

**DR. MARTIN LUTHER KING, JR. MEMORIAL COMMISSION:  
AMENDED AGREEMENT FOR COMMISSION OF PUBLIC ART WORK**

THIS AGREEMENT (this “**Agreement**”), is originally entered into on the 13<sup>th</sup> day of June, 2018, and now amended as of this 29<sup>th</sup> day of November, 2019, by and between **COMMONWEALTH OF VIRGINIA, DR. MARTIN LUTHER KING, JR. MEMORIAL COMMISSION** (“**MLKMC**”), c/o, Commonwealth of Virginia, Division of Legislative Services, 900 East Main Street, Richmond, Virginia 23219, and **THOMAS JAY WARREN** (“**Artist**”) with offices at 7225 West Evans Creek Road, Rogue River, Oregon 97537.

**RECITALS**

WHEREAS, at a meeting of the MLKMC on April 19, 2016, the MLKMC formally selected the Artist and his design, renderings of which are attached to this Agreement as **Exhibit A** (the “**Artist’s Design Proposal**”), to be used for the Virginia Emancipation Proclamation and Freedom Monument (the “**Monument**”); and

WHEREAS, the parties entered into an original agreement dated June 13, 2018, for the same services herein related to the Monument (hereinafter the “**Old Agreement**”), it being after further work under Old Agreement, there are now changes and revisions in costs and time deadlines and other issues that are now formally in this Agreement to serve as an amended edition of the Old Agreement; and

WHEREAS, the MLKMC and the Artist desire to enter into this Agreement to substitute and replace the Old Agreement and which now memorializes the terms and conditions upon which the Artist will produce the art to be a portion of the Monument to be installed on Brown’s Island in the City of Richmond, Virginia.

**AGREEMENT**

NOW, THEREFORE, in consideration of foregoing recitals, the covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the MLKMC and the Artist (each, a “**Party**,” and collectively, the “**Parties**”) agree as follows:

**ARTICLE I**  
**DEFINITIONS AND EXHIBITS**

**1.01 Definitions.** The following words have the following meanings as provided by this Agreement:

“**Approval**” means the MLKMC’s approval of a Deliverable, which process is more particularly set out in Section 4.04.

“**Architect**” means Four Winds Design LC, a Virginia limited liability company, with a principal office located at 2700 Jimmy Winters Road, Chesterfield, Virginia 23235, or

MLK Initials:



Warren Initials:



such other architect licensed in the Commonwealth as may be approved by MLKMC in writing.

**“Artwork”** means the bronze and steel monument created by the Artist pursuant to the terms of this Agreement, to consist of two (2) twelve foot (12’) tall bronze figures (one male and one female), an 8’x8’x3’ bronze pedestal with text and reliefs, and steel chains and shackles, all as more particularly described in the Artist Design Proposal and finalized in the Design Documents.

**“Artist Fee”** means a total of Eight Hundred Sixty-One Thousand Five Hundred Eighty (\$861,580.00) paid to the Artist by the MLKMC for the Services as provided in Section 2.01 of this Agreement.

**“Bronze Foundry”** means the bronze foundry located at Artworks Foundry in Berkley, California.

**“Budget”** means the schedule of costs and expenses for the Services to be provided by the Artist, including without limitation, (i) all design fees and costs; (ii) preliminary and final engineering requirements; (iii) materials and labor for Fabrication, (iv) Artist, contractor’s, subcontractors’, third party consultants’ costs; (vi) engineers and specifications writers costs; (vii) costs of Transportation and Installation; (viii) permits and licenses; (ix) insurance; (x) any sales tax; and (xi) a 5% to 10% contingency allowance. The Budget will take into consideration the possible inflation of service and material costs between the Effective Date and the Completion Date.

**“Commonwealth”** means the Commonwealth of Virginia.

**“Completion Date”** means twenty-four (24) months after the Effective Date.

**“Deliverables”** means those tangible items to be completed as a part of the Services, which items are set forth on the Schedule.

**“Effective Date”** means the date on which all Parties have signed this Agreement.

**“Fabrication”** means the bronze casting, steel fabrication, bronze relief production, finishing, and creation of patina of the Artwork in accordance with the Fabrication Documents.

**“Fabrication Documents”** means all necessary presentation documents, models, engineering drawings, and revisions for the Fabrication and the method of Installation, as approved by the MLKMC, which shall include the design for the text and relief panels for the bronze pedestal and shall be certified and stamped by an engineer licensed in the Commonwealth.

**“Final Approval”** means the MLKMC’s approval of the Artwork after Installation and acknowledgement that the Artwork substantially conforms with the Fabrication



Documents and the Artist has complied with all of the terms of this Agreement.

**“Install”** or **“Installation”** means to establish or the act of establishing the Artwork on the Site in accordance with the Fabrication Documents and the terms of this Agreement.

**“Intellectual Property Rights”** means any and all rights to copyrights, trade secrets, trademarks (and related goodwill), patents, and other intellectual property rights in and to the Artwork arising in any jurisdiction throughout the world and all related rights of priority under international conventions with respect thereto, including all pending and future applications and registrations therefor, and continuations, divisions, continuation-in-part, reissues, extensions, and renewals thereof.

**“Maintenance Manual”** means the written description of all materials, processes, and products utilized in the Artwork, the required care and upkeep involved, and the Artist’s recommended procedures in the event of necessary conservation.

**“Phase One”** means the first phase to be performed by the Artist, his agents, contractors, and subcontractors, including without limitation, the Architect, which will include design and development of the Artwork, and preparation of the Site and the satisfactory delivery to, and acceptance by, the MLKMC of the Fabrication Documents, the Schematic Design Documents, and the Site Development Documents.

**“Phase Two”** means the Fabrication of the Artwork as provided in the Fabrication Documents, Site Development in accordance with the Site Development Documents, and preparation for Transportation.

**“Phase Three”** means Transportation and Installation.

**“Prior Work”** means any and all work, deliverables, documents, designs, drawings, samples, inventions, discoveries, processes, formulas, techniques, know-how, modifications, improvements, or other Intellectual Property Rights, whether or not patentable or copyrightable, including without limitation, all goodwill associated with the foregoing, which the Artist, alone or with others, created, made, discovered, devised, or conceived, or otherwise possessed with respect to the Artwork during Phase One.

**“Schedule”** means the timeline for completion of Deliverables and the Approval during each of Phase One, Phase Two, and Phase Three as set forth on **Exhibit C**.

**“Schematic Design Documents”** means the schematic design and design development documents created by the Architect for Site Development and Installation of the Artwork, which will meet the requirements of the current DGS/DEB Construction and Professional Services Manual (“CPSM”) for “Schematic Design/Project Criteria” and will include: (i) presentation quality materials, which shall include colored drawings or computer-generated color images (in plan and elevation) that accurately reflect the Artwork and Installation, proposed color and materials, samples, the specific location and orientation of the Artwork relative to the Site; (ii) detailed analysis of the cost of Site Development

with documentation of the sources and/or assumptions upon which the numbers are based regardless of whether these services are provided by the Architect, the Artist, or by third parties under a separate agreement. The Schematic Design Documents will be signed and stamped by design professionals licensed in the Commonwealth.

**“Services”** means all services to be performed by or at the direction the Artist under this Agreement, including but not limited to completing the Deliverables and furnishing all labor, supplies, material and equipment as necessary for the design, Fabrication, Transportation, and Installation of the Artwork. The Services shall be performed in a professional manner and in strict compliance with all terms and conditions in this Agreement.

**“Site”** means the real property to be donated to the Commonwealth by the City of Richmond and owned by the Commonwealth as shown on **Exhibit D** for the public display of the Monument.

**“Site Development Documents”** means the Site development documents created by the Architect for Site Development and Installation of the Artwork, which will meet the requirements of the CPSM for “Working Drawings Phase/Construction Documents Phase” and will: (i) include sufficient detail to ensure compliance with applicable federal, state, and local laws, ordinances, and regulations; (ii) indicate issues or coordination involved in the Installation, including without limitation, any third party subcontractors needed; (iii) identify any lighting, media, or purchased forms of hardware, computers, or software programs that are an intrinsic aspect of the Artwork; and (iv) be signed and stamped by design professionals licensed in the Commonwealth.

**“Site Development”** means preparation of the Site for Installation in accordance with the Site Development Documents.

**“Transportation”** shall mean moving the Artwork from the Bronze Foundry to the Site in accordance with the Fabrication Documents.

**“Work Product”** means all writings, drawings, works of authorship, technology, inventions, discoveries, ideas, and other work product of any nature whatsoever, that are created, prepared, produced, authored, edited, amended, conceived, or reduced to practice by the Artist, individually or jointly with others, during Phase Two and Phase Three and relating in any way to the Artwork (regardless of when or where prepared or whose equipment or other resources are used in preparing the same) and all printed, physical, and electronic copies, all improvements, rights, and claims related to the foregoing, and other tangible embodiments thereof.

**1.02 Exhibits.** The following exhibits are attached hereto, made a part hereof and incorporated by reference:

<b>Exhibit A</b>	Artist’s Design Proposal
<b>Exhibit B</b>	Insurance

MLK Initials:



Warren Initials:



**Exhibit C**     Schedule  
**Exhibit D**     Site of Monument

## ARTICLE II

### OLD AGREEMENT/ARTIST FEE; BUDGET

**2.01 Old Agreement.** The Old Agreement is hereby terminated and is substituted and replaced by this Agreement. Each party confirms that they have no further obligations to each other under the Old Agreement.

**2.02 Artist Fee.** The Artist agrees to provide the Services for the MLKMC pursuant to the terms of this Agreement. In consideration of the Services, the MLKMC agrees to pay the Artist Fee to the Artist in accordance with the following payment schedule:

- a. \$255,000 to be paid as follows: \$127,000 upon delivery of Fabrication Documents and \$128,000 upon delivery of Schematic Design Documents; and then
- b. \$255,000 upon completion of Item II-A.a. of the Schedule and \$48,290 upon signing of this amended Agreement; and
- c. \$303,290 upon Final Approval.

**2.03 Budget.** The budget is \$861,580, of which \$485,000 is for the bronze and steel sculptures, delivery, and installation, and \$376,580 is for site development and landscaping. If the Artist incurs costs in excess of the amount in the Budget, the Artist shall pay such excess from the Artist's own funds unless the Artist obtains approval in writing for such additional costs from the MLKMC (or such costs were the result of actions or inaction of the MLKMC).

## ARTICLE III PHASES

### **3.01 Phase One.**

a. **Artist's Obligations.** During Phase One, the Artist shall complete the Deliverables identified in the Schedule within the time periods set forth therein. In addition to providing the Deliverables, the Artist shall:

- i. Conduct interviews, establish design criteria, develop and revise Artist's Design Proposal, and be available for a reasonable number of meetings required to coordinate design and project implementation, ceremonies and the like, as necessary.
- ii. Suggest the location of the Artwork on the Site, subject to review and approval of the MLKMC and the Commonwealth, such that

MLK Initials: 

Warren Initials: TJW

location of the Artwork on the Site shall not interfere with the intended use of the Site, pedestrian and other traffic flow, safety devices and procedures, and other needs and functions of the Site as determined by the MLKMC, the City of Richmond, and the Commonwealth.

- iii. Provide at the Artist's sole cost and expense, obtain all rights necessary for all aspects of the Artwork, including without limitation, any and all required licenses, permits, and similar legal authorizations as may be necessary and advised by MLKMC for the Installation.
- iv. Ensure all costs and expenses related to the costs to be borne by the MLKMC under this Agreement are within the specific categories of the Budget.
- v. Supervise and manage third party consultants, contractors, and subcontractors and provide a list of all third party consultants, contractors, subcontractors along with a copy of any agreements between the Artist and each third party consultant, contractor, and subcontractor promptly to the MLKMC and the Commonwealth.
- vi. Provide to the MLKMC and the Commonwealth of Virginia, Department of General Services ("DGS") monthly written reports on progress of the Artist's Services during Phase One and any issues encountered by the Artist in Phase One that might affect the Deliverables in Phase One.
- vii. Deliver renderings of the Artwork, as requested by the MLKMC, for use for the MLKMC's fundraising needs.
- viii. Review the Schematic Design Documents and the Site Development Documents for accuracy of the integration of Artwork within the Site and provide the MLKMC and the Architect with written comments and/or corrections.
- ix. Where appropriate, present Artist's Design Proposal and Fabrication Documents to a qualified conservator, who will make recommendations on the maintenance of the Artwork and the Artist shall provide a written copy of the conservator's recommendations to the MLKMC. The conservator's report will indicate future maintenance and conservation needs and anticipated costs and may reflect issues such as the longevity of the materials used.

b. **MLKMC Obligations.** During Phase One, the MLKMC shall:

MLK Initials: 

Warren Initials: TJW

- i. At the written request of the Artist, provide the Artist copies of existing designs, drawings, reports, and other existing relevant data in the possession of the MLKMC with respect to the Artwork.
  - ii. Provide to the Artist a written list of guidelines and approvals known to the MLKMC and required by regulatory and oversight bodies, which may impact Installation of the Artwork or Site preparation.
- c. **Ownership of Deliverables in Phase One.**
- i. Within 14 days after the later of Approval of the Fabrication Documents or Approval of the Site Development Documents, the Artist will contribute, transfer, and assign in writing, in a form acceptable to the Office of the Attorney General, all of the Artist's right, title, and interest in and to the Artwork and any and all Prior Work to the Commonwealth. Such transfer shall include a waiver of all moral rights permitted by law and such other provisions as the Commonwealth deems necessary. **TIME IS OF THE ESSENCE** in the fulfillment of the requirements for this Section 3.01(c). This Section 3.01(c), is a material term of this Agreement.
  - ii. The Artist agrees to execute any additional documents, as reasonably requested, to confirm the Commonwealth's sole ownership rights in the Artwork and Prior Work.
  - iii. This Section 3.01(c) will survive termination of this Agreement. The Artist shall not use the Artwork or the Prior Work for any purpose other than stated in this Agreement (even if the Artist's Services are terminated in Phase One).

### 3.02 Phase Two.

a. **Artist's Obligations.** During Phase Two, the Artist shall complete the Deliverables identified in the Schedule within the time periods set forth therein. In addition to providing the Deliverables, the Artist shall:

- i. Take reasonable measures to protect or preserve the integrity of the Artwork with the application of a protective sealant, patina or anti-graffiti coating, if applicable, unless MLKMC specifically disapproves of such.
- ii. Coordinate the Site Development with MLKMC and DGS.
- iii. Provide to the MLKMC monthly written reports on progress and

MLK Initials: \_\_\_\_\_



Warren Initials: \_\_\_\_\_

TJW

notify the MLKMC in writing when Fabrication of the Artwork has been completed, and that the Artwork is ready for Transportation and Installation.

- iv. Supervise and manage third party consultants, contractors, and subcontractors and provide a list of all third party consultants, contractors, subcontractors along with a copy of any agreements between the Artist and each third party consultant, contractor, and subcontractor promptly to the MLKMC and the Commonwealth.
- v. Provide the MLKMC with a Maintenance Manual.
- vi. Artist shall consult, as MLKMC deems necessary, for the Fabrication to proceed so as to result in an Artwork faithful to Artist's intent or if it is not, to inform MLKMC that it is not, and identify the ways in which the Fabrication is not faithful to the Artwork. MLKMC will have final oversight and approval.

b. **MLKMC's Obligations.** Throughout Phase Two, MLKMC shall promptly notify the Artist of any delays impacting Installation of the Artwork.

### 3.03 Phase Three.

a. **Artist's Obligations.** During Phase Three, the Artist shall complete the Deliverables identified in the Schedule within the time periods set forth therein. In addition to the providing the Deliverables, the Artist shall:

- i. Prior to the Installation, coordinate with MLKMC and DGS to ascertain that the Site is prepared to receive the Artwork. Artist must notify MLKMC and DGS of any adverse conditions at the Site that would effect or impede the Installation.
- ii. In coordination with the Commonwealth and DGS, supervise and oversee the Installation of the Artwork, in a first rate manner, and shall report to the MLKMC and DGS on a weekly basis of such matters.
- iii. Advise MLKMC and all contractors as to the Fabrication and Installation for the Artwork based on the Fabrication Documents and Budget.
- iv. Oversee and supervise the Installation of the Artwork with a qualified installer that is pre-approved by the Commission and the Commonwealth.
- v. Issue a certificate of authenticity to acknowledge that the Artwork

as Installed is faithful to the Artist's artistic intent as set forth in the Fabrication Documents.

vi. If the Artist does not Install the Artwork, Artist shall supervise and approve the Installation. All work shall be performed by qualified professionals and by licensed contractors approved by the Commonwealth.

vii. Provide a set of "as built" drawings of the Artwork as Installed on the Site.

b. **MLKMC's Obligations.** Throughout Phase Three, MLKMC shall promptly notify the Artist of any delays impacting Installation of the Artwork.

#### **ARTICLE IV** **SCHEDULE AND APPROVAL**

**4.01 Completion Date.** The Artist shall complete Installation no later than the Completion Date.

**4.02 Delays.**

a. **Artist Delay.** In the event that, through the fault of the Artist (as determined by the MLKMC), Installation has not occurred by the Completion Date, the amount of ten percent (10%) of the balance due shall be deducted every fourteen (14) calendar days until the Installation is complete. The Artist may request an extension of the Completion Date from the MLKMC. Requests for an extension must be in writing and be submitted within ten (10) days of Artist's knowledge of a delay, but no later than fourteen (14) calendar days prior to the Completion Date. If the extension is granted, the Completion Date shall be amended in writing. In recognition of the significant engineering and infrastructure components involved in the Artwork, requests for extensions of time shall not be unreasonably denied.

b. **MLKMC Delay.** In the event that MLKMC or its contractors cause delay, then MLKMC shall pay for any additional direct Artist's costs incurred as a result of such delay.

c. **Force Majeure.** In the event that conditions beyond the Artist's control render timely performance of the Services impossible or unduly burdensome, the Schedule may be revised to consider such events. Both Parties shall take reasonable steps during the existence of the condition to assure performance of the obligations when the condition no longer exists. Failure to fulfill contractual obligations due to conditions beyond either Party's reasonable control will not be considered a default under this Agreement.

**4.03 Amendment of Schedule.** The Parties may amend the Schedule by written

MLK Initials:



Warren Initials:



agreement, provided, that, the Artist must provide a minimum of thirty (30) days written notice of any changes to the timeline of any Deliverable in this Agreement.

**4.04 Approval of Deliverables.** Approval of a Deliverable required under this Agreement, shall occur as follows:

- a. If the MLKMC approves of a Deliverable, Approval will be submitted to the Artist in writing and initialed by the authorized representative of the MLKMC.
- b. If the MLKMC disapproves of a Deliverable, the MLKMC will submit to the Artist, in writing, the reasons for such disapproval, and the Artist will submit a revised Deliverable within 4 weeks after the MLKMC's notification of disapproval. The Artist will not be paid an additional fee for the revised Deliverable.
- c. Within 4 weeks of delivery of a revised Deliverable to the MLKMC, the MLKMC shall notify the Artist as to whether the revised Deliverable is approved.
- d. If the Artist refuses to revise, or cause to be revised, the Deliverable or if the Artist fails to adequately revise the Deliverable, in the sole judgment of the MLKMC, the MLKMC may (i) withhold the next installment of the Artist Fee, and/or (ii) terminate this Agreement by written notice and the Parties shall be under no further obligation to each other as of the date of such termination.

**4.05 Final Approval.**

- a. MLKMC shall promptly notify the Artist in writing of its Final Approval within thirty (30) days after Installation. The effective date of Final Approval shall be the date MLKMC submits written notice to the Artist of its Final Approval.
- b. If MLKMC determines that the Artist has not complied with all of the terms of this Agreement, MLKMC shall notify the Artist in writing of his failure of performance within fourteen (14) days after Installation. The Artist shall promptly comply with the terms identified by MLKMC.
- c. If the Artist disputes MLKMC's determination, the Artist shall submit reasons in writing to MLKMC within fourteen (14) days of MLKMC's prior notification to the contrary. MLKMC shall make reasonable efforts to resolve the dispute with the Artist in good faith. However, final determination as to whether all services have been performed shall remain with MLKMC.
- d. Upon the resolution of any disputes that arise under this Section 4.05, MLKMC shall notify the Artist of Final Approval within 14 days.

**ARTICLE V**  
**ARTIST'S REPRESENTATIONS AND WARRANTIES**

MLK Initials:



10

Warren Initials:



**5.01 Representations and Warranties.** The Artist represents, warrants, and covenants that:

- a. All work will be performed in accordance with professional “workmanlike” standards and free from defective or inferior materials and workmanship (including any defects consisting of “inherent vice,” or qualities that cause or accelerate deterioration of the Artwork) for one (1) year following the completion of the Services;
- b. The Artwork and the materials used are not currently known to be harmful to public health and safety;
- c. Maintenance of the Artwork after Installation will not require procedures substantially in excess of those described in the Maintenance Manual.
- d. The Artwork is solely the result of the artistic effort of the Artist.
- e. Except as otherwise disclosed in writing to MLKMC, the Artwork is unique and original and does not infringe upon any copyright or the rights of any person.
- f. The Artwork (or duplicate thereof) has not been accepted for sale elsewhere.
- g. The Artist has not sold, assigned, transferred, licensed, granted, encumbered or utilized the Artwork or any element thereof or any copyright related thereto which may affect or impair the rights granted pursuant to this Agreement.
- h. The Artwork is, and will be as the completion of the Services, free and clear of any liens from any source whatsoever.
- i. All Artwork created by the Artist under this Agreement, whether created by the Artist alone or in collaboration with others shall be wholly original with the Artist and shall not infringe upon or violate the rights of any third party.
- j. The Artist has the full power to enter into and perform this Agreement and to make the grant of rights contained in this Agreement.
- k. All services performed hereunder shall be performed in accordance with all applicable laws, regulations, ordinances, etc. and with all necessary care, skill, and diligence.

**5.02 Breach of Warranty Within Three Years.** If within three (3) years MLKMC observes any breach of the warranties in Section 5.01, the Artist shall cure the breach promptly, satisfactorily and consistent with professional conservation standards, at no expense to MLKMC. MLKMC shall give notice to the Artist of such breach with reasonable promptness. However, if the Artist did not disclose this risk of breach in the Maintenance Manual, and if breach is not curable by Artist, the Artist shall reimburse MLKMC for damages, expense and loss incurred by



MLKMC as a result of the breach of warranty. However, if the Artist disclosed the risk of this breach in the Maintenance Manual and MLKMC accepted that it may occur, as indicated by the written Final Approval, it shall not be deemed a breach for purposes of this Section of this Agreement.

**5.03 Breach of Warranty After Three Years.** Without limiting Section 5.02, if after three years MLKMC observes any breach of warranty described in this Article that is curable by the Artist, MLKMC shall contact the Artist to make or supervise repairs or restorations at a reasonable fee during the Artist's lifetime. The Artist shall have the right of first refusal to make or supervise repairs or restorations. Should the Artist be unavailable, unwilling to accept reasonable compensation under the industry standard, or otherwise unable to make or supervise the repairs or restoration, MLKMC may seek the services of a qualified restorative conservator and maintenance expert.

**5.04 Survival.** The representations and warranties in Section 5.01 shall survive the expiration or earlier termination of this Agreement.

## **ARTICLE VI**

### **RISK OF LOSS; INSURANCE REQUIRED; INDEMNIFICATION**

**6.01 Risk of Loss.** The Artist shall bear the risk of loss or damage to the Artwork until completion of the Installation. The Artist shall take such measures as are reasonably necessary to protect the Artwork from loss or damage. The Artist acknowledges that until Installation of the Artwork, any injury to property or persons caused by the Artist's Artwork or any damage to, theft of, vandalism to, or acts of God affecting the Artist's Artwork are the sole responsibility of the Artist, including, but not limited to, any loss occurring during the creation, storage, transportation or delivery of the Artist's Artwork, regardless of where such loss occurs.

**6.02 Insurance.** The Artist, at its sole cost and expense, covenants and agrees to maintain the insurance described in **Exhibit B**.

**6.03 Indemnity.** The Artist shall indemnify MLKMC, its respective officers, agents, and employees, from any claims brought arising out of the breach of this Agreement or any negligent occurrence which occurs pursuant to the performance of this Agreement by the Artist, its subcontractors, agents or employees, including reasonable attorney's fees and costs. MLKMC shall immediately notify the Artist of any written claim regarding any matter resulting from or relating to the Artist's obligations under this Agreement. This indemnification shall survive the expiration or earlier termination of this Agreement.

## **ARTICLE VII**

### **OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS**

**7.01 Prior Work.** As set forth in Section 3.01(c), at the completion of Phase One, and regardless of the status of Phase Two, the Artist shall transfer all rights in the Artwork and Prior Work to the Commonwealth. Phase Two will not commence until the Commonwealth has secured all then existing legal rights and ownership to the Artwork and Prior Work from Artist.

MLK Initials: \_\_\_\_\_



12

Warren Initials: \_\_\_\_\_



**7.02 Work Product and Intellectual Property Rights.** The Artist acknowledges and agrees that all Work Product and Intellectual Property Rights are and shall be the sole and exclusive property of the Commonwealth. The Artist further acknowledges that by reason of the services performed under this Agreement at the relevant times, to the extent permitted by law, all of the Work Product consisting of copyrightable subject matter is WORK MADE FOR HIRE as defined under federal copyright, and such copyrights are therefore owned by the Commonwealth. To the extent that the foregoing does not apply, the Artist hereby waives any moral rights it may have and irrevocably assigns to the Commonwealth, for no additional consideration, their entire right, title, and interest in and to all Work Product and Intellectual Property Rights therein, including the right to sue, counterclaim and recover for all past, present and future infringement, misappropriation or dilution thereof, and all rights corresponding thereto throughout the world. Nothing contained in this Agreement shall be construed to reduce or limit the Commonwealth's rights, title, or interest in any Work Product or Intellectual Property Rights so as to be less in any respect than that the Commonwealth would have had in the absence of this Agreement.

**7.04 Further Assurances.** During and after completion of Phase Two and Phase Three, the Artist will take all action and execute all documents reasonably requested by the Commonwealth to effectuate the transfer of the Work Product and the Intellectual Property Rights and to vest complete and exclusive ownership of the Work Product and the Intellectual Property Rights to the Commonwealth.

**7.05 Artist's License.** The Artist shall have a non-transferable, non-exclusive license to reproduce images of the Artwork solely for educational, non-commercial purposes, and provided that, no compensation shall be paid the Artist with respect to such use. This license may be terminated by the Commonwealth if the Commonwealth finds that the Artist is exceeding the scope of this license or is receiving any compensation.

**7.06 Artist Acknowledgement.** Any reproductions of the Artwork's image made by the MLKMC or the Commonwealth shall credit the Artist as follows: "Thomas Jay Warren, Sculptor".

## **ARTICLE VIII**

### **TERMINATION; DEFAULT; REMEDIES; DEATH OR INCAPACITY OF ARTIST**

**8.01 Termination.** The MLKMC may terminate this Agreement without cause upon sixty (60) days written notice to the Artist. The MLKMC shall pay the Artist for services performed and commitments made prior to the date of the termination, consistent Section 2.01.

**8.02 Default.** It shall be a default of the Artist if:

a. The Artist fails to make progress so as to endanger performance of this Agreement in accordance with its terms and such progress is not impeded or caused by MLKMC, its employees or contractors, or

b. The Artist fails to comply with the Schedule as modified pursuant to the



terms of this Agreement, or

c. The Artist violates any provisions of this Agreement or commits any act of fraud, negligence or willful misconduct in connection with the Services, or

d. The Artist commences or has commenced against him any proceedings, voluntary or involuntary, in bankruptcy or insolvency, including any reorganizing proceeding, or

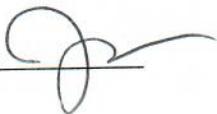
e. An assignee for the benefit of the Artist's creditors or a receiver is appointed, with or without the Artist's consent.

**8.03 Remedies for Default.** If the Artist is in default under this Agreement, the MLKMC may, without prejudice to any other right or remedy it may have at law or in equity, terminate this Agreement, if the Artist fails to cure such event of default within fifteen (15) business days after written notice of such default is sent by the MLKMC. If the event of default is not cured within such fifteen (15) day period, the MLKMC may proceed to complete or cause the Services to be completed, however, the Artwork shall not be represented as that of the Artist without the Artist's prior approval. If this Agreement is terminated for cause during Phase One, the Artist will be required to contribute, transfer, and assign in writing all of his right, title, and interest in and to the Artwork and any and all Prior Work in accordance with Section 3.01(c). The Artist shall not be entitled to any further payments of the Artist Fee.

**8.04 Death or Incapacity of Artist.** If the Artist becomes unable to complete the Services due to death or incapacity, such event will not be deemed a default of the Artist.

a. **Death.** In the event of death of the Artist, this Agreement shall terminate effective the date of death. The Artist's heirs shall retain rights under Article 10 and Article 11. The Artist's executor shall deliver to MLKMC the Artwork in whatever form or degree of completion it may be in at the time. Title to the Artwork shall then transfer to MLKMC. However, the Artwork shall not be represented to be the completed work of the Artist unless MLKMC is otherwise directed by the Artist's heirs.

b. **Incapacity.** In the event of incapacity of the Artist, the MLKMC may (i) consent to a substitute artist in writing who may assume the obligation of the Artist under this Agreement or (ii) terminate this Agreement. In the event of death, this Agreement shall terminate effective the date of death. The Artist's executor shall deliver to MLKMC the Artwork in whatever form or degree of completion it may be in at the time. Title to the Artwork shall then transfer to MLKMC. However, the Artwork shall not be represented to be the completed work of the Artist unless MLKMC is otherwise directed by the Artist's heirs. For purposes of this Agreement, "incapacity" means that Artist is impaired both physically and mentally by reason of mental illness, mental deficiency, physical illness or disability to the extent (i) that he is unable to understand or communicate responsible decisions concerning his person, or that he cannot effectively manage or apply his estate to necessary ends and for whom a guardian has to be appointed in the opinion of the court.



**ARTICLE IX**  
**Miscellaneous**

**9.01 Duration.** This Agreement shall be effective on the Effective Date, and, unless terminated earlier pursuant to the provisions in this Agreement, shall extend until Final Approval or submission of final payment to the Artist by MLKMC, whichever is later. Extension of time of performance hereunder may be granted upon the request of one Party and the consent of the other thereto, which consent shall not be unreasonably withheld. Such extension shall be in writing, signed by both Parties.

**9.02 Artist as an Independent Contractor.** The Artist agrees to perform all work under this Agreement as an independent contractor and not as an employee of MLKMC. The Artist acknowledges and agrees that the Artist shall not hold himself out as an authorized agent of MLKMC with the power to bind in any manner. The Artist shall provide MLKMC with the Artist's Tax Identification number and any proof of such number as requested by MLKMC.

**9.03 Assignment.** The work and services required of the Artist are personal and shall not be assigned, sublet or transferred. Any attempt by the Artist to assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect unless prior written consent is given by MLKMC. MLKMC shall have the right to assign or transfer any and all of MLKMC's rights and obligations under this Agreement if ownership of the Site is transferred.

**9.04 Notices.**

a. **Notice Deemed Given; Effectiveness.** All notices to a Party required or permitted under this Agreement shall be deemed to have been properly given, and are effective, at the time such notice is (i) deposited with a nationally recognized overnight delivery service using no more than two (2) business day delivery service or (ii) hand delivered, each method of delivery being addressed to the Party's address set forth below:

If to MLKMC:                    The Dr. Martin Luther King, Jr. Memorial Commission  
Commonwealth of Virginia, Division of Legislative Services  
900 East Main Street  
Richmond, Virginia 23219

with a copy to:

Kirk T. Schroder, Esq.  
Schroder BrooksLaw Firm PLC  
2310 West Main Street  
Richmond, Virginia 23220

The Honorable Jennifer L. McClellan  
Commonwealth of Virginia, Division of Legislative  
Services

MLK Initials: 

Warren Initials: TJW

900 East Main Street  
Richmond, Virginia 23219

If to the  
Commonwealth: Director  
Commonwealth of Virginia, Department of General Services  
1100 Bank Street  
Richmond, Virginia 23219

If to Artist: Mr. Thomas Jay Warren  
7225 West Evans Creek Road  
Rogue River, Oregon 97537

b. **Notice Deemed Received; Time to Act.** For any act that a party may or must take within a fixed period of time after having received notice required by this Agreement, such period shall begin on the earlier of the date of actual receipt or (i) for notice sent by a nationally recognized overnight delivery service, two (2) business days after deposit of the notice with such carrier, or (ii) for hand delivered notice, the date of actual delivery to the recipient or on which such hand delivery is refused.

c. **Notice Address.** Each Party shall notify the other Party of a new address at which to give notices, which notice shall be given in the manner provided above, and unless and until such notice of new address is given, notices to a party hereto shall be sufficient if given to such Party's address as specified in this Section 9.04.

**9.05 Waiver.** The Parties agree that a waiver of any breach or violation of any term or condition of this Agreement shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition.

**9.06 Conflict of Interest.** The Artist and MLKMC shall avoid all conflicts of interest or appearance of conflicts of interest in the performance of this Agreement.

**9.07 Amendments.** No Party, nor any agent of either Party, has any authority to alter, amend, or modify any of the terms of this Agreement, unless the amendment is in writing and executed by all Parties to this Agreement.

**9.08 Days.** If any action is required to be performed, or if any notice, consent or other communication is given, on a day that is a Saturday or Sunday or a legal holiday in the Commonwealth, such performance shall be deemed to be required, and such notice, consent or other communication shall be deemed to be given, on the first business day following such Saturday, Sunday or legal holiday. Unless otherwise specified herein, all references herein to a "day" or "days" shall refer to calendar days and not business days. A business day shall mean any day other than a Saturday, Sunday or legal holiday.

**9.09 Conflict with the Law.** If any term, covenant, condition or provision of this

MLK Initials:



Warren Initials:



Agreement, or the application thereof to any person or circumstance, shall be held by a court of competent jurisdiction to be in conflict with the laws, rules and/or regulations of the Commonwealth, invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby to the extent the remainder of the terms, covenants, conditions or provisions of this Agreement are capable of execution.

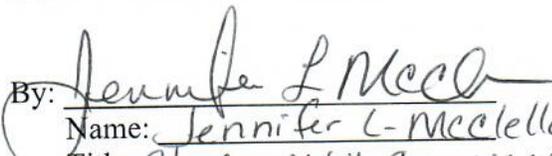
**9.10 Choice of Law.** This Agreement shall be governed by the laws of the Commonwealth both as to interpretation and performance and all actions related to this Agreement shall only occur in the state courts located in the Commonwealth.

**9.11 Entire Agreement.** This Agreement, including the exhibits attached hereto, the complete understanding and agreement between the Parties relating to the subject matter hereof and supersedes all prior and contemporaneous negotiations, understandings, and agreements, whether written or oral, between the Parties.

**9.12 Commonwealth as Third Party Beneficiary.** The Commonwealth is a third party beneficiary to this Agreement and is entitled to the rights and benefits of this Agreement and may enforce the provisions of this Agreement as if it were a Party.

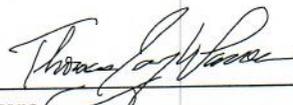
**9.13 All payments due to the Artist under this contract are subject to sufficient funds being appropriated by the General Assembly for the same.**

THE MARTIN LUTHER KING, JR.  
COMMISSION OF VIRGINIA:

By:   
Name: Jennifer L. McClellan  
Title: Chair, MLK Commission

Date: 12/21/2019

THOMAS JAY WARREN

  
Signature

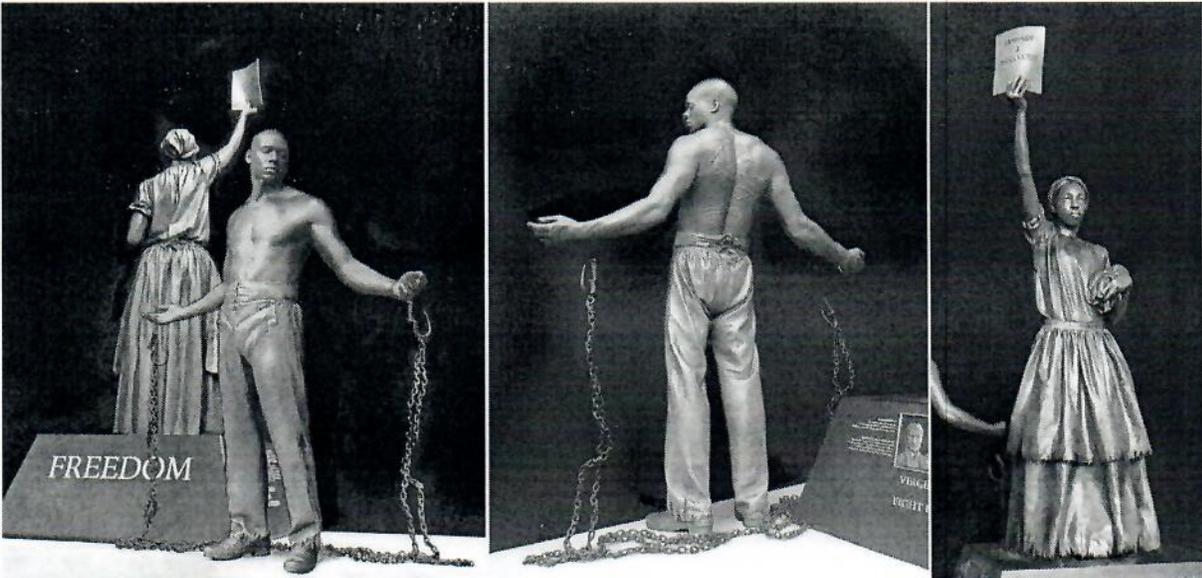
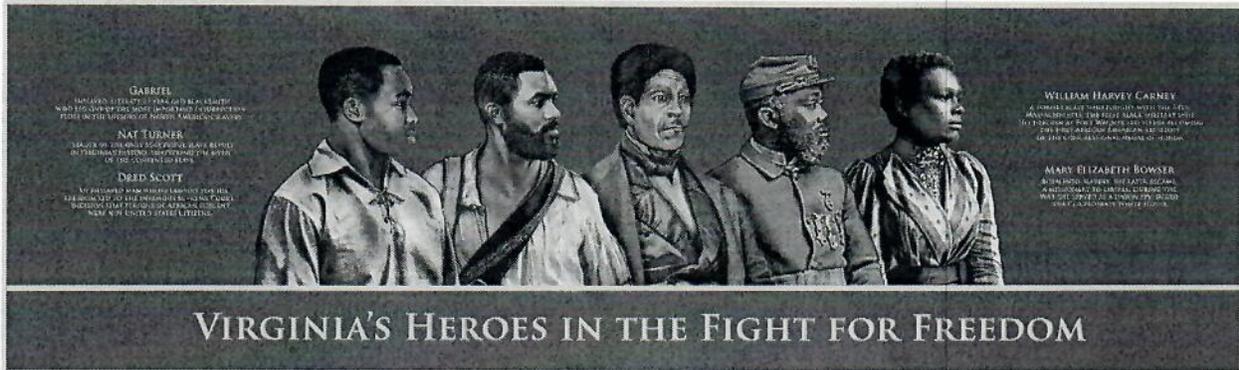
Date: 11.29.19

MLK Initials: 

Warren Initials: TJW

**Exhibit A**

**Artist's Design Proposal**



**Exhibit B**

MLK Initials:

Warren Initials: TJW

## Insurance

### General

- a. The Artist shall procure and maintain for the duration of this Agreement, at the Artist's expense, insurance in the kinds and amounts as provided in this Exhibit with insurance companies authorized to do business in the Commonwealth of Virginia. Such insurance shall cover the Artist's agents, contractors, subcontractors or employees. MLKMC, its officials, employees, agents and contractors shall be named as additional insureds. The coverage shall contain no special limitations on the scope of protection afforded to MLKMC, its officials, employees, agents and contractors.
- b. The Artist and the Artist's subcontractors' insurance coverage shall be the primary insurance as respects MLKMC, its officials, employees, agents and contractors. Any insurance or self-insurance maintained by MLKMC, its officials, employees, agents and contractors shall be in excess of the Artist's or the Artist's subcontractor's insurance and shall not contribute to the Artist's or the Artist's subcontractor's insurance. The coverage shall state that the Artist's or the Artist's subcontractors' insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- c. Prior to undertaking any work under this Agreement, the Artist, at no expense to MLKMC, shall furnish to MLKMC a certificate of insurance with original endorsements affecting coverage for each of the insurance policies provided in this Exhibit. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates must be current and the Artist must submit replacement or renewal certificates of insurance for all the policies expiring during the term of this Agreement. Each certificate shall clearly indicate that the Artist has obtained insurance in the type, amount and classification as specified in this Exhibit and that no material changes, cancellation, suspension or reduction in limits of insurance shall be effective except after [30] days prior written notice to MLKMC. Each certificate shall indicate that the subcontractors are additional insureds or the Artist shall furnish separate certificates for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated in this Agreement, including, but not limited to, naming the parties as additional insureds.
- d. Despite any changes to or cancellation of insurance, the Artist remains responsible for maintaining the required insurance coverage for the duration of the Agreement.
- e. Failure of the Artist to comply with any of these terms shall be considered a material breach of this Agreement and cause for its immediate termination.
- f. All policies of insurance shall name the MLKMC, the Commonwealth, and DGS as additional insureds.

### Insurance Policies

- a. Commercial General Liability insurance policy, written on an occurrence form, including all the usual coverage known as:
  1. premises/operations liability
  2. products/completed operations
  3. personal/advertising injury
  4. contractual liability
  5. broad-form property damage
  6. independent contractor's liability

Said policy must provide the following minimum coverage:

1. \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage.
  2. \$1,000,000 annual aggregate
- b. Automobile liability insurance policy, including coverage for owner, non-owner, leased or hired vehicles, providing the following minimum coverage:
    1. bodily injury liability of \$50,000 for each person,
    2. \$300,000 per occurrence,
    3. property damage liability of \$25,000 for each occurrence.

The Artist agrees to keep in good standing a valid driver's license at all times during the term of

MLK Initials: \_\_\_\_\_



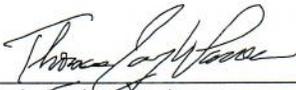
Warren Initials: \_\_\_\_\_

TJW

this Agreement.

- c. Transportation/Carriage insurance all risk. Coverage must include loading, transportation and unloading of the Artwork. If the Artwork is to be loaded, transported or unloaded by a person or entity other than the Artist, the insurance coverage must cover that person or entity. The minimum limit shall be the total amount of compensation paid to Artist through the date of loading under Exhibit B.
- d. All Risk Installation insurance which covers physical damage to or destruction of the Artwork. If the Artwork is to be installed by a person or entity other than the Artist, the insurance coverage must cover that person or entity. The minimum limit shall be the total amount of compensation paid to the Artist through the date of the beginning of the installation of the Artwork under Exhibit B.  
Worker's Compensation and Employers' Liability insurance in accordance with the statutory requirements of the Commonwealth of Virginia providing coverage for any and all employees of Artist. The Artist shall require all subcontractors to carry this coverage also. The minimum coverage for the Worker's Compensation and Employers' Liability insurance shall be \$100,000.
- e. If, however, the Artist does not have any employees as defined by state statutes and regulations and does not wish to cover himself for Worker's Compensation, the Artist shall sign the following statement:

I do not have, nor intend to have for the full term of this Agreement, any employees. Furthermore, I do not wish to obtain or be covered under any Worker's Compensation insurance coverage and, therefore, am signing this statement in lieu of providing the above require Worker's Compensation coverage.

  
 \_\_\_\_\_  
 (Artist's signature)

Thomas Jay Warren  
 \_\_\_\_\_  
 (Print Artist's name)]

The requirement for Worker's Compensation and Employers' Liability insurance shall be waived in writing upon submission of this signed statement by the Artist to the Owner.

- f. Artist will be responsible for obtaining Professional Errors and Omissions coverage for services provided by licensed engineers and architects with a general aggregate limit of \$[1,000,000] and for assuring engineers and other experts have appropriate Professional Errors and Omissions coverage or name them as additional insureds to the policy of the Artist.

MLK Initials:   
 \_\_\_\_\_

Warren Initials: TJW

## Exhibit C

### Schedule

#### **I. PHASE ONE DELIVERABLES**

- a. **Pedestal Relief and Text** – Within 16 weeks after final Effective Date, the MLKMC will deliver to the Artist the final text and the individuals to be represented on the pedestal of the female figure of the Artwork. The Completion Date will be extended by the applicable time period of delay in which the final text is delayed as stated in the preceding sentence.
- b. **Delivery of Fabrication Documents** – Within 2 weeks after the Effective Date, Artist will deliver or cause to be delivered the Fabrication Documents.
- c. **Delivery of Schematic Design Documents** Within 16 weeks after the approval of Fabrication Documents by the MLKMC, Artist will deliver or cause to be delivered the Schematic Design Documents.
- d. **MLKMC Review** – Within 2 weeks after delivery of the Schematic Design Documents, the MLKMC, in consultation with DGS, will issue an Approval.
- e. **Life-Size Models** – Within 22 weeks after Approval of the Fabrication Documents, Artist will present to the MLKMC life-size models (6' male and female figures) in clay.
- f. **MLKMC Review of Models** – Within 2 weeks after presentation of clay models, the MLKMC will issue an Approval.
- g. **Site Development Documents** – Within 4 weeks after the Approval of the Schematic Design Documents, the Artist will deliver, or cause to be delivered, the Site Development Documents to the MLKMC and DGS.
- h. **MLKMC/DGS Review** – Within 2 weeks after delivery of the Site Development Documents, the MLKMC, in consultation with DGS, will issue an Approval.

#### **II. PHASE TWO DELIVERABLES**

##### **II-A FABRICATION**

- a. **Enlargement of Models.** Within 16 weeks after Approval of the life-size clay models, the Artist shall 3D scan and enlarge the models to full-size (12 feet) for bronze casting the full-size models and deliver the full-size models to the Bronze Foundry by June 19, 2020.
- b. **Bronze Casting.** Within 20 weeks after delivery to the Bronze Foundry, all

elements of fabrication of the Artwork will be completed, including without limitation, the casting of the bronze figures and fabrication of the bronze pedestal and steel chains.

- c. **Finishing.** Within 14 days after completion of the items in II-A(b), the Artwork will be assembled and finished, including any patina requested by the MLKMC.
- c. **MLKMC Review.** Within 7 days after Fabrication of the Artwork, the MLKMC will issue an Approval.
- d. **Crating.** Within 7 days after Approval, the Artwork will be crated and prepared for Transportation.

### **II-B SITE DEVELOPMENT**

- a. Artist shall take no more than 4 weeks for landscaping of the Site.
- b. Artist shall take no more than 4 weeks preparation for lighting for the Site.

### **III. PHASE THREE DELIVERABLES**

- a. **Transportation.** Within 14 days of crating the Artwork, Transportation of the Artwork to the Site will occur.
- b. **Installation.** Within 14 days after completion of Transportation, the Artist will Install the Artwork.

MLK Initials: \_\_\_\_\_



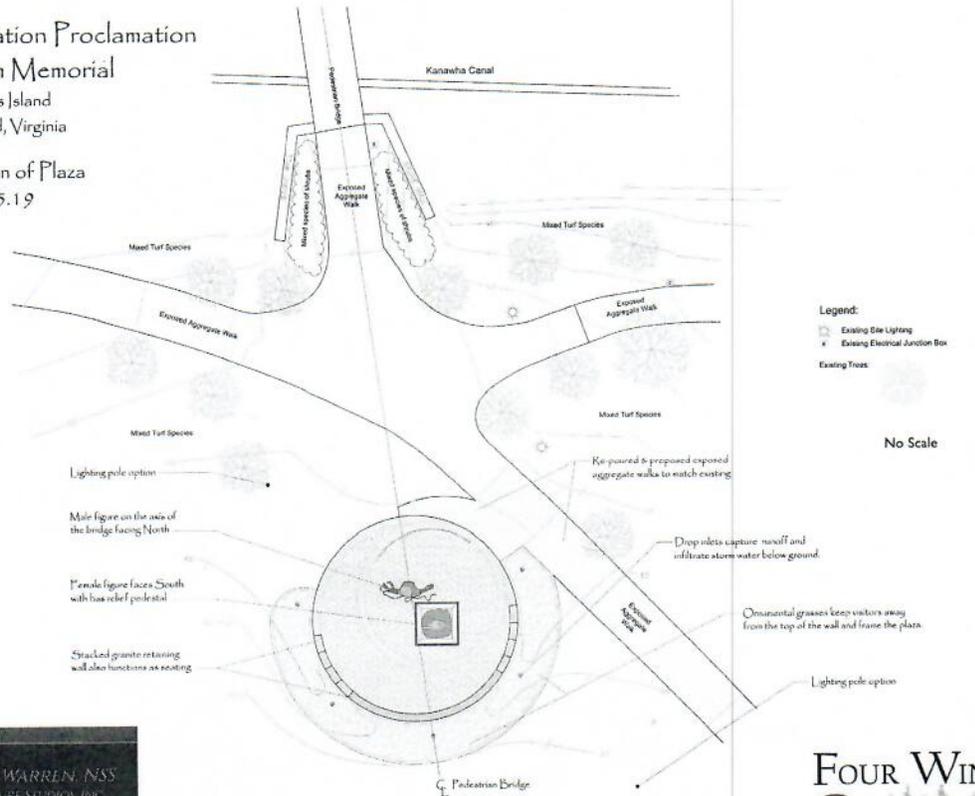
Warren Initials: \_\_\_\_\_

TJW

# Exhibit D

## Site of the Monument

Virginia Emancipation Proclamation  
& Freedom Memorial  
Browns Island  
Richmond, Virginia  
Relocation of Plaza  
4.15.19



MLK Initials: *TJW*

Warren Initials: *TJW*