

RESOLUTION NO. 55-21

A RESOLUTION APPROVING AN AGREEMENT WITH NEXTSITE, LLC

WHEREAS, the Village of Chatham ("Village") is an Illinois Municipal Corporation existing and operating under the Illinois Municipal Code and the laws of the State of Illinois; and

WHEREAS, NextSite, LLC is a consultant that provides marketing and consulting services to municipalities pertaining to commercial developments,

WHEREAS, the Village and NextSite have reached an agreement for NextSite to provide services to the Village upon the terms and conditions of the Agreement attached hereto as **Exhibit**

A; and,

WHEREAS, the Village President and Board of Trustees believe it to be in the best interest of the Village to enter into the Agreement as attached hereto.

NOW THEREFORE, BE IT RESOLVED by the President and Board of Trustees of the Village of Chatham, Sangamon County, Illinois, as follows:

Section 1. Recitals. The foregoing recitals shall be and are hereby incorporated into and made a part of this Resolution as if fully set forth in this Section 1.

Section 2. Approval of Agreement. The Village Board hereby approves the Agreement with NextSite, LLC attached hereto as **Exhibit A** and authorizes the Village Manager and/or Village President to execute any documents necessary to effectuate the renewal.

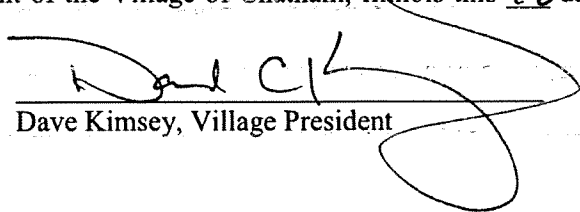
Section 3. Effective Date. This Resolution shall be in full force and effect from and after its passage and approval.

SO RESOLVED this 28 day of December, 2021.

	YES	NO	ABSENT	PRESENT
KRISTEN CHIARO	✓			
ANDREW DETMERS	✓			

MEREDITH FERGUSON	✓			
BRETT GERGER		✓		
MATT MAU	✓			
DAVE KIMSEY				
TOTAL	4	1	0	-

APPROVED by the President of the Village of Chatham, Illinois this 28 day of December, 2021.


 Dave Kimsey, Village President

Attest:

 Dan Holden, Village Clerk

EXHIBIT A
NextSite Agreement



**AGREEMENT TO PROVIDE
RESEARCH, MARKETING & CONSULTING SERVICES**

THIS AGREEMENT TO PROVIDE RESEARCH, MARKETING & CONSULTING SERVICES (“Agreement”) is entered into by and between NextSite, LLC, an Alabama limited liability company (hereinafter referred to as “Consultant”) and the Village of Chatham, Illinois (hereinafter referred to as “Client”) on this the 1st day of **December 2021**, as follows:

WHEREAS, Client has opted into the previous agreement with the Springfield-Sangamon Growth Alliance and Consultant and desires to have performed those services identified on Exhibit B attached hereto (the “Project”) relating to the agreement with the Village of Chatham, Illinois, which it believe will promote the efficient operation of Client; and,

WHEREAS, Consultant has made a proposal to 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 Client and Consultant, by which Consultant will provide research, marketing and professional consulting to 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 Client for the Project as set out in Exhibit B. The engagement will focus on the pro-active recruitment of commercial development and redevelopment for those site(s) identified by Client and Consultant. 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 Client.

2. TERM; TIME OF PERFORMANCE

The term of this Agreement shall be for **three (3) years** which shall be calculated as commencing on **December 1, 2021** and ending **November 30, 2024**. Success fees shall be due on commercial development projects as a result of Consultant's services during the three (3) year engagement and for a period of twenty-four (24) months following expiration of this agreement or any extension thereof. Success fees are paid when each project opens for business. Client agrees fees for any project, that has been identified as a recruited entity in accordance with the provisions of Exhibit A, started but not completed during the 24-month period will be paid when the project is completed.

3. COMPENSATION

Client agrees to pay Consultant for the services as set forth herein, the sum of **\$5,000** per year plus the success fees outlined in Exhibit A only for those new commercial developments located in the Village of Chatham, that have been identified as a recruited entity in accordance with the provisions of Exhibit A. Payment is to be made upon execution of Agreement and receipt of invoices from NextSite, LLC. Client shall pay Consultant in U.S. dollars within thirty (30) days of receipt of invoices. Client shall have the right to renew the contract for additional years, starting in year four, at the rate of \$5,000 per year and thereafter under the same payment terms.

4. CLIENT RESPONSIBILITIES

Client shall provide Consultant with access to relevant personnel, facilities, and materials including, but not necessarily limited to, those items specified in Consultant's proposal to Client, and such other records, reports, and information as reasonably requested by Consultant and in Client's possession within the scope of Consultant's services.

5. LEVEL OF COMPETENCE

Consultant represents and warrants that all persons working on the Project for Client shall be qualified and competent to perform the services required. Such personnel shall not be employees of or have any pre-existing contractual relationship with Client. All 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 will be Chuck Branch, CEO of NextSite. 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

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 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 Client. Client shall retain ownership of all such information provided by Client.

7. INTELLECTUAL PROPERTY

Client and Consultant, jointly and separately, acknowledge and agree that the 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 Client’s representative pursuant to a schedule agreed upon by Consultant and Client, but no later than quarterly. Consultant shall furnish 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. Consultant agrees that all such reports and analysis prepared for and provided to Client (including, but not limited to demographic, statistical, retail trade area, market analysis, customer journey, retail leakage/gap, and peer analysis) is freely licensed to Client and may be published, reproduced, or used in any manner deemed appropriate by Client. Consultant further agrees to provide site specific analysis for interested, existing entities within the limits of the Village of Chatham, as they may be reasonably requested by the Village of Chatham or the Chatham Area Chamber of Commerce.

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 Illinois or Federal laws and/or regulations they may relate to the services or activities of the Consultant to 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. CONFLICT OF INTEREST

Consultant represents and warrants to 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 Client pursuant to the terms and conditions of this agreement.

13. NOTICES/PARTIES REPRESENTATIVES

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: Village Manager
Village of Chatham, Illinois
116 E. Mulberry Street
Chatham, IL 62629
(217) 697-6764
dkimsey@chathamil.gov

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

14. REPRESENTATIVE CAPACITY

While Consultant's role will be that of consultant to Client, Consultant shall be and remain an independent contractor and not act in the role of an agent or legal representative on behalf of Client. Consultant shall not have the authority to bind or obligate Client, its officers, agents or employees. As part of our work on behalf of Client, 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 concepts likely to consider markets like Chatham, Illinois. 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.

15. DISCLOSURE

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 Village of Chatham, Illinois.

16. DEFAULT

Except as otherwise provided herein, the failure on the part of either party to comply with any material term, representation, warranty, covenant, agreement, or condition of this agreement, which continues uncured for thirty (30) days after written notice thereof (unless a different time period is specified in the separate document for curing non-performance of a specific task or event) shall constitute an "Event of Default"; provided that an Event of Default will not be deemed to have occurred if such failure is a matter that cannot reasonably be cured within thirty (30) days due to force majeure, and the failure is cured by the end of a period that includes the days lost due to force majeure. No default by the parties shall be actionable or be of other consequence unless

and until it shall constitute an Event of Default. In the Event of Default by Client in the performance of any of its obligations under this agreement, Consultant's sole remedy shall be specific performance of the agreement, including, if applicable, the payment of any fees hereunder. Except as otherwise provided, in the Event of Default by Consultant in the performance of any of its obligations under this agreement, the Village's remedies shall be specific performance (including payment of money, whether or not denoted as damages), termination of this agreement, damages, and such other rights or remedies as it may be entitled to under this agreement or law. Client shall not be liable to Consultant for consequential damages or lost profits.

17. INDEMNIFICATION

Consultant shall indemnify, defend, and hold harmless Client and its officers, officials, employees, volunteers and agents from and against all claims, damages, losses and expenses, including but not limited to legal fees (attorney's and paralegals' fees and court costs), arising from or in any way connected with any act or omission, be it negligent or not, of Consultant or Consultant Parties. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described herein. Consultant shall similarly protect, indemnify and hold and save harmless Client, its officers, officials, employees, volunteers and agents against and from any and all claims, costs, causes, actions and expenses including but not limited to legal fees, incurred by reason of Consultant's breach of any of its obligations under, or Consultant's default of, any provision of this agreement. The obligations of Consultant hereunder shall survive the expiration or termination of this agreement.

18. REPRESENTATIONS AND WARRANTIES

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

- A. 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. 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. 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. Each party has duly authorized and empowered a representative to 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. Absent fraud, the execution of 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 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. Each party represents and warrants to the other that, to the best 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, and

G. 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.

19. SUNSHINE LAWS

Consultant recognizes that the sunshine laws of the State of Illinois may require Client to release certain documents in its possession upon public request. Client shall notify Consultant of any such request, beyond those reports previously published, shared, or reproduced by Client, by facsimile or email. Consultant shall have forty-eight (48) hours after said notice is sent to advise the Client as to Consultant's opinion as to legal reasoning that a public request, or portion of a public request should be denied. In the event the documents are produced to Client by Consultant pursuant to a FOIA request, any opinion to agree or deny the request shall accompany the production of records. Client shall be under no obligation to comply with Consultant's instruction for any documents not designated "confidential" and shall not be liable to Consultant for any

production of documents that are not marked "Confidential." In the event Client is requested by Consultant to deny a FOIA request, and Client complies with Consultant's request, Consultant shall indemnify, defend, and hold harmless the Client to and from any claim arising from that decision, including reasonable attorney's fees and costs that may be awarded to the requesting party by the court.

Notwithstanding anything herein to the contrary, Consultant acknowledges that it may be deemed to have been contracted to perform a governmental function and that any documents related thereto in its possession (and not in the possession of Client) may be considered a public record pursuant to 5 ILCS 140/7(2), provided the same directly relate to the governmental function being performed and are not otherwise exempt from disclosure. Consultant agrees to maintain any and all records received/generated as a result of its performance under this Agreement and to deliver the same to Client not later than forty-eight (48) hours after receipt of a request from Client for the same pursuant to a FOIA request. To the extent Consultant believes that the record(s) do not relate to the performance of a governmental function or is exempt from disclosure under FOIA, it shall respond to the Client in writing in the time-period referenced above with a description of the record(s) and the factual basis for withholding the same. In the event such records are turned over Client but Consultant believes they are otherwise exempt from disclosure, it shall mark such documents confidential and instruct Client to deny the request and cite the factual and legal basis therefor.

Consultant agrees that it shall nonetheless comply with any request of Client to produce any documents withheld from Client for an in camera inspection in accordance with any order, directive, or request of a court of competent jurisdiction or administrative body/agency responsible for review and, to the extent such inspection results in an order requiring the production of document qualifying as a public record not otherwise exempt from disclosure, abide by such decision or order subject to Consultant's right to appeal. In the event Consultant does not produce and deliver such record(s) for production in accordance with a FOIA request, whether or not such record(s) are later determined to be public records or exempt from disclosure, as the case may be, Consultant shall indemnify, defend and hold harmless Client related to any claims therefor, including reasonable attorney's fees and costs that may be awarded to the requesting party by a court of competent jurisdiction.

20. MISCELLANEOUS

A. It is the intent of the parties hereto that there shall be no third-party beneficiaries to this agreement, except that, the Village of Chatham, Illinois (including its agents, representatives, and elected officials), the Chatham Area Chamber of Commerce (and its membership), 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 Village of Chatham, Illinois and those entities currently operating within the Village of Chatham.

B. 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.

C. 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.

D. 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.

E. This agreement shall bind the parties and their respective personal representatives, successors, and assigns.

F. If any provision in this agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

G. 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.

H. 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.

I. The laws of the State of Illinois, but without regard to conflict of laws principles, shall govern the validity of 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.

J. No party to 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.

K. Non-enforcement of any provision of 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 Agreement.

L. The date of Agreement is intended as and for a date for the convenient identification of Agreement and is not intended to indicate that Agreement was necessarily executed and delivered on said date.

M. Agreement 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.

N. No covenant or agreement contained in this agreement shall be deemed to be the agreement of any official, officer, partner, member, director, agent, employee, planning consultant or attorney of Consultant or Client, in his or her individual capacity, and no official, officer, partner, member, manager, director, agent, employee or attorney of Consultant or Client shall be liable personally under this agreement or be subject to any personal liability or accountability by reason of or in connection with or arising out of the execution, delivery, and performance of this agreement, or any failure in connection therewith.

CLIENT:

Village of Chatham, Illinois

By: Patrick M. McCarty
Title: Village Manager
Date: 12-28-2021

Consultant:

NextSite, LLC

By: [Signature]
Title: CEO
Date: 12/28/2021

Exhibit A

In consideration of NextSite's agreement to significantly reduce its standard engagement fee, Client will pay NextSite LLC success fees per the schedule below on all Verified Commercial Development recruited and completed as a result of NextSite's services during the period beginning on the date Client and NextSite LLC execute the Agreement and ending at the conclusion of 24 months following the expiration of the Agreement (initial Agreement term is 3 years) or any extension of the Agreement. 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. Outparcel developments are considered separate success fees. Client agrees fees for any Verified Commercial Development project started but not completed during the 24-month period will be paid when the project is completed. For the purposes of Agreement and this Exhibit A, a "Verified Commercial Development" is a commercial development that has been recruited to the corporate limits of the Village of Chatham, Illinois by NextSite, LLC, and such recruitment has been verified by NextSite LLC's contemporary demonstration of recruiting progress throughout the site selection process via Basecamp updates. For the purposes of clarity, a "Verified Commercial Development" does not include any commercial development placed within the Village of Chatham by a developer or site selector that is otherwise associated or in contact with NextSite, LLC, but which was not actively recruited by Next Site LLC and no demonstration of recruiting progress throughout the site selection process was documented via Basecamp updates.

Success Fee Schedule

- **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, emerging market/senior housing development - \$25,000 per location if the developer is introduced to the market by NextSite or the project developer uses NextSite services**