

File ID: TMP-5297

Cover Memo

Meeting Type: City Council Regular Meeting Meeting Date: 3/13/2025

Department: Administration

Subject:

Type of Action: Approval/Action

Resolution authorizing the Mayor to execute Modification No. 3 to the Lease Agreement between the City of Huntsville and NSH Nextco, LLC.

Resolution No.

Finance Information:

Account Number: N/A

City Cost Amount: N/A

Total Cost: N/A

Special Circumstances:

Grant Funded: N/A

Grant Title - CFDA or granting Agency: N/A

Resolution #: N/A

Location: (list below)

Address: District: District 1 District 2 District 3 District 4 District 5 D

Additional Comments:

RESOLUTION NO. 25-____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and is hereby authorized to execute Modification No. 3 to the Lease Agreement Between the City of Huntsville and NSH Nextco, LLC, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as a "Modification No. 3 to the Lease Agreement between the City of Huntsville, Alabama, and NSH Nextco, LLC" consisting of <u>six (6)</u> pages, and the date of <u>March 13, 2025</u>, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk of the City of Huntsville, Alabama.

ADOPTED this the <u>13th</u> day of <u>March</u>, 2025.

President of the City Council of the City of Huntsville, Alabama

APPROVED this the <u>13th</u> day of <u>March</u>, 2025.

Mayor of the City of Huntsville, Alabama

STATE OF ALABAMA

COUNTY OF MADISON

Modification No. 3 to the Lease Agreement Between the City of Huntsville, Alabama and NSH Nextco, LLC as adopted and approved Pursuant to Resolution No. 22-501 of the City Council of the City of Huntsville and modified pursuant to Resolution No. 23-130 and Resolution No. 23-446

MODIFICATION NO. 3 TO LEASE AGREEMENT

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This Modification No. 3 to the Lease Agreement (this "Modification No. 3") is made effective as of the <u>13th</u> day of March, 2025 by and between the CITY OF HUNTSVILLE, (the "City" or "Lessor") a municipal corporation within the State of Alabama and NSH Nextco, LLC ("NSH" or "Lessee"), a Tennessee limited liability company.

WITNESSETH

WHEREAS, the City and NSH entered into that certain fixed Lease Agreement on July 14, 2022 (the "Lease"), which set forth the respective rights and responsibilities of the parties for the lease to NSH of Joe Davis Stadium; and

WHEREAS, the Lease was modified by the parties pursuant to Modification No. 1 on February 23, 2023 and Modification No. 2 on May 25, 2023; and

WHEREAS, the parties mutually desire to amend the Lease to eliminate direct, rental cost for use of the stadium by the Huntsville City Schools; and

WHEREAS, the parties mutually desire to amend the Lease to provide expanded use of the stadium by the Huntsville Sports Commission in order to generate tourism business in the City of Huntsville.

NOW THEREFORE, in consideration of the foregoing facts and circumstances, the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by each of the parties, the parties do hereby agree to the following:

1. Section 1.01(g) of the Lease is deleted in its entirety and replaced with the following language:

Base Rent. The term "Base Rent" shall mean the following:

President of the City Council of the City of Huntsville, Alabama Date: March 13, 2025

Lease Year(s)	Base Rent
1	\$500,000.00
2	\$750,000.00
3-6	\$700,000.00
7-8	\$750,000.00
9-10	\$800,000.00
11-15*	\$850,000.00
16-20**	\$900,000.00
21-25***	\$1,000,000.00
26-30****	\$1,250,000.00

* If First Extension Option is exercised.

**If Second Etension Option is exercised.

*** If Third Extension Option is exercised.

**** If Fourth Extension Option is exercised.

2. Section 1.01(sss) of the Lease is deleted in its entirety and replaced with the following:

Presentation Certificate. The term "Presentation Certificate" is defined in Section 7.06.

3. Section 1.01(dddd) of the Lease is deleted in its entirety.

4. Section 4.01(a) of the Lease is deleted in its entirety and replaced with the following:

Except for the right of Huntsville City Schools to utilize the Premises for School Events pursuant to Section 4.02 and the right of the Huntsville Sports Commission to utilize the Premises pursuant to Section 4.01(b), the Lessee shall have exclusive right to possess and use the Premises for Lessee Events for each day of each Lease Year. The Lessee agrees to work in good faith with MLS NEXT Pro to schedule the first Team Home Game during the 2023 MLS NEXT Pro season no earlier than May 15, 2023. All Team Home Game Dates shall be deemed to be selected by Lessee as a Reserved Date. Lessee Events shall be scheduled to avoid conflicting with any School Event Reserved Date.

5. Section 4.01(b) of the Lease is deleted in its entirety and replaced with the following:

Lessee agrees to work in good faith with the HSC, the CVB, Huntsville Schools, and the Lessor to attract other events to be conducted on the Premises with the primary purpose of generating tourism business into the City of Huntsville, provided that all such events shall not conflict with School Events scheduled pursuant to Section 4.02(a) or Team Home Games. In support of its mission, the HSC shall have right to host or co-host eight (8) events at the Premises meeting its goal of attracting tourists into Huntsville with no facility rental charge. Other provisions of event expenses and revenue distribution to be negotiated between the Lessee and the HSC on a case-by-case basis.

6. Section 4.02(d) of the Lease shall be amended by striking the words "ticket sales/management" within the first sentence.

7. Section 4.02(h) of the Lease is deleted in its entirety and replaced with the following:

The sale and management of tickets for School Events shall by controlled and executed by the Huntsville City Schools. All revenues from the sale of tickets for School Events shall be received and retained by the Huntsville City Schools. The Lessee shall work in good faith with the Huntsville City Schools to ensure all necessary equipment and procedures are in place at entry gates to support the timely entry of all ticketed patrons.

8. Section 7.06 of the Lease shall be amended to strike the words "Error! Reference Source not found.".

9. Section 8.01 of the Lease shall be amended to strike the words "Except for the School Event Revenues," in the first sentence and replace them with "Except for revenues earned at School Events which shall be distributed as defined in Section 4.02,".

10. Section 16.01(b) of the Lease shall be amended to strike the words "Error! Reference Source not found.".

11. Section 17.02(b) of the Lease is deleted in its entirety and replaced with the following:

(b) Upon the occurrence of any Event of Default (subject to the expiration of the applicable notice, grace and cure periods granted to Lessee set forth in this Lease) and the termination of this Lease by Lessor or the reentry onto the Premises by Lessor, Lessee shall pay Lessor, within thirty (30) days following Lessor's written notice, (i) Seventy-five percent of the remaining Base Rent due for the then current term of the Lease (with the City having no duty to mitigate its damages by securing another Tenant for the remainder of the then current lease term) (ii) any and all reasonable out-of-pocket costs and expenses actually incurred by Lessor in connection with the termination, reentry or obtaining of possession, and the reletting of the Premises, including, without limitation, all repossession costs, brokerage commissions, reasonable attorneys' fees and expenses, alteration costs and other expenses of preparing the Premises for reletting and (ii) Lessor shall have no obligation to refund any Base Rent prepaid by Lessee.

12. Section 20.08 of the Lease is deleted in its entirety and replaced with:

Notices. All notices required or permitted hereunder shall be in writing and shall be served on the Parties hereto at the following addresses:

To the Lessor:	The City of Huntsville
	Attn: City Administrator
	305 Fountain Circle
	Huntsville, Alabama 35801
	Email: john.hamilton@huntsvilleal.gov

To the Lessee:	NSH NEXTCO LLC
	Attn: Lindsey Paola, Chief Business Officer
	290 2 nd Avenue South, Suite 100
	Nashville, TN 37201
	Email: lpaola@nashvillesc.com

With a copy to:

NSH NEXTCO LLC Attn: LaTonnsya Burney, General Counsel 290 2nd Avenue South, Suite 100 Nashville, TN 37201 Email: <u>lburney@nashvillesc.com</u>

Any such notices shall be deemed to have been sufficiently given or served upon any party hereto when either (a) deposited with a nationally recognized overnight courier delivery service for next day delivery, (b) deposited in the U.S. mail for first class delivery, postage prepaid and addressed as provided above, (c) sent by email during business hours of any business day, or (d) delivered by personal delivery to any of the Parties hereto at the addresses stated above. The above addresses may be changed by written notice to the other Party given in the manner set forth above.

13. The Parties agree that any form of electronic signature, including but not limited to signatures via facsimile, scanning, or electronic mail, may substitute for the original signature and shall have the same legal effect as the original signature.

14. All other terms and conditions of the Lease, as modified, remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have entered into this Modification No. 2 to Lease Agreement, on the date set forth above.

LESSOR:

CITY OF HUNTSVILLE, ALABAMA, an Alabama municipal corporation

By:

Printed Name: Tommy Battle Title: Mayor

LESSEE:

NSH NEXTCO LLC, a Tennessee limited liability company

By: _____ Printed Name: Eleanor G. McDonald Title: Vice President and Secretary

STATE OF ALABAMA)

COUNTY OF MADISON

I, the undersigned, a notary public in and for said county in said state, hereby certify that Tommy Battle whose name as Mayor of **CITY OF HUNTSVILLE, ALABAMA**, an Alabama municipal corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said municipal corporation.

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Given under my hand and official seal this <u>13th</u> day of March, 2025.

[NOTARIAL SEAL]

Notary Public My commission expires:

STATE OF TENNESSEE

COUNTY OF DAVIDSON

I, the undersigned, a notary public in and for said county in said state, hereby certify that Eleanor G. McDonald, whose name as Vice President and Secretary of **NSH NEXTCO LLC**, a Tennessee limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such Vice President and Secretary, executed the same voluntarily for and on behalf of the aforesaid company.

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Given under my hand and official seal this _____ day of March, 2025.

[NOTARIAL SEAL]

Notary Public My commission expires: