

1 **PET**

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15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 In the Matter of:

18 The Donald W. Reynolds Endowment Fund
19 for the Donald W. Reynolds Broadcast Center

20 Case No.:

21 Dept. No.:

22 Date of Hearing:

23 Time of Hearing:

24 **PETITION TO ASSUME JURISDICTION OVER ENDOWMENT FUNDS, CONFIRM**
25 **TRUSTEE, AND FOR MODIFICATION OF RESTRICTIONS**

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Petitioner, Nevada Public Radio, as Trustee of the Donald W. Reynolds Endowment Fund for the Donald W. Reynolds Broadcast Center (the "Endowment Fund"), by and through the law firm of SOLOMON DWIGGINS & FREER, LTD., hereby petitions this Court for an order assuming jurisdiction over the Endowment Fund, confirming Petitioner as Trustee of the Endowment Fund, and modifying certain restrictions currently applicable to the Endowment Fund. This petition is brought pursuant to NRS 153.031(1)(g) and (n), NRS 164.010(1), NRS 164.015 and NRS 164.673. In support of the Petition, Petitioner alleges as follows:

STATEMENT OF FACTS

1
2 1. Petitioner is a Nevada nonprofit corporation formed on December 26, 1975, under chapter
3 81.290 to 81.340 of the Nevada Revised Statutes, now governed by chapter 82 of the Nevada Revised
4 Statutes.

5 2. Petitioner was Nevada's first NPR affiliate. Petitioner is recognized as a tax-exempt
6 §501(c)(3) organization by the Internal Revenue Service.

7 3. Petitioner has grown to become the dominant NPR news station for Nevada, as well as
8 providing signature public radio entertainment, classical music, magazine production and the delivery
9 of that content in online formats. Nevada Public Radio has won numerous awards for broadcast
10 program production and excellence in publishing.

11 4. Nevada Public Radio now operates a non-commercial, radio broadcast network comprised
12 of eight stations, KNPR-FM Las Vegas (88.9), KCNV-FM Las Vegas (89.7), KTPH-FM Tonopah
13 (91.7), KLNR-FM Panaca (91.7), KWPR-FM Lund/Ely (88.7), KSGU-FM St George (90.3), KLKR-
14 FM Elko (89.3), KVVV Sun Valley/ Reno (89.1), plus nine rural translators. With the 2017 sign-on of
15 KVVV "NV89" in Reno, Nevada Public Radio became a statewide broadcaster reaching 93% of
16 Nevada's population.

17 5. In 1998, broadcast operations moved to a custom-built facility on the campus of the
18 College of Southern Nevada, thanks to a major grant from the Donald W. Reynolds Foundation (the
19 "Foundation"). A copy of the Construction Grant Agreement dated June 19, 1996, between Petitioner
20 and the Donald W. Reynolds Foundation is attached hereto as **Exhibit 1**. Section 1.13 of the
21 Construction Grant Agreement required Petitioner, as Grantee, to establish an endowment fund for the
22 maintenance of the facility:
23

24 Endowment Commitment. Grantee agrees that upon execution of this
25 Agreement, it will promptly and diligently proceed to initiate a fund drive
26 to provide an Endowment Fund for the maintenance of the building. This
27 fund shall be in an amount equivalent to twenty percent (20%) of the
28 Grant.

1 6. Section 1.13 further provided that the endowment fund would be established in writing
2 expressly stating its restricted purpose:

3 There shall be a document creating the fund which shall cause these
4 funds to be set aside and be restricted to providing only maintenance and
5 upkeep of this building which shall be kept in "first-class" condition.
6 Endowment funds shall not be used to operate this building or for its
7 routine custodial services.

8 7. Consistent with the Construction Grant Agreement, by instrument dated September 24,
9 1997, Petitioner created the Donald W. Reynolds Endowment Fund for the Donald W. Reynolds
10 Broadcast Center. A true and correct copy of the Endowment Agreement is attached as **Exhibit 2**.

11 8. Section 3 of the Endowment Agreement provides that the fund is to hold "[d]onations,
12 gifts, subscriptions, and bequests specifically designated by contributors as contributions to this
13 Endowment Fund," together with any unrestricted contributions that the Board of Directors adds to the
14 Fund.

15 9. Section 4 of the Endowment Agreement provides that the amount of the fund corpus may
16 exceed its fully funded amount of \$906,452.

17 10. Section 5 and Section 8 provide that only the earnings of the Endowment Fund are
18 available for appropriation, and may be used solely for "maintaining the upkeep of the Donald W.
19 Reynolds Broadcast Center."

20 11. Petitioner solicited contributions to the Endowment Fund from the public. Approximately
21 three hundred and seventy-four (374) donors made contributions to the Endowment Fund.

22 12. Representative pledge forms indicate that contributions were made to "the Endowment
23 Fund of the Nevada Public Radio Corporation," and some further provide that "the principle [*sic*] of my
24 donation is intended to be permanent, with only earnings from investments to be used for operations."
25 *See, e.g.,* attached **Exhibit 3**. This language could be construed to be sufficient to create a restricted
26 endowment fund under NRS 164.667(3), quoted below:
27
28

1 Terms in a gift instrument designating a gift as an endowment, or a
2 direction or authorization in the gift instrument to use only "income,"
3 "interest," "dividends," or "rents, issues or profits," or "to preserve the
4 principal intact," or words of similar import:

5 (a) Create an endowment fund of permanent duration unless other
6 language in the gift instrument limits the duration or purpose of the
7 fund[.]

8 13. The current balance of the Endowment Fund as of October 31, 2019 is approximately
9 \$1,360,071.69.

10 14. Petitioner has an additional endowment fund (the "Restricted Fund for Programs"),
11 established by a separate grant from the Donald W. Reynolds Foundation. According to a November
12 12, 2008 letter from the Foundation, the purpose of this grant was to "provide funding for the Grantee's
13 programs and operations." See attached **Exhibit 4**. The terms of the grant expressly limited the annual
14 disbursement to the "earnings, dividends, capital gains and other income from investment of the corpus
15 plus five percent (5%) of the original corpus (\$45,323) each year," on a noncumulative basis.

16 15. The current balance of the Restricted Fund for Programs as of October 31, 2019 is
17 approximately \$17,195.24.

18 16. Petitioner is governed by a board of trustees (the "Board").

19 17. At the beginning of August 2019, the Board became concerned that certain unaudited
20 financial information provided to the Board, as well as audited financial information previously
21 provided to the Board, appeared inconsistent with the existence of an overdue payable that was brought
22 to the Board's attention. The Board hired outside counsel to investigate.

23 18. As a result of the investigation, the Board has discovered that the books and records of the
24 Petitioner materially understated the past due obligations of the Petitioner. The Board is currently in the
25 process of having the Petitioner's books reviewed and restated.

26 19. The gravity of this discovery has been compounded by shortfalls in fundraising efforts of
27 the Petitioner over the past several years, along with Reno revenues failing to cover expenses from
28 start-up through the ceasing of operations in September 2019.

1 20. The net effect of these accounting problems is that Petitioner suddenly discovered that as
2 of August 23, 2019 it had a balance of \$11,921.45 in its bank checking account, accounts payable of
3 over \$1.8 million dollars, with pending payroll and related expenses of \$162,197 coming due between
4 September 1, 2019 and September 11, 2019. The balance of its assets were tied up in the Endowment
5 Fund and the Restricted Fund for Programs that were subjected to use restrictions.

6 21. By the end of August 2019, the Board determined that the Petitioner had insufficient funds
7 to meet its payroll and other immediate obligations to creditors.

8 22. In the intervening months, Petitioner discovered additional outstanding payables due to
9 vendors that were previously unknown to it.

10 23. The Board has diligently analyzed the Petitioner's current options based on its assets,
11 debts, accounts payable, forecasted cash flow, fundraising efforts, facility and human resource needs,
12 borrowing capability and programming, among other matters, in its efforts to maintain the Petitioner's
13 mission and operations.

14 24. Since the Board took over the operations of Petitioner, the Board has engaged in
15 significant cost-cutting measures and negotiations with vendors for discounts on outstanding payables.
16 These cost-cutting measures include ceasing Petitioner's Reno operations and laying off all four of its
17 Reno-dedicated staff. The Board has also engaged a broker to sell the Reno license, along with
18 Petitioner's licenses for Carson City and St. George.

19 25. The Board has developed a budget to sustain it going forward based on more realistic
20 revenue projections and reduced expenses, but has been unable to find additional funding sources to
21 address the remaining outstanding and overdue account payables.

22 26. In September 2019, the Board received written releases from several of the original
23 Endowment Fund donors, which released the restrictions on the funds allowing them to be used for
24 continued operations. These releases allowed the Board to access \$366,000 from the Restricted Fund
25 for Programs and \$431,810 from the Endowment Fund. These funds together with revenues from day-
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1 to-day membership and donations activity allowed the Board to pay over \$1.336 Million dollars in
2 current and past due invoices owed to vendors as well as five payroll cycles for employees.

3 27. While the Board strongly believes that Petitioner can continue as a going concern,
4 Petitioner will need immediate access to additional working capital to succeed in its turnaround plan.

5 28. Petitioner has reduced ongoing expenses and estimates that ongoing revenues will cover
6 ongoing expenses, but negotiated payments with vendors to pay delinquent accounts will require
7 additional cash flow beyond the monthly operating expenses. As of October 31, 2019, Petitioner still
8 had outstanding overdue payables that exceed \$1.6 Million dollars.

9 29. Petitioner's current financial state has rendered it ineligible to borrow at commercially
10 reasonable terms and its existing line of credit has already been exhausted.

11 30. The Board has determined that the only immediate source of potentially available capital
12 is its Endowment Fund and the Restricted Fund for Programs. Petitioner hereby respectfully applies to
13 this Court for relief.

14 **PETITION TO ASSUME JURISDICTION OVER THE TRUST AND**
15 **CONFIRM TRUSTEE**

16 1. Petitioner requests that this Court assume jurisdiction of the Endowment Fund and
17 confirm Petitioner as its Trustee.

18 2. NRS 164.010(1) and (5) provides in pertinent part as follows:

19
20 1. Upon petition of any person appointed as trustee of an express
21 trust by any written instrument other than a will, or upon petition of a
22 settlor or beneficiary of the trust, the district court of the county in which
23 any trustee resides or conducts business at the time of the filing of the
24 petition or in which the trust has been domiciled as of the time of the filing
25 of the petition shall assume jurisdiction of the trust as a proceeding in rem
26 unless another court has properly assumed continuing jurisdiction in rem in
27 accordance with the laws of that jurisdiction and the district court
28 determines that it is not appropriate for the district court to assume
jurisdiction under the circumstances.

* * *

1
2 5. When the court assumes jurisdiction pursuant to this section, the
3 court:

4 * * *

5 (c) May confirm at the same time the appointment of the trustee
6 and specify the manner in which the trustee must qualify; and

7 (d) May consider at the same time granting orders on other matters
8 relating to the trust, including, without limitation, matters that might be
9 addressed in a declaratory judgment relating to the trust under subsection 2
10 of NRS 30.040 or petitions filed pursuant to NRS 153.031 or 164.015
11 whether such matters are raised in the petition to assume jurisdiction
12 pursuant to this section or in one or more separate petitions that are filed
13 concurrently with the petition to assume jurisdiction.

14 3. Petitioner conducts business in Clark County, Nevada.

15 4. No other court has assumed continuing jurisdiction over the Endowment Fund. Therefore,
16 this Court should confirm Petitioner as Trustee of the Endowment Fund and exercise *in rem* jurisdiction
17 over the Endowment Fund.

18 PETITION FOR MODIFICATION OF RESTRICTIONS

19 1. The Board has made diligent efforts to contact donors to its endowment funds to obtain
20 their consent to release the restrictions applicable to their donations, as authorized by NRS 164.673(1):

21 If the donor consents in a record, an institution may release or modify, in
22 whole or in part, a restriction contained in a gift instrument on the
23 management, investment or purpose of an institutional fund. A release or
24 modification may not allow a fund to be used for a purpose other than a
25 charitable purpose of the institution.

26 2. By email dated August 31, 2019, Steve Anderson, as Trustee of the Donald W. Reynolds
27 Foundation, released the 5% cap on annual disbursements from the Restricted Fund for Programs as
28 necessary to meet Petitioner's immediate emergency needs for operating purposes:

In the case of the Restricted Funds for Program Grants it was our intent
for your board to decide how best to utilize the remaining grant funds to
support the programs and operations of KNPR. You have our approval
and blessing to use the remaining grant funds for program and operating
purposes and to exceed the grant-specified 5% annual maximum
expenditure from the grant corpus if that is what is required to meet your
immediate emergency needs.

1 See attached **Exhibit 5**.

2
3 3. Unfortunately, the Restricted Fund for Programs is insufficient, by itself, to support
4 Petitioner's operations and it has already been exhausted. Accordingly, Petitioner has diligently
5 attempted to contact the donors to the Endowment Fund to obtain their releases.

6 4. Although Petitioner has succeeded in obtaining some additional releases, it has proven
7 impossible or impractical to reach the many donors who made contributions to the Endowment Fund
8 over the last 20 years.

9
10 5. In recognition of this difficulty, NRS 164.673(3) permits Petitioner to petition this court to
11 modify the restrictions currently applicable to the Endowment Fund:

12 If a particular charitable purpose or a restriction contained in a gift instrument on
13 the use of an institutional fund becomes unlawful, impracticable, impossible to
14 achieve or wasteful, the court, upon application of an institution, may modify the
15 purpose of the fund or the restriction on the use of the fund in a manner
16 consistent with the charitable purposes expressed in the gift instrument. The
17 institution shall notify the Attorney General of the application, and the Attorney
18 General must be given an opportunity to be heard.

19 6. Furthermore, pursuant to NRS 153.031(1), a trustee may petition the court regarding any
20 aspect of the affairs of the trust, including: "(g) Instructing the trustee" and "(n) Approving or directing
21 the modification or termination of the trust."

22 7. Relief under NRS 164.673(3) is appropriate with respect to the Endowment Fund. Its
23 original restriction to maintain the broadcast center building for the use of Petitioner was based on the
24 assumption that Petitioner would remain in operations indefinitely. This restriction would be
25 impractical – and its purpose impossible to achieve – if Petitioner were unable to maintain operations.

26 8. The Board has determined that, if Petitioner has full access to the income and principal of
27 the Endowment Fund, the amounts remaining in the Endowment Fund will provide operating support
28 and allow it to eliminate the outstanding delinquent payables for sufficient time for Petitioner to raise
replacement funds as part of its recovery plan.

9. Notice to the Attorney General has been provided as required by NRS 164.673(3).

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SOLOMON
DWIGGINS & FREER
TRUST AND ESTATE ATTORNEYS



VERIFICATION

I, JERRY NADAL, declare under penalties of perjury in the state of Nevada:

That I am the President of Nevada Public Radio, Trustee of the Donald W. Reynolds Endowment Fund for the Donald W. Reynolds Broadcast Center, the Petitioner in the foregoing **PETITION TO ASSUME JURISDICTION OVER ENDOWMENT FUNDS, CONFIRM TRUSTEE, AND FOR MODIFICATION OF RESTRICTIONS**, and know the contents thereof; that the same is true of my own knowledge, except as to matters stated upon information and belief, and that as to such matters I believe them to be true.

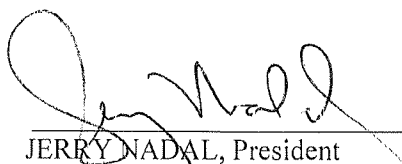

JERRY NADAL, President

EXHIBIT 1

EXHIBIT 1

CONSTRUCTION GRANT AGREEMENT

THIS CONSTRUCTION GRANT AGREEMENT (the "Agreement") is made and entered into this 19th day of June, 1996, by and between KNPR, Nevada Public Radio Corp., a Nevada not-for-profit corporation, ("Grantee") and the DONALD W. REYNOLDS FOUNDATION ("Foundation").

RECITALS

WHEREAS, Grantee has submitted a "Grant Request" to the Foundation for a grant to build and equip a broadcast and teaching facility on the campus of the Community College of Southern Nevada; and

WHEREAS, the Foundation has approved a grant of \$4,532,259 to construct such a building and to provide for equipment, furnishings and materials all as described in the Grant Request (herein collectively referred to as the "Project"); and

WHEREAS, the Foundation is willing to provide the requested funds in accordance with the terms and conditions of this agreement.

The parties to this Agreement do hereby agree as follows:

COMMITMENTS

1.1 Grant. The Foundation agrees to fund a grant of \$4,532,259 ("Grant Amount") to construct, furnish and equip the Project as described in Grantee's request, subject however to the terms and conditions set forth below and in the cover letter with this agreement, and further based on the Grantees representations and warranties as set forth in this agreement. The Foundation is relying upon these representations and warranties which are material to the performance of this agreement.

1.2 Commencement Date. Upon satisfaction of any conditions set forth in the cover letter, Grantee shall begin the process of selecting an architectural firm to prepare the plans and specifications for this Project and shall begin to seek and acquire all permits, licenses and regulatory approvals necessary to commence the construction of the improvements. Grantee shall use its best efforts to commence actual and substantial construction work on the Project site within nine months from the date of this Agreement or from the date such conditions are satisfied. If construction does not commence by that date, the Foundation may, at its sole option, elect to terminate this agreement by giving written notice to the Grantee.

1.3 Completion Date. The Project shall be completed and shall be occupied by Grantee within three (3) years from the date of this Agreement. Grantee agrees to act diligently and to exercise its best efforts to meet this completion date.

1.4 Architectural Firm. Prior to engaging an architectural firm for the planning, designing and construction supervision of the Project, the Grantee shall furnish the Foundation Representative (as defined below) with the credentials of the proposed architectural firm. It is the Foundation's desire that such firm shall be competent to design and supervise the Project within the Grant budget parameters. If the Foundation Representative has no reasonable objection to the engagement of the architectural firm, the Grantee may proceed to retain such firm. A copy of the contract between the Grantee and the architects shall be furnished to the Foundation as well as any subsequent amendments or modifications of such contract. Grantee shall notify the Foundation of the name of the architect who has been designated as the supervising architect who will be certifying the requests for payment and calculating the percentage completion of the project in such requests for payment.

- a) The architectural firm shall promptly prepare a "time-line" chronology of events showing, among other items: when the plans and specifications will be prepared; when the construction bids will be let; when the construction will commence; and an estimated completion date.
- b) The architect shall require a topographic survey with boundaries and legal description of the site, any soil studies which may be necessary or appropriate and shall assist Grantee in obtaining an appropriate Phase I environmental audit from a firm regularly engaged in performing such studies and in taking such corrective measures as may be required.
- c) When the Schematic Design Presentation Package has been prepared along with a preliminary cost estimate, it shall be submitted to the "Foundation Representative" identified below, who shall review them for compliance with the Project as described in the Grant Request.
- d) The Final Plans and specifications shall be prepared after the Schematic Design Presentation package has been approved. A final budget will also be prepared showing an architectural breakdown of construction costs and all other costs. The Budget shall identify any costs not included in the Grant Request which are to be funded to the Grantee out of funds other than the Grant. These shall be submitted to the Foundation Representative for his review prior to submitting the Project for bids.

1.5 Grantee Representative. The Grantee shall notify the Foundation as to the identity of the person appointed by the Grantee to serve as the "Grantees Representative", who shall be an officer or employee of the Grantee. By virtue of this appointment, the Grantee Representative shall be vested with the authority to act for the Grantee and whose acts, agreements and/or approvals shall be binding upon the Grantee institution. The notification shall include a certification of the signature of the Grantee's Representative.

1.6 Foundation Representative. The Foundation will appoint, at its expense, a "Foundation Representative" with authority to make such approvals as may be required on behalf of the Foundation in connection with this project. The Foundation Representative shall be responsible solely to the Foundation and shall owe no duty to the Grantee in the performance of his duties. The Foundation will send Grantee a written notification of the appointment and shall certify the Foundation Representative's signature.

- a) The Foundation Representative is charged with the responsibility to review and insure that the plans and specifications accurately reflect the Project Described in the Grant Request.
- b) The Foundation Representative will make visitations during the construction phase on behalf of the Foundation to be satisfied construction is proceeding in accordance with the plans and specifications.
- c) The Foundation Representative will monitor the equipment purchases as being necessary to the operation of the building and that such purchases are within the equipment budget.

1.7 Access to Premises and Information. The Grantee agrees to provide the Foundation Representative with full and complete access to the following:

- a) Access to the site and the building;
- b) Access to all books and records relating to the Project, including review and inspection of invoices, bills of material, lien waivers, payment records, architectural reports, surveys and

any other information which may reasonably relate to the progress of the Project or any problems which may materialize.

- c) The Foundation Representative shall have the right to discuss the Project with any of Grantee's staff or employees as well as employees or agents of the architect or the construction contractor.
- d) The Grantee will provide the Foundation Representative with desk space in its offices and at the site, and will, at its expense, make telephone and secretarial services available to the Foundation Representative as may be reasonably necessary for the performance of his duties in connection with the Project.

1.8 Bid Process. When the plans and specifications have been reviewed and approved by all parties, the Grantee shall invite bids for the construction and equipping of the Project. The Grantee will select the "best bid" for both the construction and for the various items of furnishings and equipment. The selection of the "best bid" shall include such factors as cost, quality of workmanship, reputation and ability to complete the Project on or before the Completion Date. It shall not be required to obtain competitive bids on furnishings or equipment which costs less than \$10,000.

1.9 Construction Contract. When a contractor has been selected, the Grantee shall furnish a fully executed copy of the Construction Agreement to the Foundation. Subsequent modifications or amendments shall also be furnished to the Foundation immediately. The contractor shall be required to post a performance completion bond in amounts at least equal to the total contract price as security to Grantee for the faithful performance and payment of all obligations of the contractor. This bond premium is an appropriate cost of the construction project.

1.10 Performance Bond. The contractor shall be required to post a performance completion bond in amounts at least equal to the total contract price as security to Grantee for the faithful performance and of all obligations to the contractor. This bond premium is an appropriate cost of the construction project.

1.11 Insurance Coverage. Prior to commencement of actual construction, the Grantee shall obtain at least the following types of insurance coverage:

- a) Workmen's compensation.
- b) Fire and extended coverage (in builders risk completed value form).
- c) Builders risk insurance for the full insurable value of the improvements.
- d) Comprehensive general liability insurance of not less than the amount of the authorized grant, covering both Grantee and Foundation as insured parties.
- e) Such other insurance coverage as may be deemed reasonable and necessary.

These coverages are to be considered as covered costs of construction under the grant and evidence of such coverage shall be furnished to the Foundation.

1.12 Cost Projections. The Grantee and the architect shall prepare and furnish to the Foundation, simultaneously with the plans and specifications, a detailed cost projection for:

- a) All labor, materials and services necessary for construction of the building in accordance with the plans and specifications.
- b) All furnishings, and equipment, including the installation charges for such items as were included in the Grant Request.

1.13 Endowment Commitment. Grantee agrees that upon execution of this Agreement, it will promptly and diligently proceed to initiate a fund drive to provide an Endowment Fund for the maintenance of the building. This fund shall be in an amount equivalent to twenty percent (20%) of the Grant. There shall be a document creating the fund which shall cause these funds to be set aside and be restricted to providing only maintenance and upkeep of this building which shall be kept in a "first-class" condition. Endowment funds shall not be used to operate this building or for its routine custodial services. No part of the Endowment Fund shall include any funds from the Grant. Grantee agrees that the Endowment Fund will be fully subscribed by cash or pledges which are payable within three years of completion of the Project. A copy of the Endowment Fund document shall be given to the Foundation prior to the solicitation of any endowment funding.

1.14 Donor Recognition. The Project shall be named the DONALD W. REYNOLDS BROADCAST CENTER and shall be known as such for all purposes. No interior or external portion of the Project shall ever be given any other name unless approved in writing by the Foundation. The plans and specifications shall provide for a space in the building to display a plaque describing Donald W. Reynolds and shall include a space for a bronze bust of Mr. Reynolds in a prominent and suitable location.

1.15 Publicity Policy. Grantee hereby acknowledges it has received a statement from the Foundation outlining its policy regarding publicity and agrees to abide by such policy. The essential elements of the policy are as follows:

- a) The Grantee may announce and publicize the Project after first permitting the Foundation to review such publicity prior to its dissemination.
- b) The Grantee is encouraged to publicize this grant to advance the reputation of the institution and assist in raising additional funds in support of its mission.
- c) The focus of any such publicity shall be upon the Grantee and its program.
- d) It is the Foundation's policy that its only public involvement with the Project will be the initial press release announcing the Grant and participation in the dedication ceremony when the building is completed. All public attention shall be directed toward the Grantee, the accomplishments of Grantee and upon the Project.

WARRANTIES AND REPRESENTATIONS

The following warrants and representations are true and correct as of the signing of this Agreement and each request for payment by Grantee shall constitute an affirmation that the following representations and warranties remain true and correct as of the date of such request and, unless Foundation is notified to the contrary prior to the disbursement of the requested payment, will be true and correct on the date of such payment.

2.1 Exempt Status. Grantee represents that it is organized and operated exclusively for one or more of the purposes set forth in Section 170(c)(2)(B) of the Internal Revenue Code of 1986, as amended (herein the "Code"), and that it is an organization described in Section 509(a)(1) of the Code. During any period, the Foundation shall be required to make any payments to Grantee under and in the manner provided

by this Agreement, Grantee shall immediately notify the Foundation of any change or changes in the purposes for which Grantee is organized and operated and any change in the status of Grantee as an organization described in Section 509(a)(1) of the Code. The obligations of the Foundation under this Agreement shall cease immediately upon Grantee being organized and operated for a purpose other than those described in Section 170(c)(2)(B) of the Code or upon donee not being an organization described in Section 509(a)(1) of the Code.

2.2 Title. Grantee has good and marketable title, ~~in fee simple~~ ^{in a leasehold estate,} to the premises upon which the building is to be constructed, subject only to reasonable rights-of-way, easements, conditions, covenants and restrictions which will not interfere with the construction and operation of the Project. The site location of the premises is as shown on the preliminary site plan attached hereto and incorporated hereto as Exhibit "A".

2.3 Authority. Grantee has taken all action necessary to authorize the execution and delivery by it of this Agreement and all other documents contemplated hereby to which it is a party and to authorize the consummation of the transactions contemplated in this Agreement. A copy of the resolutions of the Grantee authorizing the acceptance of the Grant and all acts required by this Agreement is incorporated herein as Exhibit "B".

2.4 Ability to Perform. Grantee represents that a building with the following features (the "Building") can be constructed, equipped and furnished on the site in full compliance with all governing and applicable federal, state and local laws, ordinances, building codes and regulations for a sum not in excess of the "Grant Amount". Based on the Grantee's Grant Request to the Foundation, the Building shall have the following features:

- a) The Building shall be free standing and shall not share a common wall with any other building.
- b) The Building shall be approximately 16,387 gross square feet in size computed in accordance with common or accepted methods.
- c) The Building shall have one (1) floor.
- d) The exterior finish of the Building shall be ~~of brick and stone~~ ^{in accordance with design and specifications of approved Schematic Design Package.}

2.5 Construction: Compliance. All construction will be performed on the improvements within the perimeter of the site as shown on Exhibit "A" and shall be in accordance with the plans and specifications approved by Grantee and its Architect and as furnished to the Foundation. The anticipated use of the premises complies with all applicable zoning ordinances, building codes, regulations and ADA requirements affecting the premises and all requirements for such use have been or will be satisfied before construction commences.

2.6 Payment of Obligations. Grantee will pay when due all obligations incurred by Grantee for the cost of constructing the building. The application by Grantee for any progress payment deemed a representation and warranty to the Foundation that each and every item of cost which was made on the basis of prior progress payments and which had not then been paid, has since been paid in full.

2.7 No Litigation. There are no actions, suits or proceedings pending or, to the knowledge of Grantee, threatened against or affecting it or the premises, at law or in equity, or before or by any Governmental Authority.

2.8 Licenses: Permits. Grantee possesses or will obtain prior to commencement of construction all franchises, certificates, licenses, permits and other authorizations from governmental or regulatory

authorities that are necessary in any material respect for the construction ownership, maintenance, or operation of the project and Grantee is not in violation of these licenses, permits or agreements in any material respects.

PROGRESS PAYMENTS PROCEDURE

The grant which is the subject of this Agreement shall be distributed to the Grantee in progress payments according to the following provisions.

3.1 Bank Account. The Grantee will open and maintain at its expense an account at a bank selected by Grantee (the "Account"). The Account shall be used exclusively for the payment of the costs of designing, constructing, equipping and furnishing the Building. The Account shall provide monthly statements and require a return of all checks charged to the Account. The Account may be an interest-bearing account which shall be used for costs associated with the Building. The funds in the Account shall be subject to withdrawal on checks signed by at least two (2) persons who shall be either two authorized officers of Grantee, or one or more authorized officers of Grantee and Grantee's Representative as identified in paragraph 1.5. Grantee shall keep the Foundation advised of the signatures of all persons authorized to sign checks drawn on the Account.

3.2 Funding the Account. At such time as funds are first required for the Account, and monthly thereafter until final acceptance by Grantee of the Building, Grantee's Representative will prepare and submit to the Foundation a request (the "Fund Request") containing an estimate of the amount of cash or additional cash needed in the Account to pay bills received and approved for payment by Grantee in connection with designing, constructing, equipping and furnishing the Building during the preceding month. Such Fund Request shall include a statement of the book balance in the Account as of the date of the Fund Request. The Fund Request shall be certified by the Grantee's Representative and shall include a certification by the architect as to the percentage of completion of the Project at the date of the Fund Request. In no event shall the funds already distributed when added to the funds being requested be a greater percentage of the total grant than the percentage of completion certified by the architect.

3.3 Providing Funding. Within ten (10) full business days after receipt of the Fund Request, the Foundation shall provide funds, by check or wire transfer to the Account in amounts at least equal to all reasonable Fund Requests.

3.4 Limitation on Funding. In no event shall the aggregate amount which is to be paid by the Foundation for constructing (including architect's fees), equipping and furnishing the building exceed the authorized grant amount.

3.5 Excess Costs. Should the cost of constructing (including architect's fees), equipping and furnishing the building, including all amounts heretofore paid by the Foundation to Grantee, exceed the grant amount, the Grantee will pay from its unrestricted funds, ~~(without the use of funds received as gifts for the special purpose from any other person or corporation)~~ such excess amount or amounts in order to complete the construction of the building and the purchase and installation of the equipment and furnishings therein.

3.6 Surplus Grant Funds. Should the Project costs be less than the Grant amount, including all amounts heretofore paid by the Foundation with respect to said Building, the Foundation shall be obligated to provide funds only to the extent of actual costs. Any surplus left in the Account or held by the Foundation shall be returned to the Foundation's general funds.

3.7 Retainage. All contracts for the construction of the Building and for furnishings and equipment (including installation thereof) shall provide, that at least five percentum (5%) of all bills rendered

for services rendered and materials furnished shall not be payable until all work or materials called for by such contracts has been completed or furnished to the Project and accepted by the architects and Grantee.

3.8 Purchases. From time to time subsequent to the letting of the construction contracts, Grantee will purchase, or contract for purchase of, such furnishings and equipment as shall not have been specified in the construction contracts, and contract for the installation thereof where installation is necessary. Grantee will deliver to the Foundation's Representative, copies of all such purchases and contracts. All such purchases and contracts shall specify a delivery date and an installation date and when possible, the net delivered and/or installed cost. As used in this Agreement, the terms "furnishings" and "equipment" shall include only those capital items as listed on Exhibit "C" which are necessary for the Building to be used for the purposes for which it is intended. Exhibit "C" may be furnished supplementally, but in any event prior to letting the construction bids. The Foundation reserves the absolute right to reject any such purchases it determines in its sole judgment which are unnecessary and upon such rejection, the Grantee will pay for any such rejected items out of its separate funds, (or may delete such items from the equipment list.)

3.9 Expenditure Restrictions. Without the prior written approval of the Foundation, none of the costs described below shall be considered a part of the cost of constructing, equipping and furnishing the Building, and under no circumstances, without the prior written approval of the Foundation shall any of the costs described below be approved or paid, directly or indirectly, from the Account:

- 1) Any amounts expended for the extension of sewer, water, gas, electrical steam or other utility lines beyond ten feet from the Building;
- 2) Any amounts expended for demolition costs or the cost of removing existing structures at the site;
- 3) Any roads into the Project or parking lots or parking facilities even though they are to be used in connection with the Project.
- 4) Any amounts expended for land surveys;
- 5) Any amounts expended for soil testing not included in a contractor's bid;
- 6) Any amounts expended for legal services to the Grantee;
- 7) The cost of special consultants retained by the architects and/or Grantee other than those covered by the architects' basic fee.
- 8) The cost of reproductions of working drawings and specifications issued by the architects and/or Grantee for the purpose of bidding and construction, other than those to be provided by the architects, the cost of which is covered by their basic fee.
- 9) Any amounts required to be expended by Grantee in accordance with the contract between Grantee and the architects in excess of 7-1/2% the cost of constructing the Building as provided in the construction documents.
- 10) Any amounts included in the Grant Request as a "contingency". Unforeseen costs and expenditures may arise, in which case the Grantee may request in writing, additional funding up to five percent (5%) of the original grant amount approved by the Foundation. These additional costs must be explained and satisfactorily justified before approval of such additional funding will be considered.

3.10 Final Payment. Prior to approval or payment from the Account of any bill representing final payment on a contract for construction of the Building, Grantee's Representative and the architect shall execute and forward to the Foundation a document certifying that all work called for by said contract has been completed and accepted. As soon thereafter as possible, the bill representing final payment shall be approved and the Foundation will deposit in the Account such additional amount, if any, as may be needed to pay such bills and payment by Grantee shall be made as soon thereafter as possible.

3.11 Lien Waivers. All parties performing labor or furnishing materials to the Project shall furnish Grantee with partial lien waivers within ten (10) days following each progress payment for the amount of work completed and paid for as of the date of billing on which the latest progress payment was based. General lien waivers are to be furnished to Grantee on the final payment.

3.12 Change Orders. Any changes in the plans which Grantee may wish to make in the course of the work shall be approved in writing in advance by the Architects, and the Grantee's Representative. Consent of the Foundation will only be required if the changes would cause the overall Project costs (including any contingency funds) to be exceeded. Consent of the Foundation will also be required when all such change orders, in the aggregate, exceed 1% of the total construction cost of the Project.

3.13 Completion Report. Upon completion of the Project and prior to final payment hereunder, a certificate of occupancy and governmental approval is to be furnished to the Foundation within thirty (30) days after completion of the improvements. The Grantee will require the Architects to furnish "as built" drawings and materials for the Project.

DEFAULT IN PERFORMANCE

The Foundation shall have the right, at any time, to terminate this Agreement after fifteen (15) days written notice to Grantee, if Grantee has refused or substantially failed, without legal justification, to perform any act required by this Agreement or if any events of default have occurred. The following items shall be considered events of default.

4.1 Breach of Agreement. If Grantee shall fail or refuse to comply with any of the covenants, agreements or obligations contained in this Agreement or any other instrument or document given in connection with this grant.

4.2 Breach of Warranty. If Grantee materially breaches any warranty or representation contained in this Agreement or any other writing given in connection with this grant.

4.3 Breach of Construction Contract. If Grantee shall fail or refuse to comply with any term or condition of the construction contract.

4.4 Not in Accordance with Plans. If the description, area, character or condition of the improvements differs materially from the information provided to the Foundation or the construction of improvements be not materially in compliance with the plans and specifications.

Such termination shall be deemed effective upon the expiration of said fifteen (15) days, if Grantee has not theretofore corrected the events of default or performed the acts described in the notice. During the pendency of this 15 day period, the Grantor will suspend any further payments pending the corrective action by the Grantee. In the event of termination of this Agreement, the Foundation shall have the right to require the balance in the Account to be paid over to it and to refrain from making any further advance hereunder. In such event the Grantors' obligations hereunder shall cease.

GENERAL TERMS AND CONDITIONS

5.1 Use Restriction and Right of Reversion. It is expressly agreed by the Grantee, its successors or assigns, that the Project shall be used for the philanthropic or charitable purposes generally set forth in the Grantee's Grant Request dated September 25, 1995, the terms of which are hereby incorporated by reference. Any use of the Project which is inconsistent with the philanthropic or charitable purpose generally set forth in Grantee's Grant Request shall be considered a willful and material breach of this Agreement and if such breach continues unremedied for thirty (30) days after written notice by the Foundation thereof specifying the acts constituting the inconsistent use and requesting that it be remedied, all right, title and ownership of said Project, including, but not limited to, all real property, rights of way, easements, equipment, machinery, appliances, chattels to the extent the same become fixtures now or hereafter used in connection with the use and operation of the Project on the real property, all permits, licenses, franchises, certificates and other rights and privileges obtained in connection with the operation of the Project, shall immediately revert to and vest in the Foundation. This restriction and right of reversion shall run with the land and be binding upon the Grantee, its successors and assigns, for a term of twenty-one (21) years from the date of completion of the Project. The parties agree to file a Memorandum of Grant Agreement in the land records, the form of which is attached hereto as Exhibit "D". No act or omission upon the part of the Foundation shall be a waiver of the operation or enforcement of this restriction and right of reversion.

5.2 No Agency. Grantee understands and agrees that Foundation is not the agent or representative of Grantee, nor is the Foundation Representative a representative of Grantee. This Agreement shall not be construed to make the Foundation liable to materialmen, contractors, sub-contractors, craftsmen, laborers or others for goods or services delivered or provided by them upon the premises.

5.3 No Liability to Third Parties. Notwithstanding any other provisions of this Agreement to the contrary, the terms, covenants and conditions contained in this Agreement are for the sole benefit of the parties hereto, and no reliance or benefit is intended to be granted to any person or company not a party to this Agreement.

5.4 Notices. All notices shall be in writing and shall be sent to the respective addressees of the parties as follows:

Grantee: KNPR, Nevada Public Radio Corp.
5151 Boulder Highway
Las Vegas, Nevada 89122
Attn: Lamar Marchese, President

Grantor: Donald W. Reynolds Foundation
P.O. Box 700690
Tulsa, OK 74170-0690
Attn: Donald E. Pray, Executive Director

A notice may be hand delivered or mailed, postage prepaid, first class, registered or certified mail, return receipt requested. Any notice sent by mail shall be deemed to have been received on the third business day following the date of mailing.

5.5 Applicable Law. This Agreement has been delivered and accepted in, and shall be a contract made under and shall be entered into and governed by the laws of the State of Nevada. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement.

Executed in multiple original counterparts, each of which constitutes the original agreement, and an executed counterpart delivered to each signatory as of the day and year first above written.

"FOUNDATION"

DONALD W. REYNOLDS FOUNDATION

By: _____
Donald E. Pray, Executive Director

"GRANTEE"

KNPR, NEVADA PUBLIC RADIO CORP.
a not-for-profit corporation

By: _____
_____, President

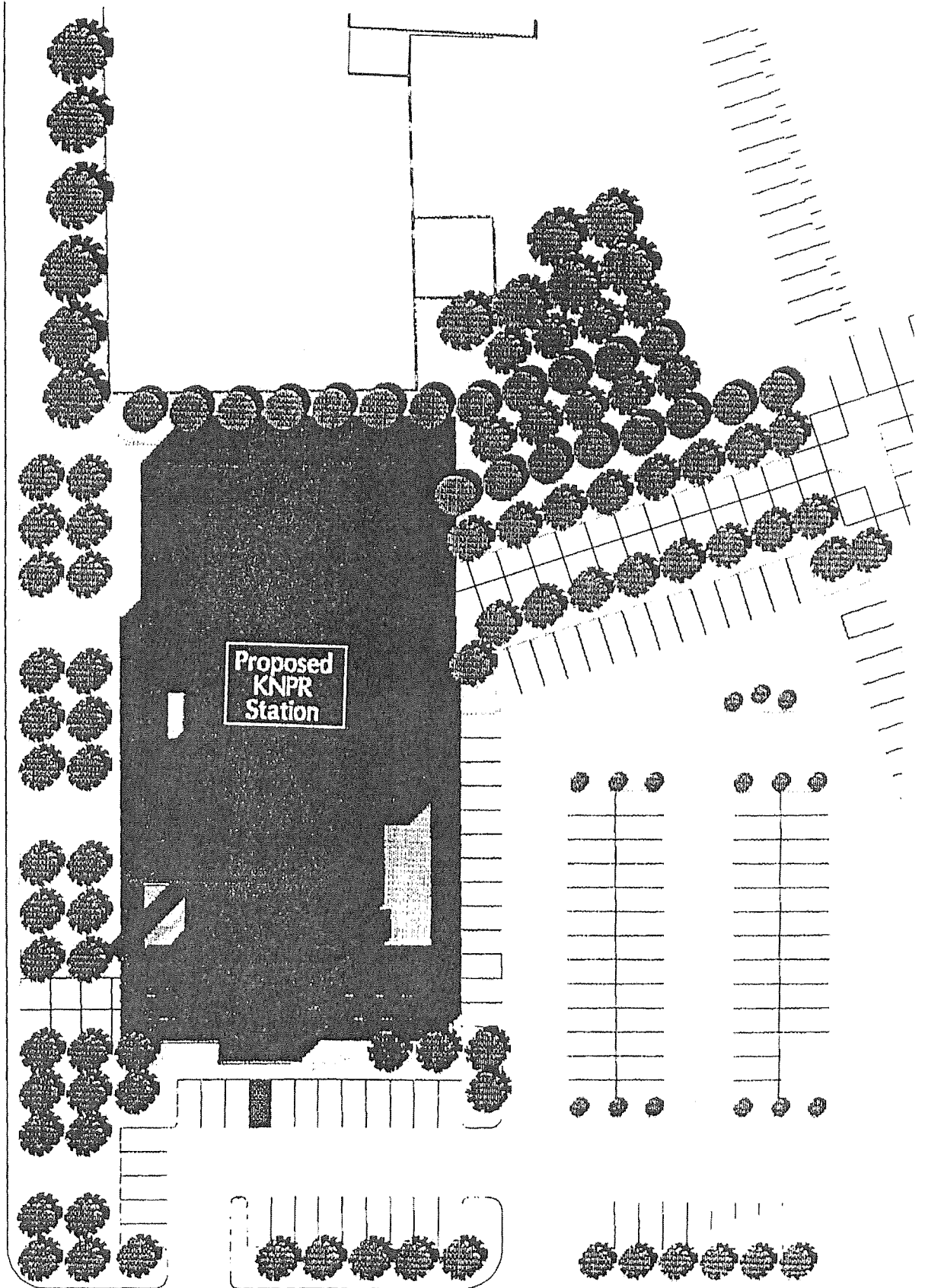
EXHIBIT "A"

Preliminary Site Plan

This site plan illustrates the layout of the College of Southern Nevada campus. Key features include:

- Existing Facilities:** Labeled as "EXISTING COMMUNITY COLLEGE OF SOUTHERN NEVADA FACILITY" in multiple locations, including a large central building and a "EXISTING COCA" (Coca-Cola) building.
- Future Facilities:** Labeled as "FUTURE COMMUNITY COLLEGE OF SOUTHERN NEVADA FACILITY" in several areas, including a large rectangular building on the left and a circular structure in the center.
- Proposed Tower:** A "PROPOSED TOWER TO BE RETAINED/ RFR RADIO BROADCAST FACILITY" is located in the upper left quadrant, surrounded by a circular tree buffer.
- Parking Lots:** Numerous parking areas are shown, including a large lot at the bottom left and several smaller lots throughout the campus.
- Landscaping:** Various tree symbols and buffers are indicated, particularly around the proposed tower and along building perimeters.
- Access Points:** "ENTRANCE" and "EXIT" points are marked for several buildings.
- Orientation:** A north arrow is located in the upper right corner, pointing towards the top of the page.
- Topography:** The plan shows a sloping terrain with contour lines and a "TORREY PINES" area at the top.

TORREY PINES DRIVE



Donald W. Reynolds Broadcast Center
Robert A. Fielden, Incorporated



EXHIBIT "B"

Resolution of Grantee

: (contract.rsl)

6/19/96

NEVADA PUBLIC RADIO CORPORATION

CORPORATE RESOLUTION

WHEREAS, the Donald W. Reynolds Foundation has approved a grant to the Nevada Public Radio Corporation to fund construction and equipment for a new broadcast and teaching facility; and

WHEREAS, final approval between the parties is subject to the execution of a formal grant agreement which is hereto attached; and

NOW THEREFORE, the Nevada Public Radio Corporation Board of Directors hereby authorizes and approves the receipt of the Donald W. Reynolds Foundation grant to construct, furnish and equip the Donald W. Reynolds Broadcast Center, subject to the terms and conditions set forth in the Construction Grant Agreement, the cover letter to that agreement and the original grant request document.

RESOLVED, this ____ day of _____, 1996.

EXHIBIT "C"

List of Furniture and Equipment

EXHIBIT "D"

Memorandum of Grant Agreement

KNOW ALL MEN BY THESE PRESENTS:

For and in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the DONALD W. REYNOLDS FOUNDATION, a Nevada non-profit corporation, having a mailing address at PO Box 700690, Tulsa, Oklahoma 74170 ("Foundation"), has approved a grant to KNPR/Nevada Public Radio Corp., a not-for-profit corporation, having a mailing address at 5151 Boulder Highway
Las Vegas, NV 89122
, ("Grantee") to construct a building and provide for equipment and furnishings and materials pursuant to a Grant Request and Construction Grant Agreement, on certain premises and real property situate in Clark County, State of Nevada, more particularly described on Exhibit "A" attached hereto and made a part hereof.

This Memorandum of Construction Grant Agreement is subject to all the conditions, terms and provisions, including any options to extend or renew or modify the Grant Request and Construction Grant Agreement, of the unrecorded Construction Grant Agreement of even date herewith between the parties hereto, which Construction Grant Agreement is hereby incorporated herein and made a part hereof by reference to the same extent as if all the provisions thereof were copied in full herein. *These provisions include use restrictions which run with the improvements and real property.*

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Grant Agreement this 19th day of June, 1996.

"FOUNDATION"

DONALD W. REYNOLDS FOUNDATION

By: _____
Donald E. Pray, Executive Director

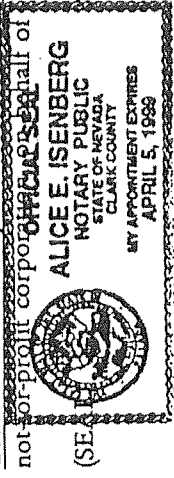
"GRANTEE"

KNPR/Nevada Public Radio Corporation
a not-for-profit corporation

By: _____
Lamar Marchese, President

STATE OF Nevada)
) ss.
COUNTY OF Clark)

The foregoing instrument was acknowledged before me this 19th day of June, 1996, by
Lamar Marchese, President of Nevada Public Radio Corp. KNPR-FM, a
not-for-profit corporation, on behalf of the corporation.



Alice E. Isenberg
Notary Public

My Commission Expires: April 5, 1999

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 1996, by
_____ of _____ Chairman of the Donald W. Reynolds Foundation, a Nevada
non-profit corporation, on behalf of the corporation.

(SEAL)

Notary Public

My Commission Expires: _____

EXHIBIT 2

EXHIBIT 2

Endowment Agreement
for the
Donald W. Reynolds Broadcast Center
at
KNPR, Nevada Public Radio Corp.

1. **Creation of Fund.** This instrument creates and establishes an endowment fund for the *Donald W. Reynolds Broadcast Center*. This fund has been authorized by action of the Board of Directors of KNPR, Nevada Public Radio Corp.

2. **Consideration.** WHEREAS, the Institution is named as the recipient of a \$4,532,259 grant (called "Foundation Grant") by the Donald W. Reynolds Foundation (called "Foundation") for the construction and equipping of the *Donald W. Reynolds Broadcast Center* located in Las Vegas, Nevada;

WHEREAS, a Construction Grant Agreement (called "Agreement") was made and entered into by and between the Institution and Foundation on June 19, 1996, which agreement set forth the contractual commitments of the parties with respect to the construction grant; and

WHEREAS, one of the commitments made by the Institution in the Agreement required the Institution to promptly and diligently proceed to initiate a fund drive to provide an endowment fund for the maintenance of the *Donald W. Reynolds Broadcast Center*. The endowment fund is to be evidenced by an endowment fund document which is the reason for the creation of this agreement.

NOW, THEREFORE, for and in consideration of the grant commitments made by the Foundation to the Institution in the Agreement, and in consideration of the donations to be made by contributors hereto in the future, the Institution hereby creates and establishes the *Donald W. Reynolds Endowment Fund for the Donald W. Reynolds Broadcast Center* (called "Endowment Fund"). The Endowment Fund shall receive donations, gifts, subscriptions, and bequests to be held and administered pursuant to the following terms and provisions.

3. **Funding of the Endowment Fund.** Donations, gifts, subscriptions, and bequests specifically designated by contributors as contributions to this Endowment Fund, together with all charitable donations, gifts, subscriptions, and bequests made to the Institution, which are unrestricted by the donor or the Institution and which are hereafter designated by the Institution's Board of Directors or its Executive Committee to be added to and become part of this Endowment Fund, are to be held pursuant to the terms of this instrument.

4. **Endowment Fund Corpus.** Under the terms of the Agreement, the Institution makes a commitment to raise funds for this Endowment Fund in the amount of \$906,452 (twenty percent (20%) of the grant amount). The Institution agrees that said amount will be fully subscribed by cash or pledges which are payable within three (3) years of the completion of the construction of the *Donald W. Reynolds Broadcast Center*. This Endowment Fund shall be considered as fully funded when it has cash and securities having a combined value of \$906,452. (called "Endowment Fund Corpus"). The Endowment Fund Corpus shall be held by the Institution in

perpetuity. The amount of the Endowment Fund Corpus may exceed the level of funding hereby established as the fully funded amount. Should the Endowment Fund Corpus fall below the fully funded amount as herein established and shall continuously remain below the fully funded amount for a period of twenty-four (24) months or longer (at such time the "Shortfall"), the Institution shall replace the Shortfall to the extent that its assets which may be legally used for such purpose will allow.

5. **Application and Use of Earnings Generated by the Endowment Fund Corpus.** For purposes of this paragraph, the terms "earnings generated by the Endowment Fund Corpus" and "annual available funds" are hereby defined as those funds in the Endowment Fund which have been designated by the Board of Trustees or the Executive Committee of the Institution as earnings on the Endowment Fund as opposed to Endowment Fund Corpus. This definition will allow capital gains on investments to be designated by the Institution as earnings, or not, at the discretion of the Board of Trustees or the Executive Committee of the Institution. Notwithstanding the foregoing, if, at any time, the value of the Endowment Fund Corpus falls below the \$906,452 fully funded amount, the Executive Committee shall not have the power to designate capital gains on investments as earnings until the Endowment Fund Corpus value has grown to the fully funded amount. The earnings generated by the Endowment Fund Corpus are restricted for use only for maintaining the upkeep of the *Donald W. Reynolds Broadcast Center* located in Las Vegas, Nevada, which shall be maintained in a manner similar to "first class" buildings owned and maintained by non-profit organizations in the city in which the building is located. This Endowment is intended to provide funding to keep the building in a sound structural condition while maintaining an attractive exterior and interior appearance. Annual available funds may be used for decorating or remodeling the existing structure or for repairs and maintenance of heating and air-conditioning equipment, upgrading or modification of telecommunications equipment, repairs or modifications of the electrical service or repairs and modification of the plumbing system, including water and sewer. They may also be used for the purpose of purchasing equipment and furnishings to replace worn out or obsolescent equipment and furnishings of the kind which were initially purchased and installed as part of the Foundation Grant. Up to ten percent (10%) of the annual available funds may be used for landscaping or interior art work. No part of the Endowment Fund Corpus or the income generated thereby shall be used or expended for ordinary custodial care or for any purpose other than those purposes expressly authorized by this paragraph 5 and by paragraphs 6 and 7 below.

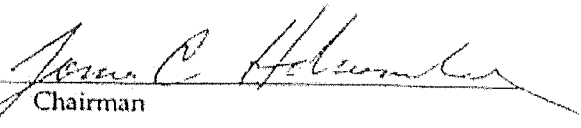
6. **Management of the Endowment Fund.** The Institution is hereby authorized to engage the services of one or more federally insured banking institutions for the management of the Endowment Fund and to negotiate and pay the management fees charged by those banks from the Endowment Fund. The Institution shall manage the Endowment Fund in accordance with the investment policy adopted by the Institution's Board of Directors, and as may be amended from time-to-time. *JEH*

7. **Inspection of Endowment Fund Books and Records by the Foundation.** Foundation, its representatives, agents, accountants or attorneys, shall have the right to inspect the books, records, and vouchers relating to the Endowment Fund at any time during normal business hours between 9:00 o'clock a.m. and 5:00 o'clock p.m. in the time zone in which the Institution maintains the *Donald W. Reynolds Broadcast Center*. In order to exercise this right of inspection, the Foundation must give the Institution two days' written notice of such inspection. The Institution shall provide Foundation a statement setting forth the cash balance and securities balance as of the end of each fiscal year of the Endowment Fund and annually thereafter. The Endowment Fund funds, books and records shall be kept separate from any other funds, books and records of the Institution.

8. **Binding Effect.** The terms and provisions of this instrument comprise the commitment and agreement of the Institution, its successors and assigns, to Foundation and to every person or legal entity who shall have made a donation, gift, subscription or bequest to the Endowment Fund, and that the Endowment Fund Corpus shall be held in perpetuity and the income only thereof be used for the purposes herein stated. This Agreement shall be governed by Nevada law.

9. **Approval, Ratification, and Adoption by Board of Directors.** The Endowment Fund document has been approved, ratified and adopted by the action of the Board of Directors of the Institution on 9/24/97.

KNPR, Nevada Public Radio Corp.

By: 
Chairman

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(contract.edw)

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6. Management of the Endowment Funds. The Institution is hereby authorized to engage the services of a Registered Investment Advisor, registered with the Securities and Exchange Commission, and or the State of Nevada Office of the Secretary of State, Securities Division; or one or more federally insured banking institution, or any other qualified investment advisor for the management of the Endowment Fund, and to negotiate and pay management fees charged by the Fund Manager or Managers from the Endowment Fund in accordance with the investment policy adopted by the Institution's Board of Directors, and as may be amended from time-to-time.

Nevada Public Radio Corporation
Endowment Fund Policies and Investment Committee Responsibilities

BE IT RESOLVED, that on this 22nd day of January, 2003 the Board of Directors of the Nevada Public Radio Corporation do hereby approve and adopt the policies and procedures set forth below.

1. The Endowment Fund created by the Board of Directors and the provisions hereby created shall exist so long as the Corporation, or its duly constituted successor, shall continue to operate and exist.

2. An Investment Committee, appointed by the Chairman of the Board of Directors, will have specific authority to administer any funds or property designated to the Fund. The Investment Committee shall be made up of the Chairman of the Board of Directors, or his appointee, the President/General Manager of the Corporation, and at least three, and not more than five members drawn from the community that have recognized expertise in financial management, business, law, or philanthropy. Committee members do not necessarily require Board membership to serve on the Investment Committee and serve without bond. Committee members serve two year terms and may be reappointed by the Chairman for a maximum of three (3) two year terms.

3. It is understood that any funds, property or other assets awarded to the Endowment Fund are intended to be permanent, with only earnings from investments to be used for operations, capital additions or improvements, or other such legitimate purposes as designated by the Board of Directors.

4. The Endowment Fund is divided into two pools: Endowment Pool #1 and Endowment Pool #2. Earnings on Endowment Pool #1 are donor-restricted and the use of such earnings must be consistent with donor-imposed restrictions. Endowment Pool #1 may contain multiple donor-restricted funds.

Endowment Pool #2 contains the principal of all money or property given to the Corporation by donors for endowment purposes and undesignated by the donor as to the specific use of earnings. Endowment Pool #2 may also contain multiple individual funds.

The Board may, at its discretion, establish a Board-Designated Endowment Fund. This Fund will contain certain unrestricted gifts to the Corporation that are set aside and treated as endowment. The principal money used to establish this Fund as well as all earnings may be used for operating activities or capital expenditures at the Board's discretion.

5. The income from the Endowment Fund shall be reported annually to the Board of Directors, or its lawful successor, by the Investment Committee to be requisitioned and used for carrying out of specific projects for which income from

Endowment Pool #1 is required to be devoted or, in the case of Endowment Pool #2, for the general purpose of promoting and conducting the goals of the Corporation. Income not requisitioned will be retained in the Fund and reinvested.

6. The Board of Directors, through its appointed Investment Committee, and any successors, is hereby given power and authority subject to its Articles of Incorporation, By-Laws, Endowment Fund policies as stated in this document, and applicable laws of the State of Nevada to receive, take, hold, use, control, manage, invest, and reinvest the said principal sum, the additions thereof, from time to time, in such bonds, stock, notes, securities, or other property, personal or real, as they shall seem most suitable.

The Board is empowered to vary either Endowment Pool's property, or any part of the position thereof, at pleasure, changing personal to real estate or real estate to personal estate, and to that end to sell any of such property either at public or private sale, with or without notice, and to such person or persons, upon such terms and for such price as may seem expedient and proper, and to that end, to execute, acknowledge, and deliver all necessary deeds, contracts, bills of sale, leases, assignments, releases or other instruments of writing, either with or without covenant of warranty, necessary or requisite to carry out effectually the full purpose, intent, and meaning of these Endowment Pools.

7. The Board of Directors, through its appointed Investment Committee, is authorized to retain in the form received and for such time as they deem proper any securities or property forming an original part of the Endowment Pools, or which may hereafter be conveyed to the Corporation to become part of the Pools.

8. In the event of the dissolution of the Corporation, or the revocation, suspension, or lapse of its charter, the supervision, management, and control of the affairs and responsibilities of the Endowment Fund shall be exercised by the Board of Directors through such agency as it may see fit to employ to continue until the reinstatement or re-establishment of said Corporation or until the chartering of a new successor Corporation, when said supervision, management, and control shall be assumed by such reinstated, re-established or new Corporation.

9. In the event of there being no suitable successor to the Corporation, the Board of Directors shall, after satisfying any claims made against the Fund convey all assets including bonds, stocks, notes, securities, or other property, personal or real in a manner consistent with Article IX of the Articles of Incorporation of the Nevada Public Radio Corporation, which stipulates that upon dissolution any assets that may be left after the payment of all debts and obligations are to be disposed of as directed by two-thirds majority of the membership of the Board of Directors.

Administration of any surplus funds or property shall be mindful as to the intentions and wishes of the donors as far as practicable, including such as may provide for diversion of funds to other organizations, agencies or other beneficiaries.

10. The Investment Committee and its successor shall serve without the necessity of giving any bond or security for the performance and discharge of its duties and without compensation for its services. However, this is not to restrict the Committee from entering into agreements with third parties for management of the Fund, in whole or in part, and to which compensation is paid for management of the Endowment Fund.

11. Should unforeseen conditions require that a member of the Investment Committee resign or be discharged from duties hereunder, 30 days notice is requested. Such resignation shall take effect upon such date as specified in such notice and thereupon the said Committee member shall be discharged from all further responsibility hereunder and replaced by appointment by the Chairman of the Board of Directors. The Chairman may, at his discretion, remove a Committee member from office upon 30 days notification in advance of said removal becoming effective.

12. The property of the Fund may be increased from time to time by contributions, donations, or otherwise and in that event the said property of the Fund shall be added to or increased as aforesaid, the same shall be considered as forming part of the corpus of the appropriate Pool and the same shall be held upon and be subject to the same terms and conditions as made applicable to the original Pool in which it is placed.

13. Earnings generated by the Endowment Fund's corpus and annual available funds are hereby defined as those funds in the Endowment Fund which exceed the value of the initial gift (corpus). Earnings may be carried over from year to year and accrued for authorized use in the future as the Investment Committee so designates.

14. Particular contributions, donations or legacies may be refused by the Investment Committee, upon approval by the Board of Directors, if found by either of them to be inconsistent with the purposes of this Fund or impracticable to administer as part of this Fund.

15. Borrowing from the Endowment Pool #2 or use of the principal of the Unrestricted portion of the Endowment Fund may only be authorized by the Board of Directors of the corporation in the case of a financial emergency. Borrowing or use of the Unrestricted Endowment principal requires an affirmative vote of two-thirds (2/3) of the membership of the Board of Directors.

16. The Investment Committee shall act as an advisor for deposit of the Endowment Fund; shall report to the Board from time to time as may be required by the Board, not only as to the status of the funds on deposit but also with an estimate of net income which will be available from time to time.

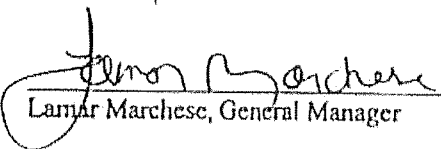
The Committee shall also submit to the Board, within ninety (90) days after the end of each fiscal year, an annual statement, and at such other times as may be required by the Board, shall submit interim statements of the condition of the Pools; each such statement shall consist of (a) a complete financial statement of the transactions of the Committee during the preceding calendar year, if it is an annual statement, or since the last annual statement if it is an interim statement, (b) the amount of income then available for distribution, (c) a list of securities, investments, and cash holdings in the Pools, and (d) a general fiduciary narrative report, including any comments, suggestions, or recommendations which the Committee may deem appropriate.

17. From time to time, if in the judgment of the Board, any of the provisions of these terms and conditions, shall be or have become inappropriate or inapplicable to the purposes for which the Board created the Endowment Fund, or if in the opinion of the Board it shall be desirable to rectify any defects and omissions in these terms and conditions or to make any reasonable, modifications thereto, which in the judgment of the Board may be expedient or necessary to give effect to the intent thereof, the Board shall have the power by an instrument in writing, to make modifications, alterations, supplements, or amendments to the terms and provisions of this document as the Board may deem not inconsistent with the general purposes for which contributions, donations, or otherwise have been made to the Fund, and for which this document shall have been made.

18. To assure further the carrying out of the purposes hereof, each and every one of the provisions of this document are to be regarded and construed as independent of every other provision. In the event that the final determination of a court of competent jurisdiction shall adjudge that any of the terms, conditions, or provisions of this agreement are invalid, such adjudication shall in no way affect the validity of the remaining provisions.

IN WITNESS WHEREOF: The Board of Directors of the Nevada Public Radio Corporation has created this Endowment Fund and adopted these policies and procedures to administer said Fund.

By majority resolution, the Board of Directors hereby authorizes the General Manager of the Corporation to sign on behalf of the Board, thereby authorizing these revised terms and conditions for administration of its Endowment Fund.


Lamar Marchese, General Manager

Date

1/22/03

EXHIBIT 3

EXHIBIT 3

2/21/97
Date

2/5/97
Date

5/98

NEVADA PUBLIC RADIO CORPORATION/KNPR

ENDOWMENT FUND PLEDGE

As my (our) contribution to the Endowment Fund of the Nevada Public Radio Corporation/KNPR, I hereby pledge the sum of

\$_____.

Name (Please print or type)

Address

Home Phone

Work Phone

Fax #

Payment now \$_____ Balance Due \$_____

With the understanding that my (our) commitment may be fulfilled over five years (1998-2002), please bill me (us) \$_____

Annually _____ Semi-Annually _____ Quarterly _____ (check one),
beginning _____ and _____ ending. (Dates)

Name/s as you wish them to appear in public acknowledgement:

I understand and agree that my pledge may be used to meet matching requirements of a grant from the National Endowment for the Humanities (CH #20473) or a pending grant from the National Endowment for the Arts.

Signature _____

Date _____

KNPR 89.5 FM NEVADA PUBLIC RADIO

Endowment Development Program

Statement of Intent

Patrick Chapin, Board President
KNPR
1289 South Torrey Pines Drive
Las Vegas, NV 89146

Re: My/our intent to make a tax-deductible gift to the \$2.2 million Endowment Development Program for KNPR 89.5 FM Nevada Public Radio.

Dear Patrick:

It is my/our intention to contribute to the KNPR Endowment Development Program—in cash, securities and/or marketable real or personal property—a total of \$_____. This gift will be payable over the next _____ years as follows:

<input type="checkbox"/> Amount of Payment	Date by which payment will be made	<input type="checkbox"/> Please have KNPR send me/us a statement thirty days in advance of each payment due date.
_____	_____	
_____	_____	
_____	_____	
_____	_____	

☐ My/Our initial payment of \$_____ is enclosed.
(Please make check payable to: KNPR)

The following is the manner in which my/our name is authorized to appear on any official/public recognition for the KNPR Endowment Development Program:

(Please type or print) _____

Or, list my/our gift: ☐ In Memory of: _____

☐ In Honor of: _____

☐ Please do not list my/our name(s) as I/we wish to remain anonymous.

I/We will make every effort to honor the scope and timing of this commitment, but reserve the right to modify it in the event of unforeseen circumstances.

Sincerely,

Date: _____ Signature: _____

Your Name (please type or print): _____

Mailing Address: _____

City: _____ State: _____ Zip: _____ Daytime Phone: _____ / _____

I understand and agree that my donation may be used to match Challenge Grant # CH-20473 from the National Endowment for the Humanities and a challenge Grant from the Nevada Arts Council

EXHIBIT 4

EXHIBIT 4

November 12, 2008

DONALD W. REYNOLDS FOUNDATION

Florence Rogers
President and General Manager
Nevada Public Radio
1289 South Torrey Pines Drive
Las Vegas, NV 89146

Dear Ms. Rogers:

I am pleased to inform you that the Donald W. Reynolds Foundation (the Foundation) has approved a grant of \$906,452.00 to Nevada Public Radio (Grantee). These funds shall establish the corpus of the Restricted Fund for Programs for Nevada Public Radio.

Payment of the grant funds will be made as a lump sum of \$906,452.00. The grant funds will be paid upon receipt of a countersigned copy of this letter and a completed Payment Information Form (enclosed).

The following terms apply to use of the Foundation's grant:

The Restricted Fund for Programs shall provide funding for the Grantee's programs and operations. The disbursement of annual available funds shall be initiated upon receipt of the Foundation's written approval of your report of anticipated expenditures as further described below and may be used for the purposes allowed under the terms of this agreement. No part of the Restricted Fund for Programs Corpus or its earnings shall be used for the retirement of debt or capital expenditures.

The grant funds shall be deposited/invested by the Grantee at a qualified financial institution and/or federally insured banking institution and designated as the "Restricted Fund for Programs". Funds shall be invested in accordance with Grantee's general policies for investments of similar nature as adopted by Grantee's Board of Directors. However, the primary goal of principal preservation and then asset growth after inflation will be maintained through the life of the fund. Payment of any advisory fees for investment and management of the Restricted Fund for Programs shall be deducted from the annual available funds. It is the intent of the Foundation that the life of the Restricted Fund for Programs would be a minimum of twenty (20) years.

For the purposes of this grant the corpus will be defined as the original grant amount of \$906,452.00 and any residual amount after the allowable five percent annual reductions. Annual available funds shall consist of earnings, dividends, capital gains and other income from investment of the corpus plus five percent (5%) of the original corpus (\$45,323) each year. Negative returns on investments and unrealized losses in the value of the corpus will reduce the amount of annual available funds accordingly. Any unused annual available funds in a given year may be carried over as annual available funds for use in subsequent year(s). Need approval before release (not an automatic release)

Grantee must obtain written approval from the Foundation prior to using any annual available funds. Foundation's written approval will be initiated after receipt of the Grantee's detailed report of anticipated expenditures from the fund along with a written statement from Grantee's Board authorizing the proposed expenditures. Once written approval from the Foundation is received, Grantee may initiate disbursement of funds from the account.

Included with its Annual Report to the Foundation, Grantee shall submit (i) a bank statement or investment fund statement for the Restricted Fund for Programs for the year being reported that shows the corpus, earnings and current account balance for the Restricted Fund for Programs, (ii) a line item detail report of the expenditures covered by annual available funds from the previous year, and (iii) an estimate of anticipated expenditures to be funded from the annual available funds for the coming year.

The Foundation, its representatives, agents, accountants or attorneys, retains the right to inspect the books, records, and vouchers related to the Restricted Fund for Programs at any time during the normal business hours of 9:00 a.m. to 5:00 p.m., in the time zone in which Grantee resides. In order to exercise this right, Foundation shall give Grantee two (2) days written notice of such inspection.

Under United States law, grant funds may be expended only for charitable, scientific, literary, or educational purposes. This grant is made only for the purposes stated in this letter. Any grant funds not expended or committed for the purposes of the grant must be returned to the Foundation.

The Foundation is not responsible for any claim, judgment, award, damages, settlement, negligence or malpractice arising from activities supported by this grant. Grantee acknowledges responsibility for all activities supported by this grant and releases the Foundation from all claims or liability that may arise from such activities resulting from any act or omission on the part of Grantee, its employees, agents or representatives.

The Foundation will include information on this grant in its periodic public reports. Grantee should not issue its own public announcement(s) of the grant. If this letter correctly sets forth Grantees understanding of the terms of this grant, we ask that you or another authorized representative please indicate your organization's agreement to such terms by countersigning the enclosed copy of this letter and returning it to me. It is also understood that by countersigning this letter, Grantee confirms that it is exempt from income taxation pursuant to the Internal Revenue Code. If any change occurs, please notify the Foundation.

If you have any questions regarding this grant or related Foundation policies, please feel free to contact Craig Willis, Senior Program Officer, who will be administering this grant.

On behalf of the Foundation, I extend every good wish for the continued success of your programs.

Sincerely,



Steven L. Anderson
President

Enclosure:
Payment Information Form

ACCEPTED AND AGREED:
For Nevada Public Radio:

Sign: FMC Rogers

Name: FLORENCE M E ROGERS

Title: GENERAL MANAGER / PRESIDENT

Date: 11-20-08

EXHIBIT 5

EXHIBIT 5

Glaser, Robert C

From: Steve Anderson <steve@dwrf.org>
Sent: Saturday, August 31, 2019 8:31 AM
To: Glaser, Robert C
Subject: Re: Capital Grant.pdf

Bob,

I'm sorry I was not able to respond to your call or email yesterday. I am traveling for the holiday. I guess I was not as clear as I intended.

When the Foundation closed it was our intent to turnover the stewardship and fiduciary responsibilities of any remaining active grants to your board. In the case of the Restricted Funds for Program Grants it was our intent for your board to decide how best to utilize the remaining grant funds to support the programs and operations of KNPR.

You have our approval and blessing to use the remaining grant funds for program and operating purposes and to exceed the grant-specified 5% annual maximum expenditure from the grant corpus if that is what is required to meet your immediate emergency needs.

As the "terminating" trustee of the Foundation I have the authority to respond to situations of this nature and make decisions on behalf of the Foundation. Hopefully, this clarifies our position for your board and, if necessary, for your auditors.

Sincerely,
Steve Anderson
Trustee
Donald W. Reynolds Foundation

Sent from my iPad

On Aug 30, 2019, at 12:24 PM, Glaser, Robert C <Robert.C.Glaser@bnymellon.com> wrote:

Thank you, Steve. I appreciate your time and effort in this matter. However, I am not as clear as I thought I was yesterday. It appears that rather than giving KNPR's Board to the discretion to determine the best use of the monies – with consideration to original grant purpose/intention – it appears you are saying that the Board needs to follow the essence of the grant documents. Am I misreading this?

I will review these documents and get back to you, if necessary, with any questions.

Sincerely,

Bob

From: Steve Anderson <steve@dwrf.org>
Sent: Thursday, August 29, 2019 10:20 PM
To: Glaser, Robert C <Robert.C.Glaser@BNYMellon.com>
Subject: Capital Grant.pdf

Bob,

The attached file is the original capital grant agreement for the building and the building maintenance fund agreement. The file also includes the original grant application and correspondence between the Foundation and KNPR prior to the award of the grant.

It appears to me that the Building Maintenance fund should be equal to or more than the original corpus amount of \$906,452 today. Since this was established by your board as a permanent endowment I do not have the authority to approve use of the original corpus funds for any purpose.

Please also note that paragraph 5.1 defines the restrictions for use of the building and the Foundation's right of reversion which only ran for 21 years from the date of completion.

In addition to the original capital grant of \$4,532,259 the Foundation also approved a "supplemental capital grant" to fund unforeseen costs and expenditures that occurred during construction. The amount of that grant was \$116,117 approved by my letter to Lamar Marchese on February 15, 2000. I will forward this letter by separate e-mail.

Our grant for a restricted fund for programs was approved on November 12, 2008 in the amount of \$906,452. The use of these funds was broadly defined as "funding for the Grantee's programs and operations". In accordance with that grant agreement there should be approximately 45% of the original grant or \$407,903 remaining as of this date.

My letter of January 23, 2013 revised the reporting requirements of all grants. (You indicated that you have a copy of that letter so I will not resend it.) I also notified KNPR by letter dated November 1, 2017 that the Foundation would cease operations on December 31, 2017. I will send a copy of that letter for your files. That letter states that "...the Foundation's expectation is that any future decisions that may be required for your organization to fulfill the letter and the spirit of the CGA (Construction Grant Agreement) and (other) Agreements shall be made by your Board of Directors, after full and careful consideration of the Foundation's charitable purpose and philosophy and the specified purposes of the grant."

In accordance with that letter we have authorized your Board of Directors to make decisions with regard to the expenditures from the Restricted Fund Corpus going forward. In order to maintain operations you have indicated that your Board may need to use more than the original allowable annual expenditure from the corpus of 5% for operating expenses. That is a decision that your board has the authority to make without further approval from the Foundation.

If you need additional clarification please feel free to contact me.

Steve Anderson
Trustee
Donald W. Reynolds Foundation

The information contained in this e-mail, and any attachment, is confidential and is intended solely for the use of the intended recipient. Access, copying or re-use of the e-mail or any attachment, or any information contained therein, by any other person is not authorized. If you are not the intended recipient please return the e-mail to the sender and delete it from your computer. Although we attempt to sweep e-mail and attachments for viruses, we do not

guarantee that either are virus-free and accept no liability for any damage sustained as a result of viruses.

Please refer to <https://disclaimer.bnymellon.com/eu.htm> for certain disclosures relating to European legal entities. We take our data protection and privacy responsibilities seriously and our privacy notice explains how we collect, use and share personal information in the course of our business activities. It can be accessed at the privacy section of www.bnymellon.com.