

DRAFT: 11.16.16
FISCAL SPONSORSHIP AGREEMENT FOR THE
VIRGINIA EMANCIPATION PROCLAMATION AND FREEDOM MONUMENT

This FISCAL SPONSORSHIP AGREEMENT FOR THE VIRGINIA EMANCIPATION AND PROCLAMATION AND FREEDOM MONUMENT ("Agreement") is made on [REDACTED], 2016, by and between the DR. MARTIN LUTHER KING, JR. MEMORIAL COMMISSION, a Virginia statutory commission (referred to herein as "the Commission") with offices at Division of Legislative Services, General Assembly Building, 2nd Floor, 910 Capitol Street, Richmond, Virginia 23219 and the VIRGINIA CAPITOL FOUNDATION, a Virginia nonprofit organization ("the Sponsor") with offices at 1001 E. Broad St., #115, Richmond, Virginia 23219.

The Sponsor: The Sponsor is a nonprofit corporation, exempt from federal tax under section 501(c)(3) of the Internal Revenue Code, as amended (the "Code"). It is formed for purposes which, according to its bylaws, shall be organized and operated exclusively for charitable, scientific and educational purposes. The Sponsor organization is formed to fulfill the expressed mission of promoting the humanities, and to using the humanities to address issues of broad public concern.

The Commission: The Commission is a statutory and bipartisan agency of the Virginia General Assembly, created in 1992 to honor the memory and legacy of Dr. King and to continue his work through educational, historical and cultural programs, public policy analysis, and public discourse on contemporary issues.

The Project: The Commission is implementing the development, creation and erection of the Virginia Emancipation Proclamation and Freedom Monument (the "Project") to serve as an education site and tool for educating the public about the importance of the Emancipation Proclamation signed by President Abraham Lincoln and related facts and information about the Emancipation Proclamation.

The Agreement: The Sponsor is willing to receive tax-deductible charitable contributions on behalf of the Commission to be designated solely for the Commission's work and budget for the Project. The Commission, with the administrative assistance of the Sponsor, desires to use these funds to implement the Project.

By entering into this Agreement, the parties agree to the following terms and conditions:

1. **Receipt of Funds:** The Sponsor agrees to receive contributions and gifts, including but not limited to grant funding if awarded, to be used by the Commission solely for the Project, and to distribute those funds to the Commission for such purposes. All funds and donations made to the Sponsor and designated for the Project shall be deposited and held by the Sponsor for the benefit of the Project and for the Commission's use of such funds for such purposes.
2. **Reporting Charitable Donations:** The Sponsor agrees that all contributions it

receives for the Commission will be reported as contributions to the Sponsor as required by law. The Sponsor agrees to promptly notify the Commission of any change in its 501(c)(3) charitable tax-exempt status under the applicable IRS regulation and/or federal law.

3. **Protection of Tax-Exempt Status:** The Commission agrees not to use funds in any way that would jeopardize the tax-exempt status of the Sponsor. The Commission agrees to immediately comply with any written request by the Sponsor that it cease activities which, in Sponsor's sole opinion, might jeopardize the Sponsor's tax status, and further agrees that the Sponsor may suspend its obligation to make funds available or terminate this Agreement in the event that the Commission fails to comply with any such request. Any changes in the purpose for which contributions are used must be approved in writing by the Sponsor before implementation. The Sponsor retains the right, if the Commission breaches this Agreement, or if the Commission jeopardizes the Sponsor's legal or tax status, to immediately return funds to the Commission or the donor, or to withhold the funds.

4. **Use of Funds:** The Sponsor also authorizes the Commission to make expenditures, which do not exceed total contributions for the Commission, on its behalf for use for the Project. The Commission agrees to use any and all funds received from the Sponsor solely for legitimate expenses for the Project and to account fully to the Sponsor for the disbursement of these funds as may be requested by the Sponsor. As donations and funds are received by the Sponsor that are designated for the Project, the Sponsor shall notify the Commission with the details of such funds and otherwise, the Sponsor shall issue payments of such funds, as requested by the Commission, for purposes of the Project unless the disbursement of such funds is made in another manner mutually agreed upon by the parties.

5. **Financial Accounting and Reporting:** The Sponsor will maintain books and financial records for funds it receives designated for the Project in accordance with generally accepted accounting principles. The Commission's revenue and expenses shall be separately recorded in the books of the Sponsor. The Sponsor will provide the Commission with reports reflecting revenue and expenses to the Commission on a monthly basis or as requested by the Commission. The Sponsor will also provide the Commission with an annual report, within three months following the end of the fiscal year of the Sponsor.

6. **Sponsor Supervision, Control and Governance:** The Commission will provide the Sponsor with copies of all grant applications, recommendations regarding grant awards and other documentation reasonably required by the Sponsor to enable it to fulfill its obligations as a fiscal sponsor.

7. **Fundraising:** The Commission may solicit contributions that are earmarked for the activities of the Project. The Sponsor shall be responsible for the processing and acknowledgment of all monies received for the Commission, which shall be reported as the income of the Sponsor for both tax purposes and for purposes of the Sponsor's financial statements.

8. **Grants:** The Commission may also solicit grants on behalf of the Project that are earmarked for the activities of the Commission. The Commission's sources of funding for grants and the text of the Commission's grant applications for the Project are subject to approval by the Sponsor. The Sponsor's President must co-sign all grant applications or proposals. All grant agreements, pledges, or other commitments with funding sources to support the Project shall be executed by the Commission and the Sponsor. Advance approval by the Sponsor is required for any application for government or public agency grants. As with other fundraising, the Sponsor shall be responsible for the processing and acknowledgment of all grant monies received for the Commission, which shall be reported as the income of the Sponsor for both tax purposes and for purposes of the Sponsor's financial statements.

9. **Remuneration to the Sponsor:** In addition to serving as fiscal sponsor for the Commission, the Sponsor will provide administrative support to the Commission. The Commission agrees that, in exchange for the administrative cost of financial accounting, human resources, organizational development, and other support provided by Sponsor, the Commission agrees to permit the Sponsor to deduct a 5% administration fee on all donations directly made to the Sponsor that are designated for or issued to the Commission for the Project.

10. **Communications** Each party agrees to keep the other party reasonably apprised on all material aspects of the Project and activities by the applicable and to copy each other on all material correspondence related to the Project.

11. **Term of Agreement/Renewal:** This Agreement will remain in force until the Project is completed or is terminated with 60 days' prior written notice by either the Sponsor or the Commission, whichever date is sooner.

12. **Termination:** Either party may terminate this Agreement by giving 30 days' written notice to the other party. The foregoing notwithstanding, if the Sponsor reasonably determines that its continued fiscal sponsorship of the Commission may jeopardize the Sponsor's tax-exempt status, the Sponsor may terminate this Agreement immediately upon notice to the Commission.

13. **Successor Sponsor:** If the Commission will continue to exist but Sponsor terminates the Sponsor's fiscal sponsorship of the Commission, the Commission may identify another nonprofit corporation that is tax-exempt under IRC Section 501(c)(3), is not classified as a private foundation under Section 509(a), and that is willing and able to sponsor the Commission (the "Successor"). If a Successor is found, the balance of assets held by the Sponsor for the Commission, together with any other assets held or liabilities incurred by the Sponsor in connection with the Commission, shall be transferred to the Successor as soon as administratively practicable, subject to the approval of any third parties (including funding sources) that may be required. If the Commission has formed a new organization qualified to be a Successor as set forth in this Paragraph, such organization shall be eligible to receive all such assets and liabilities so long as such organization has received a determination letter from the Internal Revenue Service which states the new organization is exempt from federal tax under section 501(c)(3) of the

Internal Revenue Code. If no Successor is found, the Sponsor may allocate the Commission's assets and liabilities in any manner consistent with applicable tax and charitable trust laws and other obligations.

14. **Waiver and Acknowledgment:** The Commission acknowledges that the Sponsor will devote such time to management of the Commission's funds and to general supervision of the Commission as it sees fit and in its sole discretion. The Commission hereby waives and releases the Sponsor from any and all claims, loss, damage, liability and expense, including without limitation attorney's fees and costs (collectively "Claims"), known or unknown, arising out of or in any way related to the Commission, except damages arising solely from the Sponsor's gross negligence or willful misconduct.

15. **Severability:** Each provision of this Agreement shall be separately enforceable, and the invalidity of one provision shall not affect the validity or enforceability of any other provision. This Agreement shall be interpreted and construed in accordance with the laws of the Commonwealth of Virginia.

16. **Entire Agreement:** This Agreement constitutes the only agreement, and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof. This Agreement may not be amended or modified, except in a writing signed by all parties to this Agreement.

By signing below, each person signing below warrants they have the necessary authority bind their respective party and as such, both parties agree to execute this Agreement on the day and year first written above.

**VIRGINIA CAPITOL
FOUNDATION:**

**DR. MARTIN LUTHER KING, JR.
MEMORIAL COMMISSION:**

By: _____
Name:
Title:

By: _____
Delegate Jennifer L. McClellan
Chairwoman

Date: _____

Date: _____