1. Agenda

   Documents:

   5-6-2020 SM.PDF

2. Meeting Materials

   Documents:

   05-06-2020 AGENDA DOCS.PDF

Cascade County
Special Commission Meeting
May 6, 2020 @ 10:30 a.m.
Courthouse Annex
Via Zoom

Please note the Agenda order is tentative and subject to change by the Board without prior notice.
Therefore, members of the public are encouraged to be in attendance at the time the meeting is scheduled to begin.
Public comment during public participation is limited to a maximum seven (7) minutes.

Call to Order ***Chairman James L. Larson***

Pledge of Allegiance

1. **Motion to Approve or Disapprove:**
   Contract 20-49:
   Willo Products Company Inc. Quote to replace twelve existing K-Pod cell doors at the Adult Detention Center. Total Cost: $49,830

2. **Motion to Approve or Disapprove:**
   Contract 20-51:
   Joint Prosecution and Common Interest Agreement by and between Montana Association of Counties (MACo), Lewis & Clark County and Cascade County

3. **Motion to Approve or Disapprove:**
   Resolution 20-20:
   A resolution directing the County Attorney to file a civil complaint against the Public Employees' Retirement Board of the State of Montana and the Montana Public Employee's Retirement Administration.

4. **Public comment on any public matter that is not on the meeting agenda, and that is within the Commissioners' jurisdiction.** ***(MCA 2-3-103)***

5. **Adjournment.**

May 6, 2020 **Contract 20-49**

Agenda Action Report
Prepared for the
Cascade County Commission

ITEM:	**Willo Products Company Inc.** **K-Pod Locks Sales Contract**
INITIATED & PRESENTED BY:	**Undersheriff Cory Reeves** **Cascade County Sheriff's Office**
ACTION REQUESTED:	**Approval of Contract 20-49**

BACKGROUND:
The Cascade County Sheriff's Office would like to accept the quote from Willo Products Company Inc to replace the existing twelve K-Pod cell door locks with the Willo Wedge.

TERM:	60 Day Quote expires June 19, 2020
AMOUNT:	$49,830.00 (Contingency funds)
RECOMMENDATION:	Approval of Contract 20-49.

TWO MOTIONS PROVIDED FOR CONSIDERATION:

MOTION TO APPROVE:
Mr. Chairman, I move that the Commission **APPROVE** Contract 20-49, Willo Products Company Inc. K-Pod Locks Sales Contract with the Cascade County Sheriff's Office.

MOTION TO DISAPPROVE:
Mr. Chairman, I move that the Commission **DISAPPROVE** Contract 20-49, Willo Products Company Inc. K-Pod Locks Sales Contract with the Cascade County Sheriff's Office.

CONTRACT
20-49

EQUIPMENT PURCHASE & SERVICE AGREEMENT

This Equipment Purchase Agreement ("Agreement"), made and entered into this _____ day of _____, 2020, by and between Willo Products Company Inc. ("Supplier") a foreign profit corporation registered with the State of Montana and located at 714 Willo Industrial Dr. SE, Decatur, AL 35601, and Cascade County ("Purchaser"), a local government created and existing pursuant to the laws of Montana, located at 325 2nd Avenue North, Great Falls, Montana, 59401.

WITNESSETH:

WHEREAS, the Purchaser desires to acquire and replace twelve (12) of their existing locks in K-Pod at the Cascade County Detention Center located at 3800 Ulm North Frontage Road, Great Falls, Montana; and

WHEREAS, Supplier is in the business of selling certain equipment described as Willo Wedge Surface Mounted Lock Pockets locks (herein after referred to collectively as "Equipment"), and performing replacement, installation, testing and training services; and

WHEREAS, the Purchaser requested a proposal for the purchase of and replacement of twelve (12) existing locks in K-Pod with Supplier's twelve (12) Willo Wedge Surface Mounted Lock Pockets locks, and Supplier submitted a proposal herein incorporated by reference dated April 20, 2020 offering to sell, replace and install said Equipment and provide training; and

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, and in consideration of the terms set forth in this Agreement, the parties agree as follows:

1. AGREEMENT. Supplier hereby agrees to sell, convey and transfer to Purchaser all rights, title and interest in and unto the Equipment described above, and perform replacement, installation, testing and training services.

2. SCOPE OF WORK. Supplier agrees to furnish and install the Equipment to replace the 12 existing locks in K-Pod. Supplier shall provide locksets, including any wiring adaptors needed. The Purchaser's existing doors, wiring, and controls will be reused. Supplier shall install, lubricated, adjust and fully test, using the Purchaser's controls, before approving the lock to be placed back into service. Supplier agrees to shim the doors to realign and adjust the openings as close as possible. Further, Supplier shall reinstall existing pocket covers and remove existing locks to a designated place of Purchaser or removed by Purchaser.

3. DURATION OF WORK. Supplier agrees that the duration of the project from receipt of signed contract until final completion is approximately 6 months. Onsite installation will take approximately 2 weeks.

4. PURCHASE PRICE. Subject to the terms of this Agreement, the Purchaser hereby orders and purchases from the Supplier, and the Supplier agrees to sell and provide to the

Purchaser, the Equipment and related services for the sum of $49,830. Supplier requires from Purchaser 50% of sum payment down upon contract signing for equipment manufacturing and the remaining balance paid upon completion of the project.

5. SCHEDULE & DELIVERY. Delivery of the Equipment shall be by common carrier. The Supplier shall notify the Purchaser of delivery particulars in advance of delivery, as may be required by the Purchaser. Submittal lead time is 4 to 6 weeks from purchase order or notice to proceed. Lead time for beginning of onsite installation is 16 weeks from receipt of approved submittals.

6. ACCEPTANCE. Upon acceptance by Purchaser of the equipment, which acceptance shall be identified by Purchaser taking possession of the equipment, such acceptance shall acknowledge that the equipment is in good working order and condition and that Purchaser is satisfied with same based upon Supplier's testing and written assessment.

7. INSTALLATION. The Supplier shall install the Equipment at the delivery site on the date as set forth in Paragraph 5 above. The Purchaser shall make available to the Supplier free and clear access to a specific number of devises each day.

8. STANDARD OF PERFORMANCE. The Supplier shall perform the work under this Contract in accordance with standards of care, skill and diligence consistent with (a) recognized and sound practices, procedures and techniques; (b) all applicable laws and regulations; and (c) the degree of knowledge, skill, and judgment normally exercised by professionals and individuals with respect to the services of a similar nature.

9. TESTING, ASSESSMENT & TRAINING. Supplier agrees to provide training to Purchaser on the newly installed Equipment.

10. INSURANCE AND WORKERS' COMPENSATION. Contractor agrees to maintain general liability insurance in the amount of one million dollars ($1,000,000.00) per occurrence and two million dollars ($2,000,000.00) in the aggregate, and to provide professional liability insurance. Contractor agrees to purchase and maintain automobile occurrence coverage with combined single limits for bodily injury, personal injury and property damage of five hundred thousand dollars ($500,000.00) per occurrence and one million dollars ($1,000,000.00) in aggregate per year to cover such claims as may be caused by any act, omission, or negligence of Contractor, and its employees, agents, representatives, successors, assigns or subcontractors. In accordance with MCA §§ 39-71-401 and 39-71-405, Contractor agrees to provide workers' compensation insurance for its employees while performing work under this Contract, unless an independent contractor exemption certificate has been obtained from DOLI, and copy provided to Cascade County. Contractor agrees to provide proof of compliance in the form of workers' compensation insurance or documentation of corporate officer status and maintain such insurance or corporate officer status for the duration of this Contract. All insurance policies required must be from an insurance carrier licensed to do business in the State of Montana. Contractor agrees to furnish proof of required insurance to Cascade County prior to commencing work under this

Contract. Cascade County must be listed as an additional insured on the general liability insurance certificate for this Contract unless otherwise specified by Cascade County.

11. COMPLIANCE WITH LAWS AND NON-DISCRIMINATION. Contractor agrees all hiring must be on the basis of merit and qualifications, and not discriminate against any person who performs work thereunder because of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin. Further, Contractor agrees to comply with all federal, state, and local laws, rules and regulations, including but not limited to, the Americans with Disabilities Act.

12. WAGES & LABOR. Pursuant to MCA § 18-2-401(11)(a), a "public works contract" is defined as "a contract for construction services let by the state, county, municipality, school district, or political subdivision or for nonconstruction services let by the state, county, municipality, or political subdivision in which the total cost of the contract is in excess of $25,000." As a public works contract, Montana resident preferences and prevailing wage rate apply to this work and Contract. Supplier and any and all subcontractors at any level or tier of work shall give preference to the employment of bone fide Montana residents in the performance of the work and shall pay the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions and travel allowance provision in effect and applicable to the County or locality in which the work is being performed (MCA § 18-2-403). At least 50% of the workers, as defined by the Department of Labor and Industry (DOLI), must be bona fide Montana residents (MCA §§ 18-2-401, 18-2-402). The Commissioner of the DOLI has established the standard prevailing rate of wages in accordance with MCA §§ 18-2-401 and 18-2-402. A copy of the rates entitled "State of Montana, Prevailing Wage Rates" are available online at Montana DOLI website at montana.gov. The Commissioner of the Montana DOLI has established the resident requirement in accordance with MCA § 18-2-409. The Supplier and any and all subcontractors at any level or tier of the work shall direct any and all questions concerning prevailing wage and Montana resident issues for all aspects of the work to DOLI. The Supplier and any and all subcontractors at any tier or level of the work, and as determined by the Montana DOLI, shall classify all workers in accordance with the State of Montana, Prevailing Wage Rates. In the even the Contractor is unable to classify a worker in accordance with these rates, it shall contact DOLI for a Supplier of the classification and the prevailing wage rate to be paid. It is not the responsibility of Cascade County to determine who classifies as a subcontractor or any other persons involved in any aspect of the work at any tier or level. All such determinations shall be the sole responsibility of the Supplier, subcontractor, or any other persons involved in the project at any tier or level. The Supplier is further required to maintain payroll records in a manner readily capable of being certified for submission under MCA § 18-2-423, for not less than three (3) years after the Supplier's completion of work on the project. The Supplier is also required to post a statement of all wages and fringe benefits in a visible and accessible location in compliance with MCA § 18- 2-423.

13. TITLE TO EQUIPMENT. Supplier represents that it owns all Equipment described herein free and clear and that such Equipment is free of all liens.

14. RISK OF LOSS. All risks of damage to or loss of the Equipment until delivery of the Equipment to the Purchaser shall be assumed by the Supplier.

15. EXCLUSIONS. The parties agree that the following services and supplies are not included as part of this Agreement: new doors or frames, glazing, new hinges, finish paint and painting; caulk and caulking; all non-security and security sealants; conduit, wire and wiring; any electrical or electronic controls work, except as otherwise noted above; abatement of hazardous materials, i.e. lead and/or asbestos; any door hardware no specifically identified above; rebar through frames and anchors; all structural steel members unless specifically identified above; prime and finish paint touch-up and cleaning (with the exception that Supplier will touch-up surfaces which have been disturbed by their welding on items they install); refuse containers and trash removal from the site, except as otherwise noted; portable toilets; temporary utilities; bonds, retainage, liquidated damages, permits, permit fees and special license requirements; inspections and any associated fees; sales tax; and all allowances.

16. MAINTENANCE AND REPAIR. Equipment and manufacturing workmanship are warranted against defects for one (1) year after installation. Warranty is limited to repair or replacement of equipment deemed to have failed under regular conditions of normal use and excludes failures attributable to misuse or vandalism. Installation of the Equipment is warranted against defects in workmanship for one (1) year.

17. WARRANTIES. Supplier represents and warrants the following:

a. **Title.** Supplier owns the right, title and interest in and to the equipment free of all claims, liens, or clouds on such title. The equipment is Supplier's original creation, or if not original, do not infringe upon the copyrights of any person or business.

b. **Performance**. For a period of one (1) year following final acceptance of the equipment by Purchaser, the equipment will perform in accordance with specifications and documentations in all material respects. Supplier shall immediately remedy anydifferences.

c. **Required Permits & Compliance with Law.** Supplier has obtained all authorizations and permits necessary or required by law in connection with the services provided pursuant to this Contract. Supplier shall materially comply with all relevant laws, regulations, rules and ordinances in rendering services under this Contract.

d. **Exclusions.** The above warranties do not include the following: (1) negligent use of the equipment, including vandalism; (2) failure to provide adequate environmental conditions required by the equipment; (3) "acts of God" beyond the control of Supplier or any and all of its subcontractors; (4) any modifications or repairs of the equipment by anyone other than Supplier; and (5) any equipment not provided by Supplier.

18. INDEMNIFICATION. Purchaser shall indemnify, protect and hold harmless the Supplier, its agents, servants, successors and assigns from and against all losses, damages, injuries, claims, demands and expenses, including legal expenses, of whatever nature, arising out of the use, condition or operation of any item of the equipment, regardless of where, how and by whom operated. Purchaser shall assume the settling of, and the defense of any suits or other legal proceedings brought to enforce all such losses, damages, injuries, claims, demands and expenses and shall pay all judgments entered in the suit for other legal proceedings. The indemnification and assumptions of liability and obligation herein provided shall continue in full force and effect notwithstanding the termination of this agreement, whether by expiration of time, by operation of law or otherwise.

19. GOVERNING LAW. This Agreement shall be governed by the laws of the State of Montana. Venue shall be the Eight Judicial District, Cascade County, Montana. Each party will be responsible for their own attorney fees and costs.

20. ENTIRE AGREEMENT. This Agreement represents the entire understanding and agreement between the parties. There are no other courses of dealing, understanding, agreements, representations or warranties, written or oral, except as set forth herein. This Agreement may not be amended or modified, except by a written agreement signed by all parties hereto.

21. SEVERABILITY. Any provision of this Agreement that is held void or invalid, such provision shall be deemed severed from the Agreement and the remainder of the Agreement shall remain in full force and effect.

22. WAIVER. Failure of either party to enforce any of the provisions herein shall in no way be construed to be a waiver of such provisions. Such failure shall not in any way affect the right of a party to thereafter enforce each and every provision of the Agreement. No waiver of any breach of any provision of this Agreement shall be constitute a waiver of any subsequent breach of any provision of this Agreement.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures on the date appearing beside their respective signatures.

SUPPLIER:

WILLO PRODUCTS COMPANY INC.

M. David Wood

Authorized Signature

M. David Wood

Printed Name

President
Title

STATE OF Alabama)

:.ss

County of Morgan)

This instrument was signed or acknowledged before me by M. David Wood a representative of WILLO PRODUCTS COMPANY INC. on this 30th day of April 2020.

IN WITNEESS WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year in this certificate first above written.

PAULA K EVANS
My Commission Expires
NOTARY PUBLIC
9/29/2021
ALABAMA STATE AT LARGE

Paula K Evans
Notary Public for the State of Alabama
Residing at 1203 Palisade Ct SW, Decatur AL
My Commission expires: 9-29-2021

PURCHASER:

BOARD OF COUNTY COMMISSIONERS
CASCADE COUNTY, MONTANA

_____
James L. Larson, Chairman

_____
Jane Weber, Commissioner

_____
Joe Briggs, Commissioner

ATTESTATION

On this _____ day of _____, 2020, I hereby attest the above-written signatures of the Cascade County Board of County Commissioners.

_____
Rina Fontana Moore, Clerk and Recorder

May 6, 2020 **Contract 20-51**

Agenda Action Report
Prepared for the
Cascade County Commission

ITEM:	**Joint Prosecution and Common Interest Agreement with MACo, Lewis and Clark County and Cascade County**
INITIATED & PRESENTED BY:	**Cascade County Attorney' Office**
ACTION REQUESTED:	**Approval of Contract 20-51**

BACKGROUND:
The Parties are parties in an original proceeding civil lawsuit in the Montana Supreme Court No. OP 20-0063 and currently are considering, exploring and joining in filing a civil lawsuit in Montana District Court, Lewis & Clark County (the "***Lawsuit***"). The defendants in the Lawsuit are expected to include the Montana Public Employee Retirement Board, the Montana Public Employee Retirement Administration, and DOES I-XX. In the event of a countersuit, this Agreement is intended to be construed as a joint defense agreement, as applicable. The Parties believe they have a similar and shared legal interest and common interest in the prosecution of the Lawsuit. Although working collaboratively, the parties will bear their own costs and attorney fees as part of any Lawsuit which may be brought.

RECOMMENDATION: Approval of Contract 20- 51 a Joint Prosecution and Common Interest Agreement with MACo, Lewis and Clark County and Cascade County.

TWO MOTIONS PROVIDED FOR CONSIDERATION:

MOTION TO APPROVE: Mr. Chairman, I move that the Commission **APPROVE** Contract 20-51, a Joint Prosecution and Common Interest Agreement with MACo, Lewis and Clark County and Cascade County.

MOTION TO DISAPPROVE:
Mr. Chairman, I move that the Commission **DISAPPROVE** Contract 20-51, a Joint Prosecution and Common Interest Agreement with MACo, Lewis and Clark County and Cascade County.

CONTRACT
20-51

JOINT PROSECUTION AND COMMON INTEREST AGREEMENT

This Joint Prosecution and Common Interest Agreement ("***Agreement***") is entered into effective as of April 24, 2020, by and between MONTANA ASSOCIATION OF COUNTIES ("MACo"), LEWIS & CLARK COUNTY, and CASCADE COUNTY, as well as other entities that may join (collectively the "***Parties***").

This Agreement is in addition to and supplements the Parties' previous oral joint prosecution and common interest agreement.

RECITALS

A. The Parties are parties in an original proceeding civil lawsuit in the Montana Supreme Court No. OP 20-0063 and currently are considering, exploring and joining in filing a civil lawsuit in Montana District Court, Lewis & Clark County (the "***Lawsuit***"). The defendants in the Lawsuit are expected to include the Montana Public Employee Retirement Board, the Montana Public Employee Retirement Administration, and DOES I-XX. In the event of a countersuit, this Agreement is intended to be construed as a joint defense agreement, as applicable.

B. The Parties believe they have a similar and shared legal interest and common interest in the prosecution of the Lawsuit.

C. The Parties believe it is permissible to share information and to retain joint experts on the various issues involved in the Lawsuit, and that disclosures among themselves concerning matters of common interest are essential to the preparation of an effective prosecution of the Lawsuit and are therefore governed by the common interest doctrine, and other related doctrines, which recognizes that such sharing of information for mutual benefit is not a waiver of applicable privileges or rules relating to discovery obligations.

D. It is the understanding of the Parties that this Agreement is valid under, and is not intended to commit or encourage the committing of a violation of, applicable laws, court rules, and professional rules of practice;

E. Each Party has independently discussed this matter with their respective counsel, agrees that they do not believe there is a conflict of interest to enter into this limited Agreement, and waives any such argument in the future;

NOW THEREFORE, the Parties agree as follows:

1. **Incorporation of Recitals**. The foregoing recitals are incorporated herein by this reference.

2. **Joint Prosecution**. The Parties may desire to share factual information, mental impressions, strategy, memoranda, communications, and other materials relevant to the Parties' common prosecution of the Lawsuit ("Shared Materials") in confidence, for the common purpose and benefit of and to facilitate the representation of the Parties in the prosecution of the Lawsuit.

It is in the Parties' best interests and is reasonably necessary that the Parties have the opportunity to exchange Shared Materials, including privileged and protected information, and share their respective work product as deemed necessary by each Party and their respective counsel, in their sole discretion, in a joint and common effort to prosecute the Lawsuit.

3. **Exchange of Information**. Each Party in its sole discretion may provide the other Parties with Shared Materials, which the providing Party believes will further the joint and common effort in the prosecution of the Lawsuit.

4. **Confidential Status of Information**. The Parties agree that Shared Materials that are privileged, protected, or confidential as to any Party shall be held in confidence by the other Parties (unless that information ceases to be privileged, protected or confidential, through no violation of this Agreement), and shall remain privileged, protected or confidential when communicated to the other Parties in furtherance of their common interests and the cooperative representation of each of them pursuant to this Agreement.

The Parties agree that any disclosure in accordance with this Agreement will not diminish in any way the confidentiality of the Shared Materials obtained pursuant to this Agreement (or which access was granted pursuant to this Agreement) and will not constitute a waiver of any applicable privilege or protection.

5. **No Waiver of Objections**. This Agreement is not intended to prevent or to limit the Parties from seeking documents or other discovery from any Party to this Agreement through formal discovery processes. By signing this Agreement, no Party waives any objections or privileges that may be asserted in response to a formal discovery request.

6. **Discovery Requests from Non-Party**. If any person or entity requests or demands, by subpoena or otherwise, any Shared Materials obtained pursuant to this Agreement (or to which access was granted pursuant to this Agreement), the Party who received the request or demand will immediately inform the other Parties to this Agreement and provide the Parties with a copy of the subpoena or other form of legal process. No Party shall disclose Shared Materials to a third party without a court order or the consent of the party who originated the Shared Materials being sought.

7. **Access to Shared Materials**. The Parties agree that, except as may be required by court order, access to Shared Materials obtained pursuant to this Agreement shall be limited to the Parties, the Parties' counsel, (including the employees and agents of the Parties' outside attorneys), retained consultants and the in-house counsel of each Party actively involved in the prosecution of the Lawsuit. The Shared Materials shall be maintained in reasonably secured areas. The Parties acknowledge that certain Shared Materials may be subject to additional restrictions as may be agreed upon in separate confidentiality agreements.

All persons permitted access to Shared Materials obtained pursuant to this Agreement shall be specifically advised that the Shared Materials are privileged and subject to the terms of this Agreement. The Parties agree that Shared Materials subject to this Agreement may be used only to assist in the prosecution of the Lawsuit.

8. **Public Domain Documents or Information**. Nothing in this Agreement shall restrict the right of any Party to retain, use or disclose publicly available information learned of or obtained from any source in furtherance of its defense, claims or counterclaims.

9. **Additional Parties.** The Parties agree that if additional parties intervene or otherwise participate in the Lawsuit as a Plaintiff or Plaintiff-Intervenor, any such Party may join this agreement by executing an amendment agreed to by the Parties and the proposed party, in which case any such party shall be entitled to the common interest benefits of this Agreement and subject to its obligations.

10. **Termination**. This Agreement shall terminate as to any Party upon the earlier of:

a. An election by a Party to withdraw from and terminate participation in the Agreement, which election shall be effective only after ten (10) days written notice to all of the other Parties to the Agreement.

b. The settlement or final resolution (including all appeals) of all claims asserted by and against any Parties to the Lawsuit.

11. **Independent Prosecution**. Nothing in this Agreement shall limit or interfere with the right and ability of a Party or counsel to conduct its own independent prosecution of the Lawsuit, including filing appropriate motions, conducting separate and independent discovery, entering into individual settlements or otherwise engaging in pre-trial procedures for the benefit of the Party. Each party shall be responsible for its own attorney fees, costs, and expenses.

12. **Effective Date**. The effective date of this Agreement among the Parties is April 24, 2020.

13. **Integrated Agreement**. This Agreement is the entire understanding of the Parties with respect to this subject matter and may be modified only by a duly signed writing.

14. **Counterparts and Facsimile Signatures**. This Agreement may be executed in counterparts, all of which, when taken together, shall constitute the agreement of the Parties. Electronic copies of signed counterparts of this Agreement shall be deemed authentic and valid as an original of this Agreement.

15. **No Admissions**. Nothing contained in this Agreement shall be construed to constitute an admission of any liability on the part of any Party with respect to claims or other matters associated with the subjects of the Lawsuit.

16. **Broad Interpretation**. This Agreement shall be interpreted broadly in favor of providing privilege protections to any and all matters covered by this Agreement and all efforts in furtherance of the joint interest of the Parties.

17. **Execution.** The Parties agree that this Agreement may be executed by their respective legal counsel.

18. **Severability**. In the event any condition or covenant contained in or provision of this Agreement is held to be invalid or void by any court of competent jurisdiction, the same shall be deemed severable from the remainder of the Agreement and shall in no way affect any other condition, covenant or provision contained herein. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, such condition, covenant or provision shall be deemed valid to the extent of the scope or breadth permitted by law.

Attorneys for MACo

GARLINGTON, LOHN & ROBINSON, PLLP

By:_____
Jared Dahle

Lewis & Clark County

By:_____
Title: _____

Cascade County

By:_____
Title: _____

May 6, 2020 **Resolution 20-20**

Agenda Action Report
Prepared for the
Cascade County Commission

ITEM:	**A Resolution directing the County Attorney to file a civil action against the Public Employees Retirement Board of the State of Montana and the Montana Public Employees' Retirement Administration**
INITIATED & PRESENTED BY:	**Cascade County Attorney' Office**
ACTION REQUESTED:	**Approval of Resolution 20-20**

BACKGROUND:

Cascade County formerly participated as a co-applicant with the Community Health Care Center (CHCC) in the operation of a federally qualified health care clinic (Clinic) at its City-County Health Department Facility at 115 4th Street North, Great Falls, Montana. As part of the co-applicant model, the CHCC provided governance and administration of the Clinic while Cascade County provided, among other things, roughly 60 employees who, as Cascade County employees, were required to be enrolled in the Montana Public Employees' Retirement System (PERS). In 2018, the CHCC requested Cascade County permit CHCC separate and be permitted to operate as a stand-alone health center, effective January 1, 2019. Although the CHCC requested and expected the Cascade County employees that were transitioning with CHCC would continue to participate in PERS, the Montana Public Employees' Retirement Board denied their participation. Thereafter, on November 7, 2019, with no prior warning or indication, the Montana Public Employees' Retirement Administration (MPERA) sent Cascade County a "final administrative decision" letter demanding payment of approximately $3,125,000 as a partial withdrawal penalty for the reduction of enrolment caused by CHCC's separation from Cascade County. In response to the demand for payment, Cascade County filed its objection on February 5, 2020, disputing the $3,125,000 assessed and MPERB's authority to make such assessment.

Meanwhile, MPERB was pursuing a demand for payment of roughly $5 million dollars from Lewis and Clark County, following its separation from its federally qualified health care center, Pure View. On January 29, 2020, MPERB petitioned the Supreme Court of Montana (OP 20-0063) to accept original jurisdiction and issue an expedited declaratory judgment that the

Montana Constitution vested MPERB with the authority to assess and compel the payment of allegedly unfunded pension liabilities accruing upon Lewis & Clark County's reduction of approximately 60 employees who formerly participated in PERS stemming from the separation of the Pure View clinic from Lewis & Clark County. Because of our similar positions, Cascade County moved on March 6, 2020, to intervene in OP 20-0063 and submitted its brief on April 3, 2020, opposing MPERB's Petition on procedural and substantive grounds. The Montana Supreme Court denied MPERB's Petition on April 21, 2020.

However, there still exists an actual dispute between Cascade County and MPERB concerning the constitutional authority and obligation of the MPERB to assess and compel the payment of pension liabilities deemed unfunded by MPERB as a result of partial withdrawal separations. Cascade County remains subject to MPERA's demand for $3,125,000 and has no assurances that MPERB will not undertake actions to collect on the claimed obligation and thus remains under the threat and uncertainty that MPERA claims a penalty due and owing. Cascade County will continue to operate under uncertainty with regard to this dispute and controversy until such time as a final judgement or decree is rendered by a Court of law.

RECOMMENDATION: Approval of Resolution 20-20 directing the County Attorney to file a civil action against the Public Employees' Retirement Board of the State of Montana and the Montana Public Employees' Retirement Administration and any other parties deemed necessary, concerning the constitutional authority and obligation of the MPERB to assess and compel the payment of pension liabilities deemed unfunded by MPERB as a result of partial withdrawal separations and MPERA's demand of $3,125,000 from Cascade County

TWO MOTIONS PROVIDED FOR CONSIDERATION:

MOTION TO APPROVE: Mr. Chairman, I move that the Commission **APPROVE Resolution 20-20** directing the County Attorney to file a civil action against the Public Employees' Retirement Board of the State of Montana and the Montana Public Employees' Retirement Administration.

MOTION TO DISAPPROVE:
Mr. Chairman, I move that the Commission **DISAPPROVE Resolution 20-20** directing the County Attorney to file a civil action against the Public Employees' Retirement Board of the State of Montana and the Montana Public Employees' Retirement Administration

BEFORE THE BOARD CASCADE COUNTY COMMISSIONERS
CASCADE COUNTY, MONTANA

A RESOLUTION DIRECTING THE COUNTY ATTORNEY TO FILE A CIVIL ACTION AGAINST THE PUBLIC EMPLOYEES' RETIREMENT BOARD OF THE STATE OF MONTANA AND THE MONTANA PUBLIC EMPLOYEES' RETIREMENT ADMINISTRATION **RESOLUTION 20-20**

WHEREAS, Cascade County formerly participated as a co-applicant with the Community Health Care Center (CHCC) in the operation of a federally qualified health care clinic (Clinic) at its City-County Health Department Facility at 115 4th Street North, Great Falls, Montana; and

WHERAS, as part of the co-applicant model, the CHCC provided governance and administration of the Clinic while Cascade County provided, among other things, roughly 60 employees who, as Cascade County employees, were required to be enrolled in the Montana Public Employees' Retirement System (PERS); and

WHEREAS, in 2018, the CHCC requested Cascade County permit CHCC separate and be permitted to operate as a stand-alone health center, effective January 1, 2019; and

WHEREAS, CHCC requested and expected the Cascade County employees that were transitioning with CHCC would continue to participate in PERS, but the Montana Public Employees' Retirement Board (MPERB) formally denied their participation on September 21, 2018; and

WHEREAS, on November 7, 2019, with no prior warning or indication, the Montana Public Employees' Retirement Administration (MPERA) sent Cascade County a "final administrative decision" letter demanding payment of approximately $3,125,000 as a partial withdrawal penalty for the reduction of enrolment caused by CHCC's separation from Cascade County; and

WHEREAS, on February 5, 2020, Cascade County filed its objection to the November 7, 2019, demand disputing the $3,125,000 assessed and MPERB's authority to make such assessment; and

WHEREAS, on January 29, 2020, MPERB petitioned the Supreme Court of Montana (OP 20-0063) to accept original jurisdiction and issue an expedited declaratory judgment that the Montana Constitution vested MPERB with the authority to assess and compel the payment of allegedly unfunded pension liabilities accruing upon Lewis & Clark County's reduction of approximately 60 employees who formerly participated in PERS stemming from the separation of the Pure View clinic from Lewis & Clark County; and

WHEREAS, on March 6, 2020, Cascade County moved to intervene in OP 20-0063 and submitted its brief on April 3, 2020, opposing MPERB's Petition on procedural and substantive grounds; and

WHEREAS, the Montana Supreme Court denied MPERB's Petition on April 21, 2020; and

WHEREAS, there still exists an actual dispute between Cascade County and MPERB concerning the constitutional authority and obligation of the MPERB to assess and compel the payment of pension liabilities deemed unfunded by MPERB as a result of partial withdrawal separations; and

WHEREAS, Cascade County remains subject to MPERA's demand for $3,125,000 and has no assurances that MPERB will not undertake actions to collect on the claimed obligation and thus remains under the threat and uncertainty that MPERA claims a penalty due and owing; and

WHEREAS, judgement or decree would terminate the uncertainty or controversy giving rise to the dispute; and

WHEREAS, pursuant to MCA section 7-5-2104, the board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to direct and control the prosecution and defense of all suits to which the county is a party.

NOW THEREFORE, BE IT RESOLVED that the Board of County Commissioners directs the County Attorney to file a civil action against the Public Employees' Retirement Board of the State of Montana and the Montana Public Employees' Retirement Administration and any other parties deemed necessary, concerning the constitutional authority and obligation of the MPERB to assess and compel the payment of pension liabilities deemed unfunded by MPERB as a result of partial withdrawal separations and MPERA's demand of $3,125,000 from Cascade County.

Passed and adopted this _____ day of _____, 2020.

BOARD OF COUNTY COMMISSIONERS
CASCADE COUNTY, MONTANA

_____
James L. Larson, Chairman

_____
Jane Weber, Commissioner

_____
Joe Briggs, Commissioner

Attest

On this ____ day of _____, 2020, I hereby attest the above-written signatures of the Board of Cascade County Commissioners.

_____
Rina Fontana Moore, Cascade County Clerk and Recorder

* APPROVED AS TO FORM:
Josh Racki, County Attorney

_____
DEPUTY COUNTY ATTORNEY

* THE COUNTY ATTORNEY HAS PROVIDED ADVICE AND APPROVAL OF THE FOREGOING DOCUMENT LANGUAGE ON BEHALF OF THE BOARD OF CASCADE COUNTY COMMISSIONERS, AND NOT ON BEHALF OF OTHER PARTIES OR ENTITIES. REVIEW AND APPROVAL OF THIS DOCUMENT BY THE COUNTY ATTORNEY WAS CONDUCTED SOLELY FROM A LEGAL PERSPECTIVE AND FOR THE EXCLUSIVE BENEFIT OF CASCADE COUNTY. OTHER PARTIES SHOULD NOT RELY ON THIS APPROVAL AND SHOULD SEEK REVIEW AND APPROVAL BY THEIR OWN RESPECTIVE COUNSEL.