

ORDINANCE NO. 36-24

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A MANAGEMENT AGREEMENT BETWEEN THE CITY OF MEDINA AND COLD STREAM AIR SERVICES, INC. FOR MANAGEMENT OF THE MEDINA MUNICIPAL AIRPORT.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEDINA, OHIO:

- SEC. 1:** That the Mayor is hereby authorized and directed to enter into a Management Agreement with Cold Stream Air Services, Inc. for the premises located at 2050 Medina Road also known as the Medina Municipal Airport.
- SEC. 2:** That a copy of the Management Agreement is marked Exhibit A, attached hereto and incorporated herein.
- SEC. 3:** That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with the law.
- SEC. 4:** That this Ordinance shall be in full force and effect at the earliest period allowed by law.

PASSED: February 26, 2024

SIGNED: John M. Coyne, III
President of Council

ATTEST: Kathy Patton
Clerk of Council

APPROVED: February 27, 2024

SIGNED: Dennis Hanwell
Mayor

Effective date – November 1, 2023 through December 31, 2024

ORD. 36-24
Exh. A

**MANAGEMENT AGREEMENT
FOR THE CITY OF MEDINA AIRPORT**

THIS AGREEMENT ("Agreement") is made as of the 1st day of November, in the year 2023, by and between **CITY OF MEDINA, OHIO** ("City"), and **COLD STREAM AIR SERVICES, INC.** ("Manager").

RECITALS:

A. City is the owner of certain land located in the Sharon Township, Medina County, Ohio, more particularly depicted on Exhibit A attached hereto (the "Airport Land") upon which the Medina Municipal Airport is situated (the "Airport");

B. Manager is affiliated with the fixed base operator ("FBO") operating as such at the Airport pursuant to a Lease (the "FBO Lease") of fixed base operations premises (the "FBO Premises") dated of even date herewith; and

C. Manager has represented that it is qualified or has or will have within its staff qualified personnel and expertise to function as the manager of the Airport and to perform the services and responsibilities required under this Agreement or by affiliation with the FBO (hereinafter sometimes referred to as the "Airport Management Services"); and

D. Both parties desire to enter into an agreement for the Manager to provide Airport Management Services to the Airport.

NOW THEREFORE, the City and Manager, for and in consideration of the compensation hereinafter set forth, and in consideration of the covenants and agreements herein contained, mutually agree as follows:

A. DUTIES AND RESPONSIBILITIES OF MANAGER

1. The Manager shall, at its cost, provide a qualified individual to serve in the capacity of Airport Director. The Airport Director need not be a full-time employee of the Manager but shall be responsible for devoting such time and attention to the position as will enable the Manager to comply with this Agreement. The Manager shall have the power and authority to hire, contract for, terminate, redesignate and otherwise supervise and direct the Airport Director and any other staff Manager shall determine to be necessary to perform the services under this Agreement. The Airport Director appointed by Manager and other persons performing services for management operations at the Airport may be employed by Manager or may be employees of the Manager's FBO operations. No employees of the Manager will constitute City employees. A roster of all staff employed by Manager shall be provided to City annually accompanied by a description of the position held by such staff and the responsibilities of each member of such staff. All staff shall be adequately trained to perform the tasks to which they are assigned in accordance with best practices and all applicable laws, rules and regulations, including, but not limited to, rules and regulations of the Federal

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Aviation Administration ("FAA"). The Airport Director appointed by Manager and other persons performing services for management operations at the Airport may be employed by Manager or may be employees of the Manager's FBO operations.

2. Among the other duties specified in this Agreement, the Manager shall fulfill the following duties and responsibilities at the specified hours where so designated below:

- a. The Airport Director or other qualified staff of the Manager shall be on duty at the Airport during normal operating hours. Normal operating hours shall be determined by the City subject to input and recommendation of the Manager. The current normal operating hours are listed on **Exhibit B** attached hereto.
- b. The Manager shall maintain office space at the FBO Premises by agreement with the FBO and such shall serve as the Airport's main office ("Airport Office") which shall be open during normal Airport operating hours.
- c. The Airport Director's phone number shall be posted at the Airport in a conspicuous location and at the FBO facilities and the Airport Director shall also maintain current phone numbers for after-hours contact with the local FAA, the Ohio Division of Aviation, the Medina Police Department and the Medina County Sheriff's Department.
- d. The Manager shall assure that aircraft operations at the Airport are conducted within the rules and regulations of the FAA, the Federal Communications Commission, any applicable state law and any rules, regulations and/or minimum standards adopted by the City for the Airport. The Manager shall notify the City immediately of any aircraft operations or operators not complying with these requirements and shall keep records documenting all violations and warnings.
- e. The Manager shall issue Notice to Airmen (NOTAMS) to the local FAA Flight Service Station whenever any of the facilities are out-of-service or any conditions exist that would affect normal operations at the Airport.
- f. The Manager shall supervise the operation of Radio Airport Advisory Service (UNICOM) during the normal operating hours.
- g. The Manager shall coordinate with the City to provide services for necessary snow removal from the airfield runways, taxiways and necessary pavement areas. City may elect to have the Manager engage a snow removal provider, which may be the FBO, with the expense therefor approved by the City and paid for or reimbursed out of Airport revenues received by the Manager on City's behalf. Notwithstanding, during the initial term of this Agreement, however, City will perform the necessary snow removal contemplated herein on such schedule as City may dictate in due consideration of City capacity.

- h. The Manager shall coordinate with the City in the City's cutting of grass on the airfield. City may elect to have the Manager engage a mowing service provider, which may be the FBO, with the expense therefor approved by the City and paid for or reimbursed out of Airport revenues received by the Manager on City's behalf. Notwithstanding, during the initial term of this Agreement, however, City will perform the necessary grass cutting for the Airport contemplated herein on such schedule as City may dictate in due consideration of City capacity.
- i. The Manager shall conduct periodic inspections of the airfield pavement including, but not limited to, runways and taxiways and markings to assure that they are in a satisfactory condition for safe aircraft operation and shall promptly notify the City of any problem areas and arrange for necessary repairs and maintenance. Such repairs and maintenance shall be paid for or reimbursed out of Airport revenues received by the Manager on City's behalf or Airport revenues received by City.
- j. The Manager shall conduct periodic inspections of the airfield lighting systems to assure that they are functioning properly and perform replacement of any lighting system lamps which do not work. The cost of repairs and replacement shall be paid for or reimbursed from Airport revenues received on City's behalf or Airport revenues received by City.
- k. The Manager shall manage the spare parts for the lighting systems and notify the Authority when additional replacement parts are ordered. The Manager shall place orders from time to time as replacement parts are necessary with the cost of same to be paid or reimbursed from Airport revenues received by Manager on City's behalf or Airport revenues received by City.
- l. The Manager shall maintain accurate records acceptable to the City of all inspections, problems, written correspondence, visits by the FAA or Ohio Division of Aviation, NOTAMS, complaints, emergencies and all other airport activity in written or electronic files. Further, the Manager shall maintain accurate financial records concerning all finances (including, but not limited to, budgets, revenue, and expenses) of the Airport in written or electronic files. Files are to be kept at the Airport Office in the area and by means designated by the parties for such information and shall be available for access, examination and copying by the City upon 24-hour advance notice. All files are to be reliably secured and backed up according to best practices and as approved by City. Within one hundred twenty (120) days after the end of each calendar years commencing with calendar year end 2023, Manager (in consultation with the FBO) shall submit to City a written report (the "Annual Report of Airport Operations") summarizing Airport flight and other operations and financial operations conducted by Manager and the FBO. Such report shall contain such data and information and be in such form as is reasonably satisfactory to City. Among other things that may be covered by the Annual Report

of Airport Operations, the following shall be addressed: (i) total numbers of aircraft landings and departures by month with year over year comparisons; (ii) total census of aircraft hangered by any person, firm or entity; (iii) Airport maintenance and repair activities by month and type; (iv) financial performance of the Airport and budgets; (v) leasing and rental information; and (vi) reports of other services or activities of the Manager and of each FBO operation.

- m. The Manager shall notify the City of any written correspondence received at the Airport requiring or requesting action by the City.
- n. The Manager shall immediately notify the City and the police and/or fire departments of any emergencies and/or safety and security incidents requiring a response by police or fire personnel.
- o. The Manager shall assist and cooperate with City as requested by City in any FAA grant application process and in any periodic updates of an Airport master plan.

3. The Manager shall have the right to propose rules and regulations (including, but not limited to, Minimum Standards for Aeronautical Activity) pertaining to the operation of the Airport property. All such rules and regulations shall be consistent with applicable laws, rules and regulations promulgated by governmental authorities having jurisdiction over the Airport, including, but not limited to the rules and regulations of the FAA and all grant assurances by reason of the FAA grants received for the Airport. All such rules and regulations as proposed shall be presented to the City for its comment, review and approval. City shall consult with the Manager prior to enacting or rescinding rules pertinent to the Airport. The Manager shall be responsible for monitoring and enforcing compliance with the rules and regulations adopted from time to time.

4. The Manager shall have the right to deny use of the Airport to anyone willfully or persistently violating regulations and rules of the FAA, the Ohio Division of Aviation, the Federal Communication Commission or the City.

5. The Manager shall assist the City in the negotiation of leases and other material agreements pertaining to the operation of the Airport or Airport property. The Manager shall administer agreements and leases entered into by the Airport to the extent consistent with City requests and the Manager's responsibilities and duties under this Agreement.

6. The City with Manager's input shall establish and publish a schedule of Airport user fees. Currently the City is charging a monthly access fee of \$100.00 per month per aircraft hangar space; counting each individual hangar space in a multi-aircraft storage facility (e.g. a T-Hangar facility) as a separate hangar subject to the fee.

7. The Manager may, at City's election, be designated as City agent for collection of rents and/or user/access fees and/or other Airport revenue and in such case all such funds shall be duly collected by Manager in trust for City and same shall be deposited in a City designated account at a

reputable financial institution selected by the City for Airport revenues. As provided in Section 2 above, Manager shall keep accurate financial records of all such user fees, Airport revenue and expenses.

8. The Manager shall not enter into any agreement or commitment on behalf of the City without City's prior written approval that (i) requires the City's approval under applicable law or requires the same be let by competitive bidding, or (ii) which is in violation of applicable law, or (iii) which would bind City beyond the period of Manager's engagement. The City and Manager shall develop reasonable guidelines setting forth Manager's authority with respect to routine customary expenditures relative to maintenance, repair and operating the Airport.

9. The Manager shall at all times promote the interests of the City and the Airport through communication with various professional, corporate and civic organizations and shall act in a professional manner at all times during contact with the public. Manager in cooperation with the City shall establish and pursue initiatives to increase aeronautical and related economic activity at the Airport consistent with a vibrant municipal airport for the betterment of the Medina community.

10. The Manager shall cause the Airport Director or another authorized representative of the Manager to attend regularly scheduled meetings of the City concerning Airport operation and development.

11. The Manager shall have such additional authority as is necessarily inferred from the other duties, responsibilities and authority hereinabove set forth subject in all events to City's right to clarify such authority from time-to-time.

12. Manager shall maintain liability insurance in addition to that required to be provided by the City under Section 4(b) with limits of not less than \$ 1,000,000 per occurrence and \$ 1,000,000 in the aggregate. The Manager shall maintain the City as an additional insured on such policy.

13. City has the right in its discretion from time to time to elect to self-manage any function or activity previously assigned to the Manager. In such event, City may remove the particular function(s) from Manager's responsibilities.

B. RESPONSIBILITIES OF THE CITY

1. The City shall reasonably cooperate with and support the Manager in the fulfillment of Manager's duties and in connection with administration of the Airport.

2. The City shall promptly inform the Manager of any events, correspondence, pending action or other occurrence known to City which may impact the Airport or administration thereof or which bear on the performance of Manager's duties.

3. The City will use reasonable efforts to support the Manager's promotion of the Airport and

use thereof.

4. The City shall keep and maintain or require any applicable lessee to maintain the following policies of insurance:

- a. Appropriate casualty insurance upon the City's buildings and improvements at the Airport in the amount and with coverages determined by City.
- b. Commercial policy of general liability insurance with limits adequately based upon the prudent exercise of the City's discretion. The Manager may be named as an additional insured under such policy.

5. The City shall provide Manager with such professional, legal or engineering assistance as may be required in the proper administration of the Airport; provided that all engagements and costs thereof shall be subject to the prior approval of the City and shall constitute Airport expenses for purposes of Section E(1) of this Agreement. All engagement policies shall be in accordance with applicable law.

6. The City shall use Airport revenues from access fees, lease rentals and other Airport revenue received by City in consultation with the Manager for maintenance and improvement of the Airport so far as reasonably consistent with the goals of the City for the Airport based upon a City approved annual budget to be prepared annually at the commencement of each calendar by the City and the Manager in consultation with one another. An initial part year budget for the balance of calendar year 2023 shall be prepared and submitted for City approval as soon as practicable after the execution of this Agreement. City may apply for such FAA grant assistance for the Airport as is determined by the City to be appropriate and consistent with available FAA grant programs. Manager, at City's request, will assist in the process of preparing such grant application and in utilizing the grants received according to the purposes of such grants, all subject to any applicable laws, rules and FAA grant assurances imposed as a condition of such grants. Notwithstanding anything to the contrary in this Agreement, FAA grant revenue shall be used consistent with the purposes thereof and all required grant assurances. Expected grant revenue and expenditures of same shall be reflected in the Airport budgets to be prepared by Manager with the cooperation of City.

C. TERM OF AGREEMENT

1. The initial term ("Initial Term") of the Agreement shall be for one (1) year and two (2) months commencing on the 1st day of November, in the year 2023, and ending on the 31st day of December, 2024. However, this Agreement may be renewed by mutual written agreement of the parties at the end of the Initial Term for an additional one (1) year term ending December 31, 2025. Each time this Agreement is extended by renewal, it shall be upon the same terms as herein contained, except that the Management Fee shall be subject to mutual agreement of the Manager and the City. The Manager and the City shall, as soon as practicable after a request for extension by either party, commence good faith negotiations to establish a reasonable fee for managerial services.

D. RIGHTS TO TERMINATE

1. Should the Manager fail to discharge any of the heretofore mentioned duties and responsibilities, the Authority shall give written notice of such default. If such default continues for thirty (30) days after receipt of such notice, the City shall have the right to terminate this Agreement by giving written notice of such termination.

2. Should the City default in its responsibilities to the Manager, the Manager shall give written notice of such default. If such default continues for sixty (60) days after receipt of such notice, the Manager shall have the right to terminate this Agreement by giving written notice of said termination. The Authority shall promptly pay all compensation due the Manager, prorated to the date of termination.

3. The City shall have the right to terminate this Agreement in the event the FBO Lease is terminated or expires pursuant to the terms of the FBO Lease.

E. COMPENSATION

1. During the initial term of this Agreement, the Manager shall be paid an annual fee ("Management Fee") in arrears equal to 50% of the Net Revenue (defined hereinafter) of the Airport revenues for each full calendar year during the term. "Net Revenue of the Airport" shall mean all revenue received by the City from the Airport operations during the year (not, however, including FAA grant revenue that is allocated to specific projects or to the extent including any portion of FAA grant proceeds for purposes of determining management fees would be unlawful or prohibited by the terms of the Grant or applicable law) including access fees, rent and other fees minus all direct expenses incurred by City in maintenance, repair and other operations of the Airport (not however including expenses specifically payable with FAA grant proceeds where the grant requires application to the specific expenses or to the extent including any portion of FAA grant paid expenses for purposes of determining management fees would be unlawful or prohibited by the terms of the Grant or applicable law). The Management Fee for the two-month period in calendar year 2023 commencing on the date of this Agreement shall be combined with the full calendar year 2024 terminating at midnight December 31, 2024 and the Management Fee shall be determined on a 14-month basis for that period only. For any subsequent partial calendar year during the term the

Management Fee shall be based on the projected revenue and expense for the full calendar year and a proration of the projected Net Revenue for the partial year for which a determination is required.

2. By mutual agreement memorialized in written amendment to this Agreement, the parties may agree to Manager's performance of other responsibilities associated with the Airport and the compensation basis therefor.

F. MISCELLANEOUS

1. If any portion of this Agreement is subsequently held to be illegal or invalid, the remainder of this Agreement shall continue to be of full force and effect.

2. Neither party may assign this Agreement without the prior written consent of the other.

3. It is mutually agreed that the terms hereof shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties hereto.

4. This Agreement shall be interpreted, and the rights and liabilities of the parties hereto determined, in accordance with the laws of the State of Ohio.

IN WITNESS WHEREOF, the City and Manager have hereunto caused their names to be affixed to this Agreement.

City:

CITY OF MEDINA, OHIO

By:

Name:

Title:

Dated:

Manager:

COLD STREAM AIR SERVICES, INC.

By:

Name:

Title:

Dated:

Prepared by
Gregory H. Huber
Director of Law
City of Medina