

PROFESSIONAL SERVICES AGREEMENT**BY AND BETWEEN****THE CITY OF NEW ORLEANS****AND****CONCORDIA, LLC****PARKLET DESIGN GUIDELINES**

THIS PROFESSIONAL SERVICES AGREEMENT (the “**Agreement**”) is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the “**City**”), and Concordia, LLC, represented by Steven Bingler (the “**Contractor**”). The City and the Contractor may sometimes each be referred to as a “**Party**,” and collectively, as the “**Parties**.” The Agreement is effective as of **December 1, 2022** (the “**Effective Date**”).

RECITALS

WHEREAS, the City seeks to hire a firm or individual to develop a design guide for Parklet structures through the Parklet permit program; and

WHEREAS, the Contractor has the requisite expertise, qualifications, and certifications in place, and is available for the performance of those professional services.

NOW THEREFORE, the City and the Contractor agree as follows:

ARTICLE I - THE CONTRACTOR'S OBLIGATIONS

A. Services. The Contractor will, in accordance with the schedule approved by the City:

1. Develop a parklet design guide that is no more than 15 pages, in digital format, with the ability for the City to update or adjust it in the future as needed;
2. The parklet design guide should include:
 - a. Three to five standard design templates or site plans, including at least one that is appropriate for most commercial corridors and at least one that is appropriate for most historic corridors;
 - b. Detailed descriptions and visuals of the design templates, including standard dimensions, materials, and other relevant components; and
 - c. Options for lighting, shade, and shelter.
3. Perform all other services and obligations as set forth in any the following documents that are incorporated fully into this Agreement: the Contractor's proposal dated October 17, 2022 (Exhibit “A”).
4. Submit complete and accurate invoices, maintain records, submit to audits and inspections, maintain insurance, and perform all other obligations of the Contractor as set forth in this Agreement;
5. Promptly correct any errors or omissions and any work deemed unsatisfactory or unacceptable by the City, at no additional compensation;

6. Monitor, supervise, and otherwise control and be solely responsible for all persons performing work on its behalf;

7. Perform all requirements set forth in La. R.S. 38:2192, including without limitation the payment of any associated costs, and submit a copy of any recorded documents to the City within 30 days after the approval of the associated plan change or amendment; and

8. Cooperate with the City and any person performing work for the City.

The City's officers and employees are not authorized to request or instruct the Contractor to perform any work beyond the scope or duration of this Agreement in the absence of an executed amendment to this Agreement.

B. Standards. The Contractor, and any person performing work on its behalf, will perform all work under this Agreement.

C. Compliance with Laws. The Contractor, and any person performing work on its behalf, will comply with all applicable federal, state, and local laws and ordinances, including, without limitation.

D. Schedule.

1. The Contractor will perform all work under this Agreement according to the following schedule:

- a. Kickoff meeting with design team and City team
- b. 4-6 weeks for initial design
- c. 2-4 weeks for feedback
- d. 2 weeks for finalization
- e. Goal: Finalize the guide and have it approved by Council by the end of 2022.

The Contractor will submit a proposed progress schedule to the City within 14 calendar days of receiving written authorization to proceed from the City. At a minimum, the proposed progress schedule must include the following information and be arranged so the actual progress can be shown as work is completed: Projected dates and times for the kickoff meeting, initial design, and final design.

2. The City has the sole right to approve, reject, or require changes to all schedules relating to the performance of this Agreement, including, without limitation, any proposed progress schedule and any requests for modifications.

3. The Contractor acknowledges and agrees that time is of the essence in the performance of this Agreement.

E. Invoices. The Contractor must submit invoices monthly (unless agreed otherwise between the parties to this Agreement) to the City electronically, via its supplier portal, for goods or services provided under this Agreement no later than 10 calendar days following the end of the period covered by the invoice. Untimely invoices may result in delayed payment for which the City is not liable. At a minimum, each invoice must include, at a minimum, the following information:

- a. Name of Contractor;
- b. Date of Invoice;

- c. Invoice Number;
- d. Contract or BRASS Number issued by the City (i.e., K#);
- e. Name of the City Department to be invoiced (i.e., Economic Development);
- f. Description of the Services completed;
- g. FEMA or HUD Project Number (i.e., PW#), if applicable.

2. Invoices will be processed in accordance with Article III Section B of the Agreement.

3. All invoices must be signed by an authorized representative of the Contractor under penalty of perjury attesting to the validity and accuracy of the invoice.

4. The City may require changes to the form of the invoice and may require additional supporting documentation to be submitted with invoices.

F. Records and Reporting.

1. The Contractor will maintain all books, documents, papers, accounting records, invoices, materials records, payrolls, work papers, personnel records, and other evidence pertaining to the performance of services under this Agreement, including, without limitation, of costs incurred through the later of years from: (a) the completion of this Agreement (including any renewal or extension periods); or (b) from the resolution of any dispute relating to the Agreement. If this Agreement is terminated for any reason, the Contractor will deliver to the City all plans and records of work compiled through the date of termination.

2. The Contractor will identify any reporting requirements, including the frequency, method and contents.

3. The Contractor is solely responsible for the relevance and accuracy of all items and details included in any reports relating to the work performed under this Agreement, regardless of any review by the City.

G. Audit and Inspection.

1. The Contractor will submit to any City audit, inspection, and review and, at the City's request, will make available all documents relating or pertaining to this Agreement maintained by or under the control of the Contractor, its employees, agents, assigns, successors and subcontractors, during normal business hours at the Contractor's office or place of business in Louisiana. If no such location is available, the Contractor will make the documents available at a time and location that is convenient for the City.

2. The Contractor will abide by all provisions of City Code § 2-1120, including but not limited to City Code § 2-1120(12), which requires the Contractor to provide the Office of Inspector General with documents and information as requested. Failure to comply with such requests shall constitute a material breach of the contract. The Contractor agrees that it is subject to the jurisdiction of the Orleans Parish Civil District Court for purposes of challenging a subpoena.

H. Insurance.

1. Except as otherwise noted, at all times during this Agreement or the performance of work required by this Agreement, the Contractor will maintain the following insurance in full force and effect for the duration of the work under this Agreement. Evidence of coverage shall be

provided prior to the start of any activities/work, in conjunction with the Contractor's scope of work under the Agreement. If the Contractor maintains broader coverage and/or higher limits than the minimums shown below, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

a. Minimum Requirements:

- i. Workers' Compensation & Employers Liability Insurance in compliance with the Louisiana Workers' Compensation Act(s). Statutory and Employers Liability Insurance with limits of not less than \$1,000,000.
- ii. Commercial General Liability Insurance including contractual liability insurance, products and completed operations, personal & advertising injury, bodily injury, property damage, and any other type of liability for which this Agreement applies with limits of liability of not less than \$1,000,000 each occurrence / \$2,000,000 policy aggregate.
- iii. Automobile Liability Insurance with a combined single limit of liability of not less than \$500,000 per accident for bodily injury and property damage. Insurance shall include all owned, non-owned and hired vehicles.
- iv. Professional (Errors & Omission) Liability - As professional services are required under the contract, insurance appropriate to the contractor's profession, with limits of liability of not less than \$1,000,000 per occurrence or claim / \$2,000,000 policy aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this Agreement.

Policy shall be kept in force and uninterrupted for a period of three (3) years beyond policy expiration. If coverage is discontinued for any reason during this three (3) year term, Contractor must procure and evidence full extended reporting period (ERP) coverage.
- v. The Contractor shall be able to meet the above referenced specific policy limits of liability through a combination of primary and umbrella /excess coverage.
- vi. Important: The obligations for the Contractor to procure and maintain insurance shall not be constructed to waive or restrict other obligations. It is understood that neither failure to comply nor full compliance with the foregoing insurance requirements shall limit or relieve the Contractor from any liability incurred as a result of their activities/operations in conjunction with the Contractors obligations and/or Scope of Work.

b. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

- i. Additional Insured Status: The Contractor and all Subcontractors (where applicable) will provide, and maintain current, a Certificate of Insurance naming the City of New Orleans, its departments, political subdivisions, officers, officials, employees, and volunteers are to be covered as “Additional Insureds” on the CGL policy with respect to liability arising out of the performance of this agreement, General liability insurance coverage can be provided in the form of an endorsement to the Contractors insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

ISO Form Endorsement; Owners, Lessees or Contractors—Completed Operations (CG 20 37), or equivalent acceptable to the City, is to be used to provide additional coverage for injury or damage that occurs after the work is completed, within the “products-completed operations hazard.” ISO Form Endorsement; Managers or Lessors of Premises (CG 20 11), or equivalent.

The Contractor shall require and verify that all Subcontractors maintain insurance and coverage limits meeting all the requirements stated herein. The Certificate of Insurance, as evidence of all required coverage, should name the City of New Orleans Risk Manager as Certificate Holder and be delivered via U.S. Mail to 1300 Perdido Street, 9E06 – City Hall, New Orleans LA 70112.

The Additional Insured box shall be marked “Y” or Commercial General Liability coverage. The Subrogation Waiver Box must be marked “Y” for Workers Compensation/Employers Liability.

- ii. Primary Coverage. For any claims related to this contract, **the Contractor’s insurance coverage shall be primary** insurance as respects the City, its departments, political subdivisions, officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City shall be non-contributing to the Contractor’s coverage.
- iii. Claims Made Policies. If applicable, the retroactive date must be shown and must be before the date of the contract or the beginning of work. If the coverage is canceled or non-renewed, and not replaced with another claims-made policy, Contractor must purchase “extended reporting” coverage for minimum of 3 years after the termination of this Agreement.
- iv. Waiver of Subrogation. **The Contractor and its insurers agree to waive any right of subrogation** which any insurer may acquire against the City by virtue of the payment of any loss under insurance required by this Agreement.

- v. Acceptability of Insurers. Insurance is to be placed with **insurers licensed and authorized to do business in the State of Louisiana with a current A.M. Best's rating of no less than A:VII**, unless otherwise acceptable to the City.

2. The Contractor will provide the City's Risk Manager (at City of New Orleans Attn: Risk Manager, 1300 Perdido Street, Suite 9E06, New Orleans, LA 70112 – Ref.: Concordia, LLC) within 10 calendar days of the Effective Date and at any other time at the City's request the following documents:

- a. Proof of coverage for each policy of insurance required by this Agreement; and
 - b. Copies of all policies of insurance, including all policies, forms, and endorsements.
3. Without notice from the City, the Contractor will:
- a. Replenish any policy aggregate limit that is impaired before commencement of any work or continuation of any work under this Agreement;
 - b. Substitute insurance coverage acceptable to the City within 30 calendar days if any insurance company providing any insurance with respect to this Agreement is declared bankrupt, becomes insolvent, loses the right to do business in Louisiana, or ceases to meet the requirements of this Agreement; and
 - c. Notify the City's Risk Manager in writing within 48 hours of its receipt of any notice of non-renewal, cancellation, or reduction in coverage or limits affecting any policy of insurance maintained under this Agreement.
4. Special Risks or Circumstances: The City of New Orleans shall reserve the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer coverage, or other circumstances.

I. Indemnity.

1. In General. To the fullest extent permitted by law, the Contractor will indemnify, defend, and hold harmless the City, its agents, employees, officials, insurers, self-insurance funds, and assigns (collectively, the "**Indemnified Parties**") from and against any and all claims, demands, suits, and judgments of sums of money accruing against the Indemnified Parties: for loss of life or injury or damage to persons or property arising from or relating to any act or omission or the operation of the Contractor, its agents, subcontractors, or employees while engaged in or in connection with the discharge or performance of any work under this Agreement; and for any and all claims and/or liens for labor, services, or materials furnished to the Contractor in connection with the performance of work under this Agreement.

2. Limitation. The Contractor's indemnity does not extend to any loss arising from the gross negligence or willful misconduct of any of the Indemnified Parties, provided that neither the Contractor nor any of its agents, subcontractors, or employees contributed to such gross negligence or willful misconduct.

3. Independent Duty. The Contractor has an immediate and independent obligation to, at the City's option: (a) defend the City from or (b) reimburse the City for its costs incurred in the defense of any claim that actually or potentially falls within this indemnity, even if: (a) the

allegations are or may be groundless, false, or fraudulent; or (b) the Contractor is ultimately absolved from liability.

4. Expenses. Notwithstanding any provision to the contrary, the Contractor shall bear the expenses including, but not limited to, the City's reasonable attorneys' fees, lay and expert witness fees, court costs, and any similar expenses, incurred by the City in enforcing this indemnity.

ARTICLE II - REPRESENTATIONS AND WARRANTIES

A. The Contractor represents and warrants to the City that:

1. The Contractor, through its duly authorized representative, has the full power and authority to enter into and execute this Agreement;

2. The Contractor has and will maintain the requisite expertise, qualifications, staff, materials, equipment, licenses, permits, consents, registrations, and certifications in place and available for the performance of all work required under this Agreement;

3. The Contractor is bonded, if required by law, and fully and adequately insured for any injury or loss to its employees and any other person resulting from the actions or omissions of the Contractor, its employees, or its subcontractors in the performance of this Agreement;

4. The Contractor is not under any obligation to any other person that is inconsistent or in conflict with this Agreement or that could prevent, limit, or impair the Contractor's performance of this Agreement;

5. The Contractor has no knowledge of any facts that could prevent, limit, or impair the performance of this Agreement, except as otherwise disclosed to the City and incorporated into this Agreement;

6. The Contractor is not in breach of any federal, state, or local statute, regulation, or code applicable to the Contractor or its operations;

7. Any rate of compensation charged for the performance of services under this Agreement are no higher than those charged to the Contractor's most favored customer for the same or substantially similar services;

8. The Contractor has read and fully understands this Agreement and is executing this Agreement willingly and voluntarily; and

9. All of the representations and warranties in this Article and elsewhere in this Agreement are true and correct as of the date of execution of this Agreement by the Contractor and the execution of this Agreement by the Contractor's representative constitutes a sworn statement, under penalty of perjury, by the Contractor as to the truth of the foregoing representations and warranties.

B. **Convicted Felon Statement.** The Contractor complies with City Code Section 2-8(c) and no principal, member, or officer of the Contractor has, within the preceding 5 years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.

C. **Non-Solicitation Statement.** The Contractor has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement. The Contractor has not paid or agreed to pay any person, other than a bona fide

employee working for it, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from this Agreement.

D. Employee Verification. The Contractor swears that (i) it is registered and participates in a status verification system to verify that all employees in the State of Louisiana are legal citizens of the United States or are legal aliens; (ii) it shall continue, during the term of this Agreement, to utilize a status verification system to verify the legal status of all new employees in the State of Louisiana; and (iii) it shall require all subcontractors to submit to the Contractor a sworn affidavit verifying compliance with items (i) and (ii) above. Any violation of the provisions of this paragraph may subject this Agreement to termination and may further result in the Contractor being ineligible for any public contract for a period of 3 years from the date the violation is discovered. The Contractor further acknowledges and agrees that it shall be liable for any additional costs incurred by the City occasioned by the termination of this Agreement or the loss of any license or permit to do business in the State of Louisiana resulting from a violation of this provision. The Contractor will provide to the City a sworn affidavit attesting to the above provisions if requested by the City. The City may terminate this Agreement for cause if the Contractor fails to provide such the requested affidavit or violates any provision of this paragraph.

E. The Contractor acknowledges that the City is relying on these representations, warranties, expertise, skill, and knowledge and that the Contractor's obligations and liabilities will not be diminished by reason of any approval by the City.

ARTICLE III - THE CITY'S OBLIGATIONS

A. Administration. The City will:

1. Administer this Agreement through the Office of Economic Development;
2. Provide the Contractor copies of legislation related to the Parklet program, documents created during the pilot Parklet program, and other documents necessary for the Contractor's performance of any work required under this Agreement; and
3. Provide reasonable access to Office of Economic Development personnel to discuss the required services during normal working hours, as requested by the Contractor.

B. Payment. The City will make payments to the Contractor at the rate of compensation established in this Agreement based upon the Contractor's certified invoices, except:

1. The City's obligation to pay is contingent upon the Contractor's: (a) submission of a complete and accurate invoice; (b) satisfactory performance of the services and conditions required by this Agreement;
2. The City, in its discretion, may withhold payment of any disputed amounts, and no interest shall accrue on any amount withheld pending the resolution of the dispute;
3. The City may set-off any amounts due to the Contractor with any amounts deemed by the City to be owed to the City by the Contractor pursuant this Agreement; and
4. All compensation owed to the Contractor under this Agreement is contingent upon the appropriation and allocation of funds for work under this Agreement by the City.
5. The City is not obligated under any circumstances to pay for any work performed or costs incurred by the Contractor that: exceed the maximum aggregate amount payable established by this Agreement; are beyond the scope or duration of this Agreement; arise from or

relate to any unauthorized change order within the scope of the Agreement; are for services performed on days on which services were suspended, due to circumstances beyond the control of the City, and no work has taken place; arise from or relate to the correction of errors or omissions of the Contractor or its subcontractors; or the City is not expressly obligated to pay under this Agreement.

6. Unless otherwise agreed by the City, payment terms are NET 30 days upon providing that goods and/or services described under this Agreement have been delivered, installed (if required), rendered, and/or accepted and upon receipt by the City of properly submitted invoice via the City's supplier portal.

7. If this Agreement is terminated for any reason, the City will pay the Contractor only for the work requested by the City and satisfactorily performed by the Contractor through the date of termination, except as otherwise provided in this Agreement.

ARTICLE IV - COMPENSATION

A. Rate of Compensation.

1. The City will pay the Contractor in accordance with the following rate: \$15,000.00, including a \$1,500 payment made as soon as reasonably practical following the execution of this Agreement by both Parties and in accordance with the terms and conditions provided for herein, which will be followed by monthly payments based on percentage of project completion and otherwise in accordance with the terms and conditions provided for herein.

2. This Agreement does not guarantee any amount of work or compensation except as specifically authorized by the City in accordance with the terms and conditions of this Agreement.

3. The stated compensation is inclusive, and includes no additional amounts for, the Contractor's costs, including without limitation all expenses relating to overhead, administration, subcontractors, employees, bid preparation, bonds, scheduling, invoicing, insurance, record retention, reporting, inspections, audits, the correction of errors and omissions, or minor changes within the scope of this Agreement. The City will not consider or be obligated to pay or reimburse the Contractor any other charges or fees and the Contractor will not be entitled to any additional compensation or reimbursement, except otherwise specifically provided in the Agreement.

4. The Contractor will immediately provide written notification to the City of any reduction to the rate of compensation for its most favored customer, and the rate of compensation established by this Agreement will automatically adjust to the reduced rate effective as of the effective date of the reduction for the most favored customer.

B. Maximum Amount. The maximum aggregate amount payable by the City under this Agreement is \$15,000.00.

ARTICLE V - DURATION AND TERMINATION

A. Term. The term of this Agreement shall be for 1 year, beginning the Effective Date, provided there is an encumbrance of funds by the requesting department made from the funds allotted by the Chief Administrative Officer, which are derived from appropriations made by the City Council. This Agreement shall automatically terminate with respect to any period of time for which funds are not so encumbered.

B. Termination for Convenience. The City may terminate this Agreement at any time during the term of the Agreement by giving the Contractor written notice of the termination at least 30 calendar days before the intended date of termination.

C. Termination for Non-Appropriation. This Agreement will terminate immediately in the event of non-appropriation of funds sufficient to maintain this Agreement without the requirement of notice and the City will not be liable for any amounts beyond the funds appropriated and encumbered for this Agreement.

D. Termination for Cause. The City may terminate this Agreement immediately for cause by sending written notice to the Contractor. "Cause" includes without limitation any failure to perform any obligation or abide by any condition of this Agreement or the failure of any representation or warranty in this Agreement, including without limitation any failure to comply with the requirements of the City's Disadvantaged Business Enterprise program and any failure to comply with any provision of City Code § 2-1120 or requests of the Office of Inspector General. If a termination for cause is subsequently challenged in a court of law and the challenging Party prevails, the termination will be deemed to be a termination for convenience effective 30 days from the date of the original written notice of termination for cause was sent to the challenging Party; no further notice will be required.

E. Suspension. Notwithstanding the article on Force Majeure, the City may suspend this Agreement at any time and for any reason by giving 2 business day's written notice to the Contractor. The Contractor will resume work upon 5 business day's written notice from the City.

F. Access to Documents and Data. The Contractor will ensure that the City is provided with timely and accurate reports and other documentation, as requested. Upon termination or expiration of this Agreement: (i) the Contractor will not delete any of the City's data before the earlier of the Contractor receiving written consent from the City or sixty (60) days following termination or expiration of the Agreement ("Data Retrieval Period"), except as otherwise required by law; and (ii) during the Data Retrieval Period following termination or expiration, the City may retrieve its data without regard to any current or pending dispute or engagement between the City and the Contractor. The City will not incur any additional fees for downloading its data from the Contractor during this Data Retrieval Period. After this Data Retrieval Period, the Contractor has no obligation to maintain or provide any of the City's data and will thereafter, unless legally prohibited, delete all of the City's data it has stored. No proprietary software shall be required to access the City's data that was transferred or shared with the Contractor.

ARTICLE VII - PERFORMANCE MEASURES

A. Factors. The City will measure the performance of the Contractor according to the following non-exhaustive factors: work performed in compliance with the terms of the Agreement; staff availability; staff training; staff professionalism; staff experience; customer service; communication and accessibility; prompt and effective correction of situations and conditions; timeliness and completeness of submission of requested documentation (such as records, receipts, invoices, insurance certificates, and computer-generated reports).

B. Failure to Perform. If the Contractor fails to perform according to the Agreement, the City will notify the Contractor. If there is a continued lack of performance after notification, the City may declare the Contractor in default and may pursue any appropriate remedies available under the Agreement and/or any applicable law. In the event of a notification of default, the City

will invoice the defaulting contractor for any increase in costs and other damages sustained by the City. Further, the City will seek full recovery from the defaulting contractor.

ARTICLE VIII - NON-DISCRIMINATION

A. Equal Employment Opportunity. In all hiring or employment made possible by, or resulting from this Agreement, the Contractor (1) will not be discriminate against any employee or applicant for employment because of race, color, religion, sex, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry, and (2) where applicable, will take affirmative action to ensure that the Contractor's employees are treated during employment without regard to their race, color, religion, sex, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry. This requirement shall apply to, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry.

B. Non-Discrimination. In the performance of this Agreement, the Contractor will not discriminate on the basis, whether in fact or perception, of a person's race, color, creed, religion, national origin, ancestry, age, sex, gender, sexual orientation, gender identity, domestic partner status, marital status, physical or mental disability, or AIDS- or HIV-status against (1) any employee of the City working with the Contractor in any of Contractor's operations within Orleans Parish or (2) any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by the Contractor. The Contractor agrees to comply with and abide by all applicable federal, state and local laws relating to non-discrimination, including, without limitation, Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990.

C. Incorporation into Subcontracts. The Contractor will incorporate the terms and conditions of this Article into all subcontracts, by reference or otherwise, and will require all subcontractors to comply with those provisions.

D. Termination for Breach. The City may terminate this Agreement for cause if the Contractor fails to comply with any obligation in this Article, which failure is a material breach of this Agreement.

ARTICLE IX - INDEPENDENT CONTRACTOR

A. Independent Contractor Status. The Contractor is an independent contractor and shall not be deemed an employee, servant, agent, partner, or joint venture of the City and will not hold itself or any of its employees, subcontractors or agents to be an employee, partner, or agent of the City.

B. Exclusion of Worker's Compensation Coverage. The City will not be liable to the Contractor, as an independent contractor as defined in La. R.S. 23:1021(7), for any benefits or coverage as provided by the Workmen's Compensation Law of the State of Louisiana. Under the provisions of La. R.S. 23:1034, any person employed by the Contractor will not be considered an employee of the City for the purpose of Worker's Compensation coverage.

C. Exclusion of Unemployment Compensation Coverage. The Contractor, as an independent contractor, is being hired by the City under this Agreement for hire and defined in La. R.S. 23:1472(12)(E) and neither the Contractor nor anyone employed by it will be considered an employee of the City for the purpose of unemployment compensation coverage, which coverage same being hereby expressly waived and excluded by the parties, because: (a) the Contractor has been and will be free from any control or direction by the City over the performance of the services covered by this contract; (b) the services to be performed by the Contractor are outside the normal course and scope of the City's usual business; and (c) the Contractor has been independently engaged in performing the services required under this Agreement prior to the date of this Agreement.

D. Waiver of Benefits. The Contractor, as an independent contractor, will not receive from the City any sick and annual leave benefits, medical insurance, life insurance, paid vacations, paid holidays, sick leave, pension, or Social Security for any services rendered to the City under this Agreement.

ARTICLE X – FORCE MAJEURE

A. Event. An event of Force Majeure will include any event or occurrence not reasonably foreseeable by the City at the execution of this Agreement, which will include, but not be limited to, abnormally severe and unusual weather conditions or other acts of God (including tropical weather events, tornados, hurricanes, and flooding); declarations of emergency; shortages of labor or materials (not caused by City); riots; terrorism; acts of public enemy; war; sabotage; cyber-attacks, threats, or incidents; epidemics or pandemics; court or governmental order; or any other cause whatsoever beyond the reasonable control of City, provided such event was not caused by the negligence or misconduct of City, by the failure of City to comply with applicable laws, or by the breach of this Agreement.

B. Notice. To seek the benefit of this Article, the City must provide notice in writing to the Contractor stating: (1) an event triggering this Article has occurred; (2) the anticipated effect of the Force Majeure event on performance; and (3) the expected duration of the delay, if the Agreement is being suspended

C. Effect.

1. Upon the occurrence of a Force Majeure event, for which the City has provided required notice, the City may, at its sole discretion:

- a. Suspend this Agreement for a duration to be set by the City, not to exceed 90 days. During such time of suspension, the Parties will not be liable or responsible for performance of their respective obligations under this Agreement, and there will be excluded from the computation of such period of time any delays directly due to the occurrence of the Force Majeure event. During any such period of suspension, the Contractor must take all commercially reasonable actions to mitigate against the effects of the Force Majeure event and to ensure the prompt resumption of performance when so instructed by the City; or
- b. Terminate this Agreement, either immediately or after one or more periods of suspension, effective on notice to Contractor and without any further compensation due.

2. Notwithstanding Section C(1) above, the obligations relating to making payments when due (for services or materials already provided) and those obligations specified to survive in the Agreement will be unaffected by any suspension or termination.

ARTICLE XI - NOTICE

A. **In General.** Except for any routine communication, any notice, demand, communication, or request required or permitted under this Agreement will be given in writing and delivered in person or by certified mail, return receipt requested as follows:

1. To the City:

Director of Economic Development
City of New Orleans
1340 Poydras Street, Suite 1800
New Orleans, LA 70112

&

City Attorney
City of New Orleans
1300 Perdido Street, Suite 5E03
New Orleans, LA 70112

2. To the Contractor:

Steven Bingler, Principal
Concordia, LLC
1610 Oretha Castle Haley Boulevard
Suite C
New Orleans, LA 70113

B. **Effectiveness.** Notices are effective when received, except any notice that is not received due to the intended recipient's refusal or avoidance of delivery is deemed received as of the date of the first attempted delivery.

C. **Notification of Change.** Each Party is responsible for notifying the other in writing that references this Agreement of any changes in its address(es) set forth above.

ARTICLE XII - ADDITIONAL PROVISIONS

A. **Amendment.** No amendment of or modification to this Agreement shall be valid unless and until executed in writing by the duly authorized representatives of both parties to this Agreement.

B. **Assignment.** This Agreement and any part of the Contractor's interest in it are not assignable or transferable without the City's prior written consent.

C. **Choice of Law.** This Agreement will be construed and enforced in accordance with the laws of the State of Louisiana without regard to its conflict of laws provisions.

D. **Compliance with City's Hiring Requirements – Ban the Box.**

1. The Contractor agrees to adhere to the City's hiring requirements contained in City Code Section 2-8(d) and 2-13(a)-(f). Prior to executing this Agreement, the Contractor must provide a sworn statement attesting to its compliance with the

City's hiring requirements or stating why deviation from the hiring requirement is necessary.

2. Failure to maintain compliance with the City's hiring requirements through the term of the Agreement, or to provide sufficient written reasons for deviation, is a material breach of this Agreement. Upon learning of any such breach, the City will provide the Contractor notice of noncompliance and allow the Contractor thirty (30) days to come into compliance. If, after providing notice and thirty (30) days to cure, the Contractor remains noncompliant, the City may move to suspend payments to the Contractor, void the Agreement, or take any such legal action permitted by law or this Agreement.
3. This section will not apply to any agreements excluded from the City's hiring requirements by City Code Sections 2-8(d) or (g). Should a court of competent jurisdiction find any part of this section to be unenforceable, the section should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law, or if reformation is not possible, the section should be fully severable and remaining provisions of the Agreement will remain in full force and effect.
4. The Contractor will incorporate the terms and conditions of this Article into all subcontracts, by reference or otherwise, and will require all sub-contractors to comply with those provisions.

E. Conflicting Employment. To ensure that the Contractor's efforts do not conflict with the City's interests, and in recognition of the Contractor's obligations to the City, the Contractor will decline any offer of other employment if its performance of this Agreement is likely to be adversely affected by the acceptance of the other employment. The Contractor will promptly notify the City in writing of its intention to accept the other employment and will disclose all possible effects of the other employment on the Contractor's performance of this Agreement. The City will make the final determination whether the Contractor may accept the other employment.

F. Construction of Agreement. Neither Party will be deemed to have drafted this Agreement. This Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties. No term of this Agreement shall be construed or resolved in favor of or against the City or the Contractor on the basis of which Party drafted the uncertain or ambiguous language. The headings and captions of this Agreement are provided for convenience only and are not intended to have effect in the construction or interpretation of this Agreement. Where appropriate, the singular includes the plural and neutral words and words of any gender shall include the neutral and other gender.

G. Convicted Felon Statement. The Contractor complies with City Code § 2-8(c) and no principal, member, or officer of the Contractor has, within the preceding 5 years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.

H. Cost Recovery. In accordance with Section 2-8.1 of the Municipal Code entitled "Cost recovery in contracts, cooperative endeavor agreements, and grants," to the maximum extent permitted by law, the Contractor shall reimburse the City or disgorge anything of value or economic benefit received from the City if the Contractor fails to meet its contractual obligations.

I. Entire Agreement. This Agreement, including all incorporated documents, constitutes the final and complete agreement and understanding between the parties. All prior and contemporaneous agreements and understandings, whether oral or written, are superseded by this Agreement and are without effect to vary or alter any terms or conditions of this Agreement.

J. Exhibits. The following exhibits will be and are incorporated into this Agreement: Contractor's proposal dated October 17, 2022; Parklet Design Guide Needed Services dated October 3, 2022.

K. Jurisdiction. The Contractor consents and yields to the jurisdiction of the State Civil Courts of the Parish of Orleans and formally waives any pleas or exceptions of jurisdiction on account of the residence of the Contractor.

L. Limitations of the City's Obligations. The City has no obligations not explicitly set forth in this Agreement or any incorporated documents or expressly imposed by law.

M. No Third-Party Beneficiaries. This Agreement is entered into for the exclusive benefit of the parties and the parties expressly disclaim any intent to benefit anyone not a party to this Agreement.

N. Non-Exclusivity. This Agreement is non-exclusive and the Contractor may provide services to other clients, subject to the City's approval of any potential conflicts with the performance of this Agreement and the City may engage the services of others for the provision of some or all of the work to be performed under this Agreement.

O. Non-Solicitation Statement. The Contractor has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement. The Contractor has not paid or agreed to pay any person, other than a bona fide employee working for it, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from this Agreement.

P. Non-Waiver. The failure of either Party to insist upon strict compliance with any provision of this Agreement, to enforce any right or to seek any remedy upon discovery of any default or breach of the other Party at such time as the initial discovery of the existence of such noncompliance, right, default or breach shall not affect or constitute a waiver of either Party's right to insist upon such compliance, exercise such right or seek such remedy with respect to that default or breach or any prior contemporaneous or subsequent default or breach.

Q. Order of Documents. In the event of any conflict between the provisions of this Agreement any incorporated documents, the terms and conditions of the documents will apply in this order: the Agreement; Contractor's proposal dated October 17, 2022; Parklet Design Guide Needed Services dated October 3, 2022.

R. Ownership of Records. All data collected and all products of work prepared, created or modified by the Contractor in the performance of this Agreement, including without limitation any and all notes, tables, graphs, reports, files, computer programs, source code, documents, records, disks, original drawings or other such material, regardless of form and whether finished or unfinished, but excluding the Contractor's personnel and administrative records and any tools, systems, and information used by the Contractor to perform the services under this Agreement, including computer software (object code and source code), know-how, methodologies, equipment, and processes and any related intellectual property (collectively, "**Work Product**") will be the exclusive property of City and the City will have all right, title and interest in any Work

Product, including without limitation the right to secure and maintain any copyright, trademark, or patent of Work Product in the City's name. The City can retrieve and download its data from the Contractor at any time and at no cost during the term of this Agreement. The Contractor shall not access the City's user accounts or the City's data, except: (1) as permitted under the express terms of this Agreement; (2) in response to service or technical issues; (3) or at the City's written request. No Work Product may be reproduced in any form without the City's express written consent. The City may use and distribute any Work Product for any purpose the City deems appropriate without the Contractor's consent and for no additional consideration to the Contractor.

S. Prohibition of Financial Interest in Agreement. No elected official or employee of the City shall have a financial interest, direct or indirect, in this Agreement. For purposes of this provision, a financial interest held by the spouse, child, or parent of any elected official or employee of the City shall be deemed to be a financial interest of such elected official or employee of the City. Any willful violation of this provision, with the expressed or implied knowledge of Contractor, shall render this Agreement voidable by the City and shall entitle the City to recover, in addition to any other rights and remedies available to the City, all monies paid by the City to Contractor pursuant to this Agreement without regard to Contractor's otherwise satisfactory performance of the Agreement.

T. Prohibition on Political Activity. None of the funds, materials, property, or services provided directly or indirectly under the terms of this Agreement shall be used in the performance of this Agreement for any partisan political activity, or to further the election or defeat of any candidate for public office.

U. Remedies Cumulative. No remedy set forth in the Agreement or otherwise conferred upon or reserved to any Party shall be considered exclusive of any other remedy available to a Party. Rather, each remedy shall be deemed distinct, separate and cumulative and each may be exercised from time to time as often as the occasion may arise or as may be deemed expedient.

V. Severability. Should a court of competent jurisdiction find any provision of this Agreement to be unenforceable as written, the unenforceable provision should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law or, if reformation is not possible, the unenforceable provision shall be fully severable and the remaining provisions of the Agreement remain in full force and effect and shall be construed and enforced as if the unenforceable provision was never a part the Agreement.

W. Survival of Certain Provisions. All representations and warranties and all obligations concerning record retention, inspections, audits, ownership, indemnification, payment, remedies, jurisdiction, choice of law, and shall survive the expiration, suspension, or termination of this Agreement and continue in full force and effect.

X. Terms Binding. The terms and conditions of this Agreement are binding on any heirs, successors, transferees, and assigns.

ARTICLE XIII – COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Agreement, but all of which, when taken together, shall constitute one and the same agreement.

ARTICLE XIV - ELECTRONIC SIGNATURE AND DELIVERY

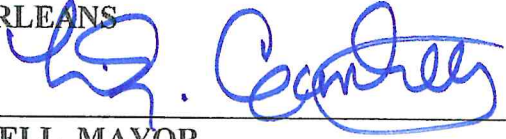
The Parties agree that a manually signed copy of this Agreement and any other document(s) attached to this Agreement delivered by email shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. No legally binding obligation shall be created with respect to a Party until such Party has delivered or caused to be delivered a manually signed copy of this Agreement.

[SIGNATURES CONTAINED ON NEXT PAGE]

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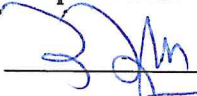
IN WITNESS WHEREOF, the City and the Contractor, through their duly authorized representatives, execute this Agreement.

CITY OF NEW ORLEANS

BY: 
LATOYA CANTRELL, MAYOR

Executed on this 16th of December, 2022

FORM AND LEGALITY APPROVED:
Law Department

By: 

Printed Name: Tracy Tyle

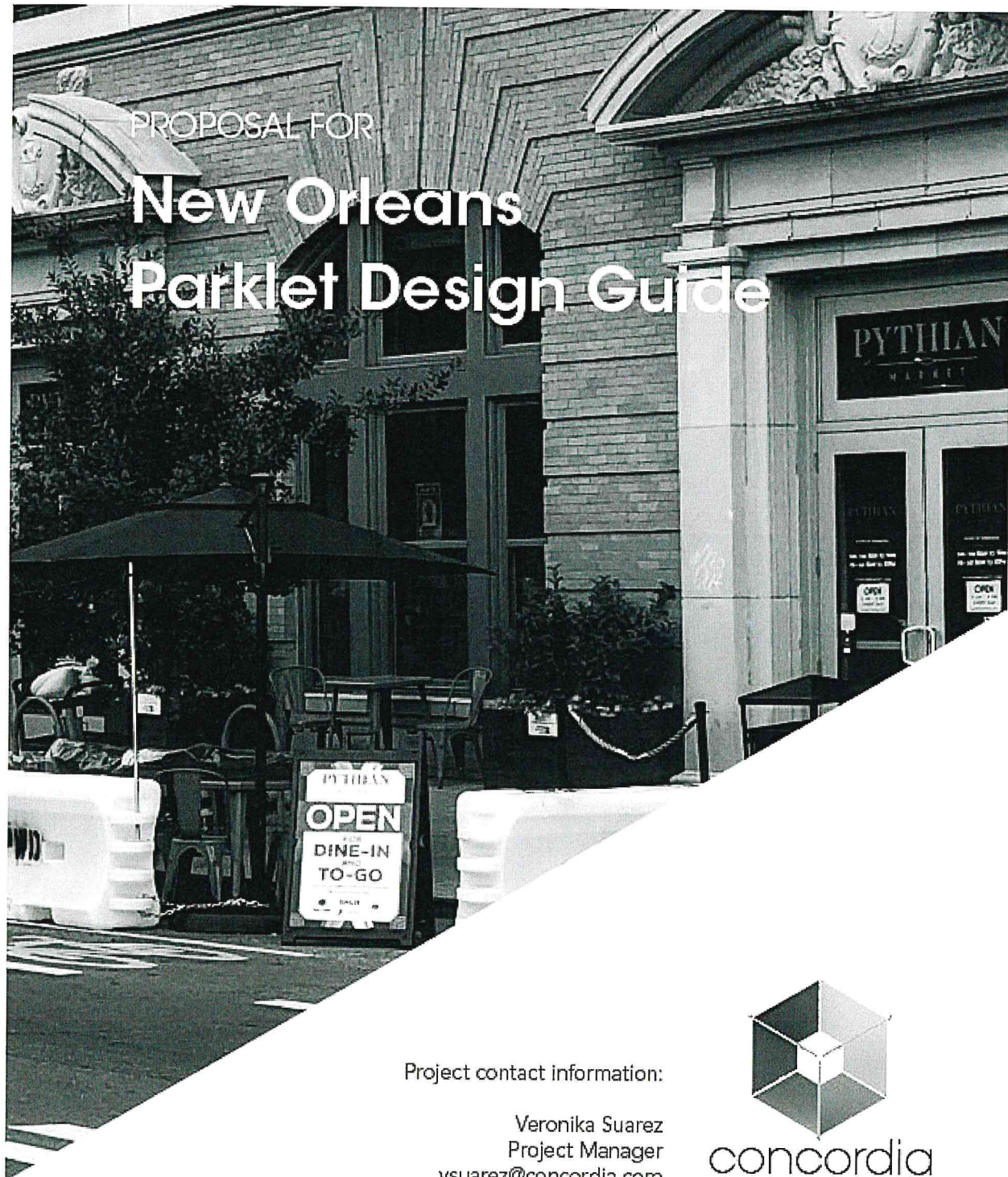
CONCORDIA, LLC

BY: 
STEVEN BINGLER, PRINCIPAL


FEDERAL TAX I.D.

[EXHIBITS A - B CONTAINED ON NEXT PAGES]

EXHIBIT A



Project contact information:

Veronika Suarez
Project Manager
vsuarez@concordia.com



COVER LETTER

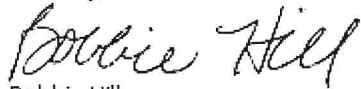
Concordia, LLC
1610 Oretha Castle Haley Blvd., Ste. C
New Orleans, LA 70113

Dear Leadership Team:

We are pleased to submit our team's qualifications for the New Orleans Parklet Design Guide. When our team completed the Parklet Design Pilot Program, we successfully and thoughtfully executed an accessible design document to aid the city in its efforts to foster a more inclusive, vibrant, healthy, and active cityscape. We would love to share our lessons not only from that project, but many of our other New Orleans-based engagement processes, to continue the trajectory toward an even more beautiful city.

We look forward to the opportunity to be part of such an important movement for the future of New Orleans.

Sincerely,



Bobbie Hill
Principal

ABOUT CONCORDIA

ESTABLISHED 1983

SPECIALTY ARCHITECTURAL DESIGN & COMMUNITY-BASED PLANNING

Concordia, LLC is a national award-winning architecture and planning firm based in New Orleans, Louisiana. "Concordia," is our one word name and mission statement; it means harmony and agreement among people and things. To achieve this goal, we work collaboratively and think holistically. Our range of work includes architecture, urban planning, community engagement, strategic planning, and graphic design.

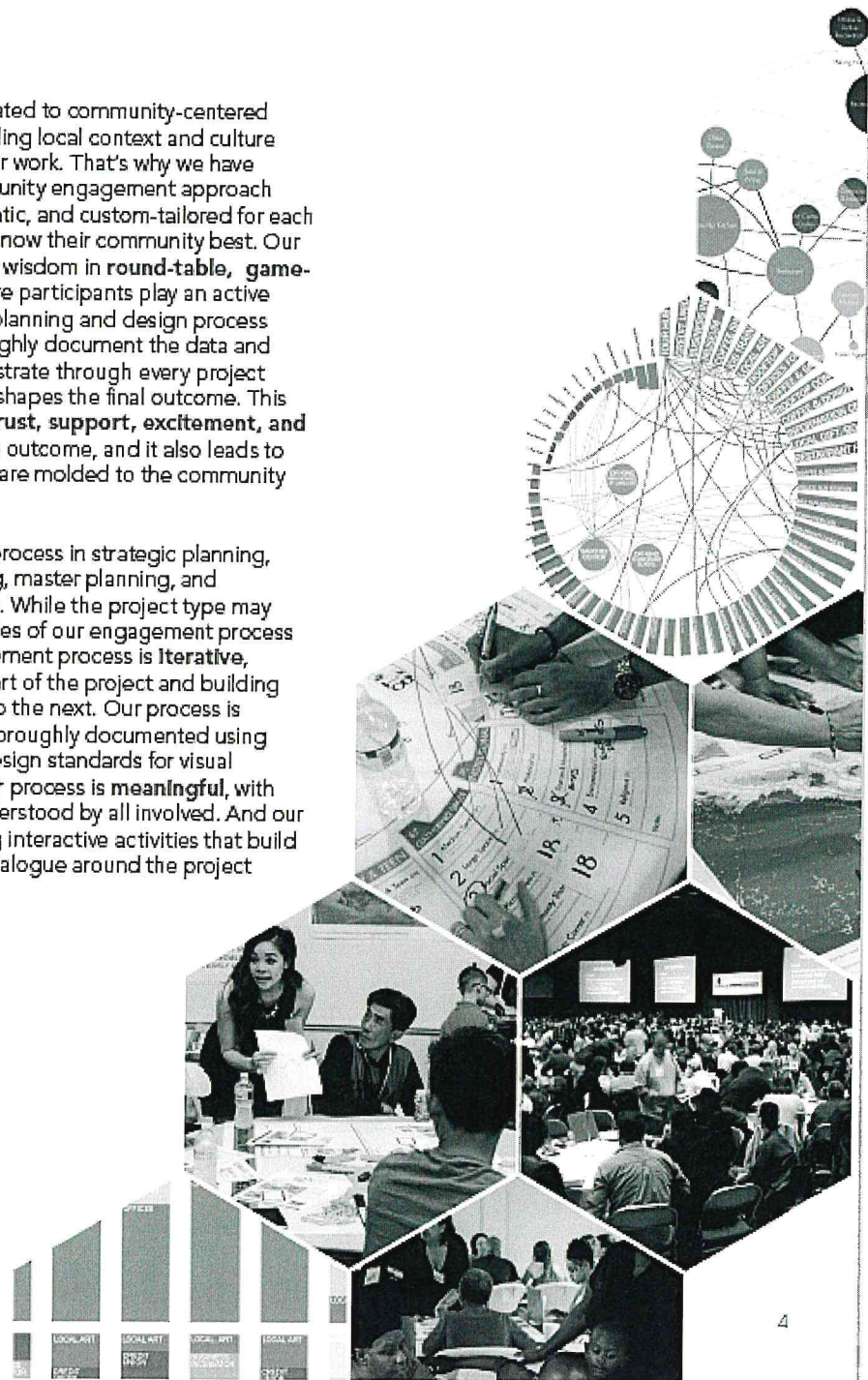
Community engagement is the hallmark of our success. We approach complex projects by bringing as many minds to the table as we can, to problem-solve in game-like. We often ask a diverse cross-section of the community to review project-related data, discuss design options, and make concrete recommendations. As a design firm that works around the country, we place high importance on understanding what makes each neighborhood and community unique. Community input enriches plans and designs, builds support and momentum for projects, and produces better results that are appreciated by experts and laymen alike.



AUTHENTIC ENGAGEMENT

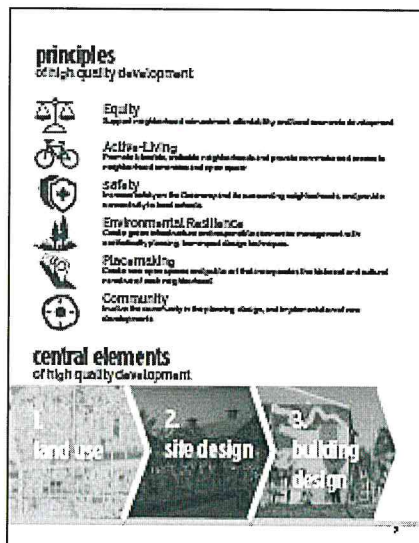
Concordia is dedicated to community-centered design. Understanding local context and culture is paramount for our work. That's why we have developed a community engagement approach that is deep, authentic, and custom-tailored for each project. Residents know their community best. Our process mines their wisdom in **round-table, game-like activities**, where participants play an active role in moving the planning and design process forward. We thoroughly document the data and results, and demonstrate through every project how resident input shapes the final outcome. This builds community **trust, support, excitement, and ownership** over the outcome, and it also leads to better designs that are molded to the community they serve.

We have used this process in strategic planning, adaptation planning, master planning, and architectural design. While the project type may change, the principles of our engagement process remain. Our engagement process is **iterative**, beginning at the start of the project and building from one meeting to the next. Our process is **transparent** and thoroughly documented using beautiful graphic design standards for visual communication. Our process is **meaningful**, with tangible results understood by all involved. And our process is **fun**, using interactive activities that build collaboration and dialogue around the project topic.

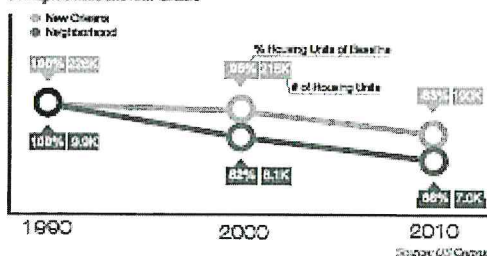


GRAPHIC DESIGN

Over the decades of implementing community engagement, Concordia's team has honed our graphic design work, tailored for the general public. We create clear, friendly, and engaging graphic documents, presentations, and other materials that integrate tight writing and compelling imagery. Our multidisciplinary team members hold degrees in english, visual arts, and media communication. We've used this expertise to support cities and non-profits communicate and promote their good work.



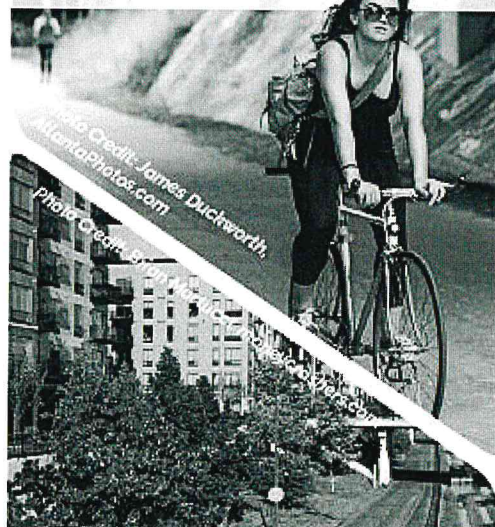
**Total Housing Unit Decline From 1990
in Neighborhood and New Orleans**



The 606 in Chicago successfully brings together art, history, design, and active living in public space for the city's many residents.



The North & Park development on Atlanta's Beltline provides ample lighting and active uses that create a safe and attractive feature for cyclists and pedestrians alike.



The Midtown Greenway in Minneapolis provides a vital public space for a culturally and economically diverse community.



PROJECT APPROACH & TEAM

We organize project timelines around our engagement process. While there will be continuous coordination, discussion, planning, research, and document production throughout this timeline, meetings become major points of delivering draft materials, including summaries of where the project stands at a given time.

Project Set Up

Initial design covering all technical scope requirements and suggestions for design details.

Internal Meeting 1

Engaging clients for feedback.

Revision Period 1

Revision of design guidelines per internal feedback.

External Meeting 2

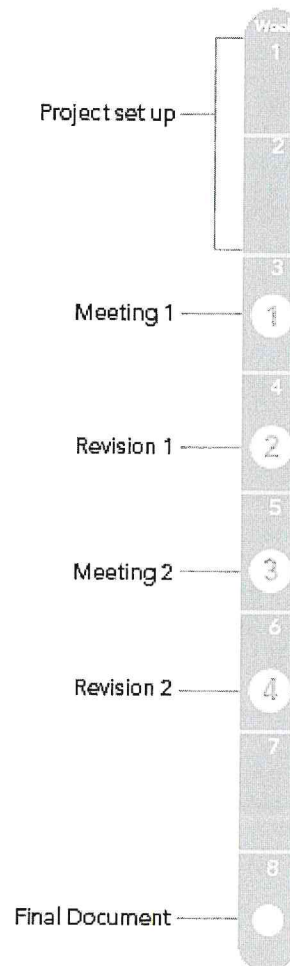
Presentation of design guidelines to the public.

Revision Period 2

Revision of design guidelines per external feedback.

Final Document

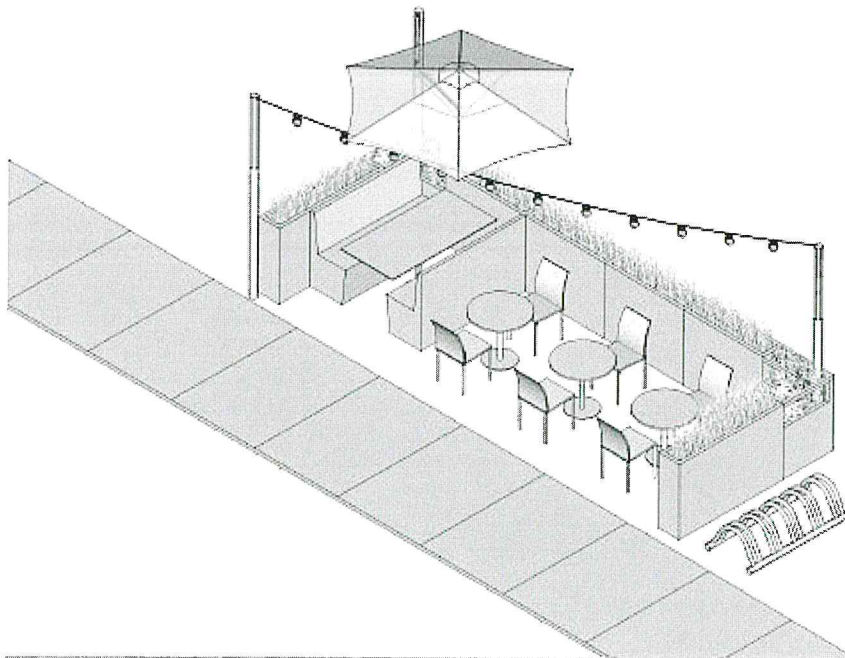
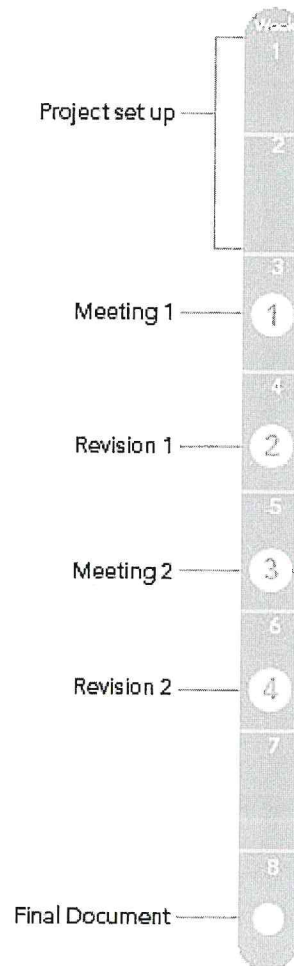
Compilation and completion of final design guidelines.



BUDGET

8 weeks: Design & Community Engagement

Project Set Up	3,000
Meeting 1 (prep through analysis)	2,000
Revision 1	2,000
Meeting 2 (prep through analysis)	2,000
Revision 2	3,000
Final Document	3,000
SUBTOTALS	\$ 15,000





THANK YOU



EXHIBIT B

Parklet Design Guide Needed Services

BACKGROUND

The City of New Orleans launched a Curbside Dining and Parklets Pilot in the fall of 2020. There were 40 pilot parklets permits approved, which can be viewed at nola.gov/parklets. A long-term Parklet program was approved by the New Orleans City Council in June 2022. The ordinance for the long-term Parklet program includes locational, operational, and structural requirements. However, the ordinance does not include information on design and aesthetics. The Parklet program will go into effect once design guidelines are finalized.

As part of the rule promulgation process for the Parklet program, the City desires to procure services to develop the visual and aesthetic aspects of the parklets.

According to the ordinance that was just passed: The Design Advisory Committee will adopt a standard template for the visual and aesthetic aspects of proposed elements of the Parklet. If a proposed Parklet uses the standard template for the visual and aesthetic aspects of proposed elements, no further design review will be required. If a proposed Parklet will not use the standard template for the visual and aesthetic aspects of proposed elements, the Parklet design shall be reviewed by the Design Advisory Committee, whose approval shall be required prior to permitting. All Design Advisory Committee meetings are public meetings, and all agendas will be publicly noticed according to applicable law.

Priorities for the design templates include:

- Adhere to structural guidelines as described in existing draft ordinance;
- Be aesthetically pleasing;
- Complement existing architectural character of our city; and
- Practical for implementation by small businesses, considering assembly, time, and cost.

DELIVERABLES

- The primary deliverable is a parklet design guide that is no more than 15 pages, in digital format with the ability for the City to update or adjust it in the future as needed. The users of the document will be both parklet permit applicants and the City's technical staff who will review the applications. The goal is to create easily replicable designs that the majority of parklet applicants will choose to use. The user guide should include:
 - Three to five standard design templates or site plans
 - At least one that is appropriate for most commercial corridors
 - At least one that is appropriate for most historic corridors
 - Detailed descriptions and visuals of the design templates, including standard dimensions, materials, and other relevant components
 - Options for lighting, shade, and shelter

PROCESS

- Review City-provided materials and related documents
 - Parklet Ordinance 33,738, which amended Sections 146-587 through 145-601 of the City Code
 - Parklet language in the Comprehensive Zoning Ordinance
 - City Planning Commission preliminary staff report
 - Concordia pilot program guide
 - Parklet Website
 - Evaluation by Syracuse University
 - Relevant guidelines by peer cities and organizations, such as Los Angeles' Kit of Parts for Parklets and NACTO's Urban Street Design Guide for Parklets
- Timeline – The actions below can overlap, shortening the overall timeline.
 - Kickoff meeting with design team and City team
 - 4-6 weeks for initial design
 - 2-4 weeks for feedback
 - 2 weeks for finalization
 - Goal: Finalize the guide and have it approved by Council by the end of 2022.
- Two rounds of feedback and changes
 - Internal – Staff from internal departments and committees, including the Office of Economic Development, the Office of Resilience and Sustainability, Safety & Permits, Department of Public Works, Historic Districts Landmarks Commission, and the Design Advisory Committee
 - External – Feedback at a public meeting, likely an Economic Development Committee meeting of the New Orleans City Council
- Cost
 - We will be accepting informal bids under \$15,000.

[END OF AGREEMENT]