

AGREEMENT FOR COMMISSION OF PUBLIC ARTWORK

THIS AGREEMENT is entered into this 31st day of October, 2019, by and between Breaking the Bronze Ceiling, Inc., a Kentucky non-profit corporation, whose address is 200 East Main Street, 5th Floor, Lexington, KY 40507 (hereinafter the “BTBC”) and Barbara Grygutis Sculpture LLC, an Arizona limited liability company, whose address is 135 South 6th Ave. Suite C, Tucson, AZ 85701 (hereinafter the “Artist”).

RECITALS

WHEREAS, BTBC requires the services of an artist to create a work of art (hereinafter the “Artwork”) in a public space located at the Vine Street and Mill Street corner of Lexington Financial Center, referred to and location more particularly described in Exhibit A which is attached hereto and terms and conditions are incorporated herein 250 West Main Street, Lexington KY 40507 (hereinafter the “Site”); and

WHEREAS, the Artist is a professional artist whose work and qualifications make the Artist uniquely qualified to create the Artwork;

WHEREAS, BTBC has selected the Artist based upon the Artist’s work and qualifications; and

WHEREAS, the Artist and BTBC wish to perform under the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the above-stated premises and subject to the conditions hereinafter set forth, the parties agree as follows:

The above recitals are incorporated herein by reference as if fully stated.

- a. “Agency” shall mean Lexington-Fayette Urban County Government.
- b. “Artist” shall mean: **BARBARA GRYGUTIS SCULPTURE, LLC**. Where there is more than one Artist, all Artists shall be referred to collectively as “Artist.” If Artist is comprised of two or more individual persons or entities, each individual person or entity shall be jointly and severally responsible for satisfying Artist’s obligations under this Agreement, and each individual person or entity shall be liable for the acts and omissions of every other individual person or entity comprising Artist.
- c. “Artwork” shall mean the work of art designed by Artist for the Site under the terms of this Agreement, as described and currently defined in the Artist Proposal, which is attached hereto as **Exhibit B** and terms and conditions are incorporated herein. Requirements for the final design of the Artwork are described in Section 1.3 of this agreement.

- d. The following documents are incorporated by reference herein as if fully stated and are attached hereto as exhibits: Breaking the Bronze Ceiling, Request for Proposals, July 8, 2019 (**Exhibit G**), and Artist's Response (**Exhibit B**).

Article 1 Scope of Services

1.1 Artist's Obligations

- a. The Artist shall perform all services and furnish, at Artist's sole expense ,all supplies, material and/or work equipment necessary for the design, fabrication, transportation and installation of the Artwork. Services shall be performed in a professional manner and in strict compliance with all terms and conditions in this Agreement.
- b. The Artist shall determine the artistic expression, design, dimensions and materials of the Artwork, subject to review and acceptance by BTBC and any regulatory agencies with project oversight, as set forth in this Agreement. The Artist will do so in a manner that ensures that the Artwork as installed shall not interfere with the intended use of the Site, pedestrian and other traffic flow, parking, safety devices and procedures, and other needs and functions of the site as defined by BTBC and/or ordinance prior to the development of a design by the Artist.
- c. The Artist shall prepare the design concept described in Section 1.3 of this Agreement.
- d. The Artist shall complete the fabrication, transportation and installation of the Artwork by the scheduled dates as provided Section 1.5 of this Agreement.
- e. The Artist shall secure any and all required licenses, permits and similar legal authorizations at the Artist's expense as may be necessary for the installation of the Artwork at the Site.
- f. The Artist shall arrange for the transportation and installation of the Artwork in coordination with BTBC. If the Artist does not install the Artwork herself, Artist shall supervise and approve the installation. Prior to the installation of the Artwork, Artist shall inspect site to ensure that it is ready to accept the artwork and compliant with the specifications provided by the Artist. Artist shall notify BTBC of any perceived conflict, defect or non-compliance with specifications. All work shall be performed by qualified professionals and by licensed contractors as required by law.
- g. Artist shall provide required insurance in amounts and limits specified in Article 5 and Exhibit F, which is attached hereto, and terms and conditions are incorporated herein.
- h. Artist shall provide a list of all subcontractors used in connection with the design, fabrication, transportation, and installation of the Artwork. The Artist shall be fully responsible to BTBC for all acts and omissions of Subcontractors, Suppliers and other persons and organizations performing or furnishing any of services in connection with the design, fabrication, transportation, and installation of the Artwork under a direct or indirect contract with the Artist just as the Artist is responsible for the Artist's own acts and omissions. Nothing in the Contract Documents shall create any contractual relationship between BTBC and any such Subcontractor, Supplier or other person or organization, nor shall it create any

obligation on the part of BTBC to pay or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization except as may otherwise be required by Laws and Regulations.

- i. Artist shall provide a maintenance manual with a description of all materials, processes and products utilized in the Artwork and the required care and upkeep involved, as well as recommended procedures in the event of necessary conservation.
- j. Artist shall provide a set of “as built” drawings if there is significant deviation from approved and permitted construction documents.
- k. Artist shall be available with reasonable advance notice for a reasonable number of site visits for meetings required to coordinate design and project implementation, ceremonies and the like, as necessary. A minimum of five (5) site visits shall be required. BTBC shall provide the Artist with a minimum 3 week notice of required site visits.
- l. As part of the (5) site visits described in Section 1.3 (k), Artist shall participate in BTBC events including but not limited to fundraising events, (1) press conference announcing Artist selection, (1) public slide lecture with question & answer session, (1) informal presentation during Artwork installation, and (1) Artwork unveiling.
- m. Artist shall provide BTBC with (20) copies of the publication Public Art / Public Space within (30) days of execution of this Agreement.

1.2 BTBC’s Obligations

- a. BTBC shall pay to the Artist a total sum in the amount of Five Hundred Thousand and 00/100 Dollars (\$500,000.00).
 - i. Notwithstanding Section 1.2(a), within (90) days of execution of this Agreement, the Artist shall provide a Schedule of Values that describes a breakdown of materials, services and labor costs for the Artwork. In the case that BTBC furnishes materials, services and/or labor for the project, the total sum stated in 1.2 (a) shall be adjusted based on the Schedule of Values delivered and provided to the Artist. BTBC shall perform all obligations in strict compliance with all terms and conditions in this Agreement.
- b. BTBC shall be responsible for providing the Artist, at no expense to the Artist, copies of existing designs, drawings, reports, list of required permits, and other existing relevant data, if any, which is needed by Artist in order to perform.
- c. BTBC shall be responsible for compliance with all applicable laws and regulations, including but not limited to zoning or environmental regulations, and prior to Artist’s development of design, shall provide to the artist in writing an explanation of any specific limitations imposed by such laws and/or regulations that may impact the Artwork including the policies, guidelines and approvals required by regulatory or oversight agencies such as a cultural affairs office.
- d. BTBC shall be responsible for all expenses, labor and equipment to prepare the Site for the timely transportation and installation of the Artwork by the Artist. BTBC shall complete the Site preparations by the scheduled installation date as

provided in Section 1.5 of this Agreement or shall contact the Artist in writing informing him or her of any delays. Site work shall be completed no later than July 15, 2020 and shall include the following:

- i. Concrete Foundation
 - ii. Concrete pedestal
 - iii. Electrical conduit with stub up per the Artist's design
 - iv. Dedicated electrical circuit for lighting
- e. BTBC shall provide the Artist with all text to be publicly displayed on the Artwork by February 1, 2020.
 - f. BTBC shall provide traffic mitigation during the Artwork installation.
 - g. BTBC shall not use the Artist's name or misuse the Artwork which would reflect discredit on the Artist's reputation as an artist or which would violate the spirit of the Artwork.

1.3 Design

- a. Conceptual/Schematic Design
 - i. The Artist submitted a design Conceptual/Schematic (the "Design") which was selected and approved by BTBC as a Conceptual/Schematic Design. The Conceptual/Schematic Design shall be attached to this Agreement as **Exhibit B**.
- b. Design Development Documents
 - i. Design Development Materials and Documents shall incorporate the further development and refinement of the Proposal.
 - ii. Design Development shall include presentation quality materials, which shall include colored drawings or computer-generated color images (in plan and elevation) and/or 3-dimensional models that accurately reflect the Artwork and how it will be installed at the Site, final color and materials samples, proposed fabrication methods, feasibility studies and final written cost estimates from fabricators, suppliers and other subcontractors at design completion. When used in reference to the proposed Artwork, Design Development Documents shall fix and describe the size and character of the Artwork with respect to its relationship to the site, including architectural, structural, mechanical and electrical systems, materials and other elements as may be appropriate. The Design must provide sufficient detail to permit BTBC to ensure compliance with applicable local, state or federal laws, ordinances and/or regulations.
 - iii. BTBC shall review and approve the location and orientation of the Artwork on the site during Design Development. The Artwork shall be oriented toward the West in a way that acknowledges the traffic flow pattern on Vine Street and integrates with the future Town Branch Trail.
 - iv. Artist shall provide a half scale mock-up of (1) figure that will be reviewed by BTBC on site during Design Development. The mock-up shall demonstrate that the material of the Artwork does not create a source of glare. Artist is not authorized to proceed with Final Design of Artwork until approval of material selection is received from BTBC.

- v. Artist and Artist's structural engineer and fabricator shall review all Design Development drawings, materials and documents for consistency and constructability, and promptly report any engineering, structural concerns, or constructability concerns to BTBC. Modifications to the design necessitated by this review shall be submitted and approved by BTBC prior to beginning the production of Construction Documents and incorporated therein
 - vi. Maintenance Plan. At the time Artist submits Artist's design for review by BTBC and as part of the Design Development Documents, Artist shall provide BTBC with a General Maintenance Plan for the Artwork, with a detailed description of future anticipated maintenance requirements; a recommended maintenance schedule; anticipated and required care and/or replacement/upgrade of any part of the Artwork and associated moving parts or equipment including any staff time involved in displaying or operating artwork and the frequency of such staff involvement; and written instructions and manufacturer's specifications for reasonably foreseeable maintenance and preservation activities relating to the Artwork. Artist shall also provide BTBC with a description of all equipment and or machinery needed to operate the project (if applicable) and any anticipated or required staffing, supervision or operational needs. The Artwork must be durable, taking into consideration that the Site is an unsecured public space that will be exposed to elements such as weather, temperature variation, and considerable movement of people and equipment. Artist shall ensure that all maintenance requirements will be reasonable in terms of time and expense. The Artist shall be responsible for making any updates or clarifications to this Maintenance Plan if the maintenance requirements and estimates change over the course of the design, fabrication and/or installation of the Artwork.
- c. Final Design
- i. Upon approval of the Design Development Documents by BTBC, Artist is authorized to proceed with Final Design which shall include the following: presentation quality materials, which shall include colored drawings or computer-generated color images (in plan and elevation) and/or 3-dimensional models that accurately reflect the Artwork and how it will be installed at the Site, mock-ups, final color and materials samples, proposed fabrication methods, feasibility studies and final cost estimates at design completion. When used in reference to the proposed Artwork, Final Design Documents shall fix and describe the size and character of the Artwork with respect to its relationship to the site, including architectural, structural, mechanical and electrical systems, materials and other elements as may be appropriate.
 - ii. The Final Design shall address structural considerations, surface integrity, & permanence.
- d. Final/Construction Documents

- i. Artist shall submit Construction Documents for construction and/or installation of the proposed Artwork as approved, which must be signed and stamped by design professionals licensed in the Commonwealth of Kentucky, as required by the Kentucky Building Code and any local government amendments to the Building Code. Construction Documents shall include drawings and specifications for the concrete foundation, 6” concrete pedestal, and anchor bolt design. The documents shall contain the electrical design associated with the lighting. In the case that the new foundation/electrical work impacts existing site features, the documents shall address site design, including but not limited to retaining walls, stairs, and sidewalk.
- ii. The Artist shall provide structural drawings certified by a qualified engineer, licensed by the Commonwealth of Kentucky and paid by the Artist as part of the design cost. Such drawings will conform to all applicable federal, state and local laws and regulations. Drawings must comply with standards as defined by permitting authorities as required or be redesigned and resubmitted at no additional cost to BTBC.
- iii. Artist shall deliver a 3D rendering and color and material samples to BTBC.
- iv. Artist shall provide a detailed description of future maintenance requirements for the Artwork including needs and anticipated costs and may reflect issues such as the longevity of the materials used and the life span of the project.
- v. Artist shall comply with the schedule for completing the Artwork outlined in Section 1.4.

1.4 Budget, Payment and Deliverables Schedule

a. Budget

- i. The Artist shall prepare a budget (the “Budget”), which shall include all goods, services and materials related to the design, fabrication, and installation of the Artwork with such costs itemized. The Budget shall be attached to this Agreement as **Exhibit C**, which is attached hereto, and terms and conditions are incorporated herein. A Schedule of Values shall be provided within (90) days of execution of this agreement.
- ii. The Budget identify the cost of completion of all work under this Agreement, including all modifications. The Budget shall include the costs for all design fees and costs; preliminary and final engineering requirements; materials and labor for fabrication, including Artist’s and subcontractors’ costs; consultants, including engineers and specifications writers; transportation of Artwork; installation of Artwork, including any necessary permits; permits and licenses; required insurance; any sales tax; and a 5% to10% contingency allowance. Calculation of the Budget will take into consideration the possible inflation of service and material costs between the date of execution of this Agreement and the anticipated completion date.

- iii. BTBC may, without invalidating the Agreement, secure mutually agreed upon in-kind donations for project materials or labor; this will be authorized by a Change Order that will modify the Contract Sum based on Schedule of Values amounts.
- iv. If the Artist incurs costs in excess of the amount listed in the Budget, the Artist shall pay such excess from the Artist's own funds at no expense to BTBC unless the Artist obtains approval in writing for such additional costs from BTBC.
- v. Payment Schedule
- vi. Artist's completion milestones and payment schedule is as set forth in **Exhibit D**, the Payment Schedule, which is incorporated herein by reference

1.5 Schedule and Progress Reports

- a. The Artist shall notify BTBC of the anticipated schedule for the fabrication, transportation and installation of the Artwork, including a schedule for the submission of progress reports and inspections if any required by BTBC or permitting agency. The Schedule may be amended by written agreement signed by both parties. The Schedule of Deliverables must identify August 15, 2020 as the Final Completion Date. This Schedule of Deliverables is included as **Exhibit E**.
- b. The Artist shall inform the client of the progress of each phase of work completed under the Agreement.
- c. The Artist shall make every reasonable effort to complete the Work in accordance with the phases set forth in Exhibits B and C. Each party shall promptly inform the other of any delays to the project. The parties shall discuss the effect of any delays in good faith under the circumstances and adjust the schedule of phases set forth in Schedules B and C and the completion date as may be necessary.
- d. The completion date of August 15, 2020 may be extended, with the approval of BTBC, in the event of delays caused by events beyond the control of the Artist. Such delays shall include, but not be limited to, acts or neglect by BTBC or others performing additional work as contemplated by Section 1.2, or to fires, floods, labor disputes, epidemics, abnormal weather conditions or acts of God or in the event that Barbara Grygutis or other individual responsible for the design and fabrication of the Work on behalf of the Artist becomes disabled by illness, preventing progress of the Work. Failure to fulfill contractual obligations due to conditions beyond either party's reasonable control will not be considered a breach of contract; provided that such obligations shall be suspended only for the duration of such conditions.

1.6 Fabrication Stage

- a. The Artist shall fabricate and install the Artwork in substantial conformity with the Design. The Artist may not deviate from the approved design without prior written approval of BTBC.
- b. If the Artwork is being constructed on site, the Artist shall avoid creating nuisance conditions arising out of the Artist's operations.

- c. BTBC shall have the right to review the Artwork at reasonable times during the fabrication thereof upon reasonable notice.
- d. If BTBC, upon review of the Artwork, determines that the Artwork does not conform to the approved Final Design, BTBC reserves the right to notify the Artist in writing of the deficiencies and that BTBC intends to withhold the next budget installment within (15) days of the determination as in paragraph (g) below.
- e. The Artist will have (30) days to cure BTBC's objections and will notify BTBC in writing of completion of the cure. BTBC shall promptly review the Artwork, and upon approval shall release the next budget installment. If the Artist disputes BTBC's determination that the Artwork does not conform, the Artist shall promptly submit reasons in writing to BTBC within (15) days of BTBC's prior notification to the contrary. BTBC and the Artist shall make reasonable efforts to resolve the dispute in good faith. However, the final determination as to whether the Artist has complied with the terms of this Agreement shall remain with BTBC.
- f. The Artist shall notify BTBC in writing when fabrication of the Artwork has been completed, and that the Artwork is ready for delivery and installation at the Site.
- g. Prior to the transportation and installation of the Artwork, the Artist shall provide color photographs of the Artwork that clearly describe the quality of the Artwork or BTBC may choose to visually inspect the Artwork on site. BTBC shall give final approval of the fabricated Artwork and; authorize the installation of the Artwork at the site. BTBC shall not unreasonably withhold final approval of the fabricated Artwork. In the event that BTBC does withhold final approval, BTBC shall submit the reasons for such disapproval in writing within (15) days of examining the fabricated Artwork. The Artist shall then have (15) days from the date of BTBC's notice of the disapproval to make the necessary adjustments to the fabricated Artwork in accordance with such writing. The Artist shall not be penalized for any delay in the delivery and installation of the Artwork to the Site unless the Artist has willfully and substantially deviated from the Design without the prior approval of BTBC. The Artist shall then be held solely responsible for any expenses incurred in correcting such deviation.
- h. BTBC shall promptly notify the Artist of any delays impacting installation of the Artwork. Any additional storage and insurance costs incurred by the Artist shall be borne by BTBC to the extent that the delay is caused by BTBC.
- i. The Artist shall be required to inspect the Site prior to the transportation and installation of the Artwork and shall notify BTBC of any adverse Site conditions that will impact the installation of the Artwork and which need correction. Failure to do so by the Artist shall be deemed as an acceptance of the Site conditions.
- j. The Artist shall 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 BTBC specifically disapproves of such.

1.7 Installation

- a. Upon BTBC's final approval of the fabricated Artwork as being in conformity with the Design, the Artist shall deliver [and install] the completed Artwork to the Site in accordance with the schedule provided for in Section 1.4.
- b. The Artist will coordinate closely with BTBC to ascertain that the Site is prepared to receive the Artwork. Artist must notify BTBC of any adverse conditions at the Site that would affect or impede the installation of the Artwork.
- c. The Artist is responsible for timely installation of the Artwork. Artist may not install the Artwork until authorized to do so by BTBC.
- d. The Artist shall be present to supervise the installation of the Artwork.
- e. Upon installation and final approval of the Artwork by BTBC, the Artwork shall be deemed to be in the custody of BTBC for purposes of Article 3 and Article 5 of this Agreement.
- f. Upon completion of the installation of the Artwork, the Artist shall provide BTBC with written instructions for the future maintenance and preservation of the Artwork. BTBC is responsible for the proper care and maintenance of the Artwork.

1.8 Approval and Acceptance

- a. The Artist shall notify BTBC in writing when all services as required of both Parties by this Agreement prior to this paragraph have been completed in substantial conformity with the Design and Contract Documents.
- b. BTBC shall promptly notify the Artist in writing of its final acceptance of the Artwork within (7) days after the Artist submitted written notice pursuant to paragraph (a) above. The effective date of final acceptance shall be the date BTBC submits written notice to the Artist of its final acceptance of the Artwork. The final acceptance shall be understood to mean that BTBC acknowledges completion of the Artwork in substantial conformity with the Design, and that BTBC confirms that all services as required of both Parties by this Agreement prior to paragraph (c) of this section have been completed. Title to the Artwork to BTBC passes upon final acceptance of the Artwork and final payment by BTBC to Artist. If a regulatory agency must approve the completed artwork, BTBC should move promptly to gain such approval as it will be a precondition to BTBC's ability to accept and approve the finished artwork from the Artist.
- c. If BTBC disputes that all the services have been performed, BTBC shall notify the Artist in writing of those services the Artist has failed to perform within (7) days after the Artist submitted written notice pursuant to paragraph (a) above. The Artist shall promptly perform those services indicated by BTBC.
- d. If the Artist disputes BTBC's determination that not all services have been performed, the Artist shall submit reasons in writing to BTBC within (7) days of BTBC's prior notification to the contrary. BTBC shall make reasonable efforts to resolve the dispute with the Artist in good faith. However, the final determination as to whether all services have been performed shall remain with BTBC.
- e. Upon the resolution of any disputes that arise under paragraphs (c) and (d) of this Section, BTBC shall notify the Artist of its final acceptance of the Artwork pursuant to paragraph (b).

Article 2. Terms of Agreement

a. Duration

This Agreement shall be effective on the date that this contract has been signed by both parties, and, unless terminated earlier pursuant to such provisions in the Agreement, shall extend until final acceptance by BTBC under Section 1.8(b), or submission of final payment to the Artist by BTBC under Exhibit B, 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, and attached to the schedule described in Section 1.5.

b. Force Majeure

BTBC shall grant to the Artist a reasonable extension of time in the event that conditions beyond the Artist's control render timely performance of the Artist's services impossible or unduly burdensome. All such performance obligations shall be suspended for the duration of the condition. Both parties shall take all reasonable steps during the existence of the condition to assure performance of their contractual 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 breach of contract, provided that such obligations shall be suspended only for the duration of such conditions.

Article 3. Risk of Loss

The Artist shall bear the risk of loss or damage to the Artwork until the Artwork has been fully installed and until BTBC has finally accepted the Artwork. The Artist shall take such measures as are reasonably necessary to protect the Artwork from loss or damage. BTBC shall bear the risk of loss or damage to the Artwork prior to final acceptance only if, during such time, partially or wholly completed Artwork is in the custody, control or supervision of BTBC or its agent(s) for the purposes of transporting, storing, installing or performing other services to the Artwork.

Article 4 Artist's Representations and Warranties

4.1 Warranties of Title

The Artist represents and warrants that:

- a. the Artwork is solely the result of the artistic effort of the Artist;
- b. except as otherwise disclosed in writing to BTBC, the Artwork is unique and original and does not infringe upon any copyright or the rights of any person;
- c. the Artwork (or duplicate thereof) has not been accepted for sale elsewhere;
- d. 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;
- e. the Artwork is free and clear of any liens from any source whatsoever;
- f. 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;

- g. the Artist has the full power to enter into and perform this Agreement and to make the grant of rights contained in this Agreement;
- h. all services performed hereunder shall be performed in accordance with all applicable laws, regulations, ordinances, etc. and with all necessary care, skill, and diligence;
- i. these representations and warranties shall survive the termination or other extinction of this Agreement.

4.2.Warranties of Quality and Condition

- a. The Artist represents and warrants that 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 (1) year after the date of final acceptance by BTBC under Section 1.8.
- b. The Artist represents and warrants that the Artwork and the materials used are not currently known to be harmful to public health and safety.
- c. The Artist represents and warrants that reasonable maintenance of the Artwork will not require procedures substantially in excess of those described in the maintenance and preservation recommendations submitted by the Artist pursuant to Section 1.7.
- d. If within (1) year BTBC observes any breach of warranty described in this Section, the Artist shall cure the breach promptly, satisfactorily and consistent with professional conservation standards, at no expense to BTBC. BTBC shall give notice to the Artist of such breach with reasonable promptness. However, if Artist did not disclose this risk of breach in the Proposal and Maintenance and Conservation manual, and if the breach is not curable by Artist, the Artist is responsible for reimbursing BTBC for damages, expenses and loss incurred by BTBC as a result of the breach of warranty. However, if the Artist disclosed the risk of this breach in the Proposal and maintenance and conservation manual and BTBC accepted that it may occur, as indicated by the written final acceptance of the artwork, it shall not be deemed a breach for purposes of this Section 4.2 of this Agreement.
- e. If after (1) year BTBC observes any breach of warranty described in this Section 4.2 that is curable by the Artist, BTBC 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 or unwilling to accept reasonable compensation under the industry standard, BTBC may make or supervise repairs or restorations itself or using any third party.
- f. The foregoing warranties are conditional and shall be voided by the failure of BTBC to maintain the Artwork in accordance with the Artist’s specifications and the applicable conservation standards. If BTBC fails to maintain the Artwork in reasonably good condition, the Artist, in addition to other rights or remedies the Artist may have in equity or at law, shall have the right to disown the Artwork as the Artist’s creation and request that all credits be removed from the Artwork and reproductions thereof until the Artwork’s condition is satisfactorily repaired.

- g. All warranties shall be transferable from the original BTBC to any assignee.
- h. Title assignees shall be obligated to maintain the Artwork as described in this section.

Article 5 Insurance

5.1 General

- a. The Artist acknowledges that until installation and final acceptance by BTBC of the Artwork under Section 1.7, any injury to property or persons caused by the Artist's Artwork or any damage, theft, vandalism, 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.
- b. Terms for the procurement and duration of insurance are provided in Exhibit C.
- c. Required insurance policies are described in **Exhibit F**.

5.2 Indemnity

- a. The Artist shall indemnify BTBC, 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.
- b. BTBC shall indemnify the Artist, Artist's subcontractors, agents or 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 BTBC, its respective officers, agents, and employees.
- c. Each Party shall immediately notify the other of any written claim regarding any matter resulting from or relating to the Party's obligations under this Agreement. Each Party shall cooperate, assist, and consult with the other in the defense or investigation of any such claim arising out of or relating to the performance of this Agreement.
- d. The indemnification shall include reasonable attorneys' fees and costs.
- e. This indemnification shall survive the termination or expiration of this Agreement.
- f. Notwithstanding any provision of this Agreement to the contrary, no Party shall recover from a Party to this Agreement in an action, of whatever nature, in contract or tort, any consequential or incidental damages, lost profits, or any type of expectancy damages.

Article 6 Ownership and Intellectual Property Rights

6.1 Title

Title to the Artwork shall pass to BTBC upon BTBC's written final acceptance and payment for the Artwork pursuant to Section 1.8 and **Exhibit C**. BTBC has the right to transfer the Title of the Artwork to other entities at BTBC's discretion without the consent of the Artist.

- a. BTBC and title assignees shall notify the Artist of title transfers within (90) days of transfer.

6.2 Ownership of Documents

One set of presentation materials prepared by Artist and submitted to BTBC under this Agreement shall be retained by BTBC.

6.3 Copyright Ownership

The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C. §101 et seq., as the sole author of the Artwork for the duration of the copyright.

6.4 Reproduction Rights

- a. In view of the intention that the final Artwork shall be unique, the Artist shall not make any additional exact duplicate [three]-dimensional reproductions of the final Artwork, nor shall the Artist grant permission to others to do so except with the written permission of BTBC. However, nothing shall prevent the Artist from creating works in the Artist's manner and style of artistic expression.
- b. The Artist grants to BTBC and its assignees an irrevocable license to make two-dimensional reproduction of the Artwork for non-commercial purposes, including, but not limited to, reproductions used in brochures, media publicity, and exhibition catalogues or other similar publication provided that these rights are exercised in a tasteful and professional manner.
- c. All reproductions by BTBC shall contain a credit to the Artist and a copyright notice in substantially the following form: © [Barbara Grygutis, 2020].
- d. The Artist shall use her best efforts in any public showing or resume use of reproductions to give acknowledgment to BTBC in substantially the following form: "An original artwork owned and commissioned by Breaking the Bronze Ceiling."
- e. The Artist shall, at the Artist's expense, cause to be registered with the United States Register of Copyrights, a copyright in the Artwork in the Artist's name.
- f. If BTBC wished to make reproductions of the Artwork with Artist approval for commercial purposes including, but not limited to, tee shirts, postcards and posters, the Parties shall execute a separate agreement to address the terms of the license granted by the Artist and the royalty the Artist shall receive.

Article 7 Artist's Rights

7.1 General

- a. The Artist retains all rights under state and federal laws, including §106A of the Copyright Act of 1976.
- b. BTBC agrees that it will not intentionally alter, modify, change, destroy or damage the Artwork without first obtaining permission from the Artist. BTBC further agrees to take reasonable measures to avoid these from occurring from the gross negligence of BTBC, its representatives, or employees pursuant to the federal Visual Artists' Rights Act.
- c. If any alteration or damage to the Artwork occurs, the Artist shall have the right to disclaim authorship of the Artwork in addition to any remedies he/she may have in law or equity under this contract. No provision of this Agreement shall obligate BTBC to alter or remove any such attributive reference printed or published prior

to BTBC's receipt of such notice. The Artist may take such other action as the Artist may choose in order to disavow the Artwork

7.2 Alteration of Site or Removal of Artwork

- a. BTBC shall notify the Artist of any proposed significant alteration of the Site that would affect the intended character and appearance of the Artwork. BTBC shall consult with the Artist in the planning and execution of any such alterations. BTBC shall make a reasonable effort to maintain the integrity of the Artwork.
- b. BTBC agrees not to arbitrarily remove or relocate the Artwork without first obtaining the Artist's express permission to do so. The Artist shall not unreasonably withhold approval of removal or relocation of the Artwork. Should the Artist agree to such removal or relocation of the Artwork, the Artist shall provide BTBC with written handling instructions. In the event that the Artist is deceased or unable to otherwise give his consent, the then current BTBC of the copyright of the Artwork shall not unreasonably withhold permission, keeping in mind the intentions of the Artist at the time of commission and fabrication.

Article 8 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 BTBC. The Artist acknowledges and agrees that the Artist shall not hold herself out as an authorized agent of BTBC with the power to bind in any manner.

The Artist shall provide BTBC with the Artist's Tax Identification number and any proof of such number as requested by BTBC.

Article 9 Assignment of Artwork

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 BTBC. BTBC shall have the right to assign or transfer any and all of BTBC's rights and obligations under this Agreement, subject to the Artist's consent, if BTBC ownership of the Site is transferred; if the Artist refuses to give consent, this Agreement shall terminate.

Article 10 Termination

- a. Either Party may terminate this Agreement without recourse by the other where performance is rendered impossible or impracticable for reasons beyond such Party's reasonable control such as, but not limited to, acts of nature; war or warlike operation; superior governmental regulation or control; public emergence; or strike or other labor disturbances. Notice of termination of this Agreement shall be given to the non-terminating party in writing not less than (30) days prior to the effective date of termination.
- b. BTBC may terminate this Agreement without cause upon (30) days written notice to the Artist. BTBC shall pay the Artist for services performed and commitments made prior to the date of the termination, consistent with the schedule of payments set forth in Exhibit D of this Agreement. The Artist shall have the right

to an equitable adjustment in the fee for services performed and expenses incurred beyond those for which the Artist has been compensated to date under Exhibit B with allowance for documented lost opportunities, unless the parties come to a settlement otherwise. The Artist shall retain possession and title to the [studies, drawings, designs, maquettes, and models] already prepared and submitted or prepared for submission to BTBC by the Artist under this Agreement prior to the date of termination.

- c. If either party to this agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate any of the covenants, agreements or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have (30) days after the effective date of the notice to cure the default. If it is not cured by that time, this Agreement shall terminate.
- d. If the Artist defaults for cause other than death or incapacitation, the Artist shall return to BTBC all funds provided by BTBC in excess of the expenses already incurred. The Artist shall provide an accounting of these expenses. All finished and unfinished drawings, sketches, photographs and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall be retained by the Artist. BTBC shall retain the right to have the Artwork fabricated or executed. However, the Artist shall retain the copyright in the Artwork and all rights under Article 7 and Article 8.
- e. Upon notice of termination, the Artist and his subcontractors shall cease all services affected.

Article 11 Death or Incapacity

- a. If the Artist becomes unable to complete this Agreement due to death or incapacity, such death or incapacity will not be deemed a breach of this Agreement or a default on the part of the Artist for purposes of Article 10.
- b. In the event of incapacity, the Artist shall assign his obligations and services under this contract to another artist provided that BTBC approves of the new artist and so agrees in writing. If BTBC does not agree, BTBC may elect to terminate this Agreement. The Artist shall retain all rights under Article 6 and Article 7. The Artwork and any reproductions thereof shall contain a credit to the Artist and a copyright notice in substantially the following form: © [Artist's name, date of publication].
- c. In the event of death, this Agreement shall terminate effective the date of death. The Artist's heirs shall retain rights under Article 6 and Article 7. The Artist's executor shall deliver to BTBC the Artwork in whatever form or degree of completion it may be in at the time. Title to the Artwork shall then transfer to BTBC. However, the Artwork shall not be represented to be the completed work of the Artist unless BTBC is otherwise directed by the Artist's heirs. In the event of death, the Artist gives permission to construct the Artwork with the chosen fabricator.

Article 12 Payment Requests

At least ten days before each progress payment is scheduled, the Artist shall submit to BTBC for review an Application for Payment filled out and signed by BTBC covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that BTBC has received the materials and equipment free and clear of all liens, charges, security interests and encumbrances (which are hereinafter referred to as "Liens") and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect BTBC's interest therein, all of which will be satisfactory to BTBC. BTBC shall, within thirty (30) calendar days of presentation to him of an approved Application for Payment, pay the Artist the amount approved by BTBC. Progress payments shall be one hundred (100) percent of the sum obtained by applying the respective bid unit prices to the approved estimated quantities of work completed by the Artist during the preceding month.

- a. With each Application for Payment BTBC may require the Artist to submit waivers of mechanic's lien from entities lawfully entitled to file a mechanic's lien arising out of the Contract and related to the Work covered by the payment.
- b. Submit partial waivers on each item for amount requested in previous application, after deduction for retainage, on each item.
- c. When an application shows completion of an item, submit conditional final or full waivers.
- d. BTBC reserves the right to designate which entities involved in the Work must submit waivers.
- e. Waiver Forms: BTBC will provide the standardized waiver form for the Artist's use.

Article 13 Change of Contract Price

- a. Without invalidating the Agreement, BTBC may, at any time or from time to time, order mutually agreed upon additions, deletions or revisions in the Work; these will be authorized by a Change Order. Upon receipt of such notice, the Artist shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).
- b. The Artist shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any Work performed that is not required by the Contract Documents.

Article 14 Change of Contract Time

- a. The Contract Time may only be changed by a mutually agreed upon Change Order. Any claim for an extension or shortening of the Contract Time shall be based on written notice delivered to BTBC promptly (but in no event later than 7 days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data shall be delivered within 30 days after such occurrence (unless BTBC in its sole

discretion allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Time shall be determined by BTBC in accordance with paragraph 8.11. No claim for an adjustment in the Contract Time will be valid if not submitted in accordance with the requirements of this paragraph 14(a).

- b. The Contract Time will be extended in an amount equal to time lost due to delays beyond the control of Artist if a claim is made therefore as provided in Section 1.5.
- c. All time limits stated in the Contract Documents are of the essence of the Agreement. The provisions of this Article 14 shall not exclude recovery for damages (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court costs) for delay by either party.

Article 15 Nondiscrimination

The Artist shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, disability, ethnicity, or national origin, in connection with or related to the performance of this Agreement.

Article 16 Notices and Documents

Notices under this Agreement shall be delivered personally or through the [registered or certified mail, return receipt requested] mail, postage prepaid, to the addresses stated below, or to any other address as may be noticed by a Party:

For BTBC:

Breaking the Bronze Ceiling, Inc.
c/o Jennifer Mossotti, Chair
818 Cindy Blair Way
Lexington, KY 40503
jmossotti@lexingtonky.gov

For the Artist:

Barbara Grygutis Sculpture LLC
P.O. Box 3028 Tucson, AZ 85702
barbara@barbaragrygutis.com
Ground deliveries only to:
Barbara Grygutis Sculpture LLC
135 South 6th Ave. Suite C
Tucson, AZ 85701

Notice shall be deemed effective on the date personally delivered or, if mailed, (3) days after the postmarked date.

Article 17 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.

Article 18 Conflict of Interest

The Artist and BTBC shall avoid all conflicts of interest or appearance of conflicts of interest in the performance of this Agreement.

Article 19 Mediation/Arbitration

Any controversy or claim arising out of or relating to this Agreement, or the breach of this Agreement, is subject to mediation. If an ambiguity arises regarding this Agreement upon which the parties cannot agree or a dispute arises as to completion of a provision, the parties shall submit to mediation. A Party desiring mediation shall give notice containing a general description of the controversy to the other Party.

- a. Mediation is a condition precedent to arbitration or the institution of legal or equitable proceedings by either Party in any court. If the matter relates to or is the subject of a lien arising out of the Artist's services, the Artist may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by arbitration.
- b. A Party's request for mediation may be made concurrently with the filing of a demand for arbitration but, in that event, mediation shall proceed in advance of arbitration, which shall be stayed pending mediation for a period of (45) days from the date of filing, unless stayed for a longer period by agreement of the parties or order.
- c. The Party requesting mediation shall pay the mediator's fees and costs of mediation including any filing fees. Each Party agrees to be responsible for their own attorney's fees except as otherwise provided herein or by statute.
- d. Notwithstanding any provision of this Agreement to the contrary, any damage award to a Party on account of a Party's breach of this Agreement, with the exception of the Artist's duty under Article 5 to procure and maintain insurance, shall not exceed an amount equal to the sum of the payments in Exhibit D.

Article 20 Amendments

No alteration change or modification of the terms of this Agreement shall be valid unless made in writing and signed by both Parties hereto.

Article 21 Conflict with the Law

If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall be held by a court of competent jurisdiction or arbitration panel to be in conflict with the laws, rules and/or regulations of the United States or the Commonwealth of Kentucky, 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.

Article 22 Choice of Law

This contract shall be governed by the laws of the Commonwealth of Kentucky both as to interpretation and performance.

Article 23 Entire Agreement

This Agreement, including the exhibits, comprises all of the covenants, promises, agreements and conditions between the Parties. No verbal agreements or conversation between the Parties prior to the execution of this Agreement shall affect or modify any of the terms or obligation.

For BTBC:

Jennifer Mossette
Name

Chair Breaking the Bronze Ceiling
Title

Oct. 30, 2019
Date

For Artist:

Garban Pappas
Name

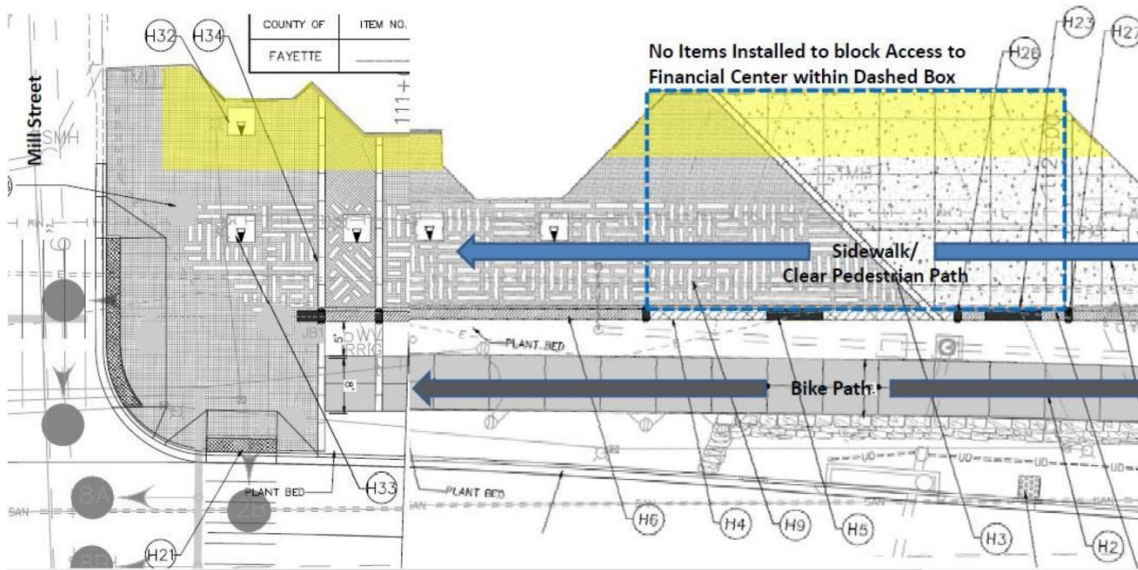
Artist / OWNER
Title

Oct 29, 2019
Date

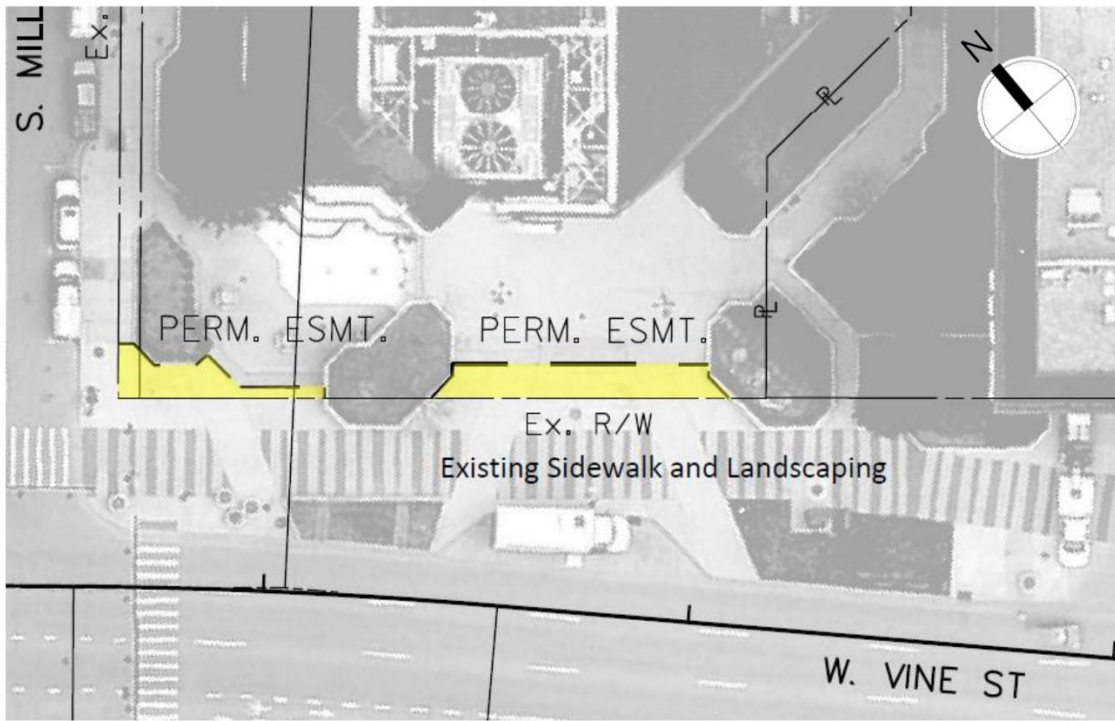
Exhibit A

Site Plan

NOTES: Yellow Shaded areas are permanent easements purchased by the LFUCG –
White / Gray space between the yellow shaded areas is proposed site for sculpture.



FUTURE SITE INCLUDING TOWN BRANCH TRAIL



EXISTING SITE

Exhibit B

Artist's Proposal

A Public Monument Commemorating the Historic Contributions of Lexington and Fayette County Women in Securing Women's Right to Vote

DESIGN

To commemorate the contribution of Lexington and Fayette County women to the passage of the nineteenth amendment to the Constitution of the United States, I propose a work of art that merges contemporary and historical visual elements into a sculptural statement. My proposal is designed to resonate with the Lexington Community on many important levels. The sculpture is composed with five silhouettes of Suffragettes. The sculptures are purposefully not identifiable figures, as many, many women were involved in the suffrage movement. The sculpture celebrates the heroic effort by the women of Lexington and Fayette County, as well as the vastness of participation and the monumentality of their achievement on a national level.

The silhouettes are recognizably women from the Suffragette movement because of the dressing style, including the hat and shoes. The outlines of these figures are clearly from the Victorian era. They are images of the women that secured the right to vote for all of us.

The figures are prodigious in size. They are twenty feet tall. This scale creates a monumentality which symbolizes the monumental effort made by women to obtain the right to vote. In this monument the woman are larger than life. The concept for the lineup is inspired by a famous photograph of Suffragettes in Lexington Kentucky to whom this monument is dedicated.

The silhouettes of the women form an arc, creating motion and giving the monument momentum and a sense of movement. There is no front or back. The silhouettes are three dimensional and can be read from the south and the north viewing platforms equally. The view from the street is equal to the view from the plaza. The three dimensionality of the work creates a sense of the movement.

The use of highly polished aluminum will give the sculpture a reflective quality. This quality of reflectivity is central to the theme of the sculpture. When viewing the sculpture and reflecting on the monumentality of the accomplishment, the community of Lexington will see itself reflected in the sculpture.

TEXT

Text is an integral part of this proposal. On the street side of the monument, text celebrating the passage of the 19th amendment will be prominently displayed. The text will be rendered in polished stainless steel.

Facing the plaza, names of prominent Lexington and Fayette women Suffragettes will be placed along the planter. These names will be chosen by the committee and provided to the artist.



REQUIRED INFRASTRUCTURE ON SITE

The required infrastructure will be:

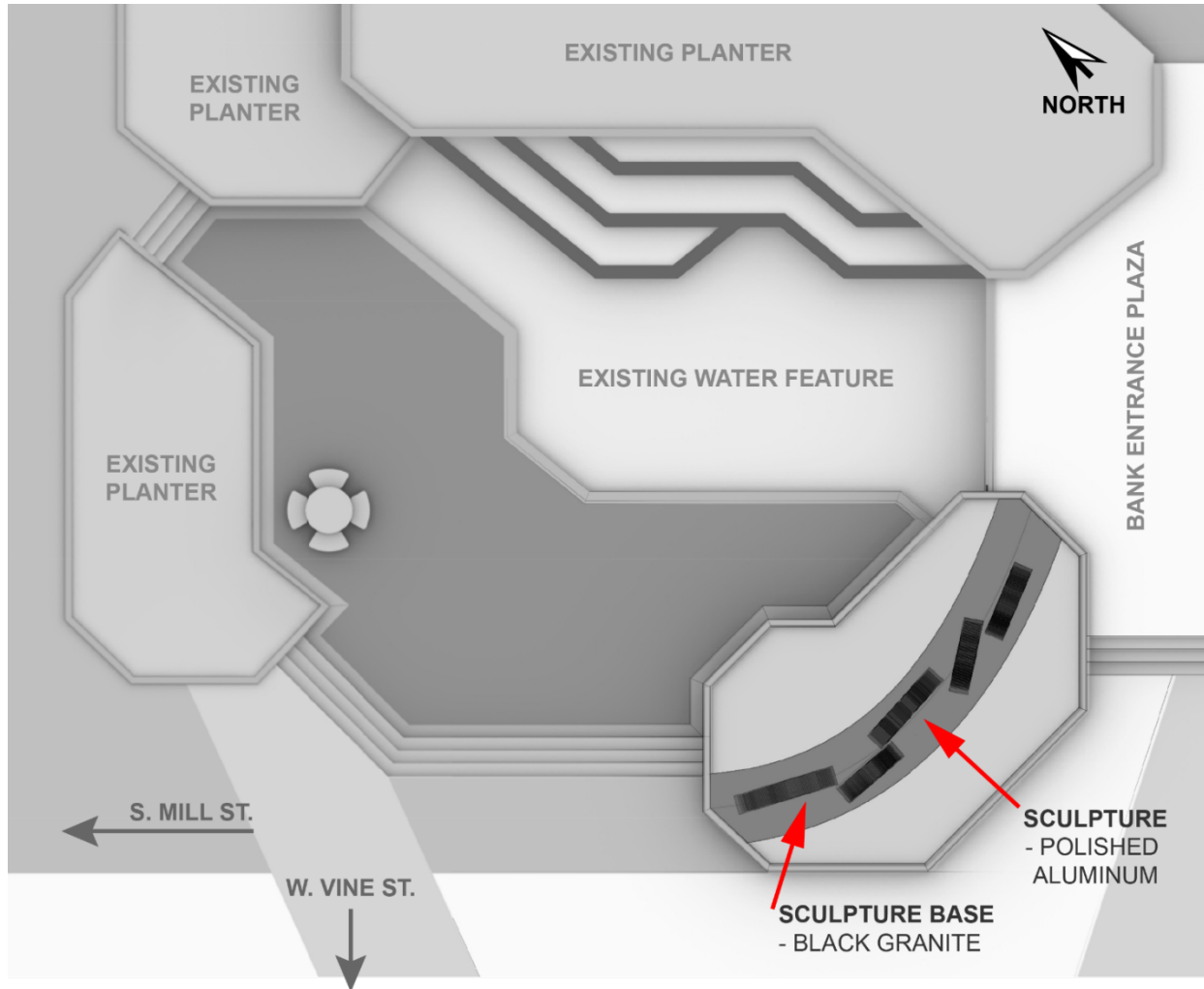
- A. A poured concrete foundation, per engineering supplied by the artist. This will include embedded anchor bolts that receive the sculpture.
- B. Electrical wiring to an individual circuit with a photocell or timer for lighting the sculpture.

Note: Artist will supply a template for the foundation and the anchor bolts to be installed in the poured foundation.

LOCATION

The sculpture will be located in the large existing planter as demonstrated in the site plan included below.

SITE PLAN – SCULPTURE LOCATION



SCALE AND MEDIUM / MATERIALS / SURFACE

The work of art will be approximately twenty feet high measured above the top of the planter in which it sits.

The sculpture will sit on an elevated pedestal clad in black granite tile. The pedestal will be six inches above the lip of the planter.

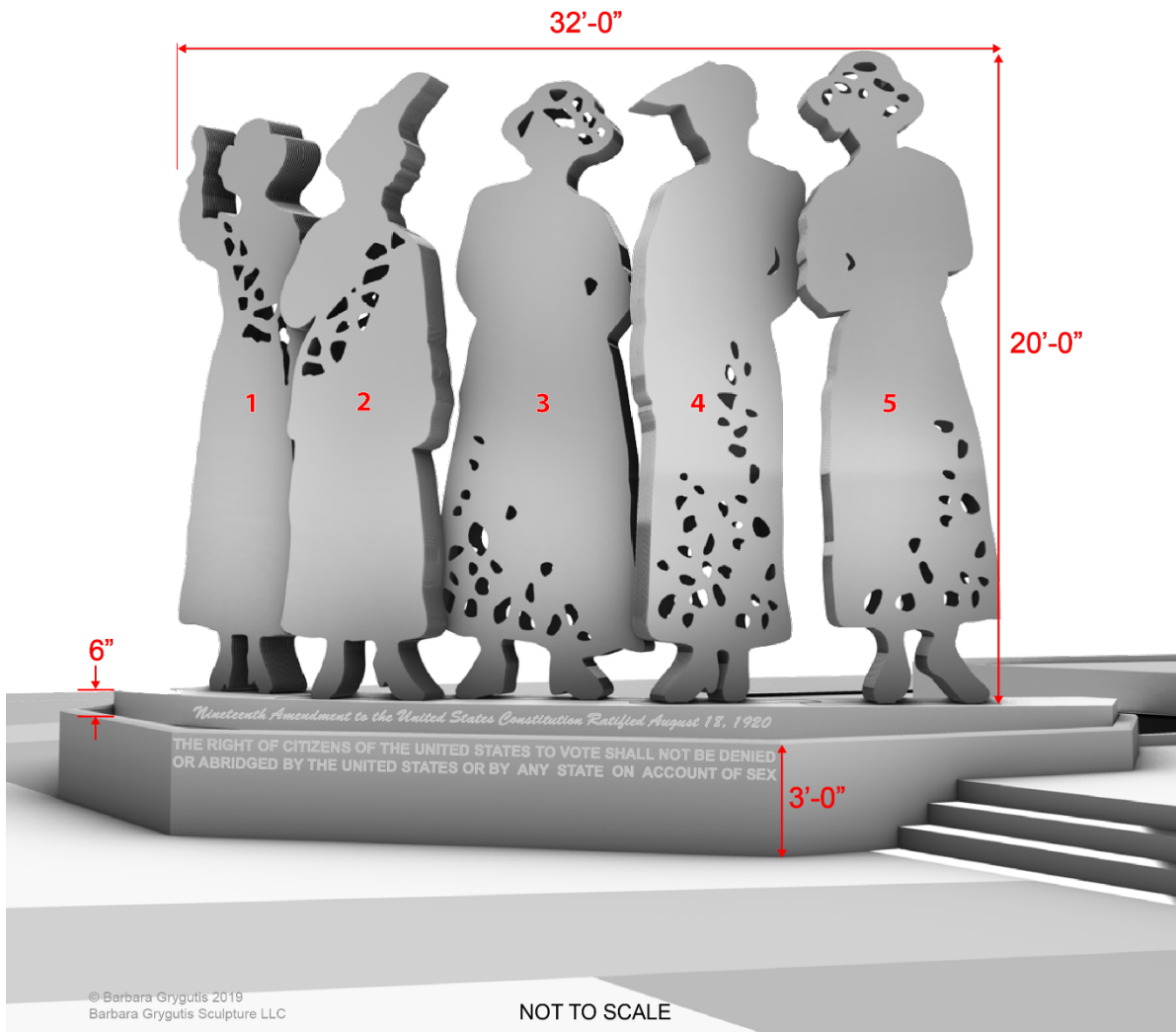
The planter elevation is three feet above grade on the street side. That would put the sculpture at a height of twenty-three- and one-half feet above the height of the road.

On the plaza side, the elevation of the planter is five feet above grade. This would put the height of the sculpture at twenty-five- and one-half feet above the plaza surface.

The work of art will be fabricated with polished aluminum. Areas of the sculpture will have laser cut perforations, creating a lace like effect.

A material sample accompanies this proposal. Aluminum is a most durable metal. It does not rust. We use a clear coat on high polished aluminum sculptures to prevent oxidation.

DIMENSIONS – LOOKING NORTH



MAINTENANCE AND PROPOSED SCULPTURE LIFESPAN

LIGHTING

The lamps proposed for this sculpture will be placed on the interior of the sculptures. They will be accessible through removable panels located in the bottom of the sculptures. The lamps have a lifespan of 10 years and should be replaced every 10 years.



ALUMINUM

Aluminum has a long life span, does not rust, and will continue to look as new in a non-marine environment. Cleaning simply requires water and a cotton rag. No chemical cleaners should be used.

“Aluminum has been used in buildings for more than a hundred years, with the metal first appearing in the Church of St Edmunds, Derbyshire in 1895. It has been used in many famous architectural landmarks including the Empire State Building (New York), the Gherkin (London) and the Hong Kong and Shanghai Bank HQ (Hong Kong) “ Source: <http://www.world-aluminium.org/news/2014/09/25/aluminiums-sustainability-and-longevity-buildings/>

“From Los Angeles to Washington, D.C., artists and architects choose aluminum... Sculptures constructed from aluminum continue to pop up around the United States. In fact, just this month artist Michael Kalish’s sculpture of Muhammad Ali went on display in Los Angeles’ Nokia Plaza.”

Source: <https://www.aluminum.org/news/aluminum-sculptures-sprout-around-usong>

BUDGET

Design	15% of total budget	\$ 75,000.
Engineering		\$ 20,000.
Sculpture Fabrication		\$ 300,000.
Lighting		\$ 35,000.
Transportation (from fabrication shop to site)		\$ 15,000.
Fabrication oversite		\$ 25,000.
Installation by fabricator		\$ 20,000.
Granite tile covering sculpture base		\$ 10,000.
Total:		\$ 500,000.

Note: Site preparation and concrete foundation preparation by the Lexington KY Committee for "Raising the Bronze Ceiling" Foundation as discussed on conference telephone call Thursday, August 8.

TIMELINE FOR INSTALLATION BEFORE AUGUST 10, 2020

Timeline assumes that a contract will be available for review by October 10, 2019 and signed by October 30, 2019

Phase 1-Design completion

Design finalization: with City of Lexington "Breaking the Bronze Ceiling Committee" December 15, 2019
Engineering: Completion date February 15, 2020

Phase 2-Fabrication

Commencement of Fabrication: March 1, 2020
Commencement of site preparation: March 1, 2020

Phase 3-Installation

August 1, 2020

Note: Bollinger Atelier will be the fabricator for this project. They are located in Phoenix, Arizona.

<https://bollingeratelier.com/>

Schedule B

Breaking the Bronze Ceiling : Payments to Artist and Deliverables:

DESIGN

Phase 1: Execution of Contract	\$ 50,000. (10%)	October 30, 2019
Phase 2: Design completion Engineering completion	\$ 75,000. (15%)	December 30, 2019

FABRICATION

Phase 3: Materials procurement	\$ 100,000. (20%)	January 15, 2020
Phase 4: Sculpture Fabrication midpoint	\$ 100,000. (20%)	April 15, 2020
Phase 5: Sculpture Fabrication complete	\$ 100,000. (20%)	July 15, 2020

INSTALLATION

Phase 6: shipping and Installation	\$ 75,000. (15%)	Completed by August 15, 2020
------------------------------------	------------------	------------------------------

CONTRACT TOTAL	\$ 500,000.
----------------	-------------

Schedule C

Breaking the Bronze Ceiling responsibilities

Will prepare site in accordance with artist engineering drawings to include:

- a. BTBC to provide artist with all text by February 1, 2020
- b. Concrete foundation (per artist supplied engineering)
- c. Concrete pedestal 6" above planter lip, per proposal.
- d. Electrical conduit on dedicated circuit and stub up per artist drawing
- e. Traffic mitigation during sculpture installation

Items B, C, D, to be completed no later than July 15, 2020

Exhibit C

Budget

The Owner shall pay the Artist a fixed fee of \$500,000, which shall constitute full and complete compensation for all the services performed and material furnished by the Artist under this Agreement.

Design	15% of total budget	\$ 75,000
Engineering		\$ 20,000
Sculpture Fabrication		\$ 300,000
Lighting		\$ 35,000
Transportation (from fabrication shop to site)		\$ 15,000
Fabrication oversight		\$ 25,000.
Installation by fabricator		\$ 20,000
Granite tile covering sculpture base		\$ 10,000
Total:		\$ 500,000

The above cost does not include any of the site prep Work to be performed by the Owner under separate contract.

Exhibit D

Payment Schedule

<u>PHASE</u>	<u>COST</u>	<u>COMPLETION DATE:</u>
<u>DESIGN</u>		
Phase 1: Execution of Contract	\$ 50,000 (10%)	October 31, 2019
Phase 2: Design completion & Engineering completion	\$ 50,000 (10%)	January 15, 2019
<u>FABRICATION</u>		
Phase 3: Materials procurement midpoint	\$ 50,000 (10%)	February 1, 2020
Phase 4: Materials procurement final	\$ 50,000 (10%)	March 1, 2020
Phase 5: Sculpture Fabrication midpoint	\$ 50,000 (10%)	April 15, 2020
<u>INSTALLATION</u>		
Phase 6: Sculpture Shipping and Installation	\$250,000 (50%)	August 15, 2020

CONTRACT TOTAL \$ 500,000.

Exhibit E

Schedule

TIMELINE FOR INSTALLATION ON OR BEFORE AUGUST 1, 2020

Timeline assumes that a contract will be available for review by October 15, 2019 and signed by October 31, 2019

Phase 1-Design

Design Development Submittal Meeting with the Owner	November 13, 2019
Final Design Meeting with the Owner Including Construction Documents Submittal	January 15, 2020

Phase 2-Fabrication

Material Procurement & Commencement of Fabrication:	January 30, 2020
Completion of Site Prep by Owner:	July 15, 2020

Phase 3-Installation

Installation of Artwork – Substantial Completion	August 1, 2020
Artwork Unveiling	August 18, 2020

Exhibit F

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 [name of city or state]. Such insurance shall cover the Artist's agents, contractors, subcontractors or employees. The Owner, 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 the Owner, its officials, employees, agents and contractors.
- b. The Artist and the Artist's subcontractors' insurance coverage shall be the primary insurance as respects the Owner, its officials, employees, agents and contractors. Any insurance or self-insurance maintained by the Owner, 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 the Owner, shall furnish to the Owner 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 the Owner. Each certificate shall indicate that the subcontractors are additionally insured 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. Any deductibles or self-insured retentions must be declared to, and approved by, the Owner. At the option of the Owner, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Owner, its officials, employees, agents and contractors; or the Artist shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses as described in Article 13 of this agreement.
- e. Despite any changes to or cancellation of insurance, the Artist remains responsible for maintaining the required insurance coverage for the duration of the Agreement.
- f. Failure of the Artist to comply with any of the terms of this Article 6 shall be considered a material breach of this Agreement and cause for its immediate termination.

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

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. \$2,000,000 annual aggregate
- b. Automobile liability insurance policy, including coverage for owner, non-owner, leased or hired vehicles, providing the following minimum coverage: \$1,000,000 combined single limit

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

- c. Transportation/Cartage 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.
- e. Worker's Compensation and Employers' Liability insurance in accordance with the statutory requirements of the State of Kentucky 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 \$1,000,000.
- f. 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)

(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.

- a. Artist will be responsible for assuring licensed engineers and other experts have appropriate Professional Liability coverage with a general aggregate limit of \$ 1,000,000 and name Artist as additional insureds to their policy.

Request for Proposal

**Breaking the Bronze Ceiling
Request for Proposals
July 8, 2019**

Request for Proposals

The Breaking the Bronze Ceiling Steering Committee (BTBC) is issuing this request for proposals (RFP) to selected artists/artist teams to solicit a public art concept for a permanent community sculpture commemorating the historic contribution of Lexington and Fayette County women.

Contents

- I. Purpose and References**
- II. Submission Requirements**
- III. Location and Parameters**
- IV. Response Requirements/Elements of Proposal**
- V. Scope of Work**
- VI. Review Process and Criteria**

I. Purpose and References

Purpose Statement

The purpose of the public work of art is to commemorate the historic contributions of Lexington and Fayette County women and celebrate their role in securing women's right to vote. 2020 marks the centennial of the 19th amendment to the U.S. Constitution recognizing the right of women to vote. BTBC seeks to commission and install a work of art as part of the national celebration to pay tribute to this historic event.

Since Lexington's founding in 1782 women have advanced the interests of Lexington as well as the Commonwealth of Kentucky, the nation, and the world. Lexington is the birthplace of and the home to many noteworthy women: educators, advocates, entrepreneurs, orators, politicians, philanthropists, writers, artists, scholars, researchers, scientists and health care practitioners. Among these leaders were women who fought for their right to vote and the passage of the 19th Amendment contributing to one of the greatest expansions of democracy in the United States and the world. Despite the actions of these remarkable women, there are no monuments in Lexington to recognize their sacrifice and accomplishments.

To honor these contributions and to educate, inspire and empower present and future generations, BTBC wishes to commission public art that represents the diverse history of Lexington's visionary and inspiring women.

Reference Materials:

Breaking the Bronze Ceiling - <https://breakingthebronzeceiling.com/>

Kentucky Woman Suffrage Project - <https://networks.h-net.org/kywomansuffrage>

2020 Women's Vote Centennial Initiative - <https://www.2020centennial.org/>

Lexington, KY - <https://www.lexingtonky.gov/>

Lexington Convention and Visitors Bureau - <https://www.visitlex.com/>

Kentucky Historical Society - <https://history.ky.gov/>

Kentucky Equal Rights Association (Wikipedia) - https://en.wikipedia.org/wiki/Kentucky_Equal_Rights_Association

Lexington-Fayette Urban County Government (LFUCG) will be the permanent owner/caretaker of the completed artwork. The Lexington Public Art Commission, an entity of LFUCG will oversee maintenance and the established maintenance fund.

II. Submission Requirements

Deadline for responses

This Request for Proposals has been formally issued on July 8, 2019. All responses must be received by Breaking the Bronze Ceiling, care of LexArts, no later than 5:00 pm (EST) on September 17, 2019.

Finalists must submit one (1) electronic copy (via email) of the complete proposal and one (1) hard copy no later than 5:00 p.m. on September 17, 2019. Additionally, one (1) hard copy must be received by September 17, 2019 and may be sent to: Breaking the Bronze Ceiling, care of LexArts, 161 North Mill Street, Lexington, KY 40507.

Maquettes may be sent to the address above prior to the proposal presentation, or brought directly to the presentation.

BTBC will not be responsible for applications lost in transit. While all reasonable care will be taken in the handling of materials, BTBC is not liable for lost or damaged materials. All submitted materials become the property of BTBC.

III. Location and Parameters

The site for the permanent artwork is the Lexington Financial Center located at 250 W. Main Street, Lexington, KY. This site is in downtown Lexington and the sculpture will be located at the corner of Vine and Mill Streets, on the left side of the building.

Lexington Financial Center, locally known as "Fifth Third" or the "Big Blue Building", is a 357,361 sq. ft, 410 ft 31-floor high-rise located between Vine Street and Main Street at South Mill Street. Its exterior features blue tinted glass that has become an identifying symbol for the downtown. It is the second tallest building in Kentucky outside Louisville. Construction was completed in 1987.

See more information about Lexington Financial Center including a map of placement in downtown Lexington: <https://bit.ly/2RYoYAF>. See more information about Webb Companies: www.webbcompanies.com.

The site is located adjacent to the developing [Town Branch Trail](#) (TBT), a dedicated bike and pedestrian path running through Town Branch Commons (TBC), from Third and Midland to Rupp Arena. The Trail will connect Downtown Lexington with Masterson Station Park and the Distillery District, along with area neighborhoods, other parks, and historic sites as it follows the westward course of Lexington's historic waterway, the Town Branch of Elkhorn Creek. The shared-use greenway trail (paved route for pedestrians and bicyclists) is a significant component of Lexington's Bike and Pedestrian Plan (a broad network of bike facilities and trails planned for Fayette County). Development of the Trail seeks to transform neglected or underutilized urban areas along the historic creek into a landscaped trail that will serve among other things: recreation, commuting, the environment, tourism and businesses. Vine Street is currently dominated by cars, both in feel and in construction, as it is both a major one-way connector through downtown and a state road; however, the Town Branch proposal limits the width of lanes along Vine Street and reconfigures intersections for enhanced pedestrian and bicyclist safety. Within the Vine Street zones, the Town Branch Greenway includes public space pockets and street plantings. The TBT is part of [Town Branch Commons](#), a collection of projects that will connect Lexington neighborhoods, parks, and urban and rural communities.

Site maps of the Trail may be found at: breakingthebronzeceiling.com/siteinfo
Password is: siteinfo

The site selected for the sculpture is public and is available for viewing by respondents at any time. Individual site visits with the opportunity to meet with BTBC and its representatives is mandatory. Site visits may be scheduled by contacting:

Georgia Henkel – 859-576-4871 Georgia.henkel@gmail.com
Lori Meadows - 859-229-6509 Lori.meadows5076@gmail.com

Site Parameters

The parameters of the site are such that two distinct design opportunities are available for proposals. Current landscaping in the area may remain or may be removed; the current fountain may be adapted or incorporated into the overall design. Each finalist is invited to present one proposal using either design possibility.

The two design possibilities are:

- #1 - The raised area with landscaping currently delineated by the surrounding wall
- #2 - The integration of the lower plaza area where the fountain is located, into the overall design.

Site images including measurements may be accessed at:

breakingthebronzeceiling.com/siteinfo
Password is: siteinfo

Design Parameters

The design must honor the Lexington-Fayette County women who worked to win the constitutional right to vote. It should not be specific to any one individual but rather represent all women who had the drive and perseverance to pursue this right.

Designs should commend women's progress through their activities and accomplishments; demonstrate support for women's' contributions and the continuing empowerment of all women in our community; and serve as a source of inspiration and encouragement to all citizens.

Artists are encouraged to research the history and culture of Lexington-Fayette County using the stated reference materials.

The artwork will be a permanent outdoor installation created of durable materials suitable to the outdoor environment and proportional to the site. Designs should be site-specific and relate well to the adjoining architecture and landscape. Low maintenance in materials, details and finish is a plus and the artwork should weather well and be as impervious to vandalism as possible. Electrical service is available at the site and lighting design may be included in the proposal. The site currently includes seating in the lower plaza area (See #2 under site parameters) and artists interested in integrating the lower plaza into their design may include seating.

Artists should keep in mind that the artwork will be viewed by pedestrians and drivers from multiple vantage points. Lexington Financial Center is a Lexington landmark, and the development of Town Branch Trail will increase visibility and traffic around the site. The inclusion of the commissioned artwork into the site will create a unique community place.

The design must satisfy applicable local, state and federal regulations and be ADA compliant. (see Americans with Disabilities Act, 49 CFR 37).

IV. Response Requirements/Elements of Proposal

Response Requirements

Finalists must provide the information listed below. BTBC reserves the right to request additional information following its review of initial submissions.

1. **Contact information** - including the designated person who shall be considered the representative of the respondent.
2. **Team composition and information** (if applicable) - project lead must be clearly identified and will bear ultimate responsibility for the performance of all other individuals in producing the end product. The proposal must demonstrate how the team's efforts will be managed. Include names, specialization, relevant prior experience and other information which may be helpful in evaluating the team's capability or suitability for this project.

3. **Implementation plan and schedule** - proposed timeline for production and installation of the proposed artwork. The schedule is critical to the delivery of the artwork and respondents are to submit a schedule that can be accomplished and delivered with no exception.

Completion date for the artwork is August, 2020 to correspond with the 100th anniversary of the 19th Amendment to the U.S. Constitution granting women the right to vote being signed into law August 18, 1920.

4. **Budget** - The budget for all costs associated with designing, creating and installing the completed artwork, including (but not limited to) artist fees, administrative costs, subcontractors/consultants, fabrication, insurance, shipping, travel, installation, documentation, etc. is not to exceed \$500,000. BTBC is pursuing in-kind donations for site preparation, etc.

Proposals should include all of the following elements:

- Small-scale maquette of proposed artwork
- Conceptual visual depiction of where and how the artwork will be located on the site with regard to positioning, surroundings and complementary features. Drawings must be accompanied by proposed mechanical and electrical requirements.
- A written description of the proposed approach to fulfilling the scope of work, and a description of the design including: concept; location and placement of the artwork on the site; form the artwork will take including scale, medium (and process if that will help to clarify), and materials including color and surface quality*.
- Description of any on-site infrastructure required to support the artwork or to provide for amenities for appropriate display of artwork.
- Estimate and description of routine maintenance or repair
- Estimated lifespan of the proposed artwork

*Artists are asked to bring material samples to be used in the artwork with them to their proposal presentation.

The selected artist must be able to produce construction drawings with approved architectural design stamped by the Commonwealth of Kentucky.

The review committee will be provided with your resume, professional references and letter of interest submitted with your initial application for this project.

V. Scope of work

The selected respondent will:

- Identify the key work tasks and milestones
- Work with BTBC and the Lexington Financial Center to finalize the artwork design and site plan/preparation.
- Perform all services and furnish all supplies, material and/or work equipment as necessary for the design and fabrication of the artwork.

- Identify any necessary consultants to the project; work with contractors or others preparing the site; advise and be present for installation of the artwork and construction of related amenities, etc.
- Provide required insurance in amounts and limits specified in the final contract between BTBC and the artist.
- Secure any and all required licenses, permits, engineering approvals, and similar authorizations at the Artist's expense as may be necessary for the installation of the artwork at the site.
- Arrange for off-site storage if needed.
- Provide regular reporting and documentation indicating progress to work tasks, milestones and completion of project

A written agreement will be prepared by BTBC and the selected artist to formalize and confirm all details of the commission.

VI. Review Process and Criteria

Respondents to this Request for Proposals acknowledge that the nature of the project and the selection of the winning respondent are inherently subjective and that BTBC reserves the right to reject any and all submissions at its discretion. BTBC will reject any submissions that are incomplete, non-responsive or submitted after the deadline; all supporting materials must accompany the application.

BTBC reserves the right to cancel or reissue this RFP, or to reject, in whole or in part, any and all submissions received in response to this RFP should it be determined that the responses received are unsatisfactory or that such cancellation or rejection is in the best interest of BTBC. BTBC further reserves the right to waive any minor technical deficiency in a submission package. The determination of the selection criteria and the process for evaluating proposals shall be at the sole and absolute discretion of BTBC.

A panel of arts professionals will review submissions under this RFP, using the following criteria:

- Artistic excellence - creativity, quality and strength of the proposed work; distinctive and engaging vision and exploration of ideas and concepts.
- Relevance to stated project purpose - ability to draw public attention to the history of Lexington-Fayette County women's role in the suffrage movement
- Integration into landscape - integration of the design to the site, and the Lexington landscape
- Project management and communication - practical and efficient approach to budgeting, schedules and project management; demonstration of effective communication skills; demonstrated attention to details and problem solving

A pre-proposal information meeting will be held via conference call at a time mutually agreeable to all interested parties.

Respondents are required to give a formal presentation to the selection committee and representatives of BTBC. Proposals will be presented to the panel on September 20th in

Lexington, KY and should include a maximum 15-minute presentation by the respondent with a question/clarification period to follow.