



Huntsville, Alabama

308 Fountain Circle
Huntsville, AL 35801

Cover Memo

Meeting Type: City Council Regular Meeting **Meeting Date:** 1/12/2023

File ID: TMP-2459

Department: Administration

Subject:

Type of Action: Approval/Action

Resolution authorizing the Mayor to enter into Lease Agreement between the City of Huntsville and NSH Nextco, LLC, for lease of John Hunt Park practice facility for the Huntsville City Football Club.

Resolution No.

Finance Information:

Account Number: TBD

City Cost Amount: NA

Total Cost: NA

Special Circumstances:

Grant Funded: NA

Grant Title - CFDA or granting Agency: NA

Resolution #: NA

Location: John Hunt Park

Address:

District: District 1 ☐ District 2 ☐ District 3 ☐ District 4 ☐ District 5 ☐

Additional Comments:

NSH Nextco will pay the City of Huntsville rental amount of \$5,000 per month for the term of this lease.

RESOLUTION NO. 23-_____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor of the City of Huntsville is hereby authorized, for and on behalf of the City, to enter into a Lease Agreement between the City of Huntsville, a municipal corporation in the State of Alabama, and NSH Nextco, LLC, an Tennessee limited liability company, on behalf of the City of Huntsville, which said Agreement is substantially in words and figures similar to that certain document attached hereto and identified as "Lease Agreement between the City of Huntsville and NSH Nextco, LLC", consisting of twelve (12) pages including an exhibit, and the date of January 12, 2023, appearing on the margin of the first page, together with the signature of the President or President Pro Tempore of the City Council, an executed copy of same being kept on file permanently in the Office of the City Clerk-Treasurer of the City of Huntsville. The City Clerk-Treasurer is authorized to attest thereto.

ADOPTED this the 12th day of January, 2023.

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

APPROVED this the 12th day of January, 2023.

Mayor of the City of Huntsville,
Alabama

Facility Lease Agreement Between the
City of Huntsville, Alabama and
NSH NEXTCO LLC

LEASE AGREEMENT

This Lease Agreement (this "Lease Agreement") is made and entered into on the 12th day of January, 2023, by and between the **City of Huntsville**, a municipal corporation in the State of Alabama, hereinafter referred to as the "City," and **NSH Nextco LLC**, a Tennessee limited liability company, hereinafter referred to as "NSH Nextco".

WITNESSETH:

WHEREAS, the City and NSH Nextco entered into a lease agreement on July 14, 2022 wherein the City leased to NSH Nextco the stadium known as "Joe Davis Stadium" along with adjoining parking areas (hereinafter referred to collectively as the "Stadium Site"); and

WHEREAS, NSH Nextco will use the Stadium Site as the home of the Huntsville City Football Club professional soccer team; and

WHEREAS, the Stadium Site is undergoing renovation and will be unavailable for the use of the Huntsville City Football Club during the renovation period; and

WHEREAS, the Huntsville City Football Club has the need for practice facilities during the renovation period; and

WHEREAS, the City has space available at its John Hunt Park for the Huntsville City Football Club's use for a practice facility during the renovation period; and

WHEREAS, the City desires to grant a lease to NSH Nextco for its use of the John Hunt Park Championship Complex (hereinafter referred to collectively as the "Leased Premises" and defined in detail in Section 1.0 of this agreement) as described on Exhibit A, attached hereto and incorporated herein, on the terms and conditions set forth in this Lease Agreement.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual covenants and agreements contained hereinbelow, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1.0 LEASED PREMISES.

The City, in consideration of the covenants, and agreements contained herein, to be performed by NSH Nextco, hereby leases unto NSH Nextco the Leased Premises for the term set forth in Section 2.0 herein. NSH Nextco shall have exclusive use of the Leased Premises except for those times that the Huntsville Sports Commission or the City of Huntsville has tournaments or other events scheduled that will require the use of the Leased Premises. The City shall provide

President of the City Council of the
City of Huntsville, Alabama
Date: January 12, 2023

NSH Nextco reasonable notice of upcoming events or activities that will require the City's use of the Leased Premises.

The Leased Premises shall include the locker room building in existence in 2022, the upstairs portion of the concessions building, the press box building, and Fields #1 and #2 (or such other fields as may be coordinated with the City's Parks & Recreation staff as needed to maintain high-quality field conditions).

The City represents and warrants to NSH Nextco that (a) the City holds fee simple title to the Leased Premises, (b) the Leased Premises are free and clear of any liens or other encumbrances, security interests, judgments, claims and/or any other matters affecting title that would interfere with NSH Nextco's use of the Leased Premises for its intended purposes as set forth herein, and (c) the Leased Premises are free of any hazardous materials, or environmental liabilities or defects (latent or patent) which would give rise to any claims by any person or entity, including governmental agencies having jurisdiction over the Leased Premises or which would interfere with the NSH Nextco's use of the Leased Premises for its intended purposes as set forth herein.

2.0 TERM. The initial term of this Lease Agreement shall be one (1) year, commencing on January 1, 2023 and continuing through December 31, 2023. NSH Nextco shall have the option to renew this Lease Agreement for two (2) separate one-year periods upon providing written notice to the City at least 30-days prior to the end of the then current term. Notwithstanding anything herein to the contrary, NSH Nextco may terminate this Lease Agreement without penalty at any time by providing the City 30 days' notice of its intent to terminate.

3.0 RENTAL. During the initial term, NSH Nextco shall pay the City rental in the amount of \$5,000 per month. Should NSH Nextco exercise its option to renew the Lease Agreement, as provided in Section 2.0 above, then for each one-year term, the rental amount shall be \$6,000 per month.

4.0 USE OF LEASED PREMISES. The parties agree that NSH Nextco will use and occupy the Leased Premises for the purpose of a practice facility for the Huntsville City Football Club.

5.0 QUIET ENJOYMENT. City covenants that NSH Nextco, upon observing the covenants hereof, shall peaceably and quietly have, hold and enjoy the Leased Premises during the term hereof and any extensions thereto.

6.0 MAINTENANCE OF LEASED PREMISES.

(a) The City shall be responsible for the major maintenance (i.e. building systems, roof, HVAC, etc.) of the concession building and press box portions of the Leased Premises.

(b) The City shall provide regular maintenance of the fields in accordance with existing City of Huntsville Landscape Management Department standard procedures for similarly situated fields in Huntsville, Alabama. NSH Nextco shall collaborate on maintenance schedules and expert consultation on best practices for development and maintenance of the fields. NSH Nextco and

the City shall work together in good faith to ensure scheduling prevents the over-use of fields in John Hunt Park.

(c) NSH Nextco shall not in any manner deface or injure the Leased Premises and will pay the cost of repairing any damage or injury done to the Leased Premises or any part thereof by NSH Nextco or its employees, agents, contractors or invitees, ordinary wear and tear excepted. NSH Nextco agrees that it will keep the Leased Premises and the fixtures therein in clean, safe, sanitary and good order and condition and will, at the expiration or other termination of the Lease Agreement term hereof, remove all goods and effects not the property of City and at NSH Nextco's expense shall (i) promptly surrender to City possession of the Leased Premises (including keys, locks and any fixtures or other improvements which NSH Nextco hereby acknowledges are owned by the City) in good order and repair (ordinary wear and tear and damage due to casualty or condemnation excepted) and broom clean, (ii) remove therefrom all signs, goods, effects, machinery, furniture, fixtures computer/telephone cabling and equipment used in conducting NSH Nextco's trade or business which is not owned by the City, and (iii) pay for repairs or any damage caused by such removal.

(d) Other than attaching sponsorship signage to the Leased Premises, which City hereby approves such sponsorship signage, NSH Nextco shall not attach any sign to the Leased Premises unless the design, nature, and content thereof have been approved by City, which approval shall not be unreasonably withheld. NSH Nextco shall at its expense maintain and repair any such sign and may upon the expiration of the term of this Lease Agreement or any renewal thereof, remove said signs. All signs shall comply with all applicable laws and ordinances.

(e) All injury to the Leased Premises caused by moving the property of NSH Nextco into, on, or out of, the Leased Premises and all breakage done by NSH Nextco or agents, servants, employees and visitors of NSH Nextco, shall be repaired at the expense by NSH Nextco. This provision shall be construed as an additional remedy granted to City and not in limitation of any other rights and remedies which City has or may have in said circumstances.

(f) All personal property of NSH Nextco in the Leased Premises shall be at the sole risk of NSH Nextco. City shall not be liable for any accident to or damage to the personal property of NSH Nextco resulting from the use or operation of the heating, cooling, electrical or plumbing apparatus unless caused by the negligence of City, its employees, agents or contractors. City shall not, in any event, be liable for damages to the personal property resulting from water, steam or other causes unless caused by the negligence of City, its employees, agents or contractors. NSH Nextco hereby expressly releases City from any liability incurred or claim by reason of damage to NSH Nextco's personal property, other than any liability incurred or claim by reason of the negligence of City, its employees, agents or contractors.

(g) Third-party use of the premises shall be coordinated and scheduled through the City's Parks and Recreation Department as allowed under this agreement. Such third-party use shall be scheduled and conducted in accordance with the City's standing policies, including risk management and liability issues arising from such uses. In accordance with provisions established in Section 9.0F of this agreement, NSH Nextco shall not be held responsible for damage caused by a third-party user when NSH Nextco shall not have control of the Leased Premises. The City

shall hold any third-party user responsible for loss or damage that may occur to NSH Nextco personal property contained within the Leased Premises.

7.0 UTILITIES. The City shall pay the Huntsville Utilities fees for the Leased Premises. The City agrees to provide, at its sole cost, utility connections for the laundry area of the Leased Premises.

8.0 ALTERATIONS AND IMPROVEMENTS BY NSH NEXTCO. No alterations, additions or improvements to the Leased Premises shall be made without first obtaining the express written consent of the City's General Services Director, which consent shall not be unreasonably withheld. All requests for alterations, additions, or improvements shall be accompanied by architectural drawings depicting both the existing and proposed layout or depicting the existing and proposed condition of the proposed alteration, addition, or improvement. Any and all fixtures installed, excepting trade fixtures, shall, at City's option, remain on the Leased Premises as the property of the City, without compensation to NSH Nextco, or, shall be removed therefrom and the Leased Premises restored to its original condition at cost of NSH Nextco at the expiration or sooner termination of this license.

9.0 INSURANCE REQUIREMENTS. During the term of this Lease Agreement, NSH Nextco shall satisfy the following insurance requirements and provide to the City of Huntsville's Legal Department said proof of this requirement:

A. MINIMUM SCOPE OF INSURANCE:

1. General Liability:

Insurance will be written on an occurrence basis. Claims-made coverage will be accepted only on an exception basis after the City's approval, which approval shall not be unreasonably withheld.

Commercial General Liability

Contractual
Personal Injury
Broad Form Property Damage
No Exclusion for Sexual Misconduct or Molestation

2. Workers' Compensation Insurance:

Statutory protection against bodily injury, sickness or disease or death sustained by employee in the scope of employment. Protection shall be provided by a commercial insurance company or a recognized self-insurance fund authorized before the State of Alabama Industrial Board of Relations. Waivers of subrogation in favor of the City shall be included in Worker's Compensation coverage.

B. MINIMUM LIMITS OF INSURANCE:

1. General Liability:

Commercial General Liability on an “occurrence form” for bodily injury and property damage:

\$ 2,000,000 General Aggregate Limit

\$ 1,000,000 Each Occurrence

2. Workers’ Compensation:

As Required by the State of Alabama Statute

C. OTHER INSURANCE PROVISIONS:

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverage’s Only:

a. The City, its elected and appointed officials, employees, agents and specified volunteers are to be covered as Additional Insureds, as their interests may appear, as respects: liability arising out of activities performed by or on behalf of NSH Nextco for products used by and completed operations of NSH Nextco; or automobiles owned, leased, hired or borrowed by NSH Nextco. Additional insured status shall be through ISO Additional Endorsement CG 2011 01 96 or equivalent that is sufficient to provide the coverage required by this Agreement.

b. NSH Nextco’s insurance coverage shall be primary insurance as respects the City, its elected and appointed officials, employees, agents and specified volunteers, as their interests may appear as respects: liability arising out of activities performed by or on behalf NSH Nextco for products used by and completed operations of NSH Nextco; or automobiles owned, leased, hired or borrowed by NSH Nextco. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or specified volunteers shall be excess of NSH Nextco’s insurance and shall not contribute to it.

c. NSH Nextco’ insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.

2. All Coverages:

a. NSH Nextco is responsible to pay all deductibles. Each insurance policy required by this clause shall include that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days’ prior written notice by certified mail, return receipt requested, has been given to the City. Cancellation of coverage for non-payment of premium will require ten (10) days written notice to the City.

b. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, employees, agents or specified volunteers.

D. ACCEPTABILITY OF INSURERS:

Insurance is to be placed with insurers with an A. M. Best's rating of no less than **B+ V**.

E. VERIFICATION OF COVERAGE:

The City shall be indicated as a Certificate Holder and NSH Nextco shall furnish the City with Certificates of Insurance reflecting the coverage required by this document. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the City before work commences. The City reserves the right to reasonably require complete, certified copies of all required insurance policies at any time.

F. HOLD HARMLESS AGREEMENT:

NSH Nextco, to the fullest extent permitted by law, shall indemnify and hold harmless the City, its elected and appointed officials, employees, agents and specified volunteers against all claims, damages, losses and expenses, including, but not limited to, attorney's fees, arising out of or resulting from NSH Nextco's use or occupation of the Leased Premises, provided that any such claim, damage, loss or expense (1)(a) is attributable to personal injury, including bodily injury sickness, disease or death, or injury to or destruction of tangible property, including loss of use resulting therefrom, and (b) is caused by any negligent act or omission of NSH Nextco or any of their consultants, or anyone directly or indirectly employed by them or anyone for whose acts they are legally liable or arises out of liability based on the noncompliance of the Leased Premises with the Americans with Disabilities Act (ADA) (so long as such liability is due to the improper acts or omissions of NSH Nextco, its employees, officers or agents). Such obligation should 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 in this paragraph. To the extent permitted by Alabama law limiting municipal liability, the City shall hold harmless NSH Nextco from and against all claims, damages, losses and expenses, including, but not limited to, attorney's fees, arising out of or resulting from (i) the City's negligence or willful misconduct; (ii) the City's violation of any applicable laws, including but not limited to, the ADA; and (iii) use of the Leased Premises during non-NSH Nextco events and/or tournaments.

10.0 INSPECTIONS OF THE LEASED PREMISES. City shall have the right to enter the Leased Premises at all reasonable times for purposes of examining the Leased Premises for the purpose of discovering any defect or injury to the Leased Premises. NSH Nextco shall, upon the discovery of any defect in or injury to the Leased Premises or any appurtenance or apparatus connected therewith, or any need of repairs, promptly make the said repair; so long as such defect or injury was caused by NSH Nextco.

11.0 CITY'S RIGHT TO LOCATE AND ACCESS IT EQUIPMENT. The City may need to locate certain IT and electrical equipment related to communication and security systems and lighting for the Leased Premises within a small portion of the Leased Premises. NSH Nextco shall allow the City reasonable access at all reasonable times as necessary to those systems and, all

efforts will be made by the City to access and locate such equipment with as little interference as possible to NSH Nextco.

12.0 ASSIGNMENT AND SUBLETTING. NSH Nextco covenants and agrees not to assign this Lease Agreement or sublet said Leased Premises or any part of same, or in any other manner transfer the Lease Agreement or NSH Nextco's interest in the Leased Premises, without the written consent of City which shall not be unreasonably withheld. In the event of such subletting or assignment, NSH Nextco nevertheless shall remain liable for all obligations to City under, and compliance with, all of the terms and conditions of this Lease Agreement. Any consent to a subletting or assignment shall not be deemed a consent to any subsequent subletting or assignment. NSH Nextco shall submit to City in writing the name of the proposed sub-tenant or assignee, and the intended use and terms of occupancy.

13.0 DEFAULT. In the event: (a) the Leased Premises shall be deserted or vacated for a period lasting more than thirty (30) consecutive days; (b) NSH Nextco shall fail to comply with any material term, provision, condition, or covenant of this Lease Agreement, and shall not cure such failure within thirty (30) days after written notice to NSH Nextco of such failure to comply; (c) any petition is filed by or against NSH Nextco under any section or chapter of the National Bankruptcy Act as amended, (d) NSH Nextco shall become insolvent or make a transfer in fraud of creditors; (e) NSH Nextco shall make an assignment for benefit of creditors; (f) a receiver is appointed for a substantial part of the assets of NSH Nextco in any of such events, City shall have the option to do any one of the following, in addition to and not in limitation of any other remedy permitted by law or by this Lease Agreement:

(i) Terminate this Lease Agreement, in which event NSH Nextco shall immediately surrender the Leased Premises to City.

(ii) Enter the Leased Premises without being liable to prosecution or any claim for damages therefor, and relet the Leased Premises.

(iii) City may do whatever NSH Nextco is obligated to do by the provisions of this Lease Agreement and may enter the Leased Premises without being liable to prosecution or any claim for damages therefor, in order to accomplish this purpose. NSH Nextco agrees to reimburse City immediately upon demand for any reasonable expenses which City may incur in thus effecting compliance with this Lease Agreement on behalf of NSH Nextco.

(iv) Pursue any and all other remedies available to City at law or in equity.

In the event City employs an attorney on account of any of the terms or conditions of this Lease Agreement by NSH Nextco, NSH Nextco shall pay all expenses incurred including a reasonable attorney's fee.

14.0 SURRENDER. Upon the termination of this Lease Agreement, NSH Nextco shall deliver up the Leased Premises in the same condition as the same were in at the commencement of the term of this Lease Agreement (with the exception of any remodeling or structural changes previously approved by City, reasonable and ordinary wear and tear and damage by fire and other

casualty or condemnation). Neither vacating the Leased Premises by NSH Nextco, nor the delivery of possession to City, shall be deemed a surrender or an acceptance of surrender of the Leased Premises unless so stipulated in writing by City.

15.0 GOVERNING LAW AND VENUE. This Lease Agreement shall be governed exclusively by, and construed and interpreted in accordance with, the laws of the State of Alabama. Venue to enforce and provision of this agreement shall be in the state or federal courts sitting in Madison County, Alabama.

16.0 MISCELLANEOUS. The parties hereto further agree as follows:

16.1 The non-enforceability or illegality of any provision of this Lease Agreement shall not render the other provisions unenforceable, invalid or illegal.

16.2 The paragraph headings contained herein are only for convenience and reference and are not intended to be part of this Lease Agreement or in any manner to define, limit or describe the scope and intent of this Lease for the particular paragraph to which they refer.

16.3 The terms "City" and "NSH Nextco", when used in this Lease Agreement, shall be construed as plural whenever the number of the parties to this Lease Agreement shall require.

16.4 (a) All notices or demands pursuant to the Agreement shall be in writing and shall be deemed given if personally delivered or mailed via electronic mail, first class mail, or certified mail, return receipt requested to the following addresses:

City: City of Huntsville, Alabama
615 Washington Street
Huntsville, Alabama 35801
Attention: Director of General Services
(256) 427-5660

with copy to: City Attorney's Office
Post Office Box 308
Huntsville, Alabama 35804-0308
Attention: City Attorney
(256) 427-5026

NSH Nextco: NSH NEXTCO LLC
One Belle Meade Place
4400 Harding Pike
Nashville, TN 37205-2290
Attn: Eleanor G. McDonald
Email: eleanor.mcdonald@ingram.com

If either party hereto changes its address for purposes of this Agreement, the party so changing shall give the other party appropriate written notice of change of address in the manner specified above.

16.5 The parties further agree that this Lease Agreement is to be deemed to have been prepared jointly by the parties hereto, after arm's length negotiations, and that any ambiguity or uncertainty existing herein, if any, shall not be interpreted against the other party.

16.6 It is expressly understood that this Lease Agreement sets forth the entire agreement of the parties and supersedes any prior written or oral agreements between them concerning the subject matter contained herein, oral or otherwise, and that there is no other agreement between the parties other than that contained herein.

16.7 The parties further agree to sign any and all instruments or documents necessary to carry out the full purpose and intent of this Lease.

16.8 This Lease Agreement shall be binding upon the parties, and their successors in interest.

16.9 Each party to this Lease Agreement shall be responsible for the payment of all costs, expenses, legal fees and disbursements incurred or to be incurred by it or any of them in negotiating and preparing this Lease Agreement, and all documents required to be delivered pursuant to this Lease Agreement and in otherwise performing the transactions contemplated by this Lease Agreement.

Signature page follows.

IN WITNESS WHEREOF, the parties hereunto entered into this Lease Agreement on the day first written above.

WITNESS:

NSH NEXTCO LLC

A Tennessee limited liability company

By: _____

By: _____

Its: _____

Its: _____

CITY OF HUNTSVILLE, ALABAMA

By: _____

Kenneth Benion

Its: City Clerk-Treasurer

By: _____

Tommy Battle

Its: Mayor

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 and Kenneth Benion, whose names as Mayor and City-Clerk Treasurer of The City of Huntsville, a municipal corporation in the State of Alabama are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, in their capacity as such officers, executed the same voluntarily for and as the act of said corporation on the day the same bears day.

GIVEN under my hand and official seal this the 12th day of January, 2023.

Notary Public

STATE OF ALABAMA)
COUNTY OF MADISON)

I, the undersigned, a notary public in and for said County, in said State, hereby certify that _____, whose name as _____ 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 the instrument, (s)he, in his or her capacity as such officer, executed the same voluntarily for and as the act of said corporation on the day the same bears day.

GIVEN under my hand and official seal this the ____ day of _____, 2023.

Notary Public

Exhibit A

Leased Premises Description

