

Tuesday, June 7, 2022
City Council Workshop - Hybrid (In-Person & Electronic)

5:30 P.M.

City Council Workshop - Hybrid (In-Person & Electronic)

In-Person at City Hall, 625 S College Avenue, College Place Washington

Meeting may be viewed at: Live Stream on City of College Place, Washington YouTube at https://www.youtube.com/channel/UCbx3qrqzLDL_05NusReSI-g/featured

Zoom Attendee Link: <https://us06web.zoom.us/j/85341635063>

Or you may call this number to listen: 1-669-900-9128 ID#853 4163 5063 Phone controls: *6 - toggle mute /un-mute and *9 - raise hand

1. Opening Items.

Subject :	1.01 Call To Order
Meeting :	Jun 7, 2022 - City Council Workshop - Hybrid (In-Person & Electronic)
Category :	1. Opening Items.
Access :	Public
Type :	Procedural

Public Content

Mayor Hernández will call the meeting to order.

Subject :	1.02 Roll Call
Meeting :	Jun 7, 2022 - City Council Workshop - Hybrid (In-Person & Electronic)
Category :	1. Opening Items.
Access :	Public
Type :	Procedural

Public Content

Mayor Norma L. Hernández

Paul T. Jessup,

Michael Cleveland,

Loren Peterson,

Council Members Tito Espinoza Jr.,

Melodie Williams,
Heather Schermann,
Monica Boyle

Administrator, Mike Rizzitiello;
City Attorney, Rea Culwell;
Finance Director, Brian Carleton;
Public Works Director, Robert McAndrews;

Staff Police Chief, Troy Tomaras;
Fire Chief, David Winter;
Community Development Director, Jon Rickard;
HR Manager, Shawn Doering;
City Clerk, Lisa Neissl

Subject :	1.03 Excuse Absence of Council Members Peterson & Williams
Meeting :	Jun 7, 2022 - City Council Workshop - Hybrid (In-Person & Electronic)
Category :	1. Opening Items.
Access :	Public
Type :	Procedural
Subject :	1.04 Pledge of Allegiance
Meeting :	Jun 7, 2022 - City Council Workshop - Hybrid (In-Person & Electronic)
Category :	1. Opening Items.
Access :	Public
Type :	Procedural

Public Content

"I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all."

Subject :	1.05 Public Comment -
Meeting :	Jun 7, 2022 - City Council Workshop - Hybrid (In-Person & Electronic)

Category :	1. Opening Items.
Access :	Public
Type :	Information

Public Content

Council meetings are primarily structured to permit Council Membersto arrive at the decisions necessary to govern the City.

Meeting Protocol for Public Comment:

When submitting public comments, include the following information regardless of the manner you are using: Note that there are deadlines for writtencomments to be included in the meeting documents.

- Your Name
- Your Address

Written Public comments may be provided by submitting comment to Clerk@cpwa.usno later than 4:30PMon the meeting date to be included in the record.(If typewritten, no less than 11 pt font).

Verbal Public Comments may be made during the meeting:

- In-person at the meeting location - provided at the beginning of each agenda.
- Telephone comment - Call1-669-900-9128, entering the meeting ID (provided at beginning of agenda) and raise your hand (*9 to raise hand, *6 to mute/un-mute) when comments are requested.
- Virtual comment -Join using theZoom Attendee link (provided at beginning of agenda) and raise your hand when comments are requested.

Once recognized, you will have five minutes to speak on any subject that is under the control of the Council.

File Attachments

[It is SO EASY to participate in public meetings!.png \(224 KB\)](#)

2. Workshop Topics.

Subject :	2.01 Co-Responder Mental Health Professional Grant - Chief Tomaras & Sindi Saunders
Meeting :	Jun 7, 2022 - City Council Workshop - Hybrid (In-Person & Electronic)
Category :	2. Workshop Topics.
Access :	Public
Type :	Discussion, Information

Public Content

Workshop Only - No Action

Walla Walla County has the highest per capita mental health calls for service in the state. The Co-Responder grant will assist LE and Fire response to community members with mental health conflict.

The police department will partner with the Greater Columbia Behavior Health through a Federal grant to provide a mental health professional to aid in response to community members struggling with mental health conflict. The grant is for salary and benefits for two years and covers up to \$200,000.

Sindi Saunders, M.ED, LMHC, CCEP, CHC

Co- Director/Quality Manager/ Corporate Compliance Officer

SindiS@gcbh.org

Greater Columbia Behavioral Health ASO

File Attachments

[2022 Co-Responder Cover Sheet.pdf \(162 KB\)](#)

[CO-RESPONDER Contract JAN 2022 DRAFT 1.26.22.pdf \(361 KB\)](#)

[CO-RESPONDER liability memo.pdf \(248 KB\)](#)

Subject :	2.02 Presentation - Police Department 2021 Annual Report & Bias report - Chief Tomaras
Meeting :	Jun 7, 2022 - City Council Workshop - Hybrid (In-Person & Electronic)
Category :	2. Workshop Topics.
Access :	Public
Type :	Discussion, Information

Public Content

Workshop Only - No Action

Each year the Chief of Police produces an annual report along with a BIAS report for review and analysis. The reports document the previous years police activity.

File Attachments

[2021 Annual Report Presentation.pdf \(2.199 KB\)](#)

[2021 Annual Report.pdf \(3.516 KB\)](#)

[CPPD 2021 Bias Report.pdf \(1.213 KB\)](#)

Administrative File Attachments

[2021 Annual Report Presentation.pptx \(11,396 KB\)](#)

Subject :	2.03 Income Tax Ban - Mr. Rizzitiello
Meeting :	Jun 7, 2022 - City Council Workshop - Hybrid (In-Person & Electronic)
Category :	2. Workshop Topics.
Access :	Public

Type :

Discussion, Information

Public Content

Workshop Only - No Action

File Attachments

[Pasco_BanLocalIncomeTax.pdf \(250 KB\)](#)
[DraftCode.pdf \(167 KB\)](#)

3. Closing Items.

Subject :	3.01 Conclusion
Meeting :	Jun 7, 2022 - City Council Workshop - Hybrid (In-Person & Electronic)
Category :	3. Closing Items.
Access :	Public
Type :	Action
Recommended Action :	Motion to conclude the meeting



**CONTRACT AGREEMENT
Behavioral Health Services
Non-Medicaid:
CO-RESPONDER CONTRACT**

This Agreement is made and entered into by, and between **GREATER COLUMBIA BEHAVIORAL HEALTH, LLC BH-ASO**, hereinafter referred to as "GCBH", the Network Provider identified below, hereinafter referred to as the "Contractor". Governed by Chapter 41.05 RCW and Title 182 WAC.

CONTRACTOR INFORMATION:

Contractor Name: _____

Contractor Address: _____

CEO or Director Contract: _____ Alt. Contact: _____

E-Mail: _____ Alt. E-mail: _____

Phone: _____ Alt. Phone: _____

Fax: _____ Alt. Fax: _____

TAX ID #	UBI #	DUNS #
	N/A	N/A

ASO (Administrative Service Organization):

Greater Columbia Behavioral Health, LLC BH-ASO
101 N. Edison St., Kennewick, WA 99336
Phone: (509) 737-2475 Fax: (509) 737-4165
Website: GCBHLLC.ORG

Primary Contact: Jennifer Daniel E-mail: jenniferd@gcbh.org Direct Line: (509) 737-2472

Alternate Contact: Karen Richardson E-Mail: karenr@gcbh.org Direct Line: (509) 737-2457

AGREEMENT START DATE: "Effective Date"

AGREEMENT END DATE: TBD

EXHIBITS	CONTRACTED	
When the box(s) are marked with an X, the following exhibits are attached to and incorporated into this Agreement by reference:		
Exhibit H - Data Use, Security, and Confidentiality	X	
Exhibit N - Mental Health Block Grants (MHBG)	X	
Exhibit R - Qualified Service Organization Business Associate Agreement	X	
Exhibit S - Service Area Matrix	X	
Exhibit U - Statement of Work	X	
Exhibit V - Substance Use Disorder Block Grant (SABG)	X	

The terms and conditions of this Agreement are an integration and representation of the final, entire, and exclusive understanding between the parties superseding and merging all previous agreements, writings, and communications, oral or otherwise regarding the subject matter for this Agreement between the Parties. The Parties signing below represent they have read and understand this Agreement, and have the authority to execute this Agreement. This Agreement shall be binding on GCBH only upon signature by GCBH.

IN WITNESS WHEREOF, the parties have signed this executed Agreement:

GREATER COLUMBIA BEHAVIORAL HEALTH, LLC

GCBH Chairman, Executive Board

Approved as to Content:

GCBH Co-Director/QM/CCO

Approved as to Form:

GCBH Legal Counsel

Content/Form Prepared by:

GCBH Accounting/Auditor/Contracts

Content/Form and Fiscal Review:

GCBH Co-Director/ Finance Director

FOR CONTRACTOR:

Signature

Printed Name

Title

Network Provider Name

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1 DEFINITIONS

The words and phrases in this section shall have the following meanings for purposes of the Contract. In addition, any subcontracts and in any other documents that relate to this Contract, the Contractor shall use the following definitions and any other definitions that appear in this Contract.

1.1 Behavioral Health

“Behavioral Health” means mental health and SUD conditions and related services.

1.2 Behavioral Health Administrative Services Organization (BH-ASO)

“Behavioral Health Administrative Services Organization (BH-ASO)” means an entity selected by HCA to administer behavioral health programs, including Crisis Services and Ombuds for Individuals in a defined Regional Service Area (RSA), regardless of an Individual's ability to pay, including Medicaid eligible members.

1.3 Behavioral Health Medical Director

“Behavioral Health Medical Director” means a physician licensed in Washington State to practice medicine, oversee operations, set policies and help to make informed medical/behavioral health decisions.

1.4 Business Associate Agreement (BAA)

“Business Associate Agreement (BAA)” means an agreement under the federal Health Insurance Portability and Accountability Act of 1996, as amended (HIPAA), between a HIPAA covered entity and a HIPAA business associate. The agreement protects PHI in accordance with HIPAA guidelines.

1.5 Business Day

“Business Day” means Monday through Friday, 8:00 am to 5:00 pm Pacific Time, except for holidays observed by the State of Washington.

1.6 Code of Federal Regulations (C.F.R.)

“Code of Federal Regulations (C.F.R.)” means the codification of the general and permanent rules and Regulations, sometimes called administrative law, published in the Federal Register by the executive departments and agencies of the federal government of the United States.

1.7 Confidential Information

Confidential Information” means information that is exempt from disclosure to the public or other unauthorized persons under Chapter 42.56 RCW or other federal or State law. Confidential Information includes, but is not limited to, personal information.

1.8 Contract

“Contract” means this entire written agreement between GBCH and the Contractor, including any exhibits, documents, and materials incorporated by reference.

1.9 Contractor

“Contractor” means the Individual or entity performing services pursuant to this Contract and includes the Contractor’s owners, officers, directors, partners, employees, and/or agents, unless otherwise stated in this Contract. For purposes of any permitted Subcontract, “Contractor” includes any Subcontractor and its owners, officers, directors, partners, employees, and/or agents.

1.10 Contracted Services

“Contracted Services” means services that are to be provided by the Contractor under the terms of this Contract.

1.11 Co-Responders

“Co-responder” means teams consisting of law enforcement officer(s) and behavioral health professional(s) to engage with individuals experiencing behavioral health crises that does not rise to the level of need for incarceration

1.12 Cost Reimbursement

“Cost Reimbursement” means the Subcontractor is reimbursed for actual costs up to the maximum consideration allowed in this Contract.

1.13 Cultural Humility

“Cultural Humility” means the continuous application in professional practice of self-reflection and self-critique, learning from patients, and partnership building, with an awareness of the limited ability to understand the patient’s worldview, culture(s), and communities.

1.14 Culturally Appropriate Care

“Culturally Appropriate Care” means health care services provided with Cultural Humility and an understanding of the patient’s culture and community, and informed by Historical Trauma and the resulting cycle of Adverse Childhood Experiences (ACEs).

1.15 Department of Health (DOH)

“Department of Health (DOH)” means the Washington State agency responsible for the licensing and certification of health service providers.

1.16 Department of Social and Health Services (DSHS)

“Department of Social and Health Services (DSHS)” means the Washington State agency responsible for providing a broad array of health care and social services.

1.17 Director

“Director” means the Director of GCBH. In his or her sole discretion, the Director may designate a representative to act on the Director’s behalf. Any designation may include the representative’s authority to hear, consider, review, and/or determine any matter.

1.18 First Responders

“First Responders” means police, sheriff, fire, emergency, medical and hospital emergency rooms, and 911 call centers.

1.19 Fraud

“Fraud” means an intentional deception or misrepresentation made by a person (Individual or entity) with the knowledge that the deception could result in some unauthorized benefit to him or herself or some other person. It includes any act that constitutes fraud under applicable federal or state law.

1.20 Health Care Authority (HCA)

“Health Care Authority (HCA)” means the Washington State Health Care Authority, any division, section, office, unit or other entity of HCA or any of the officers or other officials lawfully representing HCA.

1.21 Individual

“Individual” means any person in the RSA regardless of income, ability to pay, insurance or county of residence. With respect to non-Crisis Services, “Individual” means a person who has applied for, is eligible for, or who has received GFS/FBG services through this Contract.

1.22 Materials

“Materials” means any promotional activity or communication with an Individual that is intended to “brand” a Contractor’s name or organization.

Materials include written, oral, in-person (telephonic or face-to-face) or electronic methods of communication, including email, text messaging, and social media (i.e. Facebook, Instagram, and Twitter).

1.23 Mental Health Block Grant (MHBG)

“Mental Health Block Grant (MHBG)” means those funds granted by the Secretary of the Department of Health and Human Services (DHHS), through the Center for Mental Health Services (CMHS), Substance Abuse and Mental Health Services Administration (SAMHSA), to states to establish or expand an organized community-based system for providing mental health services for adults with Serious Mental Illness (SMI) and children who are seriously emotionally disturbed (SED).

1.24 Mental Health Professional

“Mental Health Professional” means:

- 1.24.1 A psychiatrist, psychologist, psychiatric nurse, psychiatric nurse practitioner, physician assistant supervised by a psychiatrist, or social worker as defined in RCW 71.05.020;
- 1.24.2 A person with a master’s degree or further advanced degree in counseling or one of the social sciences from an accredited college or university. Such persons shall have, in addition, at least two (2) years of experience in direct treatment of persons with mental illness or emotional disturbance, such experience gained under the supervision of a Mental Health Professional;
- 1.24.3 A person who meets the waiver criteria of RCW 71.24.260, which was granted before 1986;
- 1.24.4 A person who is licensed by DOH as a mental health counselor, mental health counselor associate, marriage and family therapist, or marriage and family therapist associate;
- 1.24.5 A person who has an approved exception to perform the duties of a Mental Health Professional; or
- 1.24.6 A person who has been granted a time-limited waiver of the minimum requirements of a Mental Health Professional.

1.25 Overpayment

“Overpayment” means any payment from GCBH to the Contractor in excess of that to which the Contractor is entitled by law, rule, or this Contract, including amounts in dispute. Overpayment can also mean a payment from the Contractor to a provider or Subcontractor to which the Contractor or Subcontractor is not legally entitled. RCW 41.05A.010.

1.26 Personal Information

“Personal Information” means information identifiable to any person including, but not limited to: information that relates to a person’s name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, Social Security Numbers, driver license numbers, other identifying numbers, and any financial identifiers.

1.27 Provider

“Provider” means an Individual medical or Behavioral Health Professional, Health Care Professional, hospital, skilled nursing facility, other Facility, or organization, pharmacy, program, equipment and supply vendor, or other entity that provides care or bills for health care services or products.

1.28 ProviderOne

“ProviderOne” means the HCA’s Medicaid Management Information Payment Processing System, or any superseding platform as may be designated by HCA.

1.29 Regional Service Area (RSA)

“Regional Service Area (RSA)” means a single county or multi-county grouping formed for the purpose of health care purchasing. GCBH – Asotin, Benton, Columbia, Franklin, Garfield, Kittitas, Walla Walla, Whitman, Yakima.

1.30 Regulation

“Regulation” means any federal, State, or local Regulation or ordinance.

1.31 Revised Code of Washington (RCW)

“Revised Code of Washington (RCW)” means the laws of the State of Washington.

1.32 Serious Emotionally Disturbed (SED)

“Serious Emotionally Disturbed (SED)” means children from birth up to age eighteen (18) who have a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet diagnostic criteria specified within the current Diagnostic and Statistical Manual of Mental Disorders (DSM) that results in functional impairment which substantially interferes with or limits the child’s role or functioning in family, school, or community activities.

1.33 Serious Mental Illness (SMI)

“Serious Mental Illness (SMI)” means persons’ age eighteen (18) and over who currently, or at any time during the past year, have a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet diagnostic criteria specified within the current Diagnostic and Statistical Manual of Mental Disorders (DSM) that has resulted in functional impairment which substantially limits one (1) or more major life activities such as employment, school, social relationships, etc.

1.34 Subcontract

“Subcontract” means any separate agreement or contract between the Contractor and an Individual or entity (“Subcontractor”) to perform all or a portion of the duties and obligations that the Contractor is obligated to perform pursuant to this Contract.

1.35 Substance Abuse Block Grant (SABG)

“Substance Abuse Block Grant (SABG)” means the Federal Substance Abuse Block Grant Program) authorized by Section 1921 of Title XIX, Part B, Subpart II and III of the Public Health Service Act.

1.36 Tracking

“Tracking” means a record keeping system that identifies when the sender begins delivery of Confidential Information to the authorized and intended recipient, and when the sender receives confirmation of delivery from the authorized and intended recipient of Confidential Information.

1.37 Washington Administrative Code (WAC)

“Washington Administrative Code (WAC)” means the rules adopted by state agencies to implement legislation.

2 GENERAL TERMS AND CONDITIONS

2.1 Amendment

Except as described below, an amendment to this Contract shall require the approval of both GCBH and the Contractor. The following shall guide the amendment process:

- 2.1.1 Any amendment shall be in writing and shall be signed by the Contractor's authorized officer and an authorized representative of GCBH. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.
- 2.1.2 GCBH reserves the right to issue amendments which provide corrective or clarifying information, and notification to Contractor within thirty (30) days or fully executed contract amendments when feasible. In the event that the Contractor does not agree to the amendments, negotiations to the amendments or right to terminate the contract will become applicable.
- 2.1.3 The Contractor shall submit all feedback or questions to GCBH at karenr@gcbh.org and jenniferd@gcbh.org or other email address as expressly stated.
- 2.1.4 The Contractor shall submit written feedback within the expressed deadline (30 days when feasible) provided to the Contractor upon receipt of any amendments. GCBH is not obligated to accept Contractor feedback after the written deadline provided by GCBH.
- 2.1.5 The Contractor shall return all signed amendments within the written deadline provided by GCBH contracts administration.

2.2 Loss of Program Authorization

Should any part of the scope of work under this Contract relate to a state program that is no longer authorized by law (e.g., which has been vacated by a court of law, or for which authority has been withdrawn, or which is the subject of a legislative repeal), Contractor must do no work on that part after the effective date of the loss of program authority.

GCBH per HCA must adjust Funding to remove costs that are specific to any program or activity that is no longer authorized by law. If Contractor works on a program or activity no longer authorized by law after the date the legal authority for the work ends, Contractor will not be paid for that work. If GCBH paid Contractor in advance to work on a no-longer-authorized program or activity and under the terms of this Contract the work was to be performed after the date the legal authority ended, the payment for that work must be returned to GCBH. However, if Contractor worked on a program or activity prior to the date legal authority ended for that program or activity, and the state included the cost of performing that work in its payments to Contractor, Contractor may keep the payment for that work even if the payment was made after the date the program or activity lost legal authority.

2.3 Report Deliverable Templates

2.3.1 Templates for invoices and reports that the Contractor is required to submit to GCBH are hereby incorporated by reference into this Contract. GCBH as directed by HCA may update the templates from time to time, and any such updated templates will also be incorporated by reference into this Contract. GCBH will provide templates to Contractor upon update. The Contractor may email GCBH at any time to confirm the most recent version of any template to karenr@gcbh.org or jenniferd@gcbh.org.

2.3.1.1 Report templates include:

2.3.1.1.1 Monthly Invoice

2.3.1.1.2 Monthly Co-Responder Report

2.4 Assignment

2.4.1 The Contractor shall not assign this Contract to a third party without the prior written consent of GCBH.

2.5 Billing Limitations

2.5.1 GCBH shall pay the Contractor only for the ASO Co-Responder Program in accordance with this Contract.

2.6 Compliance with Applicable Law

In the provision of services under this Contract, the Contractor and its Subcontractors shall comply with all applicable federal, State and local laws and Regulations, and all amendments thereto, that are in effect when the Contract is signed or that come into effect during the term of this Contract. The provisions of this Contract that are in conflict with applicable State or federal laws or Regulations are hereby amended to conform to the minimum requirements of such laws or Regulations.

A provision of this Contract that is stricter than such laws or Regulations will not be deemed a conflict. Applicable laws and Regulations include, but are not limited to:

2.6.1 Title XIX and Title XXI of the Social Security Act.

2.6.2 Title VI of the Civil Rights Act of 1964.

2.6.3 Title IX of the Education Amendments of 1972, regarding any education programs and activities.

2.6.4 The Age Discrimination Act of 1975.

- 2.6.5 The Rehabilitation Act of 1973.
- 2.6.6 The Budget Deficit Reduction Act of 2005.
- 2.6.7 The Washington Medicaid False Claims Act and Federal False Claims Act (FCA).
- 2.6.8 The Health Insurance Portability and Accountability Act (HIPAA).
- 2.6.9 The American Recovery and Reinvestment Act (ARRA).
- 2.6.10 The Patient Protection and Affordable Care Act (PPACA or ACA).
- 2.6.11 The Health Care and Education Reconciliation Act (HCERA).
- 2.6.12 The Mental Health Parity and Addiction Equity Act (MHPAEA) and final rule.
- 2.6.13 21 C.F.R. Food and Drugs, Chapter 1 Subchapter C – Drugs – General.
- 2.6.14 42 C.F.R. Subchapter A, Part 2 – Confidentiality of Alcohol and Drug Abuse Patient Records.
- 2.6.15 42 C.F.R. Subchapter A, Part 8 – Certification of Opioid Treatment Programs.
- 2.6.16 45 C.F.R. Part 96 Block Grants.
- 2.6.17 45 C.F.R. 96.126 Capacity of Treatment for Intravenous Substance Abusers who Receive Services under Block Grant funding.
- 2.6.18 Chapter 70.02 RCW Medical Records – Health Care Information Access and Disclosure.
- 2.6.19 Chapter 71.05 RCW Mental Illness.
- 2.6.20 Chapter 71.24 RCW Community Mental Health Services Act (CMHSA).
- 2.6.21 Chapter 71.34 RCW Mental Health Services for Minors.
- 2.6.22 Chapter 246-341 WAC.
- 2.6.23 Chapter 43.20A RCW Department of Social and Health Services (DSHS).

- 2.6.24 Senate Bill 6312 (Chapter 225. Laws of 2014) State Purchasing of Mental Health and Chemical Dependency Treatment Services.
- 2.6.25 All federal and State professional and facility licensing and accreditation requirements/standards that apply to services performed under the terms of this Contract, including but not limited to:
 - 2.6.25.1 All applicable standards, orders, or requirements issued under Section 508 of the Clean Water Act (33 U.S.C. 1368), Section 306 of the Clean Air Act (42 U.S.C. § 7606, Executive Order 11738, and Environmental Protection Agency (EPA) Regulations (40 C.F.R. Part 15), which prohibit the use of facilities included on the EPA List of Violating Facilities. Any violations shall be reported to HCA, DHHS, and the EPA.
 - 2.6.25.2 Any applicable mandatory standards and policies relating to energy efficiency that are contained in the State Energy Conservation Plan, issued in compliance with the Federal Energy Policy and Conservation Act.
 - 2.6.25.3 Those specified for laboratory services in the Clinical Laboratory Improvement Amendments (CLIA).
 - 2.6.25.4 Those specified in Title 18 RCW for professional licensing.
- 2.6.26 Industrial Insurance – Title 51 RCW.
- 2.6.27 Reporting of abuse as required by RCW 26.44.030.
- 2.6.28 Federal Drug and Alcohol Confidentiality Laws in 42 C.F.R. Part 2.
- 2.6.29 Copeland Anti-Kickback Act.
- 2.6.30 Byrd Anti-Lobbying Amendment.
- 2.6.31 All federal and State nondiscrimination laws and Regulations.
- 2.6.32 Americans with Disabilities Act (ADA): The Contractor shall make reasonable accommodation for Individuals with disabilities, in accord with the ADA, for all Contracted Services and shall assure physical and communication barriers shall not inhibit Individuals with disabilities from obtaining Contracted Services.
- 2.6.33 Any other requirements associated with the receipt of federal funds.
- 2.6.34 Any services provided to an Individual enrolled in Medicaid are subject to applicable Medicaid rules.

2.7 Covenant Against Contingent Fees

The Contractor certifies that no person or selling agent has been employed or retained to solicit or secure this Contract for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Contractor for the purpose of securing business. GCBH shall have the right, in the event of breach of this clause by the Contractor, to terminate this Contract or, in its discretion, to deduct from amounts due the Contractor under the Contract recover by other means the full amount of any such commission, percentage, brokerage or contingent fee.

2.8 HIPAA and Confidentiality

HIPAA and Confidentiality, sets out Contractor's obligations for compliance with confidentiality terms.

2.9 Debarment Certification

- 2.9.1 The Contractor, by signature to this Contract, certifies that the MHP (Mental Health Professional) is not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded in any Washington State or federal department or agency from participating in transactions (debarred).
- 2.9.2 The Contractor shall immediately notify GCBH if, during the term of this Contract, the MHP (Mental Health Professional) becomes debarred. GCBH may immediately terminate this Contract by providing Contractor written notice in accord with Subsection 2.38 of this Contract if the Contractor becomes debarred during the term hereof.

2.10 Defense of Legal Actions

Each party to this Contract shall advise the other as to matters that come to its attention with respect to potential substantial legal actions involving allegations that may give rise to a claim for indemnification from the other. Each party shall fully cooperate with the other in the defense of any action arising out of matters related to this Contract by providing without additional fee all reasonably available information relating to such actions and by providing necessary testimony.

2.11 Disputes

When a dispute arises over an issue that pertains in any way to this Contract (other than overpayments, as described below), the parties agree to the following process to address the dispute, Action by GCBH will be held in abeyance until dispute is resolved:

- 2.11.1 The Contractor shall request a dispute resolution conference with the Agency Director. The request for a dispute resolution conference must be in writing and shall clearly state all of the following:

- 2.11.1.1 The disputed issue(s).

- 2.11.1.2 An explanation of the positions of the parties.
- 2.11.1.3 Any additional facts necessary to explain completely and accurately the nature of the dispute.
- 2.11.2 Requests for a dispute resolution conference must be mailed to the Director, Greater Columbia Behavioral Health LLC, 101 N. Edison St, Kennewick WA 99336. Any such requests must be received by the Director within thirty (30) calendar days after the Contractor receives notice of the disputed issue(s).
 - 2.11.2.1 The Director, in his or her sole discretion, shall determine a time for the parties to present their views on the disputed issue(s). The format and time allowed for the presentations are solely within the Director's discretion. The Director shall provide written notice of the time, format, and location of the conference. The conference is informal in nature and is not governed in any way by the Administrative Procedure Act, chapter 34.05 RCW.
 - 2.11.2.2 The Director shall consider all of the information provided at the conference and shall issue a written decision on the disputed issue(s) within thirty (30) calendar days after the conclusion of the conference. However, the Director retains the option of taking up to an additional sixty (60) calendar days to consider the disputed issue(s) or taking additional steps to attempt to resolve them. If the Director determines, in his or her sole discretion, that an additional period of up to sixty (60) calendar days is needed for review, he or she shall notify the Contractor, in writing, of the delay and the anticipated completion date before the initial thirty-day period expires.
 - 2.11.2.3 The Director, may appoint a designee to represent him or her at the dispute conference. If the Director does appoint a designee to represent him or her at the dispute conference, the Director shall retain all final decision-making authority regarding the disputed issue(s). Under no circumstances shall the Director's designee have any authority to issue a final decision on the disputed issue(s). In the event that the contractor wishes to appeal the dispute issue decision from the Director, they may request that the GCBH Executive Board review the Dispute and the Director's decision. If an appeal is requested the Executive Board will review the Dispute and make a final determination within 30 days.
 - 2.11.2.4 The parties hereby agree that this dispute process shall precede any judicial or quasi-judicial proceeding and is the sole

administrative remedy under this Contract.

- 2.11.2.5 Disputes regarding overpayments are governed by the Notice of Overpayment Subsection of this Contract, and not by this Section.

2.12 Force Majeure

If the Contractor is prevented from performing any of its obligations hereunder in whole or in part as a result of a major epidemic, act of God, war, civil disturbance, court order or any other cause beyond its control, such nonperformance shall not be a ground for termination for default. Immediately upon the occurrence of any such event, the Contractor shall commence to use its best efforts to provide, directly or indirectly, alternative and, to the extent practicable, comparable performance. Nothing in this section shall be construed to prevent GCBH from terminating this Contract for reasons other than for default during the period of events set forth above, or for default, if such default occurred prior to such event.

2.13 Governing Law and Venue

This Contract shall be construed and interpreted in accordance with the laws of the State of Washington and the venue of any action brought hereunder shall be in Superior Court for Benton County. In the event that an action is removed to U.S. District Court, venue shall be in the Eastern District of Washington in Richland.

2.14 Independent Contractor

The parties intend that an independent Contractor relationship shall be created by this Contract. The Contractor and its employees or agents performing under this Contract are not employees or agents of the GCBH or the State of Washington. The Contractor, its employees, or agents performing under this Contract shall not hold himself/herself out as, nor claim to be, an officer or employee of the GCBH or the State of Washington by reason hereof, nor shall the Contractor, its employees, or agent make any claim of right, privilege or benefit that would accrue to such employee.

The Contractor acknowledges and certifies that neither, the BH-ASO, HCA nor the State of Washington are guarantors of any obligations or debts of the Contractor.

2.15 Insolvency

If the Contractor becomes insolvent during the term of this Contract:

- 2.15.1 The State of Washington and Individuals shall not be, in any manner, liable for the debts and obligations of the Contractor.
- 2.15.2 The above obligations shall survive the termination of this contract.

2.16 Inspection

- 2.16.1 The Contractor shall cooperate with all audits and investigations performed by duly authorized representatives of GCBH BH-ASO, the State of Washington, HCA and Washington State Medicaid Fraud Control Division (MFCD), as well as the federal DHHS, auditors from the federal Government Accountability Office (GAO), federal Office of the Inspector General (OIG) and federal Office of Management and Budget (OMB).
- 2.16.2 The Contractor shall provide access to their facilities and the records documenting the performance of this Contract, for purpose of audits, investigations, and for the identification and recovery of overpayments within thirty (30) calendar days, and access to its facilities and the records pertinent to this Contract to monitor and evaluate performance under this Contract, including, but not limited to, claims payment and the quality, cost, use, health and safety and timeliness of services, Contractor Adequacy, including panel capacity or willingness to accept new patients, and assessment of the Contractor's capacity to bear the potential financial losses.
- 2.16.3 The Contractor shall provide immediate access to facilities and records pertinent to this Contract for state or federal fraud investigators.

2.17 Insurance

The Contractor shall at all times comply with the following insurance requirements:

- 2.17.1 Commercial General Liability Insurance (CGL): The Contractor shall maintain CGL insurance, including coverage for bodily injury, property damage, and contractual liability, with the following minimum limits: Each Occurrence - \$1,000,000; General Aggregate - \$2,000,000. The policy shall include liability arising out of premises, operations, independent Contractors, products-completed operations, personal injury, advertising injury, and liability assumed under an insured Contract. The State of Washington, HCA/GCBH its elected and appointed officials, agents, and employees shall be named as additional insured's expressly for, and limited to, Contractor's services provided under this Contract.

- 2.17.2 Professional Liability Insurance (PL): The Contractor shall maintain Professional Liability Insurance, including coverage for losses caused by errors and omissions, with the following minimum limits: Each Occurrence - \$1,000,000; General Aggregate - \$2,000,000.
- 2.17.3 Worker's Compensation: The Contractor shall comply with all applicable worker's compensation, occupational disease, and occupational health and safety laws and Regulations. The State of Washington, GCBH and HCA shall not be held responsible as an employer for claims filed by the Contractor or its employees under such laws and Regulations.
- 2.17.4 Employees and Volunteers: Insurance required of the Contractor under the Contract shall include coverage for the acts and omissions of the Contractor's employees and volunteers.
- 2.17.5 The Contractor shall ensure that all Contractors have and maintain insurance appropriate to the services to be performed. The Contractor shall make available copies of Certificates of Insurance for Contractors, to GCBH if requested.
- 2.17.6 Separation of Insured's: All insurance Commercial General Liability policies shall contain a "separation of insured's" provision.
- 2.17.7 Insurers: The Contractor shall obtain insurance from insurance companies authorized to do business within the State of Washington, with a "Best's Reports" rating of A-, Class VII or better. Any exception must be approved by GCBH. Exceptions include placement with a "Surplus Lines" insurer or an insurer with a rating lower than A-, Class VII.
- 2.17.8 Evidence of Coverage: The Contractor shall submit Certificates of Insurance in accord with the Notices section of the General Terms and Conditions, for each coverage required under this Contract upon execution of this Contract. Each Certificate of Insurance shall be executed by a duly authorized representative of each insurer.
- 2.17.9 Material Changes: The Contractor shall give GCBH, in accord with the Notices section of the General Terms and Conditions, forty-five (45) calendar days' advance notice of cancellation or non-renewal of any insurance in the Certificate of Coverage. If cancellation is due to non-payment of premium, the Contractor shall give GCBH ten (10) calendar days' advance notice of cancellation.

- 2.17.10 General: By requiring insurance, the State of Washington, GCBH and HCA do not represent that the coverage and limits specified shall be adequate to protect the Contractor. Such coverage and limits shall not be construed to relieve the Contractor from liability in excess of the required coverage and limits and shall not limit the Contractor's liability under the indemnities and reimbursements granted to the State, GCBH and HCA in this Contract. All insurance provided in compliance with this Contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State.
- 2.17.11 The Contractor may waive the requirements as described in the Commercial General Liability Insurance, Professional Liability Insurance, Insurers and Evidence of Coverage Provisions of this section if self-insured. In the event the Contractor is self-insured, the Contractor must send to GCBH by the third Wednesday of January in each Contract year, a signed written document, which certifies that the Contractor is self-insured, carries coverage adequate to meet the requirements of this section, shall treat GCBH as an additional insured, expressly for, and limited to, the Contractor's services provided under this Contract, and provides a point of contact for GCBH.
- 2.17.12 Privacy Breach Response Coverage: For the term of this Contract and three (3) years following its termination, the Contractor shall maintain insurance to cover costs incurred in connection with a Security Incident, privacy Breach, or potential compromise of data including:
- 2.17.12.1 Computer forensics assistance to assess the impact of a data Breach, determine root cause, and help determine whether and the extent to which notification must be provided to comply with Breach notification laws (45. C.F.R. Part 164, Subpart D; RCW 42.56.590, RCW 19.255.010; and WAC 284-04-625).
 - 2.17.12.2 Notification and call center services for Individuals affected by a Security Incident or privacy Breach.
 - 2.17.12.3 Breach resolution and mitigation services for Individuals affected by a Security Incident or privacy Breach including fraud prevention, credit monitoring and identity theft assistance.
 - 2.17.12.4 Regulatory defense, fines and penalties from any claim in the form of a regulatory proceeding resulting from a violation of any applicable privacy or security law(s) or regulation(s).

2.18 Records

- 2.18.1 The Contractor shall maintain all financial records pertinent to this Contract. All financial records shall follow generally accepted accounting principles. Other records shall be maintained as necessary to clearly reflect all actions taken by the Contractor related to this Contract.

- 2.18.2 The Contractor shall maintain records relating to this Contract and the performance of the services described herein. The records include, but are not limited to, all records and other material relevant to this Contract shall be retained for six (6) years after expiration or termination of this Contract. Without agreeing that litigation or claims are legally authorized, if any litigation, claim, or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims and audit findings involving the records have been resolved.
- 2.18.3 The Contractor acknowledges the HCA/GCBH is subject to the Public Records Act (Chapter 42.56 RCW). This Contract shall be a "public record" as defined in Chapter 42.56 RCW. Any documents submitted to GCBH by the Contractor may also be construed as "public records" and therefore subject to public disclosure.

2.19 Order of Precedence

In the interpretation of this Contract and incorporated documents, the various terms and conditions shall be construed as much as possible to be complementary. In the event that such interpretation is not possible the following order of precedence shall apply:

- 2.19.1 Federal statutes and Regulations applicable to the services provided under this Contract.
- 2.19.2 State of Washington statutes and Regulations concerning the operation of GCBH programs participating in this Contract.
- 2.19.3 Applicable State of Washington statutes and Regulations concerning the operation of Health Maintenance Organizations, Health Care Service Contractors, and Life and Disability Insurance Carriers.
- 2.19.4 General Terms and Conditions of this Contract.
- 2.19.5 Any other term and condition of this Contract and exhibits.
- 2.19.6 Any other material incorporated herein by reference.

2.20 Severability

If any term or condition of this Contract is held invalid by any court of competent jurisdiction, and if all Appeals have been exhausted, such invalidity shall not affect the validity of the other terms or conditions of this Contract.

2.21 Survivability

The terms and conditions contained in this Contract that shall survive the expiration or termination of this Contract include but are not limited to: Fraud, Overpayment, Indemnification and Hold Harmless, Inspection, Maintenance of Records, and Confidentiality. After termination of this Contract, the Contractor remains obligated to:

- 2.21.1 Submit reports required in this Contract.
- 2.21.2 Provide access to records required in accord with the Inspection provisions of this section.
- 2.21.3 Repay any Overpayments that:
 - 2.21.3.1 Pertain to services provided at any time during the term of this Contract; and
 - 2.21.3.2 Are identified through an GCBH, HCA, State of Washington or other agency audit or other GCBH, HCA, State of Washington or other agency administrative review at any time on or before ten (10) years from the date of the termination of this Contract; or
 - 2.21.3.3 Are identified through a fraud investigation conducted by the State or other law enforcement entity, based on the timeframes provided by federal or State law.

2.22 Waiver

Waiver of any breach or default on any occasion shall not be deemed to be a waiver of any subsequent breach or default. Any waiver shall not be construed to be a modification of the terms and conditions of this Contract. Only the Director of the GCBH or his or her designee has the authority to waive any term or condition of this Contract on behalf of GCBH.

2.23 Contractor Certification Regarding Ethics

The GCBH certifies that the Contractor is now, and shall remain, in compliance with Chapter 42.52 RCW, Ethics in Public Service, throughout the term of this Contract. Health and Safety

2.24 Health and Safety

The Contractor shall perform any and all of its obligations under this Contract in a manner that does not compromise the health and safety of any GCBH Individual with whom the Contractor has contact.

2.25 Indemnification and Hold Harmless

- 2.25.1 GCBH and the Contractor shall each be responsible for their own acts and omissions, and the acts and omissions of their agents and employees. Each party to this Contract shall defend, indemnify, protect and hold harmless the other party, or any of the other party's agents, from and against any loss and all claims, settlements, judgments, costs, penalties, and expenses, including attorney fees, arising from any willful misconduct, or dishonest, fraudulent, reckless, unlawful, or negligent act or omission of the first party, or agents of the first party, while performing under the terms of this Contract except to the extent that such losses result from the willful misconduct, or dishonest, fraudulent, reckless, unlawful or negligent act or omission on the part of the second party.
- 2.25.2 The Contractor shall indemnify and hold harmless GCBH from any claims by other parties related to the provision of services to Individuals according to the terms of this Contract; this obligation shall not apply to any services that were unpaid due to non-payment of installment moneys by GCBH. Each party agrees to promptly notify the other party in writing of any claim and provide the other party the opportunity to defend and settle the claim. The Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold harmless the State and its agencies, officials, agents, or employees.
- 2.25.3 In accordance with RCW 71.05.026 and RCW 71.24.370, the Contractor will have no claim for declaratory relief, injunctive relief, or judicial review under chapter 34.05 RCW, or civil liability against the state, state agencies, state officials, or state employees for actions or inactions performed pursuant to the administration of chapter 71.05 RCW and chapter 71.24 RCW with regards to:
- 2.25.3.1 The allocation of federal or state funds;

2.26 Industrial Insurance Coverage

The Contractor shall comply with the provisions of Title 51 RCW, Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees, as may be required by law, GCBH may collect from the Contractor the full amount payable to the Industrial Insurance accident fund. GCBH may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by GCBH under this Contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor.

2.27 No Federal or State Endorsement

The award of this Contract does not indicate an endorsement of the Contractor by the federal government, or the State of Washington. No federal or state funds have been used for lobbying purposes in connection with this Contract.

2.28 Notices

Whenever one party is required to give notice to the other under this Contract, it shall be deemed given if either (a) emailed or (b) mailed by the United States Postal Services, registered or certified mail, return receipt requested, postage prepaid and addressed as below:

2.28.1 In the case of notice from GCBH to the Contractor, notice will be sent to:

Contact Name, Title

Provider Name

Address

City, State Zip

2.28.2 In the case of notice from the Contractor to GCBH, notice will be sent to:

GCBH, LLC ASO Contract Administrator
101 N. Edison St
Kennewick, WA 99336

2.28.3 Notices shall be effective on the date delivered as evidenced by the return receipt or the date returned to the sender for non-delivery other than for insufficient postage.

2.28.4 Either party may at any time change its address for notification purposes by mailing a notice in accord with this section, stating the change and setting for the new address, which shall be effective on the tenth (10th) day following the effective date of such notice unless a later date is specified.

2.29 Notice of Overpayment

- 2.29.1 A Notice of Overpayment to the Contractor will be issued if GCBH determines an Overpayment has been made. RCW 41.05A.170.
- 2.29.2 The Contractor may contest a Notice of Overpayment by requesting an adjudicative proceeding. The request for an adjudicative proceeding must:
 - 2.29.2.1 Comply with all of the instructions contained in the Notice of Overpayment;
 - 2.29.2.2 Be received by GCBH within twenty-eight (28) calendar days of service receipt of the Notice of Overpayment by the Contractor;
 - 2.29.2.3 Be sent to GCBH by certified mail (return receipt), to the location specified in the Notice of Overpayment;
 - 2.29.2.4 Include a statement and supporting documentation as to why the Contractor thinks the Notice of Overpayment is incorrect; and
 - 2.29.2.5 Include a copy of the Notice of Overpayment.
- 2.29.3 If GCBH does not receive a request for an adjudicative proceeding within twenty-eight (28) calendar days of service of a Notice of Overpayment, then the Contractor will be responsible for repaying the amount specified in the Notice of Overpayment. This amount will be considered a final debt to GCBH from the Contractor. GCBH may charge the Contractor interest and any costs associated with the collection of the debt. GCBH may collect an Overpayment debt through lien, foreclosure, seizure and sale of the Contractor's real or personal property; order to withhold and deliver; withholding the amount of the debt from any future payment to the Contractor under this Contract; or any other collection action available to GCBH to satisfy the overpayment debt.
- 2.29.4 Nothing in this Agreement limits GCBH's ability to recover overpayments under applicable law.

2.30 Ownership of Material

GCBH recognizes that nothing in this Contract shall give GCBH ownership rights to the systems developed or acquired by the Contractor during the performance of this Contract. The Contractor recognizes that nothing in this Contract shall give the Contractor ownership rights to the systems developed or acquired by GCBH during the performance of this Contract.

2.31 Conflict of Interest Safeguards

The Contractor shall have conflict of interest safeguards that, at a minimum, are equivalent to conflict of interest safeguards imposed by federal law on parties involved in public Contracting (42 C.F.R. 438.58).

2.32 Reservation of Rights and Remedies

A material default or breach in this Contract will cause irreparable injury to GCBH and/or Contractor. In the event of any claim for default or breach of this Contract, no provision in this Contract shall be construed, expressly or by implication, as a waiver by the State of Washington to any existing or future right or remedy available by law. Failure of the State of Washington to insist upon the strict performance of any term or condition of this Contract or to exercise or delay the exercise of any right or remedy provided in this Contract or by law, or the acceptance of (or payment for) materials, equipment or services, shall not release Contractor from any responsibilities or obligations imposed by this Contract or by law, and shall not be deemed a waiver of any right of the State of Washington to insist upon the strict performance of this Contract. In addition to any other remedies that may be available for default or breach of this Contract, in equity or otherwise, GCBH may seek injunctive relief against any threatened or actual breach of this Contract without the necessity of proving actual damages. GCBH reserves the right to recover any or all administrative costs incurred in the performance of this Contract during or as a result of any threatened or actual breach.

2.33 Termination by Default

2.33.1 Termination by Contractor. The Contractor may terminate this Contract whenever GCBH defaults in performance of the Contract and fails to cure the default within a period of ninety (90) calendar days (or such longer period as the Contractor may allow) after proper receipt from the Contractor of a written notice specifying the full nature of the default. For purposes of this section, "default" means failure of GCBH to meet one or more material obligations of this Contract: (applicable to both GCBH and Contractor in the event of a Termination by either parties).

2.33.2 Termination by GCBH. GCBH may terminate this Contract with 90 days' notice if feasible, GCBH determines the Contractor has defaulted in performance of the Contract and has failed to cure the default within a 90-day period as set by GCBH, based on the nature of the default and how such default impacts possible Individuals. For purposes of this section, "default" means failure of Contractor to meet one or more material obligations of this Contract; this may minimally include the following:

- 2.33.2.1 The Contractor did not fully and accurately make any disclosure as required by the GCBH.
- 2.33.2.2 The Contractor failed to timely submit accurate information as required by the GCBH.
- 2.33.2.3 One of the Contractor's owners failed to timely submit accurate information as required by the GCBH.
- 2.33.2.4 The Contractor's agent, managing employee, general manager, business manager, administrator, director, or other Individual who exercises operational or managerial control over, or who directly or indirectly conducts the day-to-day operation of the Contractor, failed to timely submit accurate information as required by the GCBH.
- 2.33.2.5 One of the Contractor's owners/administrators did not cooperate with any screening methods as required by the GCBH. **IF APPLICABLE**
- 2.33.2.6 One of the Contractor's owners has been convicted of a criminal offense related to that person's involvement with the Medicare, Medicaid, or title XXI program in the last ten (10) years. **IF APPLICABLE** 2.36.2.7 The Contractor has been terminated under title XVIII of the Social Security Act, or under any states' Medicaid or CHIP program. **IF APPLICABLE**
- 2.33.2.9 The Contractor failed to permit access to the Contractor's location for site visits. **IF APPLICABLE**
- 2.33.2.10 The Contractor has falsified any information provided on its application.

2.34 Termination for Convenience

Notwithstanding any other provision of this Contract, GCBH or Contractor may, by giving thirty (30) calendar days' written notice, beginning on the second day after the mailing, terminate this Contract in whole or in part when it is in the best interest of either party, as determined by either parties Boards. If this Contract is so terminated, GCBH shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination.

2.35 Terminations: Pre-termination Processes

- 2.35.1 Either party to the Contract shall give the other party to the Contract written notice, as described in the Notices section of the General Terms and Conditions of this Contract, of its intent to terminate this Contract and the reason for termination.
- 2.35.2 If either party disagrees with the other party's decision to terminate this Contract, that party will have the right to a dispute resolution as described in the Disputes section of this Contract.

2.36 Termination Due to Funding

In the event funding from any state, federal, or other source is withdrawn, reduced, or limited in any way after the date this Contract is signed and prior to the termination date, GCBH may, in whole or in part, suspend or terminate this Contract upon the effective date of withdrawn or reduced funding, whichever occurs earlier. The Contractor is entitled to terminate the agreement as of the effective date. The contract may be renegotiated under the new/revised funding conditions. If this Contract is so terminated or suspended, GCBH shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date.

3 MATERIALS AND INFORMATION REQUIREMENTS

3.1 Equal Access for Individuals with Communication Barriers

The Contractor shall assure equal access for all Individuals when oral or written language creates a barrier to such access.

3.1.1 Oral Information:

3.1.1.1 The Contractor shall assure interpreter services are provided free of charge for Individuals with a preferred language other than English. This includes the provision of interpreters for Individuals who are Deaf, DeafBlind, or Hard of Hearing. This includes oral interpretation Sign Language (SL), and the use of Auxiliary Aids and Services as defined in this Contract (42 C.F.R. § 438.10(d)(4)). Interpreter services shall be provided for all interactions between such Individuals and the Contractor or any of its providers including, but not limited to:

3.1.1.1.1 Customer service;

3.1.2 Written Information: AS APPLICABLE

3.1.2.1 The Contractor shall provide all generally available and Individual-specific written materials in a language and format which may be understood by each Individual in each of the prevalent languages that are spoken by 5 percent or more of the population of the RSA based on information obtained from GCBH.

3.1.2.2 For Individuals whose preferred language has not been translated as required in this Section, the Contractor may meet the requirement of this section by doing any one of the following:

- 3.1.2.2.1 Translating the material into the Individual's preferred reading language;
 - 3.1.2.2.2 Providing the material in an audio format in the Individual's preferred language;
 - 3.1.2.2.3 Having an interpreter read the material to the Individual in the Individual's preferred language;
 - 3.1.2.2.4 Providing the material in another alternative medium or format acceptable to the Individual. The Contractor shall document the Individual's acceptance of the material in an alternative medium or format; or
 - 3.1.2.2.5 Providing the material in English, if the Contractor documents the Individual's preference for receiving material in English.
- 3.1.3 The Contractor shall ensure that all written information provided to Individuals is accurate, is not misleading, is comprehensible to its intended audience, is designed to provide the greatest degree of understanding, is written at the sixth (6th) grade reading level, and fulfills other requirements of the Contract as may be applicable to the materials.
- 3.1.4 GCBH may make exceptions to the sixth (6th) grade reading level when, in the sole judgment of GCBH, the nature of the materials does not allow for a sixth (6th) grade reading level or the Individual's needs are better served by allowing a higher reading level. GCBH approval of exceptions to the sixth (6th) grade reading level must be in writing.
- 3.1.5 Educational materials about topics or other information used by the Contractor for health promotion efforts must be submitted to GCBH, but do not require GCBH approval as long as they do not specifically mention the Contracted Services.
- 3.1.6 Educational materials that are not developed by the Contractor or by the Contractor's Subcontractors are not required to meet the sixth (6th) grade reading level requirement and do not require GCBH approval.
- 3.1.7 For Individual-specific written materials, the Contractor may use templates that have been pre-approved in writing by GCBH. The Contractor must provide GCBH with a copy of all approved materials in final form.

3.1.8 Interpreter services for Individuals over-the-telephone

- 3.1.8.1 GCBH is not responsible for any unpaid service claims made by the interpreter or the Interpreter Agency.

4 SERVICE AREA AND INDIVIDUAL ELIGIBILITY

4.1 Service Areas & Scope of Work

The Contractor shall ensure compliance with the requirements described in this section. The GCBH's RSAs are described in Exhibit S, Service Area Matrix, specifically Walla Walla County.

- 4.1.1 Implementation of Co-Responder program to include a Mental Health Professional (MHP) on the team personnel, responding to emergencies within Walla Walla.

4.2 Service Area Changes

- 4.2.1 The Contractor must offer services to all Individuals within their service location boundaries of the RSA as described in Exhibit U covered by this Contract.
- 4.2.2 If the U.S. Postal Service alters the zip code numbers or zip code boundaries within the Contractor's RSA, GCBH shall alter the service area zip code numbers or the boundaries of the service areas with input from the GCBH.
- 4.2.3 HCA shall determine, in its sole judgment, which zip codes fall within each service area.
- 4.2.4 GCBH will use the Individual's residential zip code to determine whether an Individual resides within a service area.

5 PAYMENT AND SANCTIONS

5.1 Funding

- 5.1.1 The funds under this Contract are dependent upon GCBH's receipt of continued federal funding. If GCBH does not receive continued federal funding, GCBH may terminate this Contract in accordance with this Contract's General Terms and Conditions.
- 5.1.2 Co-responder funds must be used for first responder programs with fire, EMTs as well as law enforcement.
 - 5.1.2.1 Monthly Invoice
 - 5.1.2.2 Monthly Co-Responder report

- 5.1.3 The Contractor shall submit to GCBH, a monthly billing invoice and Co-Responder report (provided by GCBH) no later than the 10th of the following month to Karenr@gcbh.org.
- 5.1.4 As these funds are MHBG and SABG Funds, the Contractor shall comply with the utilization funding agreement guidelines within the State's most recent MHBG and SABG plans. The Contractor agrees to comply with Title V, Section 1913 of the Public Health Services Act [42 U.S.C. 300x-1 et seq.]. The Contractor shall not use MHBG funds for the following:
- 5.1.4.1 The Contractor's administrative costs associated with salaries and benefits at the Contractor's organization level.
 - 5.1.4.2 Inpatient mental health services.
 - 5.1.4.3 Construction and/or renovation.
 - 5.1.4.4 Capital assets or the accumulation of operating reserve accounts.
 - 5.1.4.5 Equipment costs over \$5,000.
 - 5.1.4.6 Cash payments to Individuals.
 - 5.1.4.7 Grant funds may not be used, directly or indirectly, to purchase, prescribe, or provide marijuana or treatment using marijuana. Treatment in this context includes the treatment of opioid use disorder. Grant funds also cannot be provided to any individual who or organization that provides or permits marijuana use for the purposes of treating substance use or mental disorders. See, e.g., 45 C.F.R. § 75.300(a) (requiring HHS to "ensure that Federal funding is expended . . . in full accordance with U.S. statutory . . . requirements."); 21 U.S.C. §§ 812(c) (10) and 841 (prohibiting the possession, manufacture, sale, purchase or distribution of marijuana). This prohibition does not apply to those providing such treatment in the context of clinical research permitted by the DEA and under the Federal Drug Administration (FDA)-approved investigational new drug application where the article being evaluated is marijuana or a constituent thereof that is otherwise a banned substance under federal law
- 5.1.5 The contractor shall ensure that Block Grant Funds are used only for services to individuals who are not enrolled in Medicaid or for services that are not covered by Medicaid.
- 5.1.6 In accordance with GFS, MHBG being the payer of last resort, CONTRACTOR will pursue and report all Third Party Revenue related to services provided under this Agreement. Should reimbursement from Contractor and third party payers exceed the allowable published rate (referenced in 7.4.1), CONTRACTOR will refund any excess to Contractor after it is received.

5.2 Overpayments or Underpayments

5.2.1 If, at GCBH's sole discretion, GCBH determines as a result of data errors or inadequacies, policy changes beyond the control of the Contractor, or other causes, there are material errors or omissions in the allocation of GFS/FBG funds, GCBH may make prospective and/or retrospective modifications to the funding allocations. If the Contractor wishes to appeal this decision, they may do so in writing within 30 days of notification of funding changes due to reasons stated in the Section. In the event an appeal is requested, funding will be modified and the adjusted net amount will be held in suspense until final outcome of appeal. In the event that interest is earned on the withheld funding, or overpayment, then any interest earned on that funding would be paid. Appeals will start with the Director and Compliance Board; final decision will be the Executive Board.

5.3 Sanctions

If the Contractor fails to meet one or more of its obligation under the terms of this Contract or other applicable law, GCBH may:

5.3.1 Initiate remedial action if it is determined that any of the following situations exist:

5.3.1.1 The Contractor has failed to perform any of the Contracted Services.

5.3.1.2 The Contractor has failed to develop, produce, and/or deliver to GCBH any of the statements, reports, accountings, and/or documentation described in this Contract.

5.3.1.3 The Contractor has failed to perform any Administrative Function required under this Contract.

5.3.1.4 The Contractor has failed to implement corrective action required by the State and within GCBH prescribed timeframes.

5.4 Annual Fiscal Audit and Review

5.4.1 The Contractor shall ensure that its receive an independent audit annually, and submit to GCBH- ASO within the timeframe as indicated in Exhibit K.

5.4.2 GCBH shall conduct and/or make arrangements for an annual fiscal review of each contractor receiving FBG funds through fee-for-service, set rate, performance-based or cost reimbursement contracts. The annual GCBH fiscal review shall ensure that:

5.4.2.1 Expenditures are accounted for by revenue source.

5.4.2.2 No expenditures were made for items identified in the Payment and Sanctions Section of this Contract.

5.4.2.3 Expenditures are made only for the purposes stated in this Contract, and for services that were actually provided.

5.4.3 Additionally, as set forth in this Agreement and Exhibits.

6 INDIVIDUAL RIGHTS AND PROTECTIONS

6.1 General Requirements

- 6.1.1 The Contractor shall comply with any applicable federal and state laws that pertain to Individual rights and ensure that its staff and affiliated providers/subcontractors protect and promote those rights when furnishing services to Individuals.
- 6.1.2 The Contractor shall guarantee that each Individual has the following rights:
 - 6.1.2.1 To be treated with respect and with due consideration for his or her dignity and privacy.
 - 6.1.2.2 To be free from any form of restraint or seclusion used as a means of coercion, discipline, convenience, or retaliation.
 - 6.1.2.3 To be free to exercise his or her rights and to ensure that to do so does not adversely affect the way the Contractor treats the Individual.
- 6.1.3 The Contractor shall require a criminal history background check through the Washington State Patrol for employees and volunteers of the Contractor who may have unsupervised access to children, people with developmental disabilities or vulnerable adults, in accordance with Chapter 388-06 WAC.

6.2 Cultural Considerations

- 6.2.1 The Contractor shall recognize the unique social/legal status of Indian nations; the tribes under the Supremacy clause; the Indian Commerce Clause of the United States Constitution; federal treaties; execution orders; Indian Citizens Act 1924 statutes; state and federal court decisions; and maintain compliance with the Department of Social and Health Services (DSHS) American Indian Policy 7.01, Exhibit H, attached hereto and incorporated herein by reference, or any successor, pursuant to the Centennial Accord between the Washington State government and the Washington Tribes.
- 6.2.2 During the performance of this agreement, CONTRACTOR shall comply with state and federal laws regarding discrimination. Requirements include, but are not limited to: providing services to all the people without discrimination due to race, religion, creed, color, sex, age, national origin, and the presence of any sensory, mental or physical handicap, language, sexual orientation or veteran status.

7 PROGRAM INTEGRITY

7.1 General Requirements

- 7.1.1 The Contractor shall have and comply with policies and procedures that guide and require the Contractor employees, and Subcontractors to comply with Program Integrity requirements.

7.2 Information on Persons Convicted of Crimes

- 7.2.1 The Contractor must include in its written agreements that they will investigate and disclose to GCBH immediately upon becoming aware of any person in their employment who has been convicted of a criminal offense related to that person's involvement in any program under Medicare, Medicaid, or Title XX of the Social Security Act since the inception of those programs.

7.3 Fraud, Waste and Abuse

- 7.3.1 The Contractor's Fraud, Waste and Abuse program shall have:
 - 7.3.1.1 A process to inform officers, employees, agents and Subcontractors about the False Claims Act.
 - 7.3.1.2 Administrative procedures to detect and prevent fraud, waste and abuse, and a mandatory compliance plan.
 - 7.3.1.3 Standards of conduct that articulate the Contractor's commitment to comply with all applicable federal and state standards.
 - 7.3.1.4 The designation of a compliance officer and a compliance committee that is accountable to senior management.
 - 7.3.1.5 Training for all affected parties. Annual attestation for staff training is required and must be submitted to GCBH by Jan 31st.
 - 7.3.1.6 Effective lines of communication between the compliance officer and the Contractor's staff.
 - 7.3.1.7 Enforcement of standards through well-publicized disciplinary policies.
 - 7.3.1.8 Provision for internal monitoring and auditing of the Contractor.
 - 7.3.1.9 Provision for prompt response to detected violations, and for development of corrective action initiatives.
 - 7.3.1.10 Provision of detailed information to employees regarding fraud and abuse policies and procedures and the False Claims Act and the Washington false claims statutes, Chapter 74.66 RCW and RCW 74.09.210.

7.4 Referring of Allegations of Potential Fraud and Invoking Payment Suspensions

GCBH has established policies and procedures when identified allegations of potential fraud to HCA, as well as for the Contractor payment suspensions. When GCBH notifies the Contractor that a credible Allegation of Fraud exists, GCBH shall follow the provisions for payment suspension contained in this Section.

- 7.4.1 When GCBH has concluded that an allegation of potential Fraud exists, GCBH shall make a Fraud referral to HCA within five (5) Business Days of the determination.
- 7.4.2 When HCA determines GCBH's referral of potential Fraud is a credible Allegation of fraud, HCA shall notify GCBH compliance officers.
 - 7.4.2.1 To suspend Contractor payments, in full, in part, or if a good cause exception exists to not suspend.
 - 7.4.2.1.1 Unless otherwise notified by HCA to suspend payment, GCBH shall not suspend payment of any Contractor(s) identified in the referral.
- 7.4.3 Upon receipt of payment suspension notification from HCA, GCBH shall send notice of the decision to suspend program payments to the Contractor within five (5) calendar days of HCA's notification to suspend payment, unless an appropriate law enforcement agency requests a temporary withhold of notice.
- 7.4.4 The notice of payment suspension must include or address all of the following:
 - 7.4.4.1 State that payments are being suspended in accordance with this provision;
 - 7.4.4.2 Set forth the general allegations identified by HCA. The notice should not disclose any specific information concerning an ongoing investigation;
 - 7.4.4.3 State that the suspension is for a temporary period and cite suspension will be lifted when notified by HCA that it is no longer in place;
 - 7.4.4.4 Specify, when applicable, to which type or types of claims or business units the payment suspension relates; and
 - 7.4.4.5 Where applicable and appropriate, inform the Contractor of any Appeal rights available to this provider, along with the provider's right to submit written evidence for consideration by the Contractor.
- 7.4.5 All suspension of payment actions under this Section will be temporary and will not continue after either of the following:

- 7.4.5.1 GCBH is notified by HCA or appropriate law enforcement agency that there is insufficient evidence of Fraud by the Contractor; or
- 7.4.5.2 GCBH is notified by HCA or appropriate law enforcement agency that the legal proceedings related to the Contractor's alleged Fraud are completed.
- 7.4.6 GCBH must document in writing the termination of a payment suspension and issue a notice of the termination to the Contractor. A copy must be sent to HCA at ProgramIntegrity@hca.wa.gov.
- 7.4.7 HCA may find that good cause exists not to suspend payments, in whole or in part, or not to continue a payment suspension previously imposed, to an Individual or entity against which there is an investigation of a Credible Allegation of Fraud if any of the following are applicable:
 - 7.4.7.1 A law enforcement agency has specifically requested that a payment suspension not be imposed because such a payment suspension may compromise or jeopardize an investigation.
 - 7.4.7.2 Other available remedies are available to the Contractor, after HCA approves the remedies as more effective or timely to protect Medicaid funds.
 - 7.4.7.3 HCA determines, based upon the submission of written evidence by the Contractor, Individual or entity that is the subject of the payment suspension, there is no longer a Credible Allegation of Fraud and that the suspension should be removed. HCA shall review evidence submitted by GCBH or Contractor. GCBH may include a recommendation to HCA. HCA shall direct GCBH to continue, reduce, or remove the payment suspension within thirty (30) calendar days of having received the evidence.
 - 7.4.7.4 Individual access to items or services would be jeopardized by a payment suspension because of either of the following:
 - 7.4.7.4.1 An Individual or entity is the sole community physician or the sole source of essential specialized services in a community.
 - 7.4.7.4.2 The Individual or entity serves a large number of Individuals within a federal Health Resources and Services Administration (HRSA) designated medically underserved area.
 - 7.4.7.5 A law enforcement agency declines to certify that a matter continues to be under investigation.

- 7.4.7.6 HCA determines that payment suspension is not in the best interests of the Medicaid program.
- 7.4.8 The Contractor shall maintain for a minimum of six (6) years from the date of issuance all materials documenting:
 - 7.4.8.1 Details of payment suspensions that were imposed in whole or in part; and
 - 7.4.8.2 Each instance when a payment suspension was not imposed or was discontinued for good cause.
- 7.4.9 If GCBH fails to suspend payments to a Contractor for whom there is a pending investigation of a Credible Allegation of Fraud without good cause, and HCA directed GCBH to suspend payments, HCA may impose sanctions in accordance with the Sanctions Subsection of this Contract.
- 7.4.10 If any government entity, either from restitutions, recoveries, penalties or fines imposed following a criminal prosecution or guilty plea, or through a civil settlement or judgment, or any other form of civil action, receives a monetary recovery from any entity or Individual, the entirety of such monetary recovery belongs exclusively to the State of Washington and GCBH and any involved subcontractor have no claim to any portion of this recovery.
- 7.4.11 Furthermore, GCBH is fully subrogated, and shall require its Subcontractors to agree to subrogate, to the State of Washington for all criminal, civil and administrative action recoveries undertaken by any government entity, including, but not limited to, all claims the Contractor or subcontractor has or may have against any entity or Individual that directly or indirectly receives funds under this Contract including, but not limited to, any Health Care Provider, manufacturer, wholesale or retail supplier, sales representative, laboratory, or other provider/contractor in the design, manufacture, marketing, pricing, or quality of drugs, pharmaceuticals, medical supplies, medical devices, Medical Equipment, or other health care related products or services.
- 7.4.12 Any funds recovered and retained by a government entity will be reported to the actuary to consider in the rate-setting process.
- 7.4.13 For the purposes of this Section, "subrogation" means the right of any State of Washington government entity or local law enforcement to stand in the place of a Contractor or Individual in the collection against a third party.

7.5 Reporting

- 7.5.1 The Contractor shall submit to GCBH a report of any recoveries made or overpayments identified by the Contractor during the course of their claims review/analysis.
- 7.5.2 The Contractor is responsible for investigating Individual fraud, waste and abuse. If the Contractor suspects Individual Fraud:
 - 7.5.2.1 The Contractor shall notify and submit all associated information of any alleged or investigated cases in which the Contractor believes there is a serious likelihood of Fraud by an Individual to the HCA Office of Medicaid Eligibility and Policy (OMEP) by any of the following:
 - 7.5.2.1.1 Sending an email to WAEligibilityfraud@hca.wa.gov;
 - 7.5.2.1.2 Calling OMEP at 360-725-0934 and leaving a detailed message;
 - 7.5.2.1.3 Mailing a written referral to:
Health Care Authority
Attn: OMEP
P.O. Box 45534
Olympia, WA 98504-5534
 - 7.5.2.1.4 Faxing the written complaint to Washington Apple Health Eligibility Fraud at 360-725-1158.
- 7.5.3 The Contractor shall notify and submit all associated information of any alleged or investigated cases in which the Contractor believes there is a serious likelihood of Contractor Fraud by an Individual or group using the WA Fraud Referral Form within five (5) Business Days from the date of determining an allegation of potential Fraud exists.

7.6 Records Requests

- 7.6.1 Upon request, the Contractor shall allow GCBH or any authorized state or federal agency or authorized representative, access to all records pertaining to this Contract, including computerized data stored by the Contractor or GCBH. The Contractor shall provide and furnish the records at no cost to the requesting agency.

7.7 On-Site Inspections

- 7.7.1 The Contractor must provide any records pertaining to this Contract including, but not limited to:
 - 7.7.1.1 Any record related to services rendered, quality, appropriateness, and timeliness of service; and
- 7.7.2 Upon request, the Contractor shall assist in such review, including the provision of complete copies of records.
- 7.7.3 The Contractor must provide access to its premises and the records requested to any state or federal agency or entity, including, but not limited to: GCBH, HCA, U.S. Department of Health and Human Services (HHS), OIG, Office of the Comptroller of the Treasury, whether the visitation is announced or unannounced.



memo

Rea L Culwell
City Attorney

TO: City Council, Mayor Norma Rodriguez, and City Administrator Mike Rizzitiello

CC: Police Chief Troy Tomaras

FROM: Rea Culwell, City Attorney/Prosecutor

Date: June 2, 2022

Re: Mental Health Professional Co-Responder Risk of Liability

Introduction

This memo is to inform City Council generally of the risk associated with providing co-responder mental health professional (MHP) services. This memo is a very brief summary of governmental tortious liability, causes of action, and the City's insurance coverage as they may pertain to provision of mental health services to citizens during a law enforcement response and, is not intended to be comprehensive.

Summary

Generally, College Place faces liability for all services provided to the community. Government liability is extremely complex, ever changing, very facts specific, and in many matters, difficult to predict and safeguard from.

College Place is insured for costs of liability through the Washington Cities Insurance Authority (WCIA), a pool of cities who share the risk of operating. WCIA provides specific coverage for all members and offers optional coverage for specific risks. WCIA does not cover all risks, specifically excluding from coverage specific city acts. While negligent acts are covered, medical malpractice is not covered and coverage is not offered by WCIA. WCIA has received many requests from its members for medical malpractice coverage specifically for MHP co-responder programs. At WCIA's recent board meeting, it discussed medical malpractice coverage. WCIA will vote on providing such coverage at the fall board meeting. It is anticipated that WCIA will vote to offer medical malpractice coverage at the fall meeting, with an implementation beginning January 2023.

Should the City decide to provide MHP co-responding services to the community, there is a risk of an uninsured medical malpractice claim against the City for damages caused by co-responding. It is this writer's opinion the risk is extremely low for reasons described below and it is this writer's opinion Council should evaluate any increase in liability along with potential decrease in liability expected with implementing a co-responder program.

NOTE: The City would be covered for a claim of negligence due to MHP act or inaction.

Ultimately, the decision to implement a co-responder program is a policy decision and not a legal one.

Why Risk of Liability Increases

The City can be held financially responsible for harm the City causes to another person or entity. Governmental liability is discussed in detail in the attachment to this memo. By providing public safety (policing services) which incorporates the services of a MHP, the City opens itself up to a claim by a citizen that the acts or inactions of a MHP caused damage to the citizen such that the City should pay monetary damages to the citizen. The legal cause of action would be in negligence; the MHP acted negligent resulting in damages to the citizen. While this seems straight forward, an attorney representing a claimant will include any and all causes of action in a claim/suit against the City, no matter how remote or unlikelihood of success. One cause of action that will be brought against the City in a claim for damages caused by MHP is the claim of medical malpractice. Again, WCIA specifically does not insure or cover medical malpractice claims and specifically excludes such claims from the City's coverage.

Therefore, should the City decide to implement a co-responding program, the City is opening itself up to uninsured risk. The City can choose to provide services that are not insured against liability, taking on the risk itself. While WCIA does not offer medical malpractice for purchase by the City, the City can choose to purchase additional insurance for medical malpractice. This writer makes no recommendation regarding whether to purchase medical malpractice insurance.

Why Risk of Liability May Decrease

In 2021, Washington cities and counties settle 15 police misconduct and wrongful death cases for a total of at least \$34.3 million, a 146% increase over what was paid out in 2020 — and a 363.5% increase over the 2019 amount.¹

MHP and law enforcement co-responding has shown to reduce police use of force incidents. This makes sense in that the goal of MHP services is to de-escalate a volatile, potentially dangerous situation by getting a person to comply with law enforcements commands. The MHP has the education, experience and training to be able to communicate more effectively with people who suffer from mental health and/or substance abuse issues, (behavioral health issues). The goal of law enforcement commands is public safety; safety for the subject, for others involved in the situation, and for law enforcement.

Example

An unfortunately, emblematic scenario is a subject with a gun who is threatening to kill them self. Law enforcement has been traditionally trained to separate the individual from the firearm to protect the subject and others who may be shot by the subject. That traditional training was to follow the continuum of force, beginning with verbal commands and ending with deadly force

¹ <https://www.seattletimes.com/seattle-news/law-justice/police-misconduct-is-costing-washington-taxpayers-millions-is-george-floyds-murder-one-of-the-reasons/> accessed June 3, 2022, 8:51am.

(shooting the subject). We've seen countless cases of "suicide by cop". This training has changed to achieving the goal of de-escalation rather than increasing use of force. The next step is to provide specialized services to assist in gaining compliance through de-escalation. A MHP is better equipped to provide those specialized services.

Conclusion

This writer recommends implementing the co-responder model as I believe the overall risk (and cost) of liability would decrease. In addition, setting monetary risk consideration aside, this writer believes the City would be able to provide additional and better services to the community with a co-responder program.

Attached to this memo is a brief discussion of governmental liability and law of negligence and medical malpractice.

Public Duty Doctrine

Generally

The public duty doctrine stands for the legal principle that a governmental agency owes a duty to the public as a whole and not to any one individual. If a person is harmed by a governmental agency fulfilling a duty to the public, the governmental agency generally cannot be held liable; a cause of action for negligence will not lie unless the governmental agency owes a duty of care to the particular plaintiff as opposed to the public as a whole. In Washington state, generally, statutes and regulatory directives impose a duty on governments to the public as a whole and not to a particular person. If a governmental agency breaches its duty to the public, it cannot be held liable for any damages caused.

To establish a duty in tort (e.g. negligence), against a governmental entity, a plaintiff must show that the duty breached was owed to an individual and was not merely a general obligation owed to the public.

Ehrhart et al. v. King County et al., (citing, *Beltran-Serrano v. City of Tacoma*, 193 Wn.2d 537, 549, (2019)).

Cities can make mistakes in fulfilling its statutory and regulatory duties. A neglecting of a duty on the part of a city official, even resulting in injuries to private people, injuries which would not have happened but for the city official's negligence, does not give rise to a cause of action against a city. As a society, we want our government and its officials to fulfill their duties to citizens free from risk of being held financially accountable for damages caused. To do otherwise would result in governments choosing not to act – not to provide services to the public.

Exceptions:

A person can recover damages from a governmental entity if the governmental entity breached a duty owed to the person particularly, and not just to the public.

Washington state recognizes four most common exceptions to the public duty doctrine:

1. Legislative intent;
2. Failure to enforce;
3. The rescue doctrine, and
4. A special relationship.

If any one exception applies, the government is held to owe a duty to a particular person.

Washington courts have found the recognized exceptions overlap and a finding of any one of the four common exceptions is not necessary to find that a duty is owed to a particular individual and not to the public at large.

The fundamental question when evaluating whether a city can be held liable for damages is:
Does the government owe a duty to the plaintiff individually or merely to the public as a whole?

Example – Government Liable:

A Pierce County citizen was seriously injured when some dogs entered her home and attacked her and her dogs. She sued Pierce County for damages. Pierce County had received numerous reports and conducted investigations into allegations that the dogs were “potentially dangerous” as defined by county code. Pierce County asserted the public duty doctrine as a defense, claiming that Pierce County owed a duty to enforce its dangerous dog regulations to the public as a whole and not to the injured citizen.

Because Pierce County’s code regarding dangerous dogs *specifically required* the county to consider classifying a dog as potentially dangerous in certain circumstances, the court held that Pierce County owed a specific duty to an individual harmed by a dog that the County failed to consider as potentially dangerous pursuant to the county code. Once Pierce County received notice the dogs had behaved such that they would have met the definition of a dangerous dog under its code, investigated and confirmed the allegations, Pierce County had an affirmative duty to designate the dog as potentially dangerous. Failing to do so created a duty to the individual injured by the dogs.

Example – Government Not Liable:

King County citizen died from contracting Hantavirus near his Issaquah home. The citizen’s spouse sued King County claiming the County negligently caused the death by failing to issue a public health advisory after learning of another case of Hantavirus attributed to property in Issaquah. King County asserted the public duty doctrine as a defense, arguing it was not liable for the death because it did not owe the deceased any duty as an individual.

Washington Administrative Code (WAC) 246-101-505 requires counties to “review and determine appropriate action” whenever a county receives reports of certain serious conditions. Here, the County investigated the first, (and only in some years) Issaquah case of Hantavirus reported and determined the cause to be localized to a particular property and therefore, not a danger to the public such that a public health advisory was warranted.

Despite any factual determination that might be made as to the correctness of King County’s decision to not issue a public health warning, the County followed the code mandate to “review and determine appropriate action”. The duty in the code is a duty to the public as a whole and not to any one individual harmed. King county was not liable for the death.

Providing Mental Health Professional Services:

It is this writer’s belief that the public duty doctrine would apply to the City for provision of co-responder services as such provision is part of City’s duty to provide public safety services to the community. Analysis and reasoning is beyond the scope of this memo and can be made upon request.

Negligence/Medical Malpractice

Negligence is the failure to exercise an expected degree of care, leading to another individual's injuries or death or other damages such as financial or to property. To prove negligence, one would have to prove the following:

1. **Duty** – City owed the plaintiff a duty, either to reasonably act or reasonable refrain from acting;
2. **Breach of Duty** – City acted or failed to act contrary to the duty owed;
3. **Cause in Fact** – City's breach of duty, in fact, resulted in the plaintiff's injuries/death/damages, (would the injury have occurred without the City's negligence?);
4. **Damages** – The plaintiff in fact suffered injuries, physical or otherwise, as a result of the City's negligence.

NOTE: Washington state recognizes comparative or contributory fault, which can result in a lower award if a plaintiff was partially responsible for the damage. RCW 4.22.005-925.

NOTE: Washington state courts have applied joint and several liability, which requires all parties to pay all damages, regardless of fault.

If the City were to employ a MHP and provide co-responding services to citizens, our insurer, WCIA would defend the City against any **medical negligence** claim and would cover financial damages award or settlement.

Medical Malpractice

If the City were to employ a MHP and provide co-responding services to citizens, our insurer, WCIA would deny and not cover cost of any medical malpractice claim or judgment.

Medical malpractice is a specific type of professional negligence by a health care provider. Washington state provides for a cause of action for injuries resulting from health care. Chapter 7.70 RCW. Medical malpractice is injury to a person caused by the failure of a health care provider to follow the accepted standard of care. "Health care provider" is defined by RCW 7.70.020 as:

A person licensed by [Washington] state to provide health care or related services including, but not limited to, . . . a physician, . . . dentist, nurse, optometrist, . . . chiropractor, physical therapist, psychologist, pharmacist, optician, . . . midwife, . . . nurse practitioner, .

A mental health professional as contemplated by this grant would be a "health care provider" under 7.70 RCW.

The statute does not define "health care"; case law defines it as "the process in which the [health care provider] was utilizing the skills which he [she, or they] had been taught in examining, diagnosing, treating or caring for the patient as his [her, or their] patient." *Citation omitted.*

To succeed in a medical malpractice claim, the injured party must prove by a preponderance of the evidence (something greater than 50% or more likely than not), that:

1. Injury resulted from the failure of a health care provider to follow the accepted standard of care;
2. A health care provider promised the patient or his or her representative that the injury suffered would not occur, (no finding of liability or award of damages has ever happened in Washington state under this prong); OR
3. Injury resulted from health care to which the patient or his or her representative did not consent.

RCW 7.70.030.

The remaining of Chapter 7.70 RCW and case law governs what is considered accepted standard of care and consent.

Not all injuries following health care treatment amount to medical malpractice as there is some degree of risk inherent in most treatment. Some only rise to that of medical negligence as discussed above.

Co-Responder Risk

It is very unlikely that any claim of injury caused by a MHP co-responding with a law enforcement officer would ever reach the threshold of “medical malpractice” due to the relationship between the MHP and the citizen, due to the likely factual scenarios present at any such call and response, and due to the makeup and tenor of the state Supreme Court.

Washington state law is clear that medical malpractice applies when a provider-client relationship exists. The City’s position is that no provider-client relationship would exist between its MHP and any citizen, however case law is not clear on whether a medical malpractice claim can be made in such a scenario. There have been a few cases at the appellate court level and at least one federal case arising out of Washington state that have found medical malpractice in less than traditional provider-client relationships. It is unclear at this time if the state Supreme Court would agree with these decisions if given the opportunity to decide such a case. None of these cases is comparable to what one would expect in a co-responder situation.

A MHP co-responder is to provide expertise in the behavior of individuals with behavioral health issues to de-escalate a potentially volatile situation, with the goal of co-responding is to gain compliance with law enforcement instructions for safety of the subject individual, responders, and the public. It is unlikely that the MHP would be “examining, diagnosing, treating or caring for the patient as his, her, or their patient” in the traditional or legal sense. It is likely that the MHP would gather as much information about a person’s behavioral health, including immediate observations, and would utilize their education, training and experience not to provide health care, but to de-escalate the situation.

In addition, this writer believes our state Supreme Court would view co-responding programs overall beneficial to the community, and such view may sway their legal determinations on any medical malpractice question.

2021 Annual Report



Presented by
Chief Troy Tomaras

Mission, Vision, Values & Goals

- **MISSION**

- The College Place Police department embraces the Philosophy of community oriented policing and strives to enhance the quality of life and safety of our citizens with the highest degree of ethical behavior, fairness and professional conduct.

- **VISION**

- Our vision is to ensure the City of College Place is a safe place to live, work and do business through the delivery of quality law enforcement services.

Mission, Vision, Values & Goals

• Values

- Every member of the College Place Police Department is part of a team who inculcates courage, commitment, community and character in their daily operations through open and honest cooperation, service, respect and diversity.
- **Courage** – Moral and ethical desire to act in the face of danger or adversity.
- **Commitment** – Dedication to the department, professional policing and those we serve.
- **Community** – Respecting and protecting individual rights while fostering relationships with whom we are called to serve.
- **Character** – Performing with integrity while demonstrating strength to uphold and instill pride, honor and a call to public service.

Mission, Vision, Values & Goals

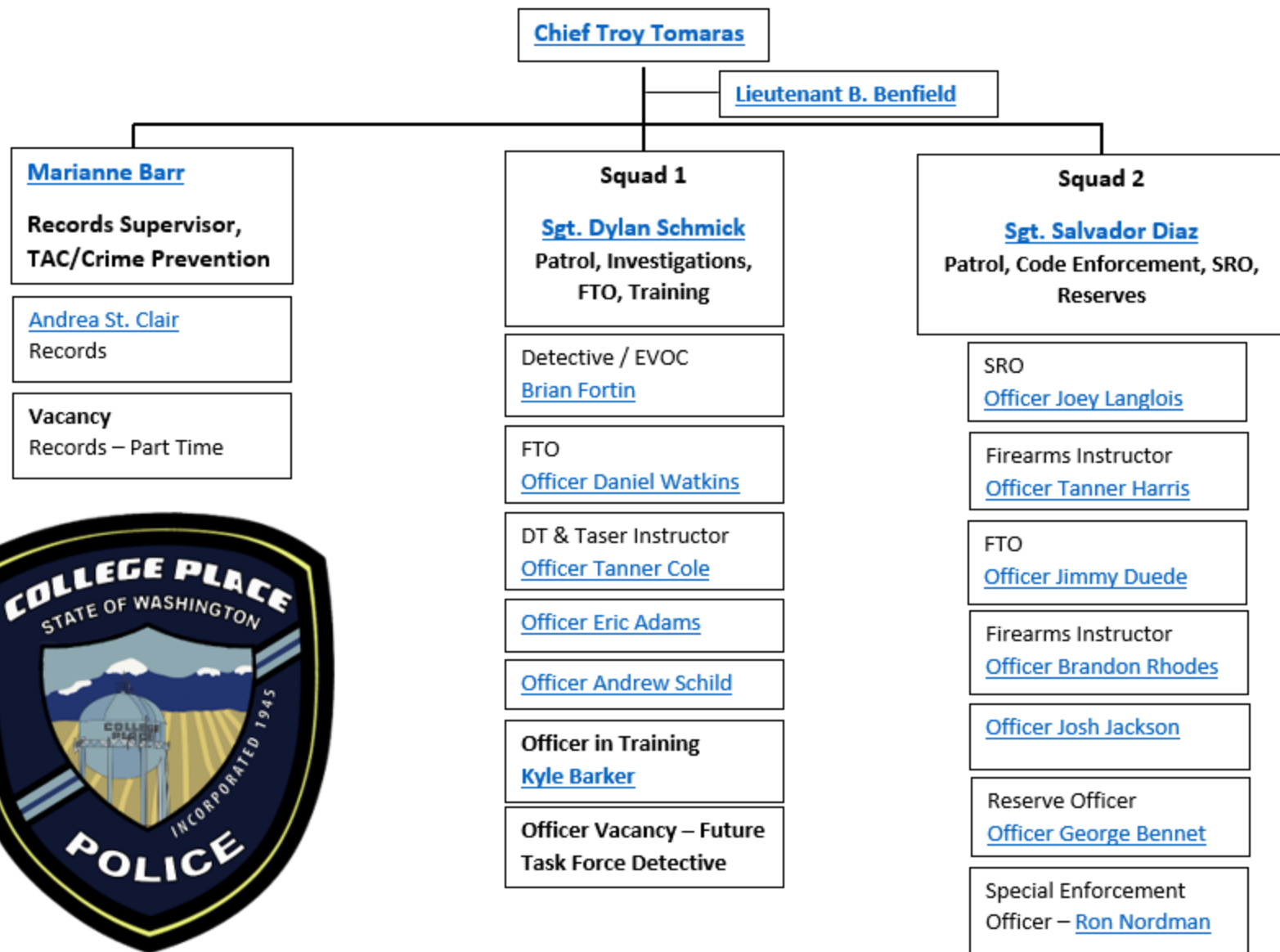
- **Goals**

1. Reduce crime and improve traffic safety within our community.
2. Provide quality services and innovative policing strategies delivered through excellent customer service.
3. Provide leadership and resources to attract, retain and foster a safe, ethical, innovative, knowledgeable, and diverse workforce.
4. Work collaboratively with our stakeholders to improve the quality of life within our city.

- Operations Plan – Available on web page (www.cpwa.us/police)

College Place Police Department

Organizational Chart



New Hires - 2021



Officer Brandon Rhodes



Officer Josh Jackson

Support Services



Records Supervisor
M. Barr



Records Clerk
A. St. Clair



Administrative Support Services at a glance:	2020	2021	% of change
Number of fingerprints processed	57	205	259.65%
Number of CPL Permits processed	70	83	18.57%
Public Disclosures Processed	102	169	65.69%
Dog licenses sold	106	93	-12.26%

Patrol



Sgt. Salvador Diaz



Sgt. Dylan Schmick

Year	2019	2020	2021	% of change
Arrests	480	405	397	-2%
Cases	874	615	585	-4.88%
Incidents	11,194	11,279	10,138	-10.12%
Tickets	837	588	577	-1.87%
Traffic stops	3,515	2,345	2,026	-13.60%



Awards - 2021



Officer Jimmy Duede
Masons – Officer of the Year



Officer Daniel Watkins – Top DUI Officer

Investigations



Year	2020	2021	% of change
Cases Taken	52	41	-0.21
Cases Cleared	49	30	-0.38
Search Warrants		13	New
SIU assist		1	New
Agency Assists		79	New



Detective Brian Fortin

School Resource Officer

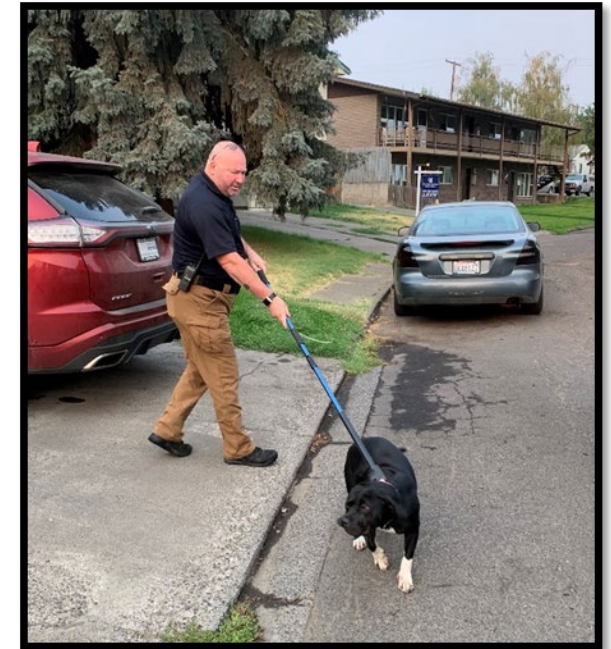
SRO Statistics at a glance:	2019	2020	2021	% of change
Incidents	36	32	73	128.13%
Criminal Investigations	18	9	22	59.09%
CPS Referrals	1	2	2	0.00%
Charges Filed	1	0	14	
Training Provided	21	16.75	20	19.40%



Officer Joey Langlois



Special Enforcement Officer

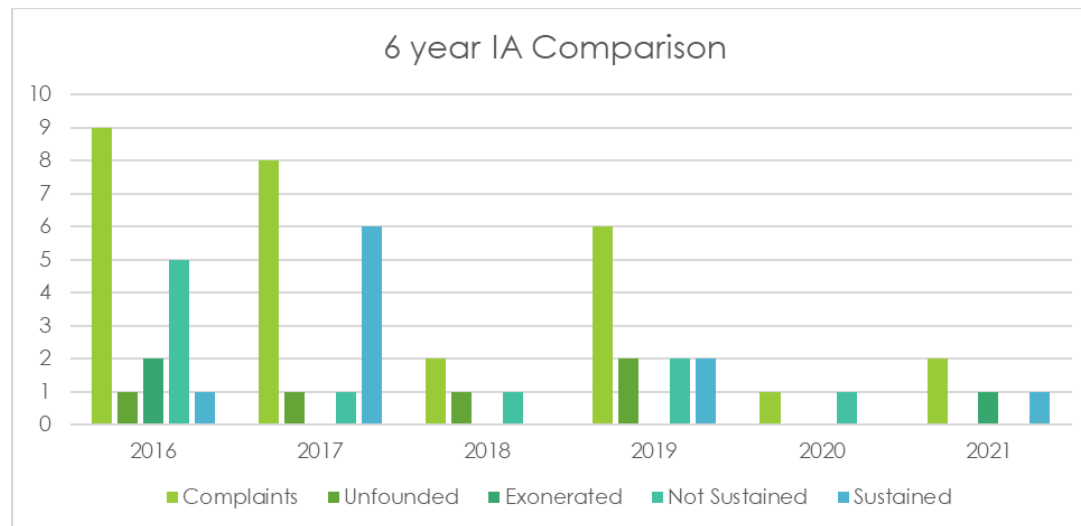


SEO Activity	2019	2020	2021	% of change
Code Enforcement Inv.	240	86	126	46.51%
Animal Calls	111	129	112	-13.18%
Parking Violations	172	214	164	-23.36%



Professional Standards

2nd year without an external complaint



Complaints include violation(s) of policy such as courtesy, lost equipment or vehicle operation.

Unfounded – When the investigation discloses that, the alleged acts did not occur or did not involve department members.

Exonerated – When the investigation discloses that the alleged act occurred but that the act was justified, lawful and/or proper.

Not sustained – When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the member.

Sustained – When the investigation discloses sufficient evidence to establish that the act occurred and that it constituted a violation of policy or misconduct.

Crime & Traffic Statistics

Category	2019	2020	19 - 20 % of change	2021	20 - 21 % of change	3 year average	19 - 21 % of change
Burglaries	32	41	28.13%	36	-12.20%	36.43	12.50%
Thefts	156	143	-8.33%	108	-24.48%	135.64	-30.77%
Collisions	87	82	-5.75%	72	-12.20%	80.31	-17.24%
DUI	26	18	-30.77%	14	-22.22%	19.23	-46.15%
Narcotics Arrests	22	37	68.18%	4	-89.19%	21.23	-81.82%
Traffic Stops	3515	2345	-33.29%	2,026	-13.60%	2628.56	-42.36%
Warrant Apprehension	240	207	-13.75%	319	54.11%	255.29	32.92%
Motor Vehicle Thefts	27	27	0.00%	33	22.22%	29.00	22.22%
Vehicle Prowls	59	38	-35.59%	31	-18.42%	42.55	-47.46%
Shoplifting	134	145	8.21%	157	8.28%	145.36	17.16%
Domestic Violence	24	20	-16.67%	18	-10.00%	20.61	-25.00%
Other Assaults	12	29	141.67%	12	-58.62%	18.14	0.00%

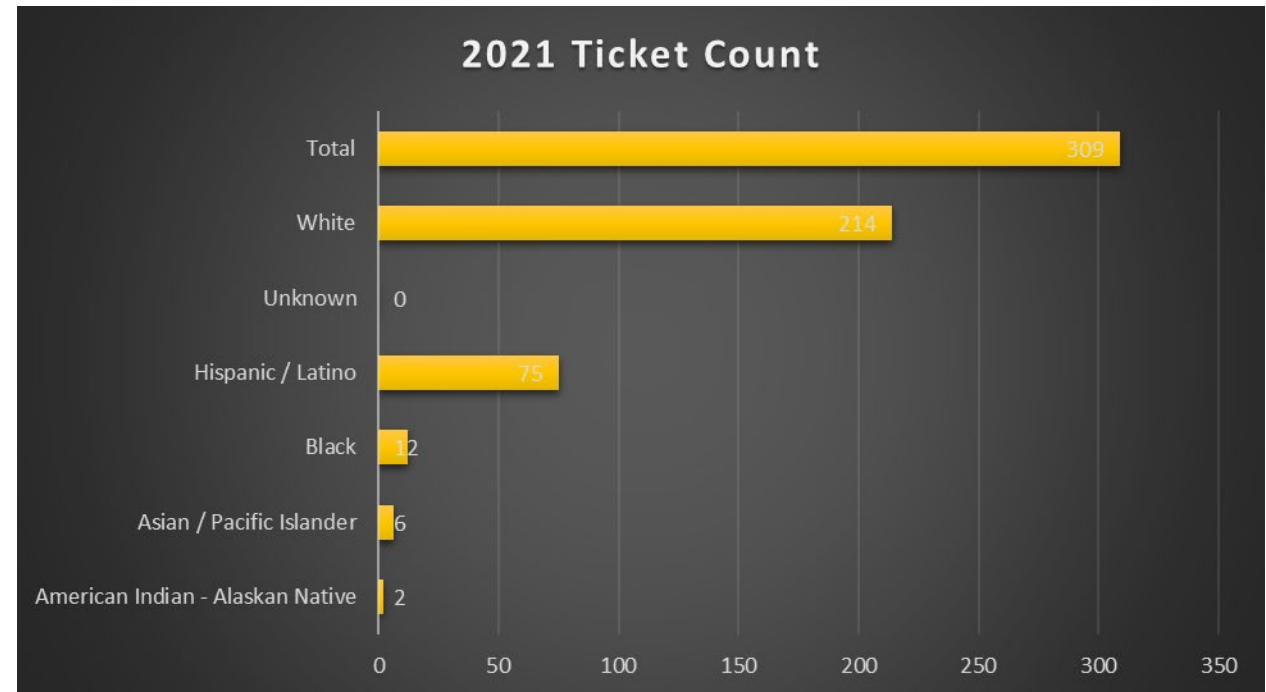
Bias Report - 2021

- RCW 43.101.410
 - Biased-Based Policing Policy – Lexipol 402
 - Complaints – CPPD receives complaints in person or online.
 - Supervision & Review – Accountability, Body Worn Cameras, Analysis
 - Training & Discussion (Dr. Marks, review of case studies)

Infractions Issued

- Stats include Traffic Infraction and Non-Traffic Violations:

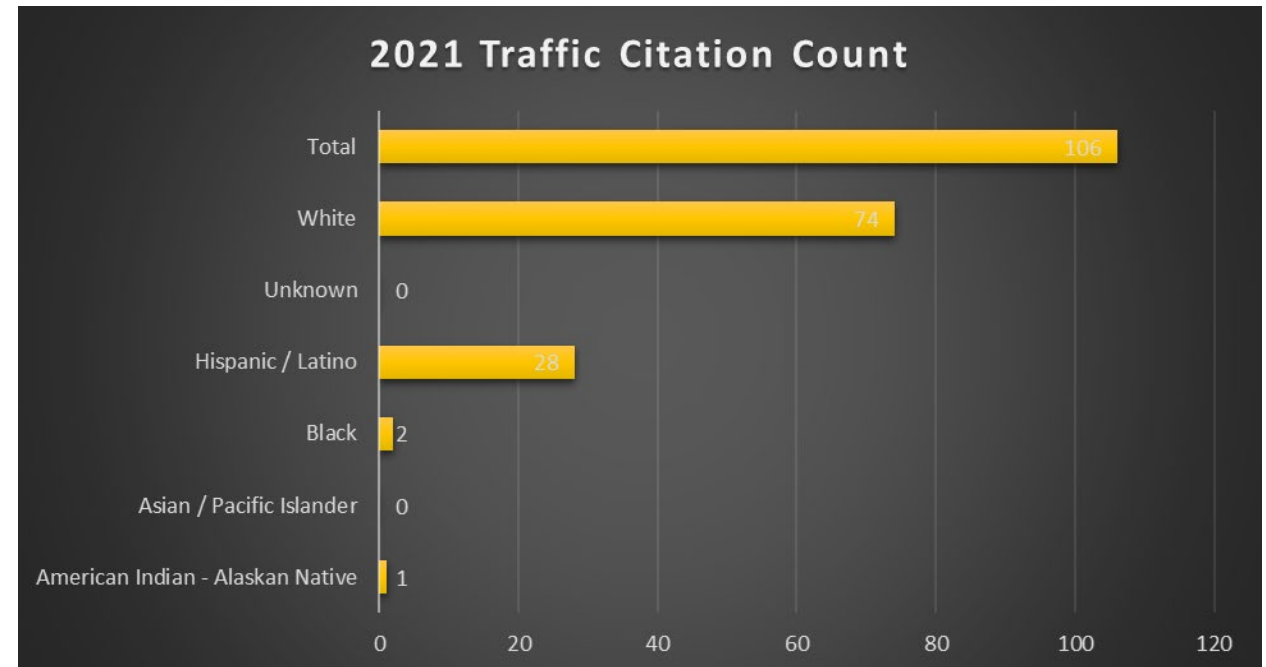
INFRACTIONS ISSUED	2019 Ticket Count	2020 Ticket Count	2021 Ticket Count
American Indian - Alaskan Native	0	1	2
Asian / Pacific Islander	6	2	6
Black	6	6	12
Hispanic / Latino	0	79	75
Unknown	142	0	0
White	275	194	214
Total	429	282	309



Citations Issued

- **Criminal Traffic (Misdemeanors):**

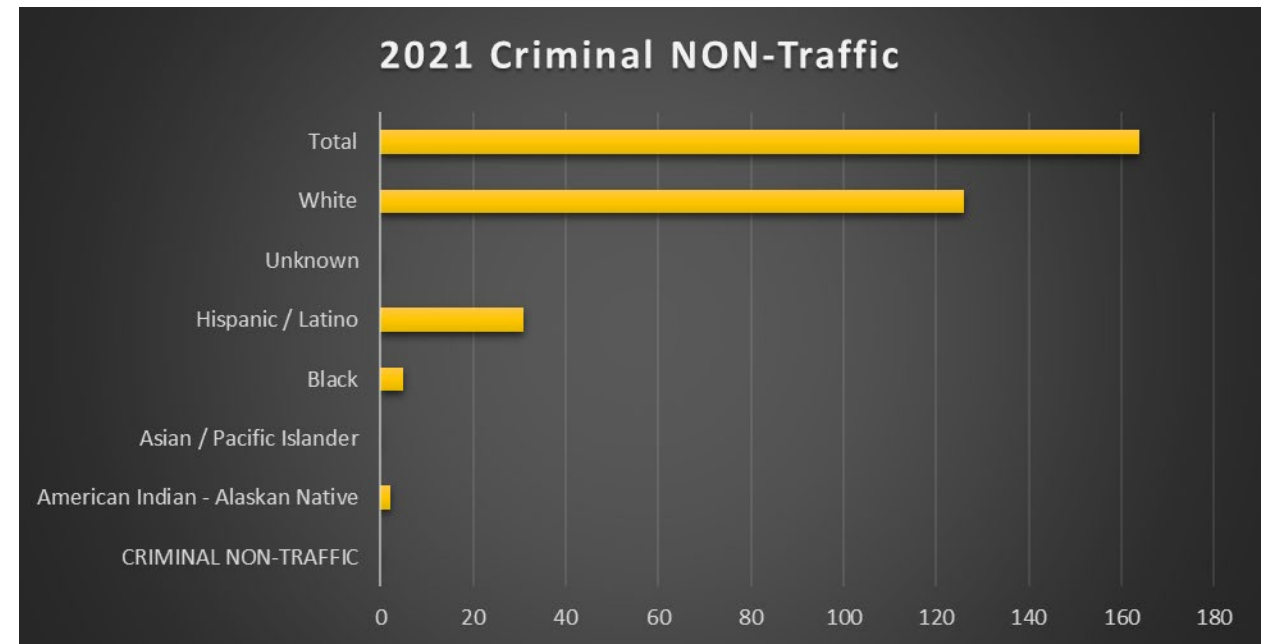
TRAFFIC CITATIONS ISSUED	2021 Citation Count
American Indian - Alaskan Native	1
Asian / Pacific Islander	0
Black	2
Hispanic / Latino	28
Unknown	0
White	74
Total	106



Citations Issued - Continued

- **Criminal Non-Traffic (Misdemeanors):**

CRIMINAL NON-TRAFFIC	2021 Citation Count
American Indian - Alaskan Native	2
Asian / Pacific Islander	0
Black	5
Hispanic / Latino	31
Unknown	0
White	126
Total	164



End of Presentation

Questions?



2021 ANNUAL REPORT

City of College Place Police Department



Chief Troy Tomaras

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Message from the Chief

In 2021 we observed a second year of COVID, economic uncertainty and rising crime across our state and country. However, College Place continues to thrive through resiliency and strong community partnerships. I'm proud to report that serious crime in our community observed a reduction in 2021. Burglaries were down 12%, theft decreased 24% and domestic violence dropped 10%. I attribute this to the hard working professional staff of the College Place Police Department (CPPD) in partnership with members of our community.

Over the last year we have listened and grown as an agency, implementing changes to reflect community concern and feedback. We know trust is fragile and we strive to earn that trust every day. This is why we have partnered with our Diversity and Inclusion advisory board (DIAB) to ensure every voice is heard.

Some of the ways the CPPD has worked toward ensuring public trust include; increased officer training, wellness strategies, maintaining our law enforcement accreditation through the Washington Association of Sheriffs and Police Chiefs (WASPC) and our implementation of body worn cameras. We also publish yearly audits and reports to provide transparency and feedback to you. You may visit our website (CPWA.us) to view these reports at your convenience.

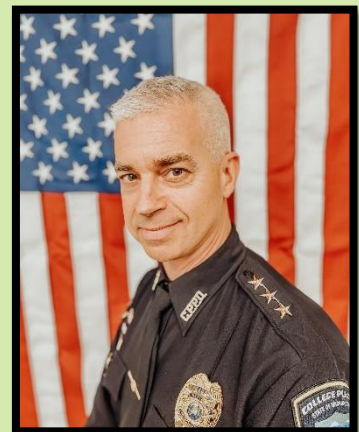
Community pride, trust and support are a few reasons that attracted me to College Place. They are also what continue to keep me here. The CPPD will not take that trust and support for granted. Please know the CPPD maintains strong accountability under the direction and leadership of Mayor Norma Hernandez and City Administrator Michael Rizzitiello.

As I celebrate my fifth year as your chief, I am truly honored to represent the men and women of the CPPD. Our professional staff work 24 hours a day, seven days a week to provide unbiased and equitable law enforcement services to you. Please know I am always available to listen or visit to discuss your concerns.

Sincerely,



Troy Tomaras
Chief of Police
College Place Police Department



MISSION

The College Place Police department embraces the Philosophy of community oriented policing and strives to enhance the quality of life and safety of our citizens with the highest degree of ethical behavior, fairness and professional conduct.

VISION

Our vision is to ensure the City of College Place is a safe place to live, work and do business through the delivery of quality law enforcement services.

VALUES

Every member of the College Place Police Department is part of a team who inculcates courage, commitment, community and character in their daily operations through open and honest cooperation, service, respect and diversity.

Courage – Moral and ethical desire to act in the face of danger or adversity.

Commitment – Dedication to the department, professional policing and those we serve.

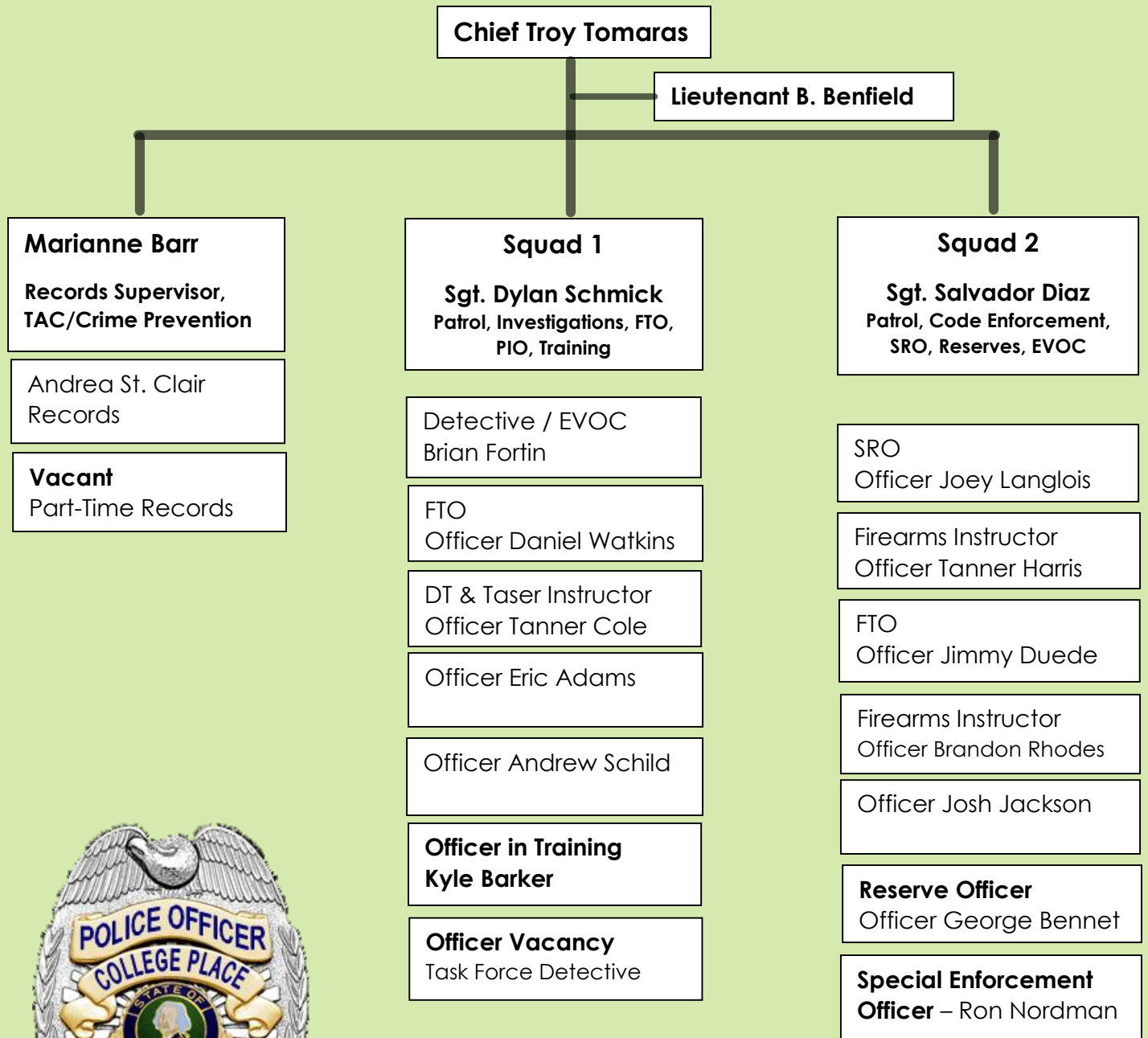
Community – Respecting and protecting individual rights while fostering relationships with whom we are called to serve.

Character – Performing with integrity while demonstrating strength to uphold and instill pride, honor and a call to public service.

GOALS

1. Reduce crime and improve traffic safety within our community.
2. Provide quality services and innovative policing strategies delivered through excellent customer service.
3. Provide leadership and resources to attract, retain and foster a safe, ethical, innovative, knowledgeable, and diverse workforce.
4. Work collaboratively with our stakeholders to improve the quality of life within our city.

Organizational Chart



New Hires

The CPPD welcomes the addition of two new officers in 2021. Officer Rhodes and Officer Jackson are both lateral officers from other jurisdictions who bring years of law enforcement experience to our community. We are grateful to have them serving within the CPPD.



Officer Brandon Rhodes



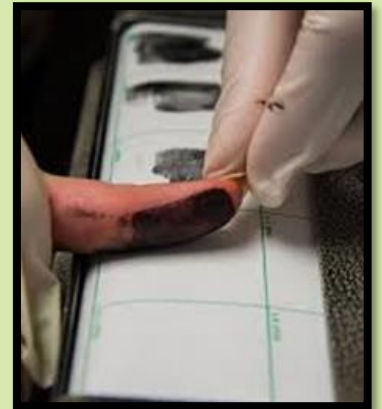
Officer Josh Jackson

Note: There were no retirements in 2021

SUPPORT SERVICES

Our friendly support services staff is available Monday through Friday during business hours to assist with concealed weapons permits, fingerprinting, special events applications, dog licenses, permits, disclosure requests, property, neighborhood watch and crime prevention.

Our team can help file a report or simply answer questions. Our support staff also assists with records management, billing, report merging and processing. Focused on providing the very best customer service, our support services team is essential to our daily operations.



Records Supervisor
M. Barr



Records Clerk
A. St. Clair



Administrative Support Services at a glance:	2020	2021	% of change
Number of fingerprints processed	57	205	259.65%
Number of CPL Permits processed	70	83	18.57%
Public Disclosures Processed	102	169	65.69%
Dog licenses sold	106	93	-12.26%

PATROL



Our patrol section provides 24-hour coverage for the City of College Place. Our patrol officers respond to general calls for service, crime prevention and traffic safety enforcement. During non-assigned time, officers work to accomplish agency goals in support of our Operations Plan.

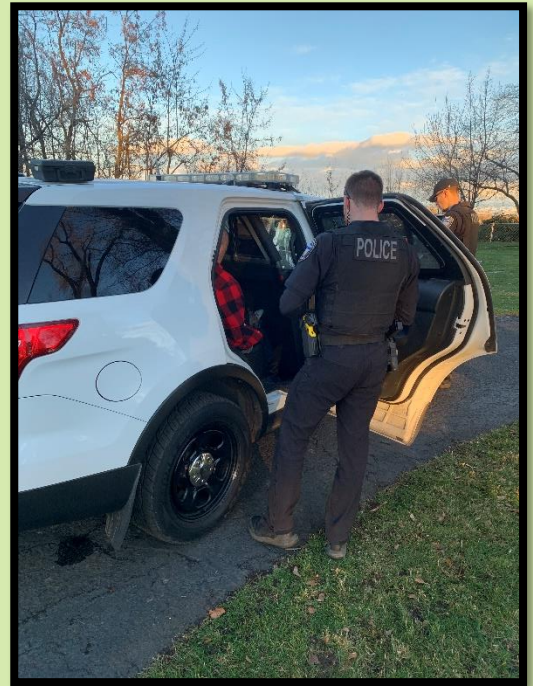
A special thank you to our patrol officers who served regardless of the many health and safety concerns presented by the COVID pandemic. Our front line officers provided service and support while practicing safety measures to ensure our community is a safe place to live and work.



Sgt. Salvador Diaz



Sgt. Dylan Schmick



Patrol Statistics by year at a glance:

Year	2019	2020	2021	% of change
Arrests	480	405	332	-18.02%
Cases	874	615	585	-4.88%
Incidents	11,194	11,279	10,138	-10.12%
Tickets	837	588	577	- 1.87%
Traffic stops	3,515	2,345	2,026	-13.60%



INVESTIGATIONS

The College Place Police Department has one detective who handles complex cases, which require special training, resources and/or time to solve crimes. Typically, our detective investigates felony cases which if proven, could result in a prison sentence. Additional duties include assisting patrol with follow-up, interviews, evidence collection, latent fingerprint and photographs.



Detective B. Fortin

Investigative Statistics at a glance:

Year	2020	2021	% of change
Cases Taken	52	41	-0.21
Cases Cleared	49	30	-0.38
Search Warrants		13	New
SIU assist		1	New
Agency Assists		79	New



SCHOOL RESOURCE OFFICER

The College Place Police Department employs one School Resource Officer (SRO) in partnership with the College Place School District. Our SRO's duties include mentoring and working with students, acting as liaison between school, parents



Officer J. Langlois

and police department, providing training to students and staff on security, anti-bullying, social media dangers, traffic safety, law and justice. The SRO also assists with truancy, checking on the health and welfare of students and the investigation and deterrence of criminal activity.

The pandemic and remote learning brought additional challenges to our students and SRO in 2021. Our SRO assisted school staff with remote learning classes and home visits and welfare checks. Student isolation and quarantine presented additional challenges for our parents, schools and SRO.

SRO Statistics at a glance:	2019	2020	2021	% of change
Incidents	36	32	73	128.13%
Criminal Investigations	18	9	22	59.09%
CPS Referrals	1	2	2	0.00%
Charges Filed	1	0	14	
Training Provided	21	16.75	20	19.40%



SPECIAL ENFORCEMENT OFFICER



The Special Enforcement Officer (S.E.O.) is a limited commission position which focuses on Code Enforcement, Animal Control and Parking violations. This position also serves as the department evidence and property custodian. S.E.O. The majority of the S.E.O. calls gain compliance through education and awareness.

S.E.O. R. Nordman

SEO Activity	2019	2020	2021	% of change
Code Enforcement Inv.	240	86	126	46.51%
Animal Calls	111	129	112	-13.18%
Parking Violations	172	214	164	-23.36%

Code enforcement generally involves the removal of junk, junk vehicles and nuisances from property. Junk and neglected property reduces property value which has a negative impact on our neighbors, business and the entire community. This can create health issues, attract crime, and promote neighborhood disputes.



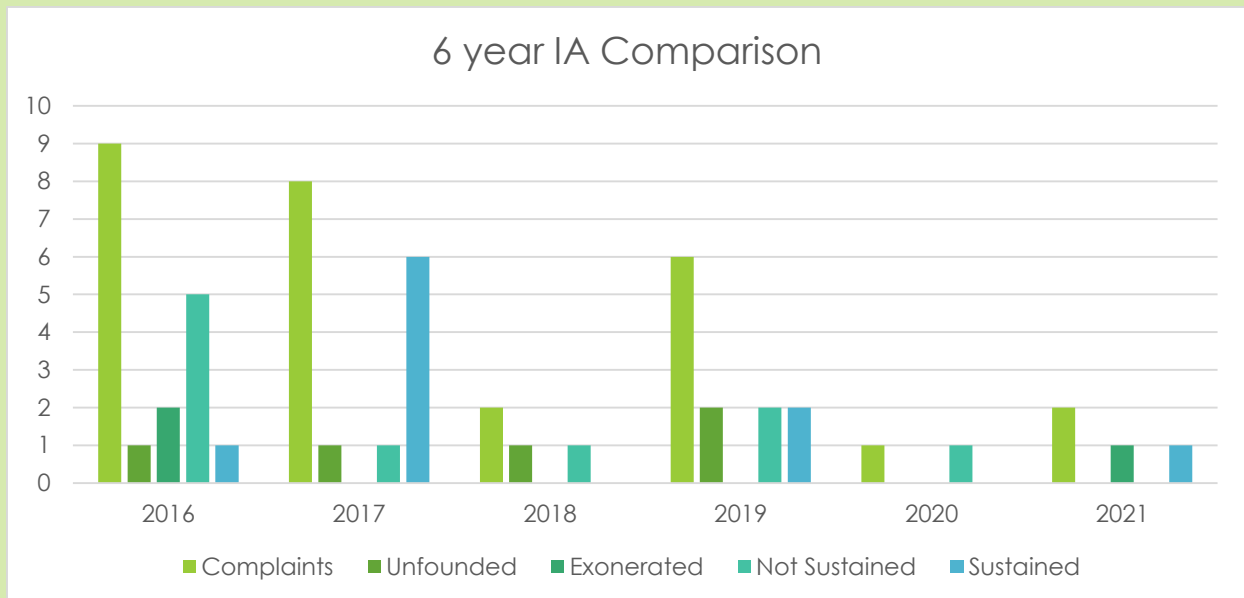
Parking and abandoned vehicles continue to challenge our community's limited parking availability. It is our goal to work with residents to remove unlicensed or non-working vehicles in an effort to promote resilient communities.

We are a pet friendly city. **Animal control** involves the response to calls involving domestic animals. This generally involves loose animals, feral or stray cats, aggressive and/or barking dogs.



PROFESSIONAL STANDARDS

The College Place Police Department inculcates courage, commitment, community and character in their daily operations through open and honest cooperation, service, respect and diversity. We strive to foster public trust through professional, unbiased policing. When an allegation of misconduct or violation of policy against one of our employees occurs, we conduct a thorough investigation while protecting and respecting the rights of everyone involved.



Complaints include violation(s) of policy such as courtesy, lost equipment or vehicle operation.

Unfounded – When the investigation discloses that, the alleged acts did not occur or did not involve department members.

Exonerated – When the investigation discloses that the alleged act occurred but that the act was justified, lawful and/or proper.

Not sustained – When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the member.

Sustained – When the investigation discloses sufficient evidence to establish that the act occurred and that it constituted a violation of policy or misconduct.

CRIME & TRAFFIC STATISTICS

Category	2019	2020	19 - 20 % of change	2021	20 - 21 % of change	3 year average	19 - 21 % of change
Burglaries	32	41	28.13%	36	-12.20%	36.43	12.50%
Thefts	156	143	-8.33%	108	-24.48%	135.64	-30.77%
Collisions	87	82	-5.75%	72	-12.20%	80.31	-17.24%
DUI	26	18	-30.77%	14	-22.22%	19.23	-46.15%
Narcotics Arrests	22	37	68.18%	4	-89.19%	21.23	-81.82%
Traffic Stops	3515	2345	-33.29%	2,026	-13.60%	2628.56	-42.36%
Warrant Apprehension	240	207	-13.75%	319	54.11%	255.29	32.92%
Motor Vehicle Thefts	27	27	0.00%	33	22.22%	29.00	22.22%
Vehicle Prowls	59	38	-35.59%	31	-18.42%	42.55	-47.46%
Shoplifting	134	145	8.21%	157	8.28%	145.36	17.16%
Domestic Violence	24	20	-16.67%	18	-10.00%	20.61	-25.00%
Other Assaults	12	29	141.67%	12	-58.62%	18.14	0.00%



2021 SIGNIFICANT ACCOMPLISHMENTS

- The CPPD promoted two officers to the rank of sergeant.
- The CPPD promoted a sergeant to the rank of Lieutenant.
- The CPPD developed and implemented a 2021 Operations Plan
- The CPPD submitted a traffic stop study and Bias Report. We are proud to report no indicators of bias or profiling by our officers through traffic enforcement.
- The CPPD collaborated with the Walla Walla Police Department and the Walla Walla County Sheriff's office to implement a regional training plan for 2021.
- The CPPD hired two new officers in 2021. Officer Brandon Rhodes & Officer Josh Jackson.
- The CPPD hosted a WWU student for her student practicum.
- Our SEO position continues to partner and promote positive improvements within our community through Code Enforcement, Animal Control and parking enforcement.
- The CPPD worked with the Walla Walla Traffic Safety Task Force to conduct traffic safety events within the city to improve the safety of our roadways.
- CPPD helped sponsor Cops and Kids families to help provide during the holidays.
- Two prescription drug take-back events.
- Worked closely with College Place Schools to improve safety.
- CPPD collaborated with city leadership and Diversity and Inclusion Board.
- CPPD sold old property through Propertyroom.com.
- CPPD has increased communication through social media (Instagram & Facebook).
- CPPD participated in the Walla Walla Valley National Night Out Parade.
- CPPD participated in the "light up the Ave" holiday parade through the city.
- CPPD has added "Now you know" informational videos.
- CPPD completed 100% of the first 32 hours (per officer) of de-escalation training in compliance with I-940.
- CPPD in partnership with Blue Mountain Lodge recognized Officer S. Diaz as the officer of the year.
- CPPD completed new evidence storage and processing garage.
- CPPD completed police range firearms classroom project.
- CPPD partnered with Walla Walla Area Crime watch and Life Church to conduct graffiti abatement throughout city.
- CPPD recognized Officers Duede, Cole & Adams for life saving awards.
- CPPD produced child passenger safety videos to improve child occupant safety.
- CPPD partnered with the Walla Walla Valley Traffic Safety to host a bike rodeo at Valle Lindo.

EVENTS/PHOTOS

National Night Out Parade Awards



Blue Mountain Lodge Officer of the year – CPPD Officer Sal Diaz (photo left).
Traffic Safety DUI award – Officer Daniel Watkins (photo right)



Drug Take Back events



Fall Festival



Area Crime Watch graffiti abatement



Life Saving Awards

Officers Duede (left), Adams (middle) & Cole (right) received life-saving awards for rendering first aid and being credited for saving a life.



Child Passenger Safety Video Series



Light Up the Avenue parade



Bike Rodeo at Valle Lindo



Cops and Kids Annual Christmas Event



College Place Police Department
Bias-Based / Racial Profiling Report

2021



Bias-based policing is described as the inappropriate reliance on characteristics such as race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, economic status, age cultural group, disability or affiliation with any non-criminal group as the basis for providing differing law enforcement service or enforcement.

According to state law ([RCW 43.101.410](#)), Local law enforcement agencies shall:

(1) Local law enforcement agencies shall comply with the recommendations of the Washington association of sheriffs and police chiefs regarding racial profiling, as set forth under (a) through (f) of this subsection. Local law enforcement agencies shall:

- (a) Adopt a written policy designed to condemn and prevent racial profiling;
- (b) Review and audit their existing procedures, practices, and training to ensure that they do not enable or foster the practice of racial profiling;
- (c) Continue training to address the issues related to racial profiling. Officers should be trained in how to better interact with persons they stop so that legitimate police actions are not misperceived as racial profiling;
- (d) Ensure that they have in place a citizen complaint review process that can adequately address instances of racial profiling. The process must be accessible to citizens and must be fair. Officers found to be engaged in racial profiling must be held accountable through the appropriate disciplinary procedures within each department;
- (e) Work with the minority groups in their community to appropriately address the issue of racial profiling; and
- (f) Within fiscal constraints, collect demographic data on traffic stops and analyze that data to ensure that racial profiling is not occurring.

(2) The Washington association of sheriffs and police chiefs shall coordinate with the criminal justice training commission to ensure that issues related to racial profiling are addressed in basic law enforcement training and offered in regional training for in-service law enforcement officers at all levels.

(3) Local law enforcement agencies shall report all information required under this section to the Washington association of sheriffs and police chiefs.

Biased-Based Policing Policy

The College Place Police Department (CPPD) policy No. 402 establishes guidance for Biased Based Policing, member responsibilities, supervisor responsibilities, training and State reporting requirements. The purpose of this policy is to ensure the CPPD is committed to policing in a fair and objective manner to foster community trust.

Policy 402.2 - The CPPD is committed to providing law enforcement services to the community with due regard for the racial, cultural or other differences of those served. It is the policy of CPPD to provide law enforcement services and to enforce the law equally, fairly, objectively and without discrimination toward any individual or group.

According to Policy 402.4.1, while in the performance of their duties, officers contacting a person shall be prepared to articulate sufficient reason for the contact independent of the protected characteristics of the individual. (Policy 402.4.2) Each time an officer makes a traffic stop, the officer shall report any demographic information required by CPPD.

Complaints

The CPPD maintains an in person or online complaint review process that adequately addresses complaints of racial profiling. Officers accused of racial profiling are held accountable through policy 1008; Personnel Complaints. This process thoroughly investigates any allegation of misconduct or improper job performance against any department employee that, if true, would constitute a violation of department policy, federal, state or local law.

Supervision and Review

Policy 402.5 states: Supervisors shall monitor those individuals under their command for any behavior that may conflict with the purpose of this policy and shall handle any alleged or observed violation of this policy in accordance with CPPD Policy 1008; Personnel Complaints.

Each year the Chief shall review available data related to traffic stops, including demographic data, existing procedures, practices and training, as well as complaints. The data will be analyzed for any patterns or other possible indicators of racial, or bias-based profiling and included in an annual report for the Washington Association of Sheriffs and Police Chiefs (RCW 43.101.410).

Training

Training on fair and objective policing and review of the CPPD Bias-Based Policing and Profiling Policy will be conducted annually.

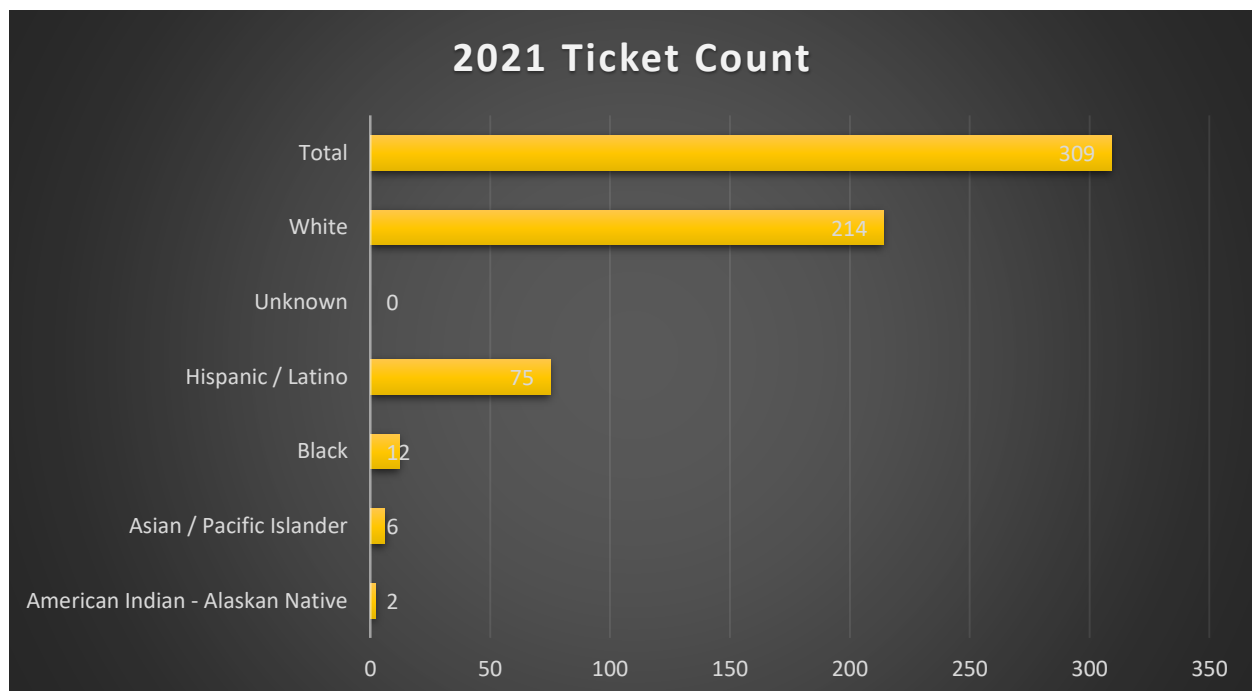
The CPPD maintains a record management system through [Tyler's New World](#) and collects demographic data on traffic stops through the Statewide Electronic Collision & Ticket online Records (SECTOR) system. The CPPD analyzes that data annually to ensure that racial profiling is not occurring. Below is the available data related to traffic stops, including demographic data:

Infractions Issued

In the year 2021, 309 infractions were issued.

Stats include Traffic Infraction and Non-Traffic Violations:

INFRACTIONS ISSUED	2019 Ticket Count	2020 Ticket Count	2021 Ticket Count
American Indian - Alaskan Native	0	1	2
Asian / Pacific Islander	6	2	6
Black	6	6	12
Hispanic / Latino	0	79	75
Unknown	142	0	0
White	275	194	214
Total	429	282	309



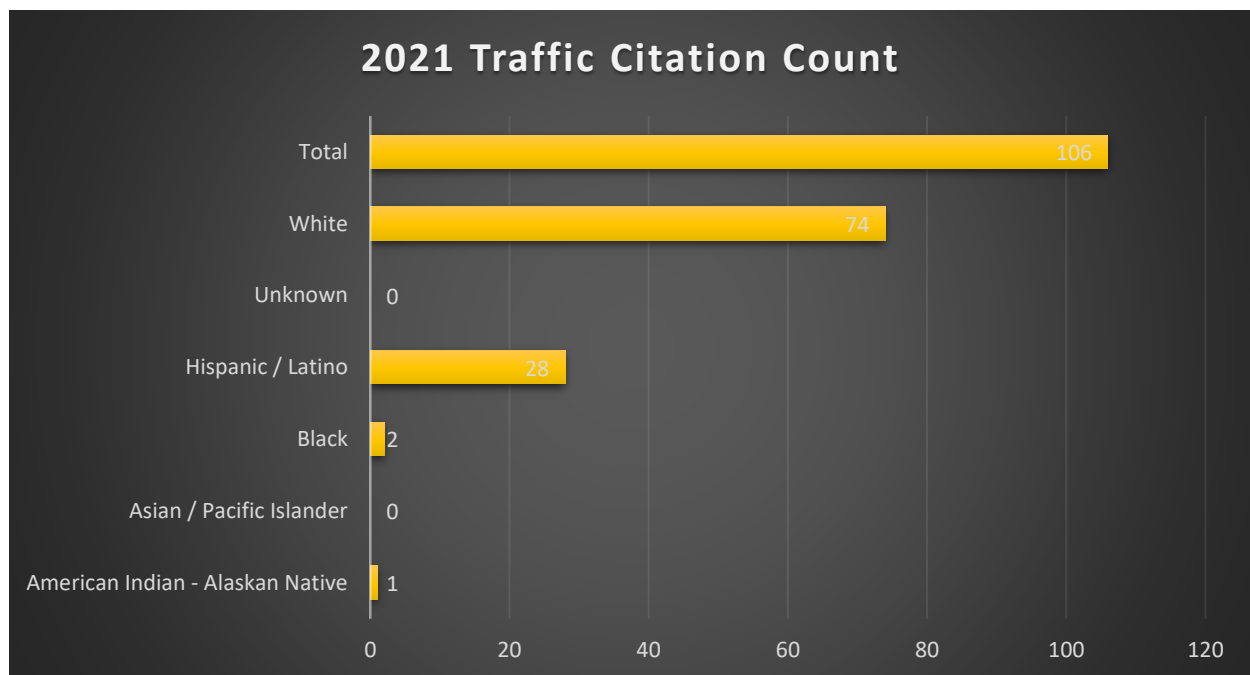
Note: Data pulled from SECTOR

Citations Issued

In the year 2021, **106** criminal traffic citations were issued.

Criminal Traffic (Misdemeanors)

TRAFFIC CITATIONS ISSUED	2021 Citation Count
American Indian - Alaskan Native	1
Asian / Pacific Islander	0
Black	2
Hispanic / Latino	28
Unknown	0
White	74
Total	106



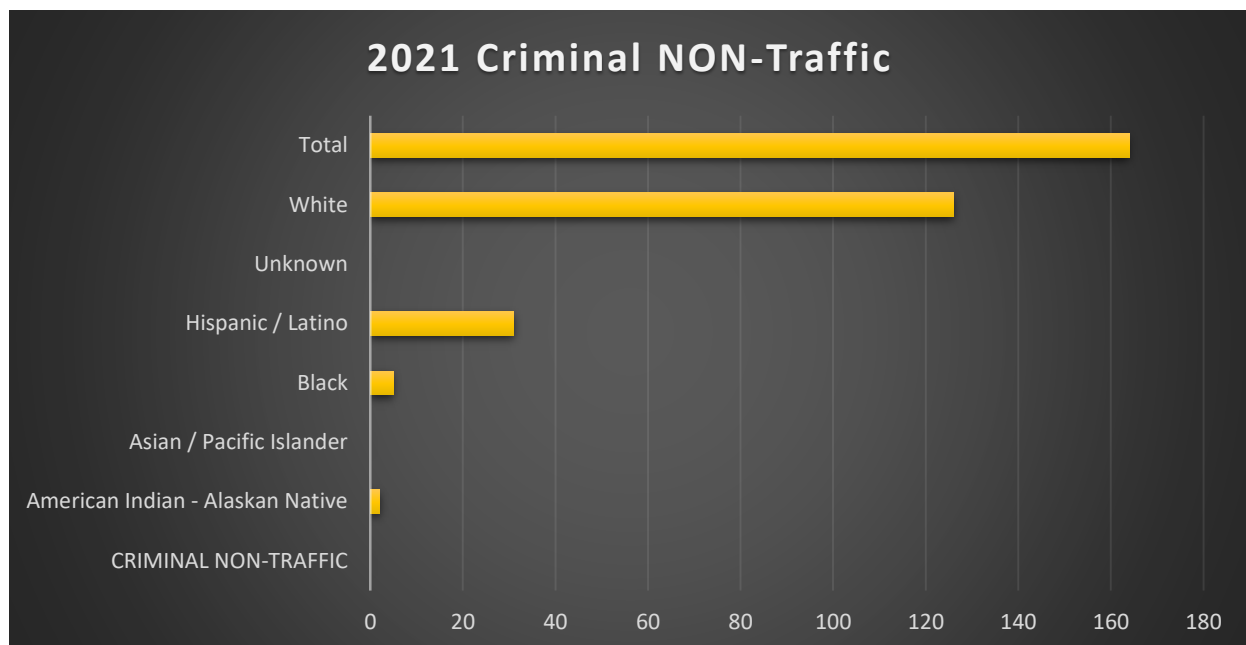
Note: Data pulled from SECTOR

Citations Issued

In the year 2021 164 Criminal non-traffic citations were issued:

Criminal NON-Traffic (Misdemeanors)

CRIMINAL NON-TRAFFIC	2021 Citation Count
American Indian - Alaskan Native	2
Asian / Pacific Islander	0
Black	5
Hispanic / Latino	31
Unknown	0
White	126
Total	164



Note: Data pulled from Sector

City of College Place Population and Demographics –

Reported by the United States Census Bureau, 2020 data search.

Total Population (City of College Place)	9,902	Percentage
White		82.2%
Black or African American		0.4%
American Indian and Alaskan Native		0.8%
Asian		2.4%
Native Hawaiian and Other Pacific Isl.		0.5%
Hispanic or Latino		21.0%
Total Population (Walla Walla County)	62,682	Percentage
White		91.4%
Black or African American		12.2%
American Indian and Alaskan Native		1.4%
Asian		1.7%
Native Hawaiian and Other Pacific Isl.		0.4%
Hispanic or Latino		21.7%
Total Population (State of Washington)	7,738,692	Percentage
White		78.5%
Black or African American		4.4%
American Indian and Alaskan Native		1.9%
Asian		9.6%
Native Hawaiian and Other Pacific Isl.		0.8%
Hispanic or Latino		13.0%

Data retrieved from: [Census.gov](https://www.census.gov)

Traffic Data

The city of College Place has 32 miles of roadways within 2.99 mi² area.

Annual Vehicle Miles Recorded upon State Routes in Walla Walla County - 2018

Total Miles of State Routes: 72.86

Total Miles Driven/Recorded: 282,581

Vehicle Miles Traveled in Walla Walla County: 441,017 Annually (2020) ([WSDOT VMT](#))

SR-12 West of SR-125 spur, Daily Traffic Volume (2018) = 12,000

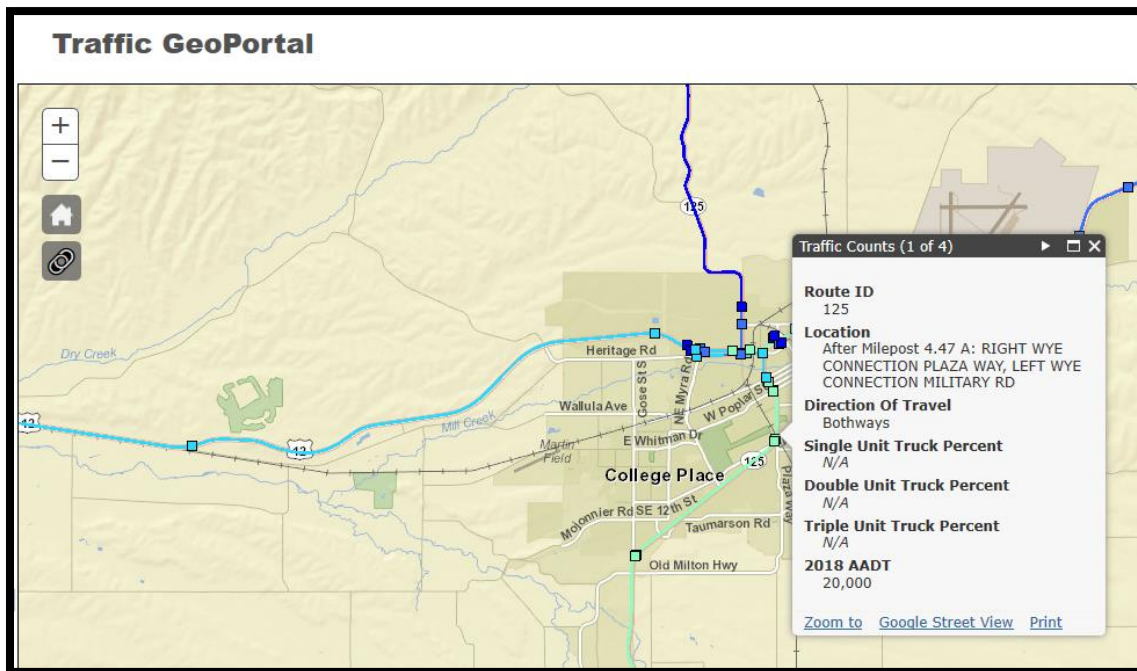
SR-125 @ Myra, Daily Traffic Volume (2018) = 20,000

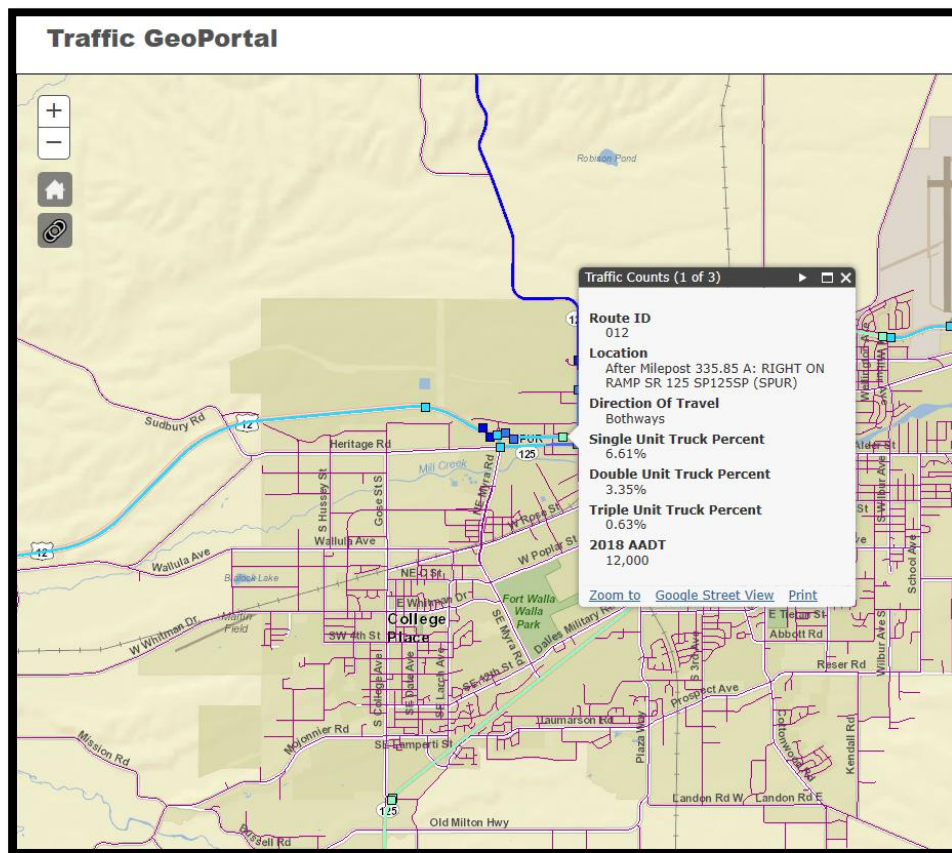
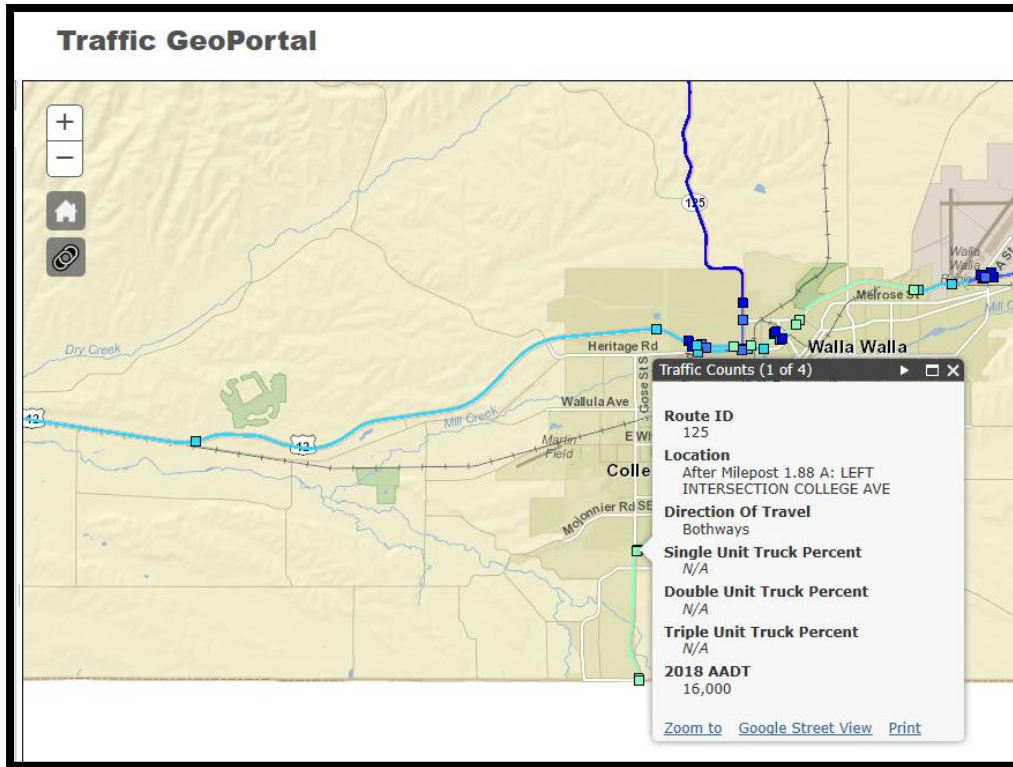
SR-125 @ S. College Ave, Daily Traffic Volume (2018) = 16,000

Data retrieved from Washington State Department of Transportation Annual Traffic Report:

[Washington State Department of Transportation](#)

[Traffic Data GeoPortal](#)





Map of the City of College Place



AGENDA REPORT

FOR: City Council February 2, 2022

TO: Dave Zabell, City Manager City Council Regular Meeting: 2/7/22

FROM: Dave Zabell, City Manager Executive

SUBJECT: Banning Local Income Tax

I. REFERENCE(S):

Draft Resolution
Draft Ordinance

II. ACTION REQUESTED OF COUNCIL / STAFF RECOMMENDATIONS:

MOTION: I move to approve Resolution No. _____, expressing Council's oppositions to a local income tax on the resident and businesses of the City of Pasco.

and/or

MOTION: I move to adopt Ordinance No. _____, creating a new Chapter 3.31 entitled, "Local Income Tax," within Title 3, "Revenue and Finance" of the Pasco Municipal Code, to oppose a local income tax on the residents and businesses of the City of Pasco.

III. FISCAL IMPACT:

N/A

IV. HISTORY AND FACTS BRIEF:

The issue of a local income tax has been discussed by the City Council in their previous three meetings. While Councilmembers speaking to the issue have uniformly indicated they would not favor a imposing a local income tax, the Council has not been as uniform in how to convey their collective position.

At the January 24 Workshop meeting, a majority of Councilmembers indicated their support of passage of an resolution or ordinance stating their City Council opposition to the imposition of a local income tax.

V. DISCUSSION:

Consistent with the discussion at the January 24 Workshop and to assist in Council's final action related to their stance on prohibiting a local income tax within Pasco, the City Attorney's Office has prepared both a draft resolution and draft ordinance for Council's review and determination:

- Draft resolution expressing Council's opposition to the imposition of a local income tax by the City of Pasco.
- Draft ordinance amending the Pasco Municipal Code to provide for such a prohibition.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASCO, WASHINGTON, EXPRESSING ITS OPPOSITION TO A LOCAL INCOME TAX ON THE RESIDENTS AND BUSINESSES OF THE CITY OF PASCO.

WHEREAS, Article VII, § 1 of the Washington State Constitution establishes the basic framework for taxation in the State of Washington, including what shall be permitted as a tax; and

WHEREAS, after the City of Seattle attempted to enact an income tax on certain individuals applicable within its municipal boundaries, the Washington State Court of Appeals, Division I, ruled that such a tax, when selectively applied, was unconstitutional and invalid. *Kunath v. City of Seattle*, 10 Wash. App. 2d 205, 444 P.3d 1235 (2019), *review denied* 195 Wn.2d 1013 (2020)); and

WHEREAS, certain language in the *Kunath* ruling has caused discussion in various communities across Washington as to whether cities have authority to impose a local income tax, which, under Washington law, is legally considered a tax on property; and

WHEREAS, the Washington State Supreme Court denied the request for appeal of the *Kunath* case such that the ruling stands at this time; and

WHEREAS, the Washington State Legislature recently introduced a bill (Senate Bill 5554) which proposed to repeal existing statutory language prohibiting local government from levying a net income tax, and would authorize counties, cities and towns to levy a graduated tax on personal or business net income - if the jurisdiction makes a corresponding reduction in the amounts collected in certain uniform local taxes; and

WHEREAS, the City Council wishes to join many other Washington local jurisdictions, including Battle Ground, DuPont, Granger, Kennewick, Longview, Moses Lake, Richland, Spokane, Spokane Valley, Union Gap, West Richland and Yakima, as well as Chelan County, Franklin County, Grant County, Spokane County and Yakima County, in publicly declaring its position opposing the imposition of a local income tax on its residents and businesses; and

WHEREAS, businesses large and small provide the economic lifeblood in our City, the County, the region, state and country; and

WHEREAS, businesses are already subject to a highly regressive business and occupation tax imposed by the state of Washington, and although many cities across the state additionally impose a local business and occupation tax, the Pasco City Council has deliberately chosen not to do so, electing, instead, to create a regulatory and taxing climate based on opportunity in which businesses may operate; and

WHEREAS, the City Council knows that a strong and encouraging business climate is one of the best ways to attract and retain good businesses to employ people in family wage jobs; and

WHEREAS, use of a local income tax may generate additional revenue in the short term, but would most likely result in less long-term revenue due to the dampening effect it would have on our businesses.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PASCO, WASHINGTON:

That the imposition of a local income tax on the businesses and residents of the City of Pasco is opposed. Such a tax would be a direct conflict with the high value the City places on promoting economic development through the attraction and expansion of financially healthy, family wage paying employers. Small businesses are the backbone of our local, regional, state, and national economy and it is imperative that the City not put unnecessary hurdles in the way of their success. As such, the City Council of the City of Pasco opposes the imposition of a local income tax in the event a local income tax is determined legal and permissible by the Washington State Supreme Court or the Washington State Legislature, and

Be It Further Resolved that the City Manager is authorized and directed to forward executed copies of this Resolution to the appropriate representatives of both houses of the Washington State Legislature, and of the Association of Washington Cities, in Olympia, Washington, and

Be It Further Resolved that this Resolution shall be effective upon adoption.

PASSED by the City Council of the City of Pasco, Washington, this _____ day of _____, 2022.

Blanche Barajas
Mayor

APPROVED AS TO FORM:

Debra Barham, CMC
City Clerk

Kerr Ferguson Law, PLLC
City Attorney

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PASCO, WASHINGTON, CREATING A NEW CHAPTER 3.31, ENTITLED “LOCAL INCOME TAX,” WITHIN TITLE 3, “REVENUE AND FINANCE” OF THE PASCO MUNICIPAL CODE, TO OPPOSE A LOCAL INCOME TAX ON THE RESIDENTS AND BUSINESSES OF THE CITY OF PASCO.

WHEREAS, Article VII, § 1 of the Washington State Constitution establishes the basic framework for taxation in the State of Washington, including what shall be permitted as a tax; and

WHEREAS, after the City of Seattle attempted to enact an income tax on certain individuals applicable within its municipal boundaries, the Washington State Court of Appeals, Division 1, ruled that such a tax, when selectively applied, was unconstitutional and invalid. *Kunath v. City of Seattle*, 10 Wash. App. 2d 205 (Div. 1 2019); and

WHEREAS, certain language in the *Kunath* ruling has caused discussion in various committees across Washington as to whether cities have authority to impose a local income tax, which is legally considered a tax on property; and

WHEREAS, the Washington State Supreme Court denied request for appeal of the *Kunath* case such that the ruling stands at this time; and

WHEREAS, the City Council wants to declare its opposition regarding a local income tax on its residents and businesses; and

WHEREAS, businesses large and small, provide the economic lifeblood in our City, the region, state, and country; and

WHEREAS, the City Council knows that a strong and encouraging business climate and quality of place are the best ways to attract and retain good businesses to employ people in family wage jobs; and

WHEREAS, use of a local income tax would most likely result in less long-term revenue due to the dampening effect it would have on our businesses and local economy.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF PASCO, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. That a new Chapter 3.31 entitled “Local Income Tax” of the Pasco Municipal Code shall be and hereby is created and shall read as follows:

Chapter 3.31

Local Income Tax

Sections:

3.31.010 Purpose.

3.31.020 Local Income Tax Banned.

3.31.010 Purpose.

The imposition of a local income tax on the businesses and residents of the City of Pasco is a direct conflict with the high value the City places on promoting economic development through the attraction and expansion of financially healthy, family wage paying employers. Small businesses are the foundation of our local, regional, state, and national economy and it is imperative that the City not put unnecessary obstacles in the way of their success.

3.31.020 Local Income Tax Prohibited.

No local income tax shall be imposed upon the Residents or Businesses of the City of Pasco.

Section 2. This Ordinance shall take full force and effect five (5) days after approval, passage and publication as required by law.

PASSED by the City Council of the City of Pasco, Washington, this ____ day of _____, 2022.

Blanche Barajas
Mayor

ATTEST:

APPROVED AS TO FORM:

Debra Barham, CMC
City Clerk

Kerr Ferguson Law, PLLC
City Attorney

Published: _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PASCO, WASHINGTON, CREATING A NEW CHAPTER 3.31, ENTITLED “LOCAL INCOME TAX,” WITHIN TITLE 3, “REVENUE AND FINANCE” OF THE PASCO MUNICIPAL CODE, TO OPPOSE A LOCAL INCOME TAX ON THE RESIDENTS AND BUSINESSES OF THE CITY OF COLLEGE PLACE.

WHEREAS, Article VII, § 1 of the Washington State Constitution establishes the basic framework for taxation in the State of Washington, including what shall be permitted as a tax; and

WHEREAS, after the City of Seattle attempted to enact an income tax on certain individuals applicable within its municipal boundaries, the Washington State Court of Appeals, Division 1, ruled that such a tax, when selectively applied, was unconstitutional and invalid. *Kunath v. City of Seattle*, 10 Wash. App. 2d 205 (Div. 1 2019); and

WHEREAS, certain language in the *Kunath* ruling has caused discussion in various committees across Washington as to whether cities have authority to impose a local income tax, which is legally considered a tax on property; and

WHEREAS, the Washington State Supreme Court denied request for appeal of the *Kunath* case such that the ruling stands at this time; and

WHEREAS, the City Council wants to declare its opposition regarding a local income tax on its residents and businesses; and

WHEREAS, businesses large and small, provide the economic lifeblood in our City, the region, state, and country; and

WHEREAS, the City Council knows that a strong and encouraging business climate and quality of place are the best ways to attract and retain good businesses to employ people in family wage jobs; and

WHEREAS, use of a local income tax would most likely result in less long-term revenue due to the dampening effect it would have on our businesses and local economy.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF COLLEGE PLACE, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. That a new Chapter 3.30 entitled “Local Income Tax” of the College Place Municipal Code shall be and hereby is created and shall read as follows:

Chapter 3.30
Local Income Tax

Sections:

3.30.010 Purpose.

3.31.020 Local Income Tax Banned.

3.31.010 Purpose.

The imposition of a local income tax on the businesses and residents of the City of College Place is a direct conflict with the high value the City places on promoting economic development through the attraction and expansion of financially healthy, family wage paying employers. Small businesses are the foundation of our local, regional, state, and national economy and it is imperative that the City not put unnecessary obstacles in the way of their success.

3.31.020 Local Income Tax Prohibited.

No local income tax shall be imposed upon the Residents or Businesses of the City of College Place.

Section 2. This Ordinance shall take full force and effect five (5) days after approval, passage and publication as required by law.

PASSED by the City Council of the City of College Place, Washington, this ____ day of _____, 2022.

Norma L. Hernandez
Mayor

ATTEST:

APPROVED AS TO FORM:

Lisa Neissl, CMC City Clerk

Rea L. Culwell, City Attorney

Published: _____