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MEMORANDUM

DATE: September 26, 2019
TO: Jacob Saur, Acting Director, Public Safety
James Crutchfield, Chief, Emergency Medical Services
THROUGH: Mitchell O. Palmer, County Attorney Approved by *M. Palmer 9-26-19*
FROM: Douglas E. Polk, Jr. Assistant County Attorney Approved by *D. Polk 9-26-19*
RE: **Peer Support Facility Dog Pilot Program; CAO Matter No. 2019-0425**

Issue Presented:

You have requested that I (1) review the proposed Facility Dog Pilot Program Policy and Procedures, (2) review a proposed contract between Valor Facility Dogs and Emergency Medical Services, and (3) provide an opinion regarding the legal ramifications, feasibility and potential liability considerations under the terms of the proposed agreement.

Brief Answer:

Florida Law imposes strict liability upon the custodian/owner of dogs and the County does not appear to have coverage under the self-insurance fund that would cover potential dog bites. Some possible remedies would involve either the purchase of specific purpose liability coverage or being added to Valor's policy as an additional insured. It does not appear that an indemnity agreement would be sufficient to protect the County from exposure in this instance.

Recommendation:

The County Attorney's Office recommends obtaining approval of this pilot program from the County Commission due to the potential liability issues that may arise. The Commission should be fully apprised of the options and could then authorize a program

* Board Certified in Construction Law

** Board Certified in City, County, & Local Government Law

and designate funding. With the Commission's approval, we would attempt to negotiate an agreement with Valor that would protect the County through insurance coverage. Currently, the proposed contract shifts all liability to the County and releases Valor from any future potential liability.

Discussion:

The pilot program being proposed would utilize a Facility Dog to assist Peer Support's efforts to address the increasing rate of PTSD claims and further address the overall mental health and wellness of the EMS and Public Safety staff. Valor Service Dogs would retain ownership of the dog, but it would be in the possession, custody and control of Public Safety staff. It is anticipated that the dog would spend business hours at the Public Safety facility and would then go home with the Public Safety employee who is designated as the dog's handler and would reside in the home with the handler and the handler's family. Valor is offering to train the handler in the care of the dog and provide the Facility Dog free of charge to the Public Safety Department. Public Safety would be responsible for the care, upkeep and veterinary services required by the dog.

F.S. Section 767.11 defines the owner of a dog to be "any person, firm, corporation, or organization ...keeping, or having control or custody of an animal..." Based upon the broad definition of "owner" in the statute, under the currently proposed scenario, both the handler of the dog as well as Manatee County would most likely be deemed an "owner" for purposes of imposing strict liability under the statute.

F.S. Section 767.04 places strict liability on the "owner" of a dog for any damages suffered by any person bitten by the dog. This liability extends to any bite that occurs in a public place as well as a bite that occurs on private property to persons lawfully present on the property. This liability is not limited to actual bites, but would also include injuries should the dog jump on someone or cause someone to fall.

The contract with Valor requires that the facility dog be kept at the handler's private residence during non-working hours. Therefore, any injuries that might occur to family, friends or guests lawfully on the handler's property would subject the individual employee working as the handler as well as the County to liability. Although we have not reviewed any potential handler's homeowner's insurance policy, most homeowner's policies contain a "business exclusion" which would limit coverage for potential dog bites in this situation.

In discussion with our Risk Manager, it would appear Manatee County maintains no liability insurance that would provide coverage to a dog in the custody and control of the County should the dog bite someone. Further, the Self-Insurance Fund does not appear to allow for payments under the Fund in situations such as this.

Pursuant to the proposed contract from Valor, the County and the handler are being required to release Valor from any liability. As a matter of practice, Manatee County generally requires its vendor partners to agree to indemnify the County and its employees from any liability resulting from the vendor's actions. In this situation, it would not appear that Valor is in a position to realistically provide indemnification to the

County. Our review of the publicly available information indicates that it is a very small non-profit corporation with little capitalization, and therefore any agreement to indemnify the County would likely be unenforceable. It would appear that Valor has only trained and placed three dogs over the past year, all with individual veterans, and none have been placed with an entity such as Manatee County.

The only realistic way that the County could protect itself from liability for damage caused by dog-related actions would be to require Valor to add the County as an additional insured to their liability policy. The policy would need to be from a rated carrier and provide defined limits of coverage consistent with the statutory sovereign immunity waiver.

Conclusion:

The liability issues need to be addressed prior to any contractual commitments being made for this program. The County Attorney's Office would be available to negotiate the terms necessary to protect the County if approved by the Commission. This concludes my response to this Request for Legal Services.

DEP:dmh

Copies to: Cheri Coryea, County Administrator
John Osborne, Deputy County Administrator
Karen Stewart, Acting Deputy County Administrator