineffective provided, however, that the commission may continue to exercise all other powers granted to it under this Act and to comply with any covenants entered into pursuant to this Act.

SECTION 12. EMERGENCY. This Act is declared to be an emergency measure.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-sixth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2188 and that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 45 Nays 3 Absent 1

President of the Senate

Secretary of the Senate

This certifies that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 66 Nays 28 Absent 4

Speaker of the House

Chief Clerk of the House

Received by the Governor at ________ M. on ________________________________, 1999.

Approved at ________ M. on ____, 1999.

Governor

Filed in this office this ____________ day of ________________________________, 1999,

at ___ o'clock ______ M.

Secretary of State

AGREEMENT

This Agreement, dated this _____ day of May, 1999 by and between Grand Forks Growth Fund, a Jobs Development Authority and Brady, Martz & Associates, P.C., a North Dakota Professional Corporation;

WHEREAS the Grand Forks Growth Fund, a Jobs Development Authority (herein referred to as Lessor) has leased office space at 401 DeMers Avenue, Grand Forks, ND (herein referred to as the Corporate Center) to each of First National Realty Corporation, a North Dakota corporation, Brady, Martz & Associates, P.C., a North Dakota Professional Corporation and Camrud, Maddock, Olson & Larson, Ltd., a North Dakota Professional Corporation, (herein called "Lessee" or collectively referred to as "Lessees.") The office space is erected upon the following real property:

> Lot A of the Replat of Lots One (1), Three (3), Five (5), the South Half of Lot Six (6), All of Lots Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11), Twelve (12), Thirteen (13), Fourteen (14), Fifteen (15) and that part of Lot Sixteen (16), lying northwesterly of a straight line drawn from the most easterly corner southwesterly to the most westerly corner of said Lot Sixteen (16), all in Block Twenty-seven (27), Town of Grand Forks, County of Grand Forks, State of North Dakota;

AND

> Lot C, Replat of Lot B of the Replat of Lots 1-6 and Lots 7, 9 and 11, Block Twenty-two (22) original townsite of the City of Grand Forks, State of North Dakota.

SECTION 1.01. Lessor shall, in consideration of the mutual covenants and obligations contained in the Lease, grant an option upon the terms and conditions contained herein to Lessee, and each of them, to purchase the space occupied by each Lessee and a pro-rata share of common area in the Corporate Center, said space having been defined as the "Leased Premises" in a certain Lease between Lessor and Lessee dated ____________________, 1999.

This agreement is granted by Lessor and accepted by each Lessee as an option under which Lessee shall have no claim for damages or specific performance if Lessor cannot obtain title to the Corporate Center for no or nominal consideration for the purpose of honoring Lessee's exercise of this option due to Lessee's default in the payment of rent under its lease with the Lessor for space in the Corporate Center located at 401 DeMers Avenue in Grand Forks, North Dakota, or the default in the payment of rent by the other initial lessees (i.e., Camrud, Maddock, Olson & Larson, Ltd., a North Dakota Professional Corporation and First National Realty Corporation, a North Dakota corporation) of space in the Corporate Center located at 401 DeMers Avenue in Grand Forks, North Dakota

The option may not be exercised unless the Lease has been properly renewed, and at least twenty-one (21) but not more than twenty-three (23) years have elapsed since the commencement date of the Lease. The method of exercising the option to purchase shall be by written notice mailed or delivered to Lessor at the same location where rent payments are made for the lease.

SECTION 1.02. The parties recognize that if the option is exercised, it may be necessary to create a condominium and to identify the Leased Premises as a unit within said condominium. Lessor and Lessees agree to cooperate in the planning and creation of a condominium within a period of time not to exceed one (1) year from the date of exercise of the option. Each Lessee exercising this option and Lessor agrees to pay a portion of all costs and expense associated in creating the condominium based on the percentage of ownership in the condominium held by each party under the condominium documents. The parties also recognize that it may be desirable, at Lessee's option, to include Lessor's building located at 402 DeMers Avenue within any condominium project affecting the building in which the Leased Premises are located. If so included, the condominium documents will provide that a portion of the second floor of the building located at 402 DeMers Avenue and the mechanical equipment located therein will be a common area for the use and benefit of the owners of condominium units in the building in which the Leased Premises are located. Further, the skyway will also be described as a common area for the benefit of the owners of condominium units within the condominium.

In the event the building located at 402 DeMers Avenue is not included in the condominium project, then Lessor shall grant Lessee a perpetual easement over and across the DeMers Avenue skyway and continuing into, over and upon the second floor of the building located at 402 DeMers Avenue that houses the mechanical equipment that serves the building in which the Leased Premises are located. This easement shall provide that the owner and future owners of the space herein described as the Leased Premises shall have the right to enter upon the skyway and that part of the second floor of the building located at 402 DeMers Avenue for the purpose of maintaining, servicing, repairing, and improving the mechanical equipment located therein.

SECTION 1.03. In the event that one or more of the Lessees exercise purchase option, the purchase price shall be the fair market value of the Leased Premises, by condominium description or otherwise, less one half (½) of the appreciation in the value of said Leased Premises that remains after full recovery by Lessor of Lessor's initial equity, as hereinafter defined, plus simple interest thereon at the rate of two and one-half percent (2.5%) for each full year and a pro-rata amount of any partial year that the Lease is in effect.

Lessor's total initial equity in 401 DeMers Avenue is $5,392,625.00.

Lessor's total initial equity in 402 DeMers Avenue is $3,357,375.00.

Lessor's initial equity with respect to the Leased Premises of a Lessee exercising its purchase option is the total equity of Lessor in the property as to which the purchase option is being exercised (i.e., either 401 DeMers Avenue or 402 DeMers Avenue) multiplied by the percentage of liability of the Lessee for payment of operating costs under Lessee's lease.

SECTION 1.04. For purposes of determining the fair market value of the Leased Premises at time of exercise of the option, the parties will meet and determine if they can agree on the selection of one appraiser whose determination of fair market value of the Leased Premises would be binding on both Lessor and Lessee. If said parties cannot agree on the selection of a single appraiser, then Lessor shall appoint one appraiser, and Lessees shall appoint one appraiser and the two appraisers as so selected shall appoint a third appraiser. Each party shall pay the fees of the appraiser they select and the fee of the third appraiser shall be divided equally between the parties.

For purposes of transfer of title as a result of the exercise of the option herein contained, each party shall bear their own costs except that the title insurance premium in an amount equal to the purchase price, and closing charges shall be divided equally between the parties. Transfer of title will be by general warranty deed or condominium warrant deed, as appropriate, conveying insurable and marketable title to Lessee.

SECTION 1.05. Each Lessee may transfer its rights under this option to purchase to a transferee that it owns or controls. Further, each Lessee may transfer its rights under this option to the surviving entity in connection with a reorganization of Lessee involving a merger or consolidation. Finally, each Lessee may transfer its rights under this option to purchase in connection with a sale or transfer of its business provided that the personnel of Lessee remains essentially unchanged and said personnel continue to work for the purchaser and the purchaser's primary business is to provide services substantially similar to those offered by each lessee at the commencement of the Lease. Except as so provided, the option to purchase may not be transferred or assigned without complying with the following requirements:

The identity of the proposed transferee or assignee of the option and the price and terms of sale or transfer of the option shall be provided by written notice from the proposed transferor to each Lessee within the building located at 401 DeMers Avenue that has a written lease as to one or more floors. Each Lessee receiving such notice shall have the right to purchase their pro rata share of the option that is the subject of the written notice for the same price and on the same terms identified in the written notice. If a Lessee declines to exercise the right to purchase a pro rata portion of the option, the right passes to other Lessees who do elect to purchase their pro rata portion of the option. Notice of the exercise of the right to purchase a pro rata share of the option shall be given in writing not later than thirty (30) days from the date of receipt of written notice from the party proposing to sell and transfer said parties option rights. Closing shall occur according to the terms of sale as stated in the written notice from the party making the attempted assignment or transfer of the option rights.

The term "pro rata share" as used herein shall be the percentage of space within the Corporate Center located at 401 DeMers Avenue occupied by each Lessee to whom an option to purchase has been granted excluding the space occupied by the Lessee making the attempted assignment or transfer of the option rights.

If the option is not purchased in its entirety by the other Lessees as provided for above, the

Lessee proposing to make the transfer to the party identified in the written notice to the other Lessees may transfer the option on the same terms and for the same price as stated in the written notice. Any transfer or proposed transfer of any option contained herein to any person or entity that does not have a written lease within the building located at 401 DeMers Avenue that has a lease as to one or more floors shall be upon the prior approval of the Lessor, which approval shall not be unreasonably withheld.

SECTION 1.06. Lessee shall have the right, commonly known as a right of first refusal, to purchase certain space within the building located at 402 DeMers Avenue on the same terms and conditions as offered by a willing buyer in an arms length transaction. Lessee's right of first refusal shall not apply to a purchase of an entire floor by one purchaser in said building and Lessee agrees to execute a waiver of its rights with respect to a proposed sale of an entire floor in said building. Lessee understands that the right of first refusal herein granted is not exclusive to Lessee and that such right is also being granted to other Lessees leasing at least one or more floors of the building in which the Leased Premises are located and that Lessee's rights hereunder are subject to the rights of other Lessees as aforesaid.

Lessee shall have a period of thirty (30) days from the date of receipt of written notice from Lessor with respect to a proposed sale of part of the building located at 402 DeMers Avenue constituting less than a complete floor thereof in which to notify Lessor in writing that Lessee has elected to meet the price and terms of sale which must be stated in detail in Lessor's written notice to Lessee, and if such notice is not given by Lessee within the prescribed time, the right of first refusal as to the property described in Lessor's written notice is terminated and canceled as to said property, however the right of first refusal remains in effect for any subsequent proposed transfers of less than an entire floor of the building located at 402 DeMers Avenue. The right of first refusal herein provided for terminates and ends when the option to purchase provided for in Section 1.01 terminates and ends.

SECTION 1.07. Any option to purchase, agreement to purchase or right of first refusal for the Corporate Center or any part thereof shall be subject to the terms and conditions contained herein, ordinances of the City of Grand Forks as well as State and Federal law.

Dated at Grand Forks, North Dakota, the day and year first above written.

GRAND FORKS GROWTH FUND, A Jobs Development Authority

By: ______________________________
DOUG CARPENTER, Its Chair

By: ______________________________
ELIOT GLASSHEIM, Its Vice Chair

BRADY, MARTZ & ASSOCIATES, P.C.,
a North Dakota Professional Corporation

By____

___________________________, Its_________________________

STATE OF NORTH DAKOTA)
)SS.
COUNTY OF GRAND FORKS)

The foregoing instrument was acknowledged before me this _____ day of May, 1999, by Doug Carpenter and Eliot Glassheim, Chair and Vice-Chair, respectively of the Grand Forks Growth Fund, a Jobs Development Authority, on behalf of the Grand Forks Growth Fund, a Jobs Development Authority.

(Notarial stamp or seal)

____
NOTARY PUBLIC, NORTH DAKOTA
My Commission Expires:

STATE OF NORTH DAKOTA)
)SS.
COUNTY OF GRAND FORKS)

The foregoing instrument was acknowledged before me this _____ day of May, 1999, by ____________________, ______________________ of BRADY, MARTZ & ASSOCIATES, P.C., a North Dakota Professional Corporation, on behalf of the corporation.

(Notarial stamp or seal)

____
NOTARY PUBLIC, NORTH DAKOTA
My Commission Expires: