



STAFF REPORT

DATE: MAY 15, 2012

TO: HONORABLE MAYOR AND CITY COUNCIL *[Signature]*

FROM: ROD FOSTER, CITY MANAGER

PREPARED BY: STEVE WARD, POLICE CHIEF *[Signature]*

SUBJECT: APPROVAL OF PUBLIC SAFETY HELICOPTER SERVICES AGREEMENT BETWEEN THE CITIES OF FONTANA AND COLTON

RECOMMENDED ACTION

It is recommended that the City Council authorize the Mayor to execute a Professional Services Agreement between The cities of Fontana and Colton for public safety helicopter services.

GOAL STATEMENT

The proposed action will establish a partnership with the City of Fontana, who will provide public safety helicopter services to The City of Colton.

BACKGROUND

The Colton Police Department has had a long-standing partnership with The San Bernardino County Sheriff's Department for helicopter services. San Bernardino County provides helicopter services to most cities in the County, often times limiting their availability for responding to requests for assistance from Colton Police. Helicopter response is determined by the priority and severity of the incident. Colton Police recognizes the importance of helicopter services to assist officers and to protect the safety of our community.

ISSUES/ANALYSIS

The Police Departments of Fontana and Colton have long recognized that mutual aid and cooperation in response to law enforcement service calls and critical incidents can be enhanced and made more effective by combining forces. The City of Fontana owns and maintains a Robinson R44 Raven II helicopter, which is equipped with a powerful searchlight, forward looking infrared (FLIR), color video camera, GPS mapping, public address / siren system, computer, Lo-Jack, and radios for both communications and navigation. The City of Fontana is in the process of purchasing a similarly equipped Robinson R66 Turbine helicopter, which they expect to be operational by August 15, 2012. It is recognized that the presence of a highly trained and skilled aviation unit has been shown to reduce the risk of injury or death to citizens, police

officers and suspects. Utilizing Fontana's helicopter services will enhance Colton's law enforcement services to the community due to our proximity and availability of the service; and our commitment to the helicopter program.

- **Proximity** – The City of Fontana's helicopter operations is based at the Rialto Airport, in the City of Rialto. The City of Colton shares a common boundary with The City of Rialto. Rialto Airport is only minutes away from Colton. In the event of a critical incident in Colton, the helicopter response would be quick.
- **Availability** – The County of San Bernardino's helicopter serves the entire County, and is not always available. The City of Fontana helicopter serves just The Cities of Fontana, Colton and Rialto. Because of the close proximity and the fact that service is provided to just the three cities, The City of Fontana's helicopter service will greatly increase Colton's availability for helicopter support and enhance community and officer safety.
- **Commitment** – Per the Agreement, Colton Police will assign one officer to Fontana's Police Air Support Unit.

FISCAL IMPACTS

The City of Colton will dedicate one full-time police officer to the Fontana Air Support Unit. In addition, there will be a one-time cost for a flight suit and helmet in the amount of approximately \$2,600. Also, the City's share of fuel cost is proposed to be funded by the Byrne Memorial Justice Assistance Grant (JAG), which is the next item on the Council's agenda this evening.

ALTERNATIVES

1. Provide alternative direction to staff.

ATTACHMENTS

Public Safety Helicopter Services Agreement between the Cities of Fontana and Colton.

PUBLIC SAFETY HELICOPTER SERVICES AGREEMENT
BETWEEN THE CITIES OF FONTANA AND COLTON

1. PARTIES AND DATE.

This Public Safety Helicopter Services Agreement (“Agreement”) is made and entered into this ____ day of _____, 2012 by and among the City of Fontana, a California municipal corporation (hereinafter called “Fontana”) and the City of Colton, a California municipal corporation (hereinafter called “Colton”). Fontana and Colton may hereinafter be referred to individually as “Party” or collectively as the “Parties.”

2. RECITALS.

2.1 Fontana owns, maintains and repairs a Robinson R44 Raven II police helicopter, which is equipped with a powerful searchlight, forward looking infrared (FLIR), color video camera, GPS mapping, PA / siren, computer, Lo-Jack, and radios for both communication and navigation, and is primarily used in connection with Fontana’s Police Air Support Unit to support ground based public safety personnel. Fontana is in the process of purchasing a similarly equipped Robinson R66 Turbine helicopter, which Fontana expects to be operational by August 15, 2012.

2.2 Fontana employs, maintains, trains and equips personnel capable of piloting Fontana’s public safety helicopter units and responding to requests for public safety helicopter services from ground based public safety personnel.

2.3 Colton is responsible for providing public safety services within its jurisdiction, which may include public safety helicopter services.

2.4 Colton desires that Fontana provide public safety helicopter services within its jurisdiction.

2.5 By this Agreement, the Parties desire to set forth the terms and conditions under which the public safety helicopter services will be provided to Colton.

2.6 The Parties are authorized to enter into this Agreement pursuant to California Government Code Section 55632.

3. TERMS.

3.1 Recitals. The Recitals listed above are incorporated into and hereby made a part of this Agreement.

3.2 Term. The term of this Agreement shall be for a period of two (2) years commencing on , 2012 and expiring on , 2014 unless earlier

terminated as provided herein. Either Party may terminate the whole or any part of this Agreement at any time and without cause by giving written notice to the other Party of such termination, and specifying the effective date thereof, at least sixty (60) days before the effective date of such termination.

3.3 Fontana's Obligations.

3.3.1 Subject to the terms and conditions of this Agreement, Fontana will provide Colton with public safety helicopter services that will include a helicopter aircrew comprised of one (1) pilot and two (2) tactical flight officers who are sworn police officers. Such services shall include, but shall not be limited to, response to emergency calls for surveillance relating to in-progress felonies, crimes against persons and property, vehicle pursuits and similar activities. The helicopter aircrew shall be specially trained to conduct public safety helicopter services. All helicopter aircrew members providing public safety helicopter services to Colton under this Agreement currently possess, and shall maintain for the term of this Agreement, all permits, licenses, certifications, and training required from any federal, state or local governmental entity to provide public safety helicopter services.

3.3.2 Fontana shall retain primary use of the helicopters referenced in Section 2.1 and first priority will be given to the land and residents of Fontana. When not responding to or assisting with such a priority call, Fontana will respond to calls in Colton for public safety helicopter services. Additionally, when not responding to or assisting with a priority call, Fontana will provide routine public safety helicopter patrol services over Colton's jurisdictional areas.

3.3.3 Colton acknowledges that Fontana will be providing similar public safety helicopter services to the City of Rialto ("Rialto"). In such occasions where there is a request or need for public safety helicopter services from both Colton and Rialto simultaneously, Fontana will provide such services to the city with the highest priority based upon the nature of the incident. The determination as to which city shall receive public safety helicopter services shall be within the sole and absolute discretion of the helicopter aircrew in command at that time.

3.3.4 When available, as determined by Fontana's Police Chief, or his/her designee, in his/her sole and absolute discretion, one or more of the helicopters referenced in Section 2.1 may be made available to Colton for static displays at community or special events.

3.3.5 Fontana's Police Air Support Unit currently operates one 10-hour shift per day, five (5) days per week. The current hours of operation are as follows: 1600 hours to 0200 hours, Wednesday through Sunday. Fontana reserves the right to modify or expand the hours of operation for the Police Air Support Unit. The Colton Officer assigned to Fontana's Police Air Support Unit pursuant to Section 3.4.1 shall be available for any such modified or expanded hours of operation.

3.4 Colton Obligations.

3.4.1 Colton shall assign one (1) full-time (40 hours per week) experienced

sworn police officer (“Colton Officer”) to Fontana’s Police Air Support Unit, who will perform the function of a tactical flight officer. Day to day supervision of the Colton Officer shall be the responsibility of the Fontana Sergeant assigned to the Police Air Support Unit while the Colton Officer is participating in activities of the Air Support Unit. Responsibility of the conduct of the Colton officer will remain with Colton. The Colton Officer shall adhere to all policies and procedures of Fontana pertaining to the activities of the Air Support Unit. The duty hours of the Colton Officer shall be determined by the Fontana Sergeant assigned to the Air Support Unit. In the event the Colton officer is removed from duty for an extended period of time for disciplinary or other reasons, including, but not limited to, vacation, sick time, personal leave, or compensatory time, Colton will assign a replacement officer to the Police Air Support Unit.

3.4.2 Notwithstanding the foregoing, the Colton Officer shall at all times be an employee of Colton. Colton shall pay all wages, salaries, benefits, overtime and other amounts due the Colton Officer while assigned to Fontana’s Police Air Support Unit pursuant to this Agreement and as required by law. Colton shall be responsible for all reports and obligations respecting the Colton Officer, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers’ compensation insurance. Colton shall have the exclusive power and authority to hire, discharge, evaluate and discipline the Colton Officer. Colton shall provide the Colton Officer with all supplies necessary to perform his duties under this Agreement, including, without limitation, uniforms, weapons, and a vehicle.

3.4.3 When operations of Fontana’s Police Air Support Unit are cancelled due to weather, maintenance or any other matter causing cancellation, the Colton Officer will be reassigned to other duties within the Air Support unit or reassigned back to Colton for deployment.

3.4.4 Colton agrees to install within its communications/dispatch center any radio equipment necessary to communicate directly with Fontana on the designated frequency agreed upon by Fontana and Colton. All costs associated with said installation shall be paid by Colton.

3.5 Representatives. Fontana and Colton hereby designate their respective Police Chiefs, or their designees, to act as their representatives for the performance of this Agreement. Each representative shall have the power to act on behalf of their respective Party for all purposes under this Agreement.

3.6 Insurance.

3.6.1 Workers’ Compensation. Fontana and Colton shall maintain Workers’ Compensation Insurance or self-insurance for their own employees without cost to the other Party. In the event that a Fontana employee pursues a workers’ compensation claim for an incident which occurred while that employee was acting pursuant to this Agreement, the Parties understand, acknowledge and agree that Fontana shall be responsible and liable to process, defend and/or pay the claim as necessary. In the event that a Colton employee pursues a workers’ compensation claim for an incident which occurred while that employee was acting

pursuant to this Agreement, the Parties understand, acknowledge and agree that Colton shall be responsible and liable to process, defend and/or pay the claim as necessary. Each Party shall defend, indemnify and hold harmless, pursuant to Section 3.9 below, the other Party with respect to workers' compensation claims filed by their own employees.

3.6.2 Additional Insurance. In addition, each Party shall provide its own insurance or self-insurance for its own apparatus, equipment and employees, including general liability insurance and automobile insurance.

3.7 Indemnification. Pursuant to California Government Code Section 895 et seq., each Party agrees to defend, indemnify and hold the other Party and their elected officials, officers, employees, contractors, volunteers and agencies, mutually free and harmless from any and all claims, demands, causes of action, costs, expenses, losses, damages, injuries or liabilities, including wrongful death and attorneys' fees, arising from their own performance of this Agreement, except to the extent that such liability is caused by the negligence of the other Party. Any claim for indemnification must be submitted in writing.

3.8 Attorneys' Fees. In the event of a dispute between the Parties arising over the interpretation or operation of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees and costs.

3.9 Notices. Any notices required to be given under this Agreement shall be deemed to have been properly delivered, served, or given for all purposes when personally delivered to the Party to whom it is directed to, or in lieu of such personal service, when mailed, postage prepaid to the following addresses:

COLTON:
Police Chief
City of Colton Police Department
303 East "E" Street
Colton, CA 92324

FONTANA:
Police Chief
City of Fontana Police Department
17005 Upland Ave.
Fontana, CA 92335

Any Party may change its address for the purposes of this paragraph by giving written notice of such change in the manner prescribed by this paragraph.

3.10 Third Party Rights. Fontana and Colton agree that the provisions of this Agreement are not intended to create or clarify any rights in third parties not a party to this Agreement. In addition, no third party shall have any right of action hereunder. This Agreement shall not be enforceable by any parties other than Fontana and Colton.

3.11 Privileges and Immunities. All privileges and immunities of Fontana and Colton provided by state or federal law shall remain in full force and effect.

3.12 Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements.

3.13 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Bernardino County.

3.14 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties, and shall not be assigned by either Party without the prior written consent of the other.

3.15 Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original.

3.16 Days. Unless otherwise specified, “days” shall mean calendar days.

3.17 Amendments. All amendments to this Agreement must be made in a signed writing by all of the Parties hereto, or their respective successors or assigns.

3.18 Severability. In the event that any provision or portion of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable for any reason, such provision or portion shall be severable from this Agreement. Such invalidity, illegality or unenforceability shall not be construed to have any effect on the validity, legality or enforceability of the remaining provisions or portions of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be signed and executed on the date first hereinabove written.

[Signatures on following page]

**SIGNATURE PAGE TO
PUBLIC SAFETY HELICOPTER SERVICES AGREEMENT
BETWEEN THE CITIES OF FONTANA AND COLTON**

CITY OF COLTON

CITY OF FONTANA

By: _____
Rod Foster, City Manager

By: _____
Kenneth R. Hunt, City Manager

Attest:

Attest:

By: _____
Eileen Gomez, City Clerk

By: _____
Tonia Lewis, City Clerk

Approved as to Form:

By: _____
Dean Derleth, City Attorney

By: _____
Jeffrey Ballinger, City Attorney