

Added at
Agenda Session
4-19-13

AGENDA REQUEST


FOR: COUNCIL MEETING OF April 16, 2013

FROM: Lioneld Jordan, Mayor
Kit Williams, City Attorney

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

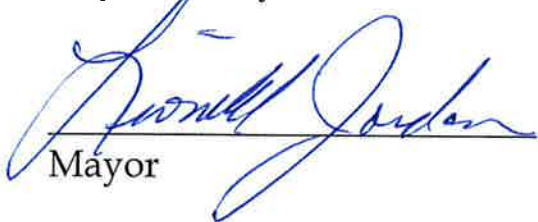
AN ORDINANCE WAIVING THE REQUIREMENTS OF FORMAL COMPETITIVE BIDDING AND APPROVING A CONTRACT IN THE AMOUNT OF \$20,342.00 PER MONTH, PLUS UPFRONT INSURANCE COSTS, WITH CI² AVIATION INC. FOR THE PROVISION OF AIR TRAFFIC CONTROL TOWER SERVICES FOR DRAKE FIELD UPON THE DATE OF TOWER CLOSURE BY THE FAA, SHOULD SUCH OCCUR; AND TO REPEAL ORDINANCE NO. 5576 THAT APPROVED THIS CONTRACT TO BEGIN APRIL 8, 2013

APPROVED FOR AGENDA:



City Attorney

4-9-13
Date



Mayor

4/9/13
Date

04-09-13 P03:58 RCVD

Kg



MEMORANDUM

Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

TO: MAYOR AND CITY COUNCIL

FROM: JASON KELLEY, ASSISTANT CITY ATTORNEY

CC: KIT WILLIAMS, CITY ATTORNEY

DATE: APRIL 9, 2013

RE: STATUS OF FAA LITIGATION EFFORTS REGARDING AIRPORT TOWER

As you are probably aware, the FAA delayed its contract air traffic control tower closure decision originally scheduled for April 7, 2013, until June 15, 2013, in an announcement by FAA Administrator Michael Huerta late Friday afternoon (April 5th).

The Council authorized our office to take action to challenge the FAA's decision to close the Drake Field air traffic control tower, in concert with other airports nationwide. The Spokane Airport Board in the State of Washington filed a Petition to Review the FAA's agency decision in the United States Court of Appeals for the District of Columbia Circuit. Other airports filed identical petitions throughout the nation, including at least one in the Ninth Circuit (San Francisco) and one in the Second Circuit (New York City). Pursuant to certain federal statutes regarding multi-jurisdictional cases, a random selection was made as to which venue would hear the challenges to the FAA action. All cases were then consolidated and transferred to the Ninth Circuit on the morning of Thursday, April 4th.

The City's Motion to Intervene was in the final stages of preparation for filing when word came of the change of venue from the D.C. Circuit to the Ninth Circuit. I had originally submitted paperwork and admission fees to authorize me to file documents as an attorney in the D.C. Circuit, and the change required my filing for admission in the Ninth Circuit. Additionally, the Motion needed to be supplemented with Ninth Circuit precedent, in addition to the D.C. Circuit precedent I had previously relied upon in our legal argument. Despite these hurdles, I was able to file our Motion for Leave to Intervene on Thursday afternoon with the Ninth Circuit. Our Motion is still pending. As a side note, the D.C. Circuit offered to return admission fees filed in their court due to the circumstances.

On Friday morning April 5th, the City of Ormond Beach, Florida filed an Emergency Motion for a Stay of the FAA's decision with the Ninth Circuit requesting a hearing and ruling within a week. We anticipated this filing and were hopeful that this effort would lead to an extension of the deadline by FAA or would quickly permit

affected airports to regain air traffic control towers pursuant to court order. Within about three hours of the filing of the Emergency Motion, FAA granted the extension of its own volition.

A multitude of cities, counties and airport authorities across the nation have joined in the legal effort challenging the FAA's decision based primarily on the fact that the FAA is bound by its own regulations to perform a safety review before making a tower closure decision. The challengers allege that has not occurred.

Between now and June 15th, continuing efforts will be made to find a more permanent solution to the airport tower situation brought on by federal budget sequestration. At this point, Fayetteville has taken the action it can take. We will continue to keep a close monitor on this case and, assuming our intervention is granted, we will continue to defend the interests of Fayetteville in the Ninth Circuit.

ORDINANCE NO. _____

AN ORDINANCE WAIVING THE REQUIREMENTS OF FORMAL COMPETITIVE BIDDING AND APPROVING A CONTRACT IN THE AMOUNT OF \$20,342.00 PER MONTH, PLUS UPFRONT INSURANCE COSTS, WITH CI² AVIATION INC. FOR THE PROVISION OF AIR TRAFFIC CONTROL TOWER SERVICES FOR DRAKE FIELD UPON THE DATE OF TOWER CLOSURE BY THE FAA, SHOULD SUCH OCCUR; AND TO REPEAL ORDINANCE NO. 5576 THAT APPROVED THIS CONTRACT TO BEGIN APRIL 8, 2013

WHEREAS, federal budget sequestration cuts have led the Federal Aviation Administration (FAA) to announce the closure of control tower operations at Drake Field; and

WHEREAS, continued air traffic control tower services are essential to assuring maximum safety for air traffic and passengers flying through Drake Field; and

WHEREAS, the expertise and training necessary for the provision of air traffic control tower services is held by the current contract provider, CI² Aviation Inc.;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby determines an exceptional situation exists in which competitive bidding is deemed not feasible or practical and therefore waives the requirements of formal competitive bidding and approves a contract in the amount of \$20,342.00 per month, with CI² Aviation Inc., marked as Exhibit "A" attached hereto and made a part hereof, for the provision of air traffic control tower services for Drake Field upon the date of tower closure by the FAA, should such occur.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby repeals Ordinance No. 5576 so that the contract attached as Exhibit "A" will supersede the initial contract because the term of service and amount of insurance payment are no longer valid because of the FAA stay of its closure order.

PASSED and **APPROVED** this _____ day of _____, 2013.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer



*CI² Aviation, Inc.
4488 North Shallowford Rd.
Suite 200
Dunwoody, GA 30338*

**AGREEMENT
for
AIR TRAFFIC CONTROL SERVICE
between
THE CITY OF FAYETTEVILLE, ARKANSAS
and
CI² AVIATION, INC.**

1. CONTRACT SERVICES

This Agreement is entered into as of the 16th day of April, 2013, by and between the City of Fayetteville, Arkansas, 4500 S. School Ave. Suite F, Fayetteville, Arkansas, 72701, and CI² Aviation, Inc., a Georgia corporation having offices at 4488 North Shallowford Road, Suite 200, Dunwoody, Georgia, 30338, effective as of the first day that the FAA ceases payment to CI² Aviation, Inc. to operate the Drake Field air traffic control tower.

WHEREAS, CI² Aviation, Inc. has entered into an agreement with the City of Fayetteville, Arkansas, which desires to have air traffic control services provided for the Fayetteville Executive Airport – Drake Field, Fayetteville, Arkansas. Services will be provided during operating hours, 0800 (8:00 A.M. Local) to 2000 (8:00 P.M. Local) daily at the Fayetteville - Drake Airport Traffic Control Tower (ATCT). CI² Aviation, Inc. shall provide these services by issuing pertinent NOTAM and advisories for the hours of operation of the Fayetteville - Drake ATCT.

NOW, THEREFORE, BOTH PARTIES, in consideration of the covenants and agreements of the respective parties herein contained hereby agree as follows:

2. SCOPE OF WORK

CI² Aviation, Inc. shall furnish all required personnel and labor, and will provide Air Traffic Control service, including normal weather observations, for the Fayetteville Executive Airport - Drake Field (FYV), Fayetteville, Arkansas, airport Movement Area and the airspace within the

designated Traffic Area as a VFR Non Federal Contract Tower (NFCT). Performance shall be in accordance with the Company and Federal Aviation Administration (FAA) standards and mandatory directives and agreements.

3. PERIOD OF PERFORMANCE AND HOURS OF OPERATION

This agreement will begin at the earliest available date of action and the hours will be from 0800L (8:00 A.M.) to 2000L, (8:00 P.M.), daily. Other additional operating hours may be provided as requested. This Agreement will be for four (4) annual periods beginning on the first day that the FAA ceases payments to CI² Aviation, Inc. to operate the Drake Field air traffic control tower.

4. REQUIREMENTS

- a. The City of Fayetteville, Arkansas will complete any required coordination as necessary to utilize the FAA maintained Control Tower structure and related ATC equipment.
- b. An Air Traffic Manager (ATM) shall be appointed and included in the minimum shift requirement.
- c. CI² Aviation, Inc. shall employ qualified Air Traffic Controllers, to accomplish all work required for this agreement. Further, CI² Aviation, Inc. shall ensure sufficient staffing to meet operating hours of air traffic from 0800L (8 A.M. Local), to 2000L (8 P.M. Local), daily.

5. LAWS AND REGULATIONS

CI² Aviation, Inc. agrees to comply with all Federal, State, and the City of Fayetteville, Arkansas rules, regulations, laws and require its officers, agents, and employees to observe and obey the same.

6. INSURANCE

- a. CI² Aviation, Inc. will provide Airport Owners' and Operators' General Liability Insurance, in the amount of \$10,000,000 per occurrence at Fayetteville Executive Airport – Drake Field, Fayetteville, Arkansas. The premium will be paid in full by the City of Fayetteville, Arkansas in accordance with the payment schedule in paragraph 7.

- b. Workers' Compensation Insurance will be provided as required by state and federal workers' compensation acts, the Federal Longshoremen's and Harbor Workers' Compensation Act, the Outer Continental Shelf Act and such other acts as may be applicable to these services.

CI² Aviation, Inc. shall provide and maintain in force at all times during the performance of the services, insurance in compliance with the insurance requirements of the Agreement.

7. COST OF SERVICES

Insurance

Insurance Cost - Based on an annual premium of \$15,000 prorated to cover the period when this contract starts through October 31, 2013.

The Premium is due and payable in advance for the first period and prior to the beginning of subsequent periods. In order to align with other CI² Aviation insurance policies this policy would renew for a full year on November 1, 2013.

The insurance policy renewal amount is subject to change annually, as determined by the Insurer.

Personnel Support Costs

The City of Fayetteville, Arkansas shall compensate CI² Aviation, Inc. for Air Traffic Control Services as follows:

First Year- \$20,342 per month
Second Year- \$21,359 per month
Third Year- \$23,090 per month
Fourth Year- \$24,244 per month

Insurance as depicted above under Insurance Costs are not included in the costs for Air Traffic Control Services, Periods 1 – 4.

8. INVOICING

- a. An invoice will be presented to the City of Fayetteville, Arkansas at the end of the month

for which services are rendered.

- b. The City of Fayetteville, Arkansas shall make payment for the provisioning of air traffic control to CI² Aviation, Inc. after services occur and after receipt of invoice.
- c. If payment has not been received within fifteen (15) days of services being provided and receipt of invoice, interest will accrue at 1.75 percent per month. If the invoice is not paid within thirty (30) days of having received the invoice, CI² Aviation, Inc. may terminate the agreement.

9. CI² AVIATION, INC. PAYMENT INFORMATION

Wiring Instructions will be provided by CI² Aviation, Inc. following the execution of this agreement, or mail check to the address below:

Mail Check To:

CI² Aviation, Inc.
Attn: Debra Anthony
4488 N. Shallowford Rd.
Suite 200
Dunwoody, Georgia 30338

10. TERM AND TERMINATION

In the event of termination of this agreement prior to the end date, all invoices will be paid in full immediately.

Advance insurance payments will be prorated and any balance will be reimbursed.

This Agreement and all rights, duties, and obligations provided for herein shall terminate upon the earliest occurrence of any of the following:

- a. For the City of Fayetteville's or CI² Aviation, Incorporated's convenience, upon thirty (30) day notice to the other party, should either party determine that it no longer desires to have or provide air traffic control services and/or funding is not available.
- b. The implementation of a new or replacement FAA Contract Tower (FCT) Program at Fayetteville – Drake ATCT.

- c. Expiration of the four-year period from the effective date of this Agreement as cited in paragraph 3 hereof.
- d. The commencement, voluntary or involuntary, of proceedings in bankruptcy for one of the parties, including filing under Chapter 11 of the U.S. Bankruptcy Code.
- e. Failure of the City of Fayetteville, Arkansas or CI² Aviation, Inc. to perform any of the covenants or conditions under this agreement.

11. COST OF LITIGATION

In the event of any litigation arising out of this Agreement, it is agreed that the prevailing party shall not be responsible for any cost reasonably incurred by it in prosecuting or defending against such litigation, including attorney's fees.

12. CONTRACT POINTS OF CONTACT

CI² Aviation, Inc. – Operations Headquarters

James M. Padgett
CI² Aviation, Inc.
4488 N. Shallowford Rd.
Suite 200
Dunwoody, Georgia 30338
404.797.0284 (mobile)
678.363.8843 (facsimile)

CI² Aviation, Inc. Point of Contact at Fayetteville - Drake ATCT, Arkansas.

Mike Bowman
Fayetteville Executive Airport – Drake Field
Attn: Airport Traffic Control Tower
437 W. Ernest Lancaster Dr.
Fayetteville, Arkansas, 72701
479.442.2182 Direct
479.659.4803 Cell for Emergencies

Notices

Any notice or other writing required or permitted by this Agreement shall be deemed to have been sufficiently given either when personally delivered or mailed by certified or registered United States mail with postage prepaid to the individual representatives and addresses of the parties specified herein.

CI² Aviation, Inc.

Michael F. Baylis, II
CEO
CI² Aviation, Inc.
4488 N. Shallowford Rd.
Suite 200
Dunwoody, Georgia, 30338

and

Fayetteville Executive Airport – Drake Field, Arkansas

Ray M. Boudreaux
Director Aviation and Economic Development
Fayetteville Executive Airport – Drake Field
4500 S. School Ave, Suite F
Fayetteville, Arkansas 72701
Office: 479.718.7642
Fax: 479.718.7646

Confidentiality

The City of Fayetteville, Arkansas hereby agrees that all information provided by CI² Aviation, Inc. pursuant to the work and Services hereunder shall be considered confidential and proprietary, and shall not be reproduced, transmitted, used or disclosed by the City of Fayetteville, Arkansas without the written consent of CI² Aviation, Inc., except as may be necessary for the non-disclosing party to fulfill its obligations hereunder; provided that the limitation shall not apply to any information or portion thereof, which is within the public domain at the time of its disclosure. The requirements of this provision shall survive the term of this Agreement.

Entire Agreement.

This Agreement constitutes the entire, complete and final understanding and agreement between the parties concerning the subject initiative and supersede any previous understandings, commitments, or agreements, oral or written.

IN WITNESS WHEREOF, the parties hereto have, through duly authorized representatives, executed this Agreement effective as of the day and year indicated in the paragraphs above.

City of Fayetteville, Arkansas

By: _____

Signature _____

Date _____

CI² Aviation, Inc.

By: Michael F. Baylis, II

Signature _____

Date _____

Agreement between the City of Fayetteville, Arkansas, and CI² Aviation, Inc.
4/8/13



CI² Aviation, Inc.
4488 North Shallowford Rd.
Suite 200
Dunwoody, GA 30338

Changes Noted

Kat

AGREEMENT
for
AIR TRAFFIC CONTROL SERVICE
between
THE CITY OF FAYETTEVILLE, ARKANSAS
and
CI² AVIATION, INC.

1. CONTRACT SERVICES

This Agreement is entered into as of the ~~2nd~~ ^{16th} day of ~~April~~ ^{April} 2013 by and between the City of Fayetteville, Arkansas, 4500 S. School Ave. Suite F, Fayetteville, Arkansas, 72701, and CI² Aviation, Inc., a Georgia corporation having offices at 4488 North Shallowford Road, Suite 200, Dunwoody, Georgia, 30338, effective as of ~~April 8, 2013~~.

^{the first day that the FAA ceases payment to CI² Aviation, Inc. to operate the Drake Field Air Traffic Control tower.}
WHEREAS, CI² Aviation, Inc. has entered into an agreement with the City of Fayetteville, Arkansas, which desires to have air traffic control services provided for the Fayetteville Executive Airport - Drake Field, Fayetteville, Arkansas. Services will be provided during operating hours, 0800 (8:00 A.M. Local) to 2000 (8:00 P.M. Local) daily at the Fayetteville - Drake Airport Traffic Control Tower (ATCT). CI² Aviation, Inc. shall provide these services by issuing pertinent NOTAM and advisories for the hours of operation of the Fayetteville - Drake ATCT.

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designated Traffic Area as a VFR Non Federal Contract Tower (NFCT). Performance shall be in accordance with the Company and Federal Aviation Administration (FAA) standards and mandatory directives and agreements.

3. PERIOD OF PERFORMANCE AND HOURS OF OPERATION

This agreement will begin at the earliest available date of action and the hours will be from 0800L (8:00 A.M.) to 2000L, (8:00 P.M.), daily. Other additional operating hours may be provided as requested. This Agreement will be for four (4) periods as follows:-

Period 1 April 8, 2013 – April 7, 2014
Period 2 April 8, 2014 – April 7, 2015
Period 3 April 8, 2015 – April 7, 2016
Period 4 April 8, 2016 – April 7, 2017

Annual beginning on the first day after the FAA ceases payment to CI² Aviation, Inc. to operate the Drake Field Air Traffic Control Tower

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Agreement between the City of Fayetteville, Arkansas, and CI² Aviation, Inc.
4/8/13

– Drake Field, Fayetteville, Arkansas. The premium will be paid in full by the City of Fayetteville, Arkansas in accordance with the payment schedule in paragraph 7.

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When the contract starts through

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- a. For the City of Fayetteville's or CI² Aviation, Incorporated's convenience, upon thirty (30) day notice to the other party, should either party determine that it no longer desires to have or provide air traffic control services and/or funding is not available.

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Agreement between the City of Fayetteville, Arkansas, and CI² Aviation, Inc.
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a new or replacement
b. The implementation of the FAA Contract Tower (FCT) Program at Fayetteville – Drake ATCT.

Expires in a four year period
c. Four (4) periods from the effective date of this Agreement as cited in paragraph 3 hereof.

d. The commencement, voluntary or involuntary, of proceedings in bankruptcy for one of the parties, including filing under Chapter 11 of the U.S. Bankruptcy Code.

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Fayetteville Executive Airport – Drake Field, Arkansas

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Entire Agreement.

This Agreement constitutes the entire, complete and final understanding and agreement between the parties concerning the subject initiative and supersede any previous understandings, commitments, or agreements, oral or written.

IN WITNESS WHEREOF, the parties hereto have, through duly authorized representatives, executed this Agreement effective as of the day and year indicated in the paragraphs above.

City of Fayetteville, Arkansas

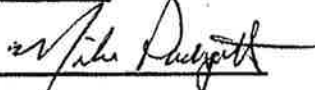
By: Lionel Jordan

Signature 

Date 4/4/13

CI² Aviation, Inc.

By: Michael F. Baylis, II

Signature ^{FOI} 

Date 4/2/13

