

**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON**

**RESOLUTION NO. 2021-003**

Resolution Approving the Intergovernmental Agreement between Multnomah County and the City of Portland for the Administration of the County's Preschool for All Program Personal Income Tax.

**The Multnomah County Board of Commissioners Finds:**

- a. On November 3, 2020, the voters of Multnomah County approved Ballot Measure 26-214, which authorizes the County to impose a personal income tax to fund universal, tuition free, voluntary, and high quality preschool education for every three and four year old residing within Multnomah County (the "Preschool for All Program").
- b. The Preschool for All Program personal income tax is effective January 1, 2021.
- c. The County does not currently have the capability to efficiently and effectively collect the personal income tax authorized by the voters to fund the Preschool for All Program. The City of Portland Bureau of Revenue and Financial Services ("Revenue Division") is willing and able to administer the County's personal income tax in the required timeline.
- d. The City of Portland Bureau of Revenue and Financial Services administers its own Business License Tax and the County's Business Tax under a separate agreement. The City has administered both programs since 1993.
- e. The City of Portland Bureau of Revenue and Financial Services administered the County's temporary personal income tax when it was imposed in 2003 demonstrating the expertise to administer a personal income tax program.
- f. Having the City of Portland administer the County's Preschool for All Program personal income tax will enable administration and collection to begin in tax year 2021 and reduce administrative costs for the County.
- g. The attached Intergovernmental Agreement will be for a 10 year term beginning January 1, 2021. The estimated administration costs over the first 5 years of agreement are detailed in Exhibit 1 of the agreement. The administration costs include ongoing operation and one-time implementation services expenses, as well as payments toward a new Integrated Tax System the City of Portland began implementing in September 2020, which will greatly modernize and enhance tax collection and administration for both the City and County. The estimated cost to the County in FY 2021 is \$7,186,689.
- h. The County will make all reasonable efforts to maintain tax code conformity with the Metro District Supportive Housing Services personal income tax to facilitate tax administration, facilitate tax filing process for taxpayers, and reduce overall administration costs. The City of Portland will be administering the Metro District personal income tax.

**The Multnomah County Board of Commissioners Resolves:**

The Board of County Commissioners approves the attached Intergovernmental Agreement between Multnomah County and the City of Portland for the Administration of the County's Preschool for All Program Personal Income Tax. The agreement term will begin January 1, 2021.

**ADOPTED this 14th day of January, 2021.**



**BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON**

Deborah Kafoury, County Chair

**REVIEWED:**

**JENNY M. MADKOUR, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY, OREGON**

By   
William Glasson, Senior County Attorney

**SUBMITTED BY: Eric Arellano, Chief Financial Officer**

**MULTNOMAH COUNTY, OREGON  
CITY OF PORTLAND, OREGON**

**Intergovernmental Agreement for  
the Collection of Personal Income  
Taxes**

THIS AGREEMENT (the "Agreement") entered into by and between Multnomah County, Oregon, hereinafter "County," and the City of Portland, hereinafter "City", is pursuant to authority of ORS Chapter 190. Each is a "Party" and collectively they are the "Parties."

**RECITALS**

- A. On November 3, 2020, the voters of Multnomah County approved Preschool for All Program Ballot Measure 26-214, which authorizes the County to impose a personal income tax to fund universal, tuition free, voluntary, and high quality preschool education for every three and four year old residing within Multnomah County (the "Program").
- B. The City of Portland administers a number of different taxes for the Parties, including its own Business License law and the County's Business Income Tax law, with tax administration services for the County under separate contracts.
- C. The Parties agree that consolidated administration of their taxes has simplified reporting requirements for taxfilers and payers and has reduced administrative costs for the Parties.
- D. The City administered the County's personal income tax (the "ITAX") when that tax was imposed in 2003, thus demonstrating the expertise to administer a personal income tax.
- E. Having the City administer the County's personal income tax whose revenue will be used to fund the Program (the "PFA PIT") will enable collections to begin in tax year 2021 and reduce administrative costs for the County.
- F. The City, acting through the Bureau of Revenue and Financial Services, Revenue Division (the "Division"), is willing and able to administer the PFA PIT.

NOW THEREFORE, in consideration of the mutual promises contained in this Agreement, the Parties agree as follows:

**AGREEMENT**

- 1. General Administration.
  - a. The Division agrees to supervise and administer the County's PFA PIT. The PFA PIT is imposed under Chapter 11 of Multnomah County Code, as approved by the voters and periodically revised, as authorized by the Multnomah County Board of Commissioners.
  - b. The Division agrees to administer the PFA PIT, including, but not limited to, collaborating with the County on promulgating administrative rules and written policies, collecting estimated tax payments, auditing returns, assessing and collecting tax and tax deficiencies, including penalties and interest, making refunds, hearing

appeals, and taking any other action necessary to administer and collect the PFA PIT.

- c. The County will defend any legal claims against the PFA PIT regarding its legal validity or constitutionality.
- d. In performing its duties under this Agreement, the Division may in its discretion determine what action to take to enforce the provisions of and collect the tax imposed under the PFA PIT law. In exercising its discretion, the Division agrees to provide a level of service comparable to the level of service it provides in the administration of the Parties other tax laws. If the Division deems it necessary to vary substantially from this standard, the Division will notify the County of the need and obtain the County's written consent.
- e. As the tax administrator, the Division is authorized to collect any and all taxes, penalties, interest, and fees for any tax year open under statute.

2. Appeals.

- a. The Revenue Division will administer an internal appeals process for any PFA PIT appeal.

3. Payments to County.

- a. The Division agrees to deposit all taxes collected under this Agreement to a trustee account within the City established on behalf of and for the benefit of the County. The account will earn interest based on the City's internal interest allocation used for its own funds.
- b. After deducting pending refunds and other credits, the City agrees to remit the balance of the tax collected under this Agreement to the County, less an amount required to restore the Reserve Balance, defined below, if needed, by the 10<sup>th</sup> business day following the close of each month.
- c. The County agrees to maintain a reserve balance in the trustee account described in Section 3.a of approximately \$200,000 (the "Reserve Balance").
- d. The Division agrees to make payments of taxes collected under this Agreement to the County. Should extraordinary refunds, adjustments, or credits require funds in excess of the Reserve Balance, the Division may retain a reasonable amount in excess of the \$200,000 in the trustee account, or the County agrees to transfer necessary funds to the City to bring the Reserve Balance back to \$200,000.
- e. The Division agrees to provide monthly reconciliations of deposits made and net revenues collected. The Division agrees to provide a minimum of 10 days prior notice if it requires retention or transfer by the County of an amount equal to or greater than \$500,000.

4. Payments to the City.

- a. The County will pay One-time Implementation Services not-to-exceed \$14,407,672, as shown in **Exhibit 1**, to initiate the program.

- b. The County will also pay Annual Compensation to the City for all services provided under this Agreement during the Term (as defined below). The Annual Compensation is equal to the actual costs incurred by the City, not-to-exceed the annual amounts shown in **Exhibit 1** for fiscal years 2020-2021 through 2024-2025. Maximum Annual Compensation for fiscal years starting 2025-2026 will be escalated by the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for West Region– Size Class A, not seasonally adjusted, as published by the United States Bureau of Labor Statistics, as described below.
- c. The City is implementing new tax collection software (“Integrated Tax System” or “ITS”) that will be operational in FY 2020-2021. The new tax system functionality will enhance tax collection efforts for both the City and the County. Each of the tax programs on the ITS platform will contribute to ITS costs for bonded and un-bonded debt service based on their relative proportion of the total revenue collected using a three-fiscal year look back of actual revenues. In the event a new program is collected on ITS after this Agreement is implemented, it will be allocated a portion of ITS project costs for bonded and un-bonded debt service commencing in the fiscal year in which the program begins to generate revenue. This will result in a reduction of debt service costs for existing revenue programs on the platform assuming no other factors change, such as the amount collected by those programs, or programs terminating. Debt service costs will cease after the 10th year. The County’s estimated ITS Debt Service payment to the City is \$335,747, as shown in **Exhibit 1**.
- d. One-time Implementation Services and Annual Compensation will include a contingency budget line item to cover unforeseen expenses. If contingency is unnecessary, it will be deducted from One-time Implementation Services and/or Annual Compensation. The City will bill the One-Time Implementation Services and Annual Compensation in twelve equal installments on the 15th of each month, or the first business day that follows the 15th. The County agrees to make payment of the billed installment by the end of the month. A reconciliation of actual costs to budgeted amounts will be provided for One-time Implementation Services and Annual Compensation as requested by the County or at least twice a year for the periods July-December and July-June. If the actual costs differ from the billed amount the City will generate an adjustment invoice.
- e. The Annual Compensation noted in **Exhibit 1** includes an amount for “ITS Upgrade Set Aside”, a reserve amount to cover future upgrade costs of ITS. Upon termination of this Agreement, the City will refund any unused ITS Upgrade Set Aside funds paid by the County, plus any interest earned by those funds based on the City’s internal interest allocation used for its own funds.
- f. Escalation of the Annual Compensation by CPI-W means an annual increase based on the change in the CPI-W between December of the prior calendar year compared to December of the year immediately preceding the prior calendar year. For example, for fiscal year 2025-2026 (July 1, 2025 – June 30, 2026), the Annual Compensation of fiscal year 2024-2025 will be multiplied by a fraction, the numerator of which is the CPI-W for December 2024 and the denominator of which is the CPI-W for December 2023. For reference, the CPI-W for December 2019 is 268.885.
- g. If administrative costs increase as a result of a material change to one jurisdiction's income tax law that is not reflected in the other, the City may increase the Annual Compensation to reflect that cost of administration and implementation only if it has provided the County

with at least 90 days advance written notice of the cost increase. If the City or the County subsequently changes the tax law to bring the two codes back into conformity, the City will remove the increased charge if it has been less than one year since it was added. Implementation costs that are incurred cannot be removed.

5. Notification of Changes.

- a. The County intends to maintain conformity with the Metro Supportive Housing Services personal income tax to facilitate administration processes and ease process burden for taxpayers. The County agrees to cooperate in amending the PFA PIT to ensure uniformity and consistency in the respective codes and in administration. The County agrees to notify the City and Metro of any intent to make changes, whether in the law or in the tax or fee rates, at least 30 days before adopting the change. The County acknowledges that if material administrative changes are made to one code and not the other, administrative costs may increase as a result.
- b. The County's Chief Financial Officer or their designees, may request to be involved in the development of administrative rules. If the County's Chief Financial Officer so requests, the Division agrees that it will not initiate the public process for review and comment on proposed administrative rules until the County's Chief Financial Officer and the Division mutually agree on the content and substance of the administrative rules.

6. Reports.

- a. The Division agrees to provide receipts and expenditure reports to the County at the close of each of the City's accounting periods. The Division will deliver a preliminary report, estimating receipts and expenditures by tax year, to the County by the 10th day of each month. If the 10<sup>th</sup> day falls on a legal holiday or on a weekend, the City will deliver the preliminary report on the following business day.
- b. The Division agrees to provide the County, upon request, a report of potential refunds of more than \$200,000 due to amended returns, appeals or overpaid estimates.
- c. The Division will provide other reports or perform other work or may discontinue or combine any of the above reports, as the Division and the County may mutually agree. If the reports or other work requested by the County require extensive programming time or have significant costs associated with the project, the City and the County may agree upon additional charges to be paid for such additional work under this Agreement.
- d. The County agrees that all County employees given access to the Division's tax database or any tax records derived from the database will safeguard the tax information and maintain the confidentiality of individual taxpayer information. To obtain access, a County employee, authorized by the County's Chief Financial Officer and subject to a background check, must attend the City's Security and Disclosure Awareness training, updated by the Division, annually. Upon completion of the annual training, the County employee must sign a Confidentiality Oath that documents the employee's understanding of the confidential nature of the data, the need to safeguard it and the consequences of violating the City's confidentiality policies and procedures.

7. Information.

- a. All public announcements and all correspondence relating to Program or PFA PIT policy matters and public relations are the County's responsibility. The Division agrees to notify the County of any matter arising from the administration of the PFA PIT that may require any legislative amendments or affect County policy, including any policy relating to the amount of taxes collected.
- b. Additionally, the Parties agree that all County tax returns from any year are available for review and may be used by Division staff to assess fees or taxes not previously collected under other tax laws.

8. Public Records.

- a. All work performed by the City under this Agreement is the property of the County. The County owns any and all data the City produces in connection with this Agreement. Upon termination of this Agreement, the City and County will mutually agree upon how delivery of this data is to be effectuated. The City and County will equally share any copying expenses (paper or electronic) related to these returns upon termination of this Agreement.
- b. The Parties agree to respond to public and other third-party requests for records and information as set forth in **Schedule 1**.

9. Limitations and Conditions.

- a. To the extent permitted by Oregon law, the City agrees to indemnify the County, within the limits of the Oregon Tort Claims Act, from any and all claims, demands, settlements or judgments, including all costs and attorney fees, arising from any of the Division's activities under this Agreement, provided, that the City is not required to indemnify the County for any such claims, demands, settlements or judgments arising from the wrongful acts of the County's officers, agents or employees.
- b. To the extent permitted by Oregon law, the County agrees to indemnify the City, within the limits of the Oregon Tort Claims Act, from any and all claims, demands, settlements or judgments, including all costs and attorney fees, arising from any of County's activities under this Agreement, provided, that the County is not be required to indemnify the City for any such claims, demands, settlements or judgments arising from the wrongful acts of the City's officers, agents or employees.

10. Confidentiality.

- a. The City will treat as confidential the information provided by individual taxpayers on tax returns to the extent permitted under Oregon law. The City may disclose this information to the County, for purposes of monitoring or overseeing the Division's administration of the PFA PIT or for revenue forecasting and budgeting. If authorized by the County's Chief Financial Officer, County officers, agents or employees may have access to such information after a background check has been performed. The confidentiality certificate must advise the officer, agent or employee of the penalties for disclosure of confidential information. The County will obtain and keep on file these certificates for its employees, agents and officers, and will provide a copy of the certificate to the Division. Before access is granted, required training as detailed in Section 6.d must be completed.

- b. When making requests for this information, other than routinely agreed upon reports, the County must give at least 10 calendar days prior notice to the Division, stating the information desired, the purpose of the request and the use to be made of such information.
- c. The County may audit the Division's administration of the PFA PIT, applying generally accepted audit standards. The County agrees to provide reasonable notice of its intent to audit the Division. Prior to beginning the audit, all County officers, agents, employees or contractors participating in the audit agree to execute confidentiality certificates and background checks as provided in this Agreement.

11. Term.

- a. The term of this Agreement is 10 years, beginning January 1, 2021 (the "Term"), unless terminated by operation of law. Prior to the termination date of this Agreement, the County and the City will determine the disposition of pending matters which will not otherwise be completed within the Term, and the Division will provide the County with such records as are necessary for the County to commence collecting the PFA PIT.
- b. The parties expect that uncollected and delinquent taxes will remain due even after the expiration of the initial 10-year term. Consequently, both parties expect to extend this Agreement for delinquent and uncollected payments beyond the initial 10-year term.

12. No Early Termination.

Neither party may terminate this Agreement before the 10-year term ends, except for cause. Early termination without cause is a breach of the contract and the non-breaching party may pursue any and all legal remedies, including an action for damages.

13. Integration.

This Agreement embodies the whole of the agreement between the Parties for the administration of the PFA PIT. Any prior written or oral agreements are superseded by this Agreement. The terms of this Agreement cannot be waived, altered, modified, supplemented or amended, in any manner whatsoever, except by written instrument signed by the Parties.

14. Severability.

If any court of competent jurisdiction holds the provisions of this Agreement invalid or unenforceable, that holding does not invalidate or render unenforceable any other provisions of this Agreement.

15. Program Managers, Notice.

- a. The City Program Manager is the Director of the City's Revenue Division, or such other person as the Director designates in writing. The County's Program Manager is the County's Chief Financial Officer, or such other person the Chief Financial Officer designates in writing.
- b. Any notice provided for under this Agreement is sufficient if in writing and delivered to the



following addressee or deposited in the United States mail, postage prepaid, addressed as follows, or to such other address as the receiving party specifies in writing. Additionally, the parties may agree that written notification by email may serve as appropriate notice.

If to the City: Revenue Division Director  
111 SW Columbia St., Suite 600  
Portland, Oregon 97201

If to County: Multnomah County – Chief Financial Officer  
501 SE Hawthorne Blvd. 5<sup>th</sup> Floor  
Portland, Oregon 97214

16. Oregon Law and Forum.

- a. This Agreement is to be construed according to the laws of the State of Oregon.
- b. Any litigation between the City and County arising under this Agreement or out of work performed under this Agreement must occur, if in the state courts, in the Multnomah County Circuit Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon.

17. Independent Contractor Status.

- a. The City is engaged as an independent contractor and is responsible for any federal, state and local taxes and fees applicable to payments hereunder.
- b. The City, its subcontractors and their employees are not employees of the County and are not eligible for any benefits through the County including, without limitation, federal social security, health benefits, workers' compensation, unemployment compensation and retirement benefits.

18. Amendments.

The City and County may amend this Agreement at any time only by written amendment executed by the City and County. The City Council must approve any amendment by ordinance.

19. Non-Waiver.

The City and County do not waive any breach of this Agreement by the other Party except by express waiver in writing. An express written waiver as to one breach is not a waiver of any other breach not expressly identified, even though the other breach may be of the same nature as that waived.

IN WITNESS HEREOF, as parties to this Agreement and acting pursuant to the authority granted to them, the authorized representatives of the City and County have

HEREBY AGREED:

**CITY OF PORTLAND**

**MULTNOMAH COUNTY**

By: \_\_\_\_\_  
Thomas W. Lannom  
Revenue Division Director  
City of Portland, Oregon

By: \_\_\_\_\_  
Chair  
Multnomah County

Date signed: \_\_\_\_\_

Date signed: \_\_\_\_\_

Approved as to Form:

Reviewed by:

\_\_\_\_\_  
Tracy Reeve  
City Attorney

\_\_\_\_\_  
Jenny M. Madkour  
County Attorney for  
Multnomah County

**EXHIBIT 1**

Exhibit 1: Preschool for All Tax Collection Budget						
City of Portland Revenue Division Budget for Tax Collection Services						
	FY20-21	FY21-22	FY22-23	FY23-24	FY24-25	5 Year Total
<b>Part I: Ongoing Operations Expenses</b>						
Personnel	\$831,413	\$2,243,787	\$2,562,255	\$2,639,122	\$2,718,296	
External Materials and Service	\$307,253	\$201,505	\$207,550	\$213,776	\$220,190	
Internal Materials and Services	\$458,889	\$507,773	\$523,007	\$538,697	\$554,858	
Contingency	\$709,590	\$709,590	\$709,590	\$709,590	\$709,590	
<b>Total Ongoing Operations</b>	<b>\$2,307,144</b>	<b>\$3,662,655</b>	<b>\$4,002,401</b>	<b>\$4,101,186</b>	<b>\$4,202,934</b>	
<b>Part II: Ongoing ITS Expenses</b>						
ITS Maintenance and Support (note 1)	\$-	\$-	\$1,557,945	\$1,617,724	\$1,627,714	
ITS Upgrade Set Aside	\$-	\$309,742	\$319,034	\$328,605	\$348,617	
ITS Level Debt Service	\$-	\$335,747	\$335,874	\$336,004	\$336,138	
<b>Total Ongoing ITS Expenses</b>	<b>\$-</b>	<b>\$645,489</b>	<b>\$2,212,853</b>	<b>\$2,282,334</b>	<b>\$2,312,469</b>	
<b>Annual Compensation (Part I plus Part II)</b>	<b>\$2,307,144</b>	<b>\$4,308,144</b>	<b>\$6,215,254</b>	<b>\$6,383,520</b>	<b>\$6,515,403</b>	<b>\$25,729,465</b>
<b>Part III: One-time Implementation Services</b>						
Personnel	\$677,498	\$1,540,173	\$351,936	\$-	\$-	
Fast Enterprises Contract	\$2,926,366	\$4,907,131	\$416,293	\$-	\$-	
External Materials and Services	\$138,817	\$174,620	\$-	\$-	\$-	
Internal Materials and Services	\$160,955	\$232,349	\$-	\$-	\$-	
Contingency	\$975,909	\$1,713,568	\$192,057	\$-	\$-	
<b>Total One-Time Implementation Services</b>	<b>\$4,879,545</b>	<b>\$8,567,841</b>	<b>\$960,286</b>	<b>\$-</b>	<b>\$-</b>	
<b>Part IV: Total</b>						
Total Ongoing Operations	\$2,307,144	\$3,662,655	\$4,002,401	\$4,101,186	\$4,202,934	\$18,276,320
Total Ongoing ITS	\$-	\$645,489	\$2,212,853	\$2,282,334	\$2,312,469	\$7,453,146
Total One-Time Implementation Services	\$4,879,545	\$8,567,841	\$960,286	\$-	\$-	\$14,407,672
<b>Total Preschool for All Tax Collection Budget</b>	<b>\$7,186,689</b>	<b>\$12,875,985</b>	<b>\$7,175,541</b>	<b>\$6,383,520</b>	<b>\$6,515,403</b>	<b>\$40,137,138</b>

## SCHEDULE 1

1. **Definitions.** As used in this **Schedule A**, the following capitalized terms are defined as follows.
  - a. “Confidential Information” means the non-public Records and information of a Party relating to its business activities, operations, financial affairs, technology, marketing or operations plans, or other information marked “PROPRIETARY” or “CONFIDENTIAL” or “DISCLOSURE EXEMPT”, that is disclosed to, and received by, the other Party under this Agreement.
  - b. “Loss” and “Losses” means any claim, damage, loss, liability or expense including, without limitation, fines, judgments, and legal costs suffered directly or by reason of any act, omission, claim, or Proceeding.
  - c. “Proceeding” means any actual, threatened, pending or completed dispute, investigation, or inquiry, whether civil, criminal, administrative or investigative, implicating a matter arising under or related to the Agreement.
  - d. “Public Records Law” means the Oregon Public Records Law, including ORS 192.311 to 192.475, the provisions for the Custody and Maintenance of Public Records, ORS 7.10, 8.125, and 192.005 to 192.170, and laws incorporated by reference.
  - e. “Record” means information prepared, owned, used, or retained by either Party, and pertaining to their respective operations and business related to the Agreement, that is inscribed on a tangible medium, commonly a document, or that is stored in an electronic or other medium and is retrievable in perceivable form. Record includes, but is not limited to, the Agreement and related documents and Confidential Information.
2. **Oregon Public Records Law.** As custodians of Records under ORS 192.311(2), and public bodies responsible under ORS 192.318(2) and ORS 192.411(2) with responding to public records requests, the Parties acknowledge they must respond to public records requests concerning Records. Any Record request made that pertain to the PFA PIT, including this Agreement, may be subject to application of the Public Records Law.
3. **Responses to Records, Information Requests.** If a Party receives (the “Recipient”) a subpoena, warrant, or other legal order, demand or request (collectively, a “Legal Demand”) seeking Records for which another Party is the source and custodian (as defined by Oregon law) (the “Custodian”), the Recipient will promptly provide a copy of the Legal Demand to the Custodian along with copies of Records in their possession that the Recipient believes responds to the Legal Demand. In the event of a Legal Demand the Parties agree to consult, cooperate, and collaborate with each other in their responses; however, the Custodian may immediately: (a) assume control of responding to the Legal Demand, and (b) notify the requester in writing, with a copy to the other Parties, that the Custodian is the custodian of record.
4. **Records Subject to a Public Records Law Exemption.** In the event a Recipient receives a Legal Demand for Records that the Custodian asserts is exempt from disclosure under the Public Records Law, the Recipient will notify the Custodian of such request as provided in this Schedule A at Section 4 and the Custodian must immediately: (a) assume control of responding to the Legal Demand, and (b) notify the requester in writing, with a copy to the other Parties, that the Custodian is the custodian of record.
5. **Public Records Law Proceedings.** Subject to the caps set forth in the Agreement at Section 9, in the event of a Proceeding that occurs at the Custodian’s request or seeks disclosure of Records which the Custodian asserts is exempt, the Custodian will have complete control over the Parties’ defense in the Proceeding and will bear all Losses associated with such defense, including any Losses borne by any other Party arising from such Proceeding.

Notwithstanding the foregoing, if the Custodian does not assume its obligation to defend the other Party in a Proceeding related to a Legal Demand for Records that the Custodian has demanded be withheld from public review or disclosure, then such Custodian shall defend, indemnify, and hold harmless the other Party, including their officials, affiliates, officers, directors, agents, employees, and representatives, from and against all Proceedings and Losses related to the Proceeding described in this section, above. In such event, the other Parties shall have the option of: (a) resisting disclosure of Records identified by the Custodian as exempt from disclosure under the Public Records Law; or (b) disclosing such Records.