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Rob Harrison Memo

To: Mayor Mayberry, Council, Manager Wood, and Atty Will Ridley

Date: 12/13/2019; updated as set forth below in version table

Re: Dr. Mark Fox matter for providing Advanced EMS Services

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NOTE: the following is intended to be a compilation of facts, interests, and options that have been voiced about this matter as a framework for thinking about this problem,

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Background

16 In late 2018, Dr. Mark Fox (Dr. Fox) asked the City for several things related to being able to respond to
17 incidents in the city by having a car with lights, siren, etc. There have been some delays, and now the
18 matter has come up again. City Council met today (12/13/19) at State Park for a Retreat. Dr. Fox learned
19 that the matter had come up and called me to discuss it. I explained how had tried to break the problem
20 down into the types of job classifications that seemed to come into play (employee, independent contractor,
21 volunteer) and said it seemed to me the main issue was the car. As I “unpacked it” with him it seems
22 having the City car, per se, is not the issue; instead he would be happy to outfit his own car with lights and
23 a secure place for antibiotics and medical supplies (not narcotics, which surprised me). I also found that he
24 is already an independent contractor as our Medical Director and also a Volunteer Fireman (plus he is a
25 Reserve Police Officer).

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Facts:

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31 Volunteer Firemen job characteristics as stated at today’s strategic planning meeting:

- use their personally owned vehicles (POV)¹
- use of warning equipment
 - ~~can use red emergency lights (not blue) (some VIPs do use blue lights, others flashing yellow — we were going to look into this)~~
 - Only full-time personnel are permitted to equip their POVs with emergency equipment per City Policy.² (see also Option 3 In 198)
 - Should only operate under red or yellow lights and cannot use blue lights unless an actual police officer with state certification³
 - Volunteers are not allowed to use sirens on POVs but can operate city owned emergency vehicles and utilize warning equipment⁴ (but see In 199)
- are allowed to carry weapons in their POV per state law, but not on scenes and discharging city duties per city policy⁵
- have to have a Emergency Vehicle Operator Course (EVOC) each year
- carry their own insurance [general liability]
- City provides workers compensation insurance

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Dr. Fox wears 3 hats with the city:

¹ Chris South confirms

² Per Chris South

³ Per Will Ridley

⁴ same as 2

⁵ same as 2

- 49 • he is the City’s Medical Director and is an independent contractor getting an IRS form 1099
50 annually for a fee of \$200/month, paid quarterly at \$600/qtr; this is a separate “hat” from being a
51 Volunteer Fireman.
 - 52 ○ Dr. Fox trains Crossville Emergency Medical Technicians (EMTs) informally ‘100-200
53 hours/yr on average’ (his estimate)... says he tries to use every incident as a training
54 opportunity
 - 55 ▪ (He does not do “training” classes as we have to comply with state regulations to
56 maintain certification. He performs quality assurance, responds on medical calls
57 and wrecks and performs emergency care. He also responds to major events and
58 acts as Safety Officer and assists with firefighter safety. He is at the station
59 almost daily and is available for questions, and direction of medical and safety
60 related problems)⁶
- 61
- 62 • he is also a Volunteer Fireman and gets a stipend based on each fire call he goes to and “pulls
63 hose” (and he is “current” on his Emergency Vehicle Operator Course (EVOC) training;
 - 64 ○ last year he made \$137; made 45 calls⁷
 - 65 ○ he carries his own disability insurance (the term he used was “Own Occupational
66 specialty disability”) to protect him to the fullest extent if he is unable to continue as a
67 surgeon. It is not partial coverage meaning that if he was able to do some things
68 medically, he would have to become a radiologist; it is full disability
 - 69 ○ he is going to talk to David Bell, insurance agent, about getting more insurance
70 (liability?) with the goal of trying to respond to the City’s concerns
- 71 • he is also a “Reserve Police Officer” sworn in by Chief Beaty and has a city issued pistol that he
72 keeps locked up
 - 73 ○ Chief Brooks has done away with this⁸
- 74 • he has a concealed carry permit issued by the State

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76 **Insurance –**

- 77 • Leah Crockett, HR, mentioned that Public Entity Partnership (PEP) insurance would cover
78 general liability for a city vehicle being used by Dr. Fox, but this would not provide protection for
79 Dr. Fox personally and professionally (medical, disability...(?)).
 - 80 ○ We need an independent contractor agreement that sets out that he must provide proof so
81 certain mal-practice coverages in a minimum of \$1,000,000/\$2,000,000 aggregate
82 naming the city as additional insured. Doctor Fox will be acting as an agent of the city
83 giving medical treatment beyond what is customary of a first responder (per his memo
84 sent out today). Our insurance PEP has indicated that we will not be covered in the event
85 of a mal-practice claim that is filed against Dr. Fox and names the City as a party to the
86 law suit. This part of the Risk v. Benefit that I was discussing last night [work session
87 1/7/20]. We need to assume that in the event a suit is filed against Dr. Fox it will also
88 name the City of Crossville for which we will be left without insurance provided defense
89 unless he can name us as additional insured with adequate coverage as set out herein.⁹
 - 90 ○ see also Option 3 In 195 below

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95 **Separate the People from the ‘Problem’ ***

- 96 • Easily said; often hard to do!
- 97 • And speaking of “the Problem” it occurs to me the goal in all this is better, more advanced and
98 quicker Emergency Medical Service for Crossville (and Cumberland County)

⁶ Per Chris South

⁷ Per Chris South

⁸ Per Will Ridley and Greg Wood

⁹ Per Will Ridley

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Interests*:

Dr. Fox’s interests:

- he loves doing this kind of work over traditional recreational activities – his Mom told him “if he loves what he’s doing he’ll never have to work a day in his life!” and he does!
 - he wants to be able to respond “immediately”
 - he wants to be able to go directly to the incident, not have to go by the Fire Station. examples of advanced pre-hospital treatment he would like to respond to:
 - Incidents such as fires, motor vehicle crashes with multiple casualties, explosives, hazardous material incidents, structure collapses, trench collapse, heavy equipment accidents, electrocutions, chemical spills, incidents involving need for triage (deciding which victims need emergency, urgent, or no-transport needs at all), High risk search warrant services, hostage/barricaded subject situations, gunshot/ knife stab wounds and weather-related issues such as tornado, ice-storm, and flooding.
 - Procedures that I alone can provide in a pre-hospital setting include, but are not limited to Advanced Airway Technique (Tracheotomy), chest openings, chest tube insertion for collapse lungs, extremity amputation, extremity blood flow restoration, head injury treatment, infectious disease isolation decision, foreign body removal, trauma center referral facilitation, air medical services requests for unusual needs, hemorrhage arrest, specific medication administrations, and direct oversight of multiple medical personnel simultaneously.¹⁰
 - he wants to be able to exceed the speed limit to get to incidents as quickly and safely as possible
 - he wants to be able to get to incidents quickly and not have to stop by Fire Station 1 to get vehicle
 - he considers some sort of emergency light package to be very important (\$4-5k)
 - he would like to be able to use blue lights, but would be OK with red
- he wants to be able to protect himself from bodily harm when he gets to an incident like a fire (which may be common with volunteer firefighters approaching fires) and so carries a weapon with him at all time (locked up, I believe)
- he is happy with his above 3 job titles because he loves this kind of work.
- He is ambivalent about being an “employee”
 - figures this may bring on some additional complications for the City
- he wants to protect antibiotics (not narcotics) and medical supplies
 - he considers a “trunk vault” to be important (\$2-3k) (may be required by regulatory authorities?). This would carry more advanced equipment than regular EMTs carry.
- he is ok using his own vehicle as long as it has an emergency light package and trunk vault
 - at 1/7/20 city work session, REH mentioned the light package and lockbox at \$6-8k; Dr. Fox suggested that a similarly equipped vehicle to City’s Tahoe would cost \$15k
- he does not want to work with the County further than he already does given some issues he sees there
 - but he says he would respond under a “mutual aid” [situation]

¹⁰ Fox Memo 1/8/2020

- 150 ▪ would need to set this out in independent contractor agreement or vehicle use
151 agreement¹¹
152 • he does not want to respond to calls outside the city in the county due to being too far away [from
153 the hospital]
154 • wants to share the project benefits/risks together going forward with the City

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157 The City's interests:

- 158 • minimize City's liability to public in case there was an accident enroute to an incident
159 • minimize City's liability to Dr. Fox in case he was injured in an accident and was unable to
160 continue in his profession
161 • keep things simple
162 ○ treat all volunteers the same
163 ○ don't change City policy which prohibits non employees from using City vehicles for one
164 person with all the legal questions that brings up just for starters
165 • continue and improve the medical director relationship which has been very good for the citizens
166 of Crossville.
167 ○ the comment has been made, "if it saves one life, it may be worth it"

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170 **Options for mutual gain (with concrete, objective details):***

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172 1. City pays a bonus to Medical Director of \$7k and Dr. Fox uses his own vehicle and responds to
173 incidents in his capacity as a Volunteer Fireman.
174 a. City pays a one time bonus to Medical Director to cover emergency light package and
175 trunk vault of \$6k-\$8k (say \$7k) and
176 i. Dr. Fox installs lights and trunk vault in his current vehicle
177 b. then City increases medical director monthly compensation to cover gas, maintenance,
178 increased insurance(?), etc. all to be bought on open market; say \$100/mo
179 i. E911 may help with this-the board will have to vote
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- 181 ~~2. City pays a bonus of \$6-8k, say \$7k, Dr. Fox buys Chris South's older Black Tahoe ("Black~~
182 ~~Tahoe") for (\$13k-7k) \$6k. Fox responds to incidents as a Volunteer Fireman. **NOT**~~

183 **LEGALLY VIABLE**

- 184 a. ~~Dr. Fox says Kelly Bluebook values Black Tahoe at \$13-14k (say \$13k).~~
185 b. ~~city makes some money~~
186 c. ~~city doesn't have to lose money putting Tahoe on gov.com~~
187 i. ~~there is some doubt that this is allowed. Will says it is not.~~

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189 3. Add Chris's Black Tahoe to Medical Director Independent Contractor contract.
190 a. Title to stay with city¹²
191 b. Operating and maintenance expense to be borne by City
192 i. E911 may help with this-that board will have to vote
193 c. Insurance (see also discussion about independent contractor agreement or vehicle use
194 agreement at line 81 above)
195 i. to be paid by City. He will be acting as an agent of the City under the
196 independent contractor agreement, and we will need to make sure he has
197 adequate malpractice coverage naming the City as additional insured¹³.
198 d. When he responds, it's in his capacity as Medical Director Independent Contractor¹⁴

¹¹ Per Will Ridley

¹² Per Will Ridley

¹³ Per Will Ridley discussion with Chris South, per Will Ridley email to REH 1/10/2020

¹⁴ Per Will Ridley

- 199 i. see also ln 36 about only full time employees may use POVs with warning
200 equipment... if Dr. Fox is the Medical Director working under an expanded
201 independent contractors agreement, he will not be a volunteer but a contractor,
202 and the vehicle will belong to the City. The policy will not need to be changed.
203 As long as the vehicle is owned by the City, it can be equipped without Dr. Fox
204 being a full time employee.¹⁵
- 205 e. will need an independent contractor agreement or vehicle use agreement (see discussion
206 at ln 81) ¹⁶
- 207 f. the vehicle will be part of Dr. Fox's compensation¹⁷ in exchange for his services of
208 providing advanced emergency medical services as Medical Director/Independent
209 Contractor
- 210 i. per a local CPA, this compensation will most likely not be considered taxable
211 income to Dr. Fox because it is for the City's convenience in providing
212 advanced EMS for its citizens and the vehicle is equipped as an emergency
213 vehicle with lights and siren and "trunk vault" for advanced medical supplies
214 and tools rather than being an ordinary civilian vehicle
- 215
- 216 g. term of the Medical Director independent contractor contract to be month to month
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- 218 4. Make Dr. Fox an employee
- 219 a. figure taxes, insurance, retirement, etc.
- 220
- 221 5. Do nothing – consider Dr. Fox to be like any other volunteer
- 222 a.
- 223
- 224 6. Let the County pay
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- 226 7. Same as Option 1 with \$15k bonus to fully outfit an emergency vehicle as suggested by Fox
227 1/7/20
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- 229 8. Same as Option 1 with \$10k bonus – a compromise between Option 1 \$6-8k and Option 7 \$15k
- 230
- 231 ~~9. Lease car to Dr. Fox individually for some amount/Yr. He responds to incidents as a Volunteer~~
- 232 ~~Fireman **NOT LEGALLY VIABLE SAME AS OPTION 2**¹⁸~~
- 233 a. ~~Title stays with city(?) (like EMA?)~~
- 234 b. ~~City insures? (like EMA?)~~
- 235 c. ~~Ongoing operating and maintenance at city? Private?~~
- 236
- 237 10. Dr. Fox rent/lease a car on his own; City reimburse via Medical Director Independent Contractor
- 238 Agmt
- 239 a. Dr. Fox buys a Tahoe at a dealer for say \$56k, adds \$15k accessories, pays tax, total is
- 240 \$78k, spread over 60 months≈\$1300/mo. Add say \$100 for operating costs, total of
- 241 \$1400/mo x 12 ≈ \$17k/yr. add to current fee of \$2400/yr now ≈ \$19-20k/yr
- 242 b. independent contractor agreement could accomplish this with a price per month for Dr.
- 243 Fox's services¹⁹
- 244
- 245

¹⁵ Per Will Ridley discussion with Chris South, per Will Ridley email to REH 1/10/2020

¹⁶ Per Will Ridley

¹⁷ In Option 3, the vehicle is compensation for services, not a lease (which we can't enter into with an individual). The City would maintain ownership and could pull the vehicle back at any time ending the contract, per Will Ridley email to REH 1/10/2020

¹⁸ Per Will Ridley

¹⁹ Per Will Ridley

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QUESTIONS AND ANSWERS:

Q: The City is buying a truck for EMA and keeping title. The question came up about a non city employee driving a city vehicle.

A: Per Atty. Will Ridley, this is an arrangement between two government entities and is different from an individual using a city vehicle.

[] = REH comments/interpretations

- he has a concealed carry permit issued by the State

yellow highlighter = changes/updates made 1/7/2020 by REH and suggestions at work session.

* “Getting to Yes”, Fisher and Ury https://en.wikipedia.org/wiki/Getting_to_Yes

versions

- 1 initial effort
- 2 added a couple of options after City Work session 1/7/20
 - 2.1 worked in Atty. Will Ridley legal details and Chris South, Deputy Fire Chief clarifications. Removed yellow highlights as being too confusing. going to try to add footnotes; added line numbers to facilitate group discussion.
 - 2.2 cleaned up and added a little more detail about how Option 3 would work.