

## FISCAL AGENCY AGREEMENT

This FISCAL AGENCY AGREEMENT ("Agreement") is made on January 26, 2017, 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 nonstock corporation ("the Fiscal Agent") with offices at 1001 E. Broad St., #115, Richmond, Virginia 23219 (Mailing Address: PO Box 396, Richmond, Virginia 23218).

**The Fiscal Agent:** The Fiscal Agent is a nonstock corporation, organized exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, as amended (the "Code").

**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 educational site and tool for educating the public about the importance of the Emancipation Proclamation signed by President Abraham Lincoln and related information about the Emancipation Proclamation.

**The Agreement:** The Fiscal Agent is willing to act as fiscal agent on behalf of the Commission to receive tax-deductible charitable contributions and other sources of Project funding as specified in this agreement designated solely for, and used by, the Commission with respect to the Project.

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

1. **Receipt of Funds:** The Fiscal Agent agrees to receive cash contributions, 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. Subject to Section 8 hereof, all funds paid to the Fiscal Agent and designated for the Project shall be deposited and held by the Fiscal Agent for the benefit of the Project and for the Commission's use of such funds for such purposes.

2. **Reporting Charitable Donations:** The Fiscal Agent agrees that all contributions it receives for the Commission will be reported as contributions by the Fiscal Agent as required by law. The Fiscal Agent 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 collected for the Project in any way that would jeopardize the tax-exempt status of the Fiscal Agent. The Commission shall provide the Fiscal Agent with any invoice received by the Commission or such other reasonable documentation as may be required to fulfill the Fiscal Agent's responsibilities with respect to preserving its tax-exempt status. The Commission agrees to immediately comply with any written request by the Fiscal Agent that it cease activities which, in the Fiscal Agent's sole opinion, might jeopardize the Fiscal Agent's tax status, and further agrees that the Fiscal Agent 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 and other sources of Project funding received by the Fiscal Agent are used must be approved in writing by the Fiscal Agent before implementation. The Fiscal Agent retains the right, if the Commission breaches this Agreement, or if the Commission jeopardizes the Fiscal Agent'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 Commission agrees to use all funds received from the Fiscal Agent, less the Fiscal Agent's 5% administration fee, solely for legitimate expenses for the Project and to account fully to the Fiscal Agent for the disbursement of these funds as may be requested by the Fiscal Agent. As funds are received by the Fiscal Agent that are designated for the Project, the Fiscal Agent shall notify the Commission in writing, not less than on a monthly basis with the details of such funds and the Fiscal Agent shall, as soon as practicable, issue payments of such funds, as requested in writing by the Commission, for purposes of the Project.

**5. Financial Accounting and Reporting:** The Fiscal Agent 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 Fiscal Agent. The Fiscal Agent will provide the Commission with reports reflecting revenue and expenses to the Commission on a quarterly basis or as requested by the Commission with five (5) business day's advance notice. The Fiscal Agent will also provide the Commission with an annual report, within six months following the end of the fiscal year of the Fiscal Agent.

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

**7. Grants:** The Commission may also solicit grants on behalf of the Project that are earmarked for the activities of the Commission. The Fiscal Agent's Executive Director will co-sign all grant applications or proposals solely to confirm the fiscal agent relationship between the parties. As with other fundraising, the Fiscal Agent shall be responsible for the processing and acknowledgment of all grant monies received for the Commission, which grants disbursed to the Commission shall be reported as the income of the Commission for both tax purposes and for purposes of the Commission's financial

statements.

8. **Remuneration to the Sponsor:** The Commission agrees that, in exchange for the administrative cost of financial accounting, tracking donors and related donor record management provided by Fiscal Agent, the Fiscal Agent shall deduct a 5% administration fee on all donations directly made to the Fiscal Agent that are designated for or issued to the Commission for the Project.

9. **Term of Agreement/Renewal:** This Agreement will remain in force until the Project is completed or is terminated with 30 days' prior written notice by either the Fiscal Agent or the Commission, whichever date is sooner. Upon termination, except as provided in section 11, all funds designated for the Project that are held by the Fiscal Agent or one of its agents shall as soon as practicable be paid to (i) the Commission or (ii) returned to the donor of the funds or other source of the funds.

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

11. **Successor Fiscal Agent:** If the Commission will continue to exist but Fiscal Agency terminates this Agreement, the Commission shall 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 serve as fiscal agent to the Commission (the "Successor"). If a Successor is found, the balance of assets held by the Fiscal Agent for the Commission, together with any other assets held or liabilities incurred by the Fiscal Agent 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, all assets, less any liabilities incurred by the Fiscal Agent, shall as soon as practicable be paid to (i) the Commission or (ii) returned to the donor of the funds or other source of the funds.

12. **Waiver and Acknowledgment:** The Commission acknowledges that the Fiscal Agent will devote such time to management of the Commission's funds as it sees fit and in its sole discretion. The Commission hereby waives and releases the Fiscal Agent 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 Fiscal Agent's gross negligence or willful misconduct.

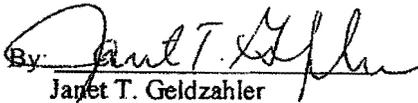
13. **Severability:** Each provision of this Agreement shall be separately enforceable, and

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.

14. **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:**

By:   
Janet T. Geldzahler  
Chair

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

By: \_\_\_\_\_  
Senator Jennifer L. McClellan  
Chairwoman

Date: 1/26/17

Date: \_\_\_\_\_