

Protokoll fört vid enskild föredragning

Näringsavdelningen
Allmänna byrån, N1

Beslutande
Minister
Fredrik Karlström

Föredragande
Avdelningschef
Linnéa Johansson

Justerat
Omedelbart

Nr 11

Samförståndsavtal med företaget Heart Aerospace AB.
ÅLR 2023/2699

Beslut

Landskapsregeringen beslöt ingå ett samförståndsavtal med företaget Heart Aerospace AB enligt **bilaga 1, N123E07**.

Beslöts att Fredrik Karlström företräder landskapsregeringen vid ingåendet av avtalet.

Landskapsregeringen omfattas av offentlighetslagen (2021:79) för Åland inklusive sekretessgrunderna i 21 §.

Motivering

Enligt landskapets budget för år 2023 ska landskapsregeringen arbeta för en långsiktig, förutsägbar och kontinuerlig flygtrafik till och från Åland som även bidrar till klimatomställningen. Heart Aerospace AB är ett svenskt företag som utvecklar passagerarflygplan för eldrift.

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (this “MOU”) is made and effective as of March 24, 2023 (the “Effective Date”) by and between Heart Aerospace AB, a limited liability company registered in Sweden, with a place of business at Fredsflottiljens Väg 19, 417 46, Göteborg, Sweden (“Heart”) and Ålands landskapsregering, The Government of Åland, PO 1060, AX-22111 Mariehamn, a public authority (“Åland”), collectively referred to as the “Parties”

BACKGROUND & PURPOSE

- A. Heart is designing and developing a family of electrically-powered aircraft (including the 30-seat ES-30 aircraft) for, among other things, commercial passenger transportation (the “Aircraft”);
- B. The Government of Åland seeks to promote innovative development of sustainable transportation alternatives and related infrastructure to serve the economic, social, and other needs of the Åland community;
- C. The Parties wish to discuss potential collaboration opportunities related to the use of Heart’s Aircraft to develop essential air transportation services for Åland in a sustainable manner (“the Purpose”).

COMMITMENTS

The Parties hereby express their mutual intentions and commitments as follows:

SECTION 1 COLLABORATION.

1.1 General. Each Party covenants to the other Party to act in good faith and take such steps as are reasonably required in compliance with applicable law to achieve the Purpose. In furtherance of the foregoing, each Party shall use commercially reasonable efforts to make available the resources of such Party and its respective affiliates and take all such other actions, in each case, as is necessary to facilitate the advancement of the objectives of the Parties with respect to the Purpose.

1.2 Collaboration Roadmap. Without limiting the foregoing, the Parties hereby commit to use commercially reasonable efforts to accomplish the following:

(a) *Joint Discussions.* Following execution of this MOU, the Parties shall establish a regular cadence of meetings and other communications to discuss certain matters related to the Purpose. These may include, without limitation, certain matters related to:

(i) potential business models for the use of Heart’s Aircraft to provide essential air transportation services to/from Åland (including, without limitation, through sale and/or lease of Aircraft (potentially to one or more third parties), and/or further collaboration in the establishment of ventures to provide such services);

(ii) requirements as may be relevant to the technical performance of the Aircraft to meet Åland’s needs;

(iii) requirements as may be relevant to ground infrastructure and in-service support of Heart's Aircraft to achieve the Purpose; and

(iv) such other matters as the Parties may agree from time to time.

The Parties shall commit sufficient resources, including the time and attention of their respective senior leadership, to discuss such matters with the goal of agreeing upon further collaboration between the Parties with respect to the Purpose. The discussions contemplated by this subsection may also include other relevant parties, such as airports, airlines, civil aviation authorities, and other entities that may help to facilitate or advance the Purpose. The Parties agree to capture the meeting minutes of the further collaboration meetings.

(b) *Further Agreement.* In connection with the discussions contemplated by (a) above, the Parties may choose to memorialize their agreement with respect to such matters in one or more separate agreements (which may include agreements involving third parties), as the Parties may mutually agree in writing.

1.3 Reporting and Information Sharing. The Parties shall regularly inform each other during the term of this MOU of the status of the activities envisioned by this Section, and mutually coordinate appointments or meetings necessary to accomplish such objectives, and consult with each other from time to time as may be necessary to achieve the Purpose.

1.4 Consideration. Except as shall be mutually agreed between the Parties in writing, each Party shall bear its own costs in connection with the transactions contemplated by this MOU.

SECTION 2 TERM; TERMINATION.

2.1 Term. This MOU shall take effect on the Effective Date and shall continue for a period of three (3) years thereafter, unless earlier terminated in accordance with Section 2.2.

2.2 Termination. Either Party may terminate this MOU with immediate effect by providing notice in writing to the other Party, provided, that any termination of this MOU shall not, by itself, affect the validity or term of any other agreement between the Parties.

SECTION 3 PROPRIETARY RIGHTS.

3.1 Intellectual Property. To the extent that any intellectual property rights pertaining to Heart's business, technology, or products arise in connection with this MOU, Åland agrees that such intellectual property rights shall be owned by Heart and shall take such actions as may reasonably be necessary to accomplish such ownership.

3.2 Publicity & Disclosure. Åland acknowledges and agrees that Heart may use Åland's name and/or identifying marks for purposes of publicly announcing the Parties' entry into this MOU, and Heart acknowledges and agrees that Åland may use Heart's name and/or logo for the same purpose. Following execution of this MOU, Åland shall provide a written testimonial elaborating the reasons why Åland has signed this MOU and/or agreed to collaborate with Heart in furtherance of the Purpose. Åland acknowledges and agrees that this testimonial may be reproduced and used publicly by Heart without restriction in support of marketing activities and events. Each party hereby grants to the other a limited, non-exclusive license to use certain of such party's intellectual property, with no right to sublicense, including names, trademarks, and copyrights, solely in connection with the exercise of rights granted under this Section.

3.3 Confidentiality.

(a) As used in this MOU, "Confidential Information" shall include any and all information disclosed, whether orally or in writing, by a Party (as such, a "Disclosing Party") or its Affiliates (as defined below) to the other Party (as such, a "Receiving Party") concerning the Disclosing Party's or its Affiliates' business and technology and/or a possible transaction or relationship between them,

including but not limited to, research, plans, and information relating to the Disclosing Party's or its Affiliates' (a) intellectual property, technology, finances, customers, employees and trade secrets, (b) sales, marketing, business development, product development and R&D initiatives, and (c) other confidential and proprietary information, all of which, to the extent previously, presently or subsequently disclosed to the Receiving Party, whether in verbal, written, graphic or electronic form. "Confidential Information" shall also include all research, analyses, compilations, forecasts, data, studies and other documents prepared by either party or its representatives that contain or are based in whole or in part on any Confidential Information furnished by the Disclosing Party or its Affiliates, as well as the existence of the Confidential Information and of any investigations, discussions or negotiations between the Parties (except as expressly contemplated by Section 3.2 above). Notwithstanding the foregoing, "Confidential Information" shall not include any information that (i) was already known to the Receiving Party at the time of its disclosure by the Disclosing Party or its Affiliates as can be demonstrated by contemporaneous records maintained by the Receiving Party; (ii) is available or becomes generally available to the public by means other than through a breach of confidentiality (including a breach of this MOU); (iii) is acquired or received rightfully by the Receiving Party from a third party without obligation of confidentiality; or (iv) is independently developed by the Receiving Party without breach of this MOU and without reference to or use of any Confidential Information of the Disclosing Party or its Affiliates.

(b) For purposes of this MOU, "Affiliate" shall mean an organization, which directly or indirectly controls a party to this MOU, an organization, which is directly or indirectly controlled by a party to this MOU; or an organization, which is controlled, directly or indirectly, by the ultimate parent company of a party. Control is defined as owning more than fifty percent of the voting stock of a company or otherwise having the power to govern the financial and the operating policies or to appoint the management of an organization. "Disclosing Party" shall mean the Party disclosing Confidential Information and "Receiving Party" shall mean the Party receiving Confidential Information.

(c) The Receiving Party shall, treat all Confidential Information as strictly confidential and shall not reveal, divulge, disclose, or export/re export (within the meaning of U.S. or other export control laws or regulations) any Confidential Information at any time, for any reason, or in any manner, to any person, including, without limitation, any employees, agents or representatives of the Receiving Party, and/or any affiliate or subsidiary of the Receiving Party, except for (i) Receiving Party's Affiliates and (ii) Receiving Party and its Affiliates' respective employees, agents and representatives, in each case which (A) have a need to know such Confidential Information for the purpose of achieving the Purpose, (B) have been advised that the Confidential Information disclosed to them is confidential and Notwithstanding the foregoing, (i) the Receiving Party may make disclosures required by law or court order provided the Receiving Party uses diligent reasonable efforts to limit disclosure and to obtain confidential treatment or a protective order and allows the Disclosing Party to participate in the proceeding, (ii) Heart may disclose this MOU to its current and potential investors and financiers provided that such entities are subject to confidentiality restrictions that are consistent with the obligations of a "Receiving Party" under this MOU, and (iii) Åland may disclose this MOU as required by applicable public records laws.

(d) Upon termination or expiry of this MOU, the Receiving Party shall (at the Disclosing Party's option) return or destroy the Confidential Information of the Disclosing Party.

SECTION 4 MISCELLANEOUS PROVISIONS.

4.1 Non-Binding MOU. The Parties acknowledge that portions of this MOU are not binding, not enforceable, and shall not give rise to any obligations on the part of either Party. This MOU establishes the framework to commence a collaborative relationship between the Parties with respect to the Purpose, which the Parties may further define by discussions and agreements between them. In no event shall either Party or any of their individual officers, employees, or agents in any way be liable or responsible for any obligations contained in this MOU, whether express or implied; nor for any statement, representation or warranty made in connection with

this MOU. The terms and conditions of any future agreement shall supersede this MOU. Nothing contained herein shall prevent the parties from exploring partnerships or entering into negotiations with third parties with regard to the subject matter of this MOU. Notwithstanding the foregoing, the Parties agree Sections 3 and 4.5 are binding and enforceable on each Party.

4.2 Amendment. Any changes, supplements, or amendments to this MOU shall require the written consent of both Parties.

4.3 Assignment. A Party may not assign any rights or obligations arising out of or in connection with this MOU to a third party, without the written consent of the other Party. A change in control of either Party shall not constitute an assignment of this MOU.

4.4 Relationship of the Parties; No Conflicts. Notwithstanding any provision hereof, for all purposes of this MOU, each party shall be and act as an independent contractor and not as a partner, joint venturer, agent or employee of the other and shall not bind nor attempt to bind the other to any contract. Åland represents and warrants that neither this MOU nor the performance thereof will conflict with or violate any obligation of Åland or right of any third party.

4.5 Governing Law; Arbitration. This MOU shall be governed by and construed in accordance with the laws of Sweden without regard to its principles of conflict of laws. Any dispute, controversy or claim arising out of or in connection with this Agreement, or the breach, termination or invalidity thereof, shall be finally settled by arbitration in accordance with the Rules for Expedited Arbitrations of the Arbitration Institute of the Stockholm Chamber of Commerce. The seat of arbitration shall be Stockholm, Sweden, and the arbitral proceedings shall be conducted in English. The Parties undertake and agree that all arbitral proceedings conducted with reference to this arbitration clause will be kept strictly confidential. This confidentiality undertaking shall cover all information disclosed in the course of such arbitral proceedings, as well as any decision or award that is made or declared during the proceedings. Information covered by this confidentiality undertaking may not, in any form, be disclosed to a third party without the prior consent by the other Party.

4.6 Counterparts. The Parties may execute this MOU in any number of counterparts, each of which is an original and all of which taken together evidence the same agreement. The Parties agree that delivery of signed counterpart signature pages by email transmission in “portable document format” (.pdf) that includes a copy of the sending Party’s signature(s) shall constitute due execution of this MOU by such Party.

Signature Page Follows

IN WITNESS WHEREOF, the parties have caused this MOU to be executed by their duly authorized representatives as of the Effective Date.

Heart Aerospace AB

Signature: _____

Name: Anders Forslund

Title: Chief Executive Officer

Date: _____

The Government of Åland

Signature: _____

Name: Fredrik Karlström

Title: Minister for Trade and Industry

Date: _____