

RESOLUTION NO. 25-20

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH NEXTSITE, LLC FOR RESEARCH, MARKETING AND CONSULTING SERVICES AND DECLARING AN EMERGENCY

WHEREAS, the Concord Township-City of Painesville Joint Economic Development District (the JEDD) recently entered into a Contract with NextSite, LLC, and Alabama limited liability company (NextSite) whereby NextSite would provide to the JEDD certain services to promote commercial development within the JEDD, a copy of which is marked as Exhibit "A", attached hereto and incorporated herein (the Agreement); and

WHEREAS, within the aforementioned Agreement are provisions allowing the City of Painesville (the City) to "opt into" said Agreement and receive NextSite services in order to promote commercial development with the City; and

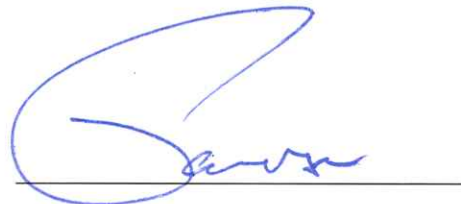
WHEREAS, the Painesville City Council believes that it is in the best interest of the City to opt into the Agreement for a period not to exceed three (3) years and a success fee schedule, as defined in the Agreement, per successful NextSite retail location event in the City.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Painesville, Lake County, Ohio, two-thirds of all members elected thereto concurring:

SECTION I. That the City Manager is hereby authorized to opt into the Agreement by entering into a separate agreement with NextSite, the same or similar as that set forth in Exhibit "A" for a term not to exceed three (3) years and for specific targeted areas in which a success fee per successful NextSite retail location event would apply.

SECTION IV. That this Resolution is declared to be an emergency measure, necessary for the immediate preservation of the public peace, health, safety and welfare, the emergency being and therefore, this Resolution shall become effective immediately upon its passage.

PASSED: September 8, 2020.



PAUL W. HACH, II  
Council President

ATTEST:



VALERIE VARGO, CMC  
Clerk of Council



AGREEMENT TO PROVIDE  
RESEARCH, MARKETING & CONSULTING SERVICES

THIS AGREEMENT is entered into by and between NextSite, LLC, an Alabama limited liability company (hereinafter referred to as "Consultant") and Concord-Painesville JEDD (hereinafter referred to as "Client") on this the 19<sup>th</sup> day of June, 2020, as follows:

WHEREAS, the Client desires to have performed those services identified on Exhibit B attached hereto (the "Project") for the Concord-Painesville JEDD which it believes will promote the efficient operation of the Client; and,

WHEREAS, Consultant has made a proposal to the Client to provide research, marketing and consulting services related to the Project to the Client as further forth below.

W-I-T-N-E-S-S-E-T-H:

NOW, THEREFORE, this agreement is made and entered into on the date first above written by and between the Client and Consultant, by which Consultant will provide research, marketing and professional consulting to the Client as hereinafter specified, through individuals possessing a high degree of professional skill where the personality of the individual will play a decisive role as follows:

1. SCOPE OF SERVICES

Consultant agrees, for the consideration stated herein, to provide research, marketing and professional consulting and related services to the Client for the Project as set out in Exhibit B. The engagement will focus on the site(s) identified by the Client and Consultant to pro-actively recruit commercial development and redevelopment in the Concord-Painesville JEDD area defined by Exhibit C. Upon notification, the City of Painesville and/or Concord Township may join this agreement and will be subject to the same success fee schedule outlined in Exhibit A.

2. TIME OF PERFORMANCE

Consultant shall provide services pursuant to this agreement and expeditiously and in good faith conduct its work in such a manner as to complete its commitments for Client within three (3)

4. CLIENT RESPONSIBILITIES

In addition to paying Consultant for services according to the preceding paragraph, the Client shall also provide for Consultant: access to relevant personnel, facilities, and materials including, but not necessarily limited to, those items specified in Consultant's proposal to Client, and such records, reports, and information as reasonably requested by Consultant and in Client's possession.

5. LEVEL OF COMPETENCE

Consultant represents and warrants to the Client that it and all of its employees that will be working on the project for the Client are qualified and competent to perform the services required.

Such personnel shall not be employees of or have any pre-existing contractual relationship with the Client. All of the services required hereunder will be performed by Consultant or under its supervision.

The Project Directors for the performance of services by Consultant pursuant to the terms and conditions of this agreement shall be Charles Branch, VP of Business Development. Consultant will also use additional employees to assist with the performance of this Agreement as Consultant deems appropriate in Consultant's discretion.

6. MATERIALS/CONFIDENTIALITY

The Client agrees to cooperate with and provide Consultant with access to facilities and information within its reasonable possession and control, requested by Consultant for its review and use in performing the services herein. Provided, however, all such documents, information, results, memoranda and all other written information ("information") shall be held confidential by Consultant and any of its sub-contractors and shall not, without the prior written consent of the Client, be used for any purpose other than the performance of this agreement nor be disclosed to any other entity not connected with performance of this agreement. Upon completion of services, Consultant shall return all such information to the Client. The Client shall retain ownership of all such information provided by Client.

7. INTELLECTUAL PROPERTY

The Client and Consultant, jointly and separately, acknowledge and agree that the

calendar years which shall be calculated as June 19<sup>th</sup>, 2020 to June 18<sup>th</sup>, 2023 with success fees due on any project opened during the three year engagement or within 24 months of June 18<sup>th</sup>, 2023 or any extension thereof.

Consultant shall commence, carry on and complete the Project with all practicable dispatch, in a sound, economical and efficient manner, in accordance with the provisions hereof and applicable laws. In accomplishing the Project, Consultant shall take such steps as are appropriate to ensure that the work involved is properly coordinated with related work and policies being carried on by the Client.

3. COMPENSATION

The Client agrees to pay Consultant for the services as set forth herein, the sum of \$15,000 for the first year plus the success fees outlined in Exhibit A below. Payment is to be made upon execution of this agreement and receipt of invoices from NextSite, LLC. The compensation for years two and three shall be \$15,000 per year plus success fees payable as outlined in Exhibit A below. Payment is to be made upon receipt of the invoices from NextSite, LLC. The client shall have the right to renew the contract for additional years, starting in year four, at the rate of \$16,500 per year and thereafter under the same payment terms, as mutually agreed between Client and Consultant. Client shall pay Consultant in U.S. dollars within thirty (30) days of receipt of invoices. Additional charges for interest shall become due and payable at a rate of one and one-half percent (1-1/2%) per month (or the maximum percentage allowed by law, whichever is lower) on past-due invoices or unpaid balances. If Client fails to pay invoiced amounts within sixty (60) days after delivery of invoice, Consultant, at its sole discretion, may initiate collections proceedings, including payment for costs associated with such collection efforts.

Client acknowledges that affiliates and strategic partners of Consultant act in the capacity of a real estate advisory service business and may earn fees for services including development, leasing and real estate advisory fees in the performance of such affiliates services as part of the scope of the Project. The fees earned by such affiliates and strategic partners are not the responsibility of the Concord-Painesville JEDD.

intellectual property of both parties shall remain owned by the respective party. Except for Consultant's periodic and final reports generated for performance of this agreement to or for the Client, reports, memorandums, electronic mail, facsimile transmissions and other written and prepared documents shall be owned by the party who authored, generated or who originally possessed the same and nothing in this agreement shall contravene said rights.

8. INFORMATION AND REPORTS

Consultant shall furnish periodic reports concerning the status of the project to the Client's representative pursuant to a schedule agreed upon by Consultant and Client. Consultant shall furnish the Client, upon request, electronic copies of all documents and other material prepared or developed as part of the project. Such requests shall be reasonable and within normal business practices for such work.

9. COPYRIGHT INFORMATION

The Client acknowledges that all intellectual property developed during the course of this agreement by Consultant shall belong exclusively to Consultant. However, the Client may utilize any of the foregoing for and on behalf of its internal operations, to support existing business and entrepreneurial growth and all commercial development efforts in its communities and county, but will take steps reasonably necessary with its employees with respect to the use, copying, protection and security of the foregoing.

10. APPLICABLE LAWS

Consultant shall register and comply with all State or Federal laws and/or regulations as they may relate to the services or activities of the Consultant to the Client.

11. INSURANCE

Consultant shall carry all appropriate and necessary insurance to be in compliance with state and national laws regarding the insurance coverage of its employees.

12. TERMINATION

Should Consultant violate any of the terms of this Contract or otherwise fail to fulfill its obligations set forth under Exhibit B of this Contract, Client shall immediately provide to Consultant written notice of any alleged deficiencies in performance and Consultant shall have thirty (30) days from the date notice is received to cure any alleged deficiencies in performance.



In no way shall more than two (2) opportunities to cure be afforded to Consultant within a twelve-month period. Should Consultant fail to remedy the alleged defect in performance after being given the opportunity to do so, Client shall have the right to terminate this Contract. All fees paid for any term shall be deemed fully earned when paid and are not subject to refund following any termination hereunder.

13. **CONFLICT OF INTEREST**

The Consultant represents and warrants to the Client, to the best of its knowledge, that neither it nor its Project Directors are aware of any conflict of interest which exists by means of its provision of services to the Client pursuant to the terms and conditions of this agreement.

14. **NOTICES/PARTIES REPRESENTATIVES**

The primary representative of the Client for this agreement shall be Rita McMahon, Administrator, Concord-Painesville JEDD.

All notices, bills, and invoices required by this agreement shall be sufficient if sent by the parties hereto in the United States Mail, postage prepaid thereon to the addresses noted below:

Client: Rita McMahon, Administrator  
Concord-Painesville JEDD  
7229 Ravenna Rd  
Painesville, OH 44077  
(440) 354-7500  
[administrator@cpjedd.com](mailto:administrator@cpjedd.com)

Consultant: NextSite LLC  
880 Montclair Road  
Suite 625  
Birmingham, AL 35213  
Attention: Chuck Branch

15. **REPRESENTATIVE CAPACITY**

While Consultant's role will be that of consultant to the Client, Consultant shall be and remain an independent contractor and not act in the role of an agent or legal representative on behalf of the Client. Consultant shall not have the authority to bind or obligate the Client, its officers, agents or employees. As part of our work on behalf of your community, NextSite connects with dozens of retailers, restaurants, developers, brokers and tenant reps. Our focus is to position your community with the decision makers that drive the development process for

of its knowledge, there is no litigation, claim or administrative action threatened or pending or other proceedings to its knowledge against it which would have an adverse impact upon this transaction or upon either's ability to conclude the transaction or perform pursuant to the terms and conditions of this agreement.

G. That each party has obtained any and all required permits, approvals and/or authorizations from third parties to enable it to fully perform pursuant to this agreement.

**Third Party Beneficiaries:** It is the intent of the parties hereto that there shall be no third-party beneficiaries to this agreement, except that, should the City of Painesville and Concord Township opt into this agreement, the Concord-Painesville JEDD may share any research, market analysis, reports, etc. generated by the Consultant as part of the engagement, with agencies and authorities working for or on behalf of the City of Painesville and Concord Township.

**Final Integration:** This agreement, together with any exhibits or amendments hereto, constitutes the entire agreement of the parties, as a complete and final integration thereof with respect to its subject matter. In the event of a direct conflict between the provisions hereof and any prior agreement or amendment, the latter shall supersede the former. All written or oral understandings and agreements heretofore had between and among the parties are merged into this agreement, which alone fully and completely expresses their understandings. No representation, warranty, or covenant made by any party which is not contained in this agreement or expressly referred to herein have been relied on by any party in entering into this agreement.

**Force Majeure:** Neither party to this agreement shall hold the other party responsible for damages or delay in performance caused by acts of God, strikes, lockouts or other circumstances beyond the reasonable control of the other or the other party's employees, agents or contractors.

**Amendment in Writing:** This agreement may not be amended, modified, altered, changed, terminated, or waived in any respect whatsoever, except by a further agreement in writing, properly executed by all of the parties.

**Binding Effect:** This Agreement shall bind the parties and their respective personal representatives, successors, and assigns. If any provision in this agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining

concepts likely to consider markets like Concord-Painesville JEDD area. Client acknowledges that one of the key benefits of this engagement is local support of the community's existing businesses and entrepreneurial opportunities both of which fall outside the scope of NextSite's services beyond the delivery of the research and market analysis.

16. **MISCELLANEOUS**

Each party to this agreement represents and warrants to the other as follows:

- A. That it is an individual of the age of majority or otherwise a legal entity duly organized and in good standing pursuant to all applicable laws, rules and regulations.
- B. That each has full power and capacity to enter into this agreement, to perform and to conclude the same including the capacity, to the extent applicable, to grant, convey and/or transfer, areas, assets, facilities, properties, (both real and personal), permits, consents and authorizations and/or the full power and right to acquire and accept the same.
- C. That to the extent required, each party has obtained the necessary approval of its governing body, board, council or other appropriate governing body and a resolution or other binding act has been duly and properly enacted by such governing body or board authorizing this agreement and said approval has been reduced to writing and certified or attested by the appropriate official of the party.
- D. That each party has duly authorized and empowered a representative execute this agreement on their respective behalf and the execution of this agreement by such representative fully and completely binds the party to the terms and conditions hereof.
- E. That absent fraud, the execution of this agreement by a representative of the party shall constitute a certification that all such authorizations for execution exist and have been performed and the other party shall be entitled to rely upon the same. To the extent a party is a partnership, limited liability company or joint venture, the execution of this agreement by any member thereof shall bind the party and to the extent that the execution of agreement is limited to a manager, managing partner or specific member then the person so executing this agreement is duly authorized to act in such capacity for the party.
- F. That each party represents and warrants to the other that, to the best

provisions shall not in any way be affected or impaired thereby.

**Captions:** The captions of this agreement are for convenience and reference only, are not a part of this agreement, and in no way define, describe, extend, or limit the scope or intent of this agreement.

**Construction:** This agreement shall be construed in its entirety according to its plain meaning and shall not be construed against the party who provided or drafted it.

**Mandatory and Permissive:** "Shall", "will", and "agrees" are mandatory; "may" is permissive.

**Governing Law:** The laws of the State of Ohio, but without regard to conflict of laws principles, shall govern the validity of this agreement, the construction of its terms, the interpretation of the rights, the duties of the parties, the enforcement of its terms, and all other matters relating to this agreement.

**Prohibition on Assignment and Delegation:** No party to this agreement may assign or delegate its interests or obligations hereunder without the written consent of all other parties hereto obtained in advance of any such assignment or delegation. No such assignment or delegation shall in any manner whatsoever relieve any party from its obligations and duties hereunder and such assigning or delegating party shall in all respects remain liable hereunder irrespective of such assignment or delegation.

**Waiver:** Non-enforcement of any provision of this agreement by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remaining terms and conditions of the agreement.

**Agreement Date/Counterparts:** The date of this agreement is intended as and for a date for the convenient identification of this agreement and is not intended to indicate that this agreement was necessarily executed and delivered on said date. This instrument may be executed in any number of counterparts, each of which so executed shall be deemed an original, but all such counterparts shall together constitute but one and the same instrument.

CLIENT:  
Concord-Painesville JEDD  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

CONSULTANT:  
NextSite, LLC  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Exhibit A

In consideration of NextSite's agreement to significantly reduce its standard engagement fee (from \$35,000 per year to \$15,000 per year), the Client will pay NextSite LLC recruitment success fees per the schedule below on all commercial development recruited and completed during the period beginning on the date the Client and NextSite LLC execute the "Agreement to Provide Research, Marketing & Recruitment Services" (the "Agreement") and ending at the conclusion of 24 months following the termination of the Agreement (initial Agreement term is 3 years) or any extension of the agreem. A development will be considered complete for the purposes of this agreement when the retailer/restaurant open for business. For multi-tenant developments, the fee is due when the first retailer opens for business. Out parcel developments are considered separate success fees.

- Restaurant(s) – QSR, FSR or Fast Casual - \$4,500 per location
- Single or Multi-Tenant development of less than 10,000 square feet - \$7,500 per development
- Multi-tenant development or single tenant retailer(s) between 10,001 and 50,000 square feet - \$15,000 per development
- Multi-tenant development or single tenant retailer(s) between 50,001 and 100,000 square feet - \$20,000 per development
- Development or single tenant retail of 100,001+ square feet - \$30,000 per location
- Multi-family, hospitality, healthcare, entertainment or senior housing development - \$25,000 per location if the developer is introduced to the market by NextSite