

**STATE OF NEW MEXICO
SUBSTITUTE JOINT POWERS AGREEMENT
FOR SHARED JURISDICTION UNDER THE CAMPAIGN REPORTING ACT
BETWEEN
THE NEW MEXICO STATE ETHICS COMMISSION
AND
THE NEW MEXICO SECRETARY OF STATE**

THIS AMENDMENT NO. 1 is made and entered into by and between the New Mexico State Ethics Commission and the New Mexico Secretary of State.

WHEREAS, the parties previously entered a joint agreements agreement for shared jurisdiction for the Campaign Reporting Act, NMSA 1978, §§ 1-19-25 through -36 (1979, as amended 2021), effective December 20, 2019;

WHEREAS, Section IX thereof provides that the original Agreement shall not be amended except by written instrument executed by the parties; and

WHEREAS, after the enactment of Laws 2021, Chapter 109, the parties now agree that it is in their mutual interest to amend their previously made agreement,

NOW, THEREFORE, THE PARTIES DO AGREE TO AMEND their previous agreement by this Amendment No. 1 as follows:

1. Section I and Section II of the original agreement are deleted and are replaced with the language of Section I and Section II as contained within Exhibit 1 attached hereto.
2. All other terms and conditions of the parties' original agreement remain the same.
3. This Amendment No. 1 shall not become effective until approved by the Secretary of the New Mexico Department of Finance and Administration.

IN WITNESS WEREOF, the parties have executed this JPA which becomes effective as of the date of approval by the Department of Finance and Administration.

By: Maggie Toulouse Oliver
Maggie Toulouse Oliver
Secretary of State

Date: 8/17/2021

By: Jeremy D. Farris
Jeremy D. Farris
State Ethics Commission, Executive Director

Date: 8/17/2021

APPROVED:

Department of Finance and Administration

DocuSigned by:

Deborah K Romero

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Debbie Romero, Cabinet Secretary

Date: 8/30/2021

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Exhibit 1

NOW, THEREFORE, the Parties agree as follows:

I. DEFINITIONS: The following terms are defined as follows:

- A. Complainant: a person, as defined in Section 1-19-26(P), who files a written complaint alleging a violation of the Campaign Reporting Act;
- B. Respondent: a person against whom a complaint alleging a violation of the Campaign Reporting Act has been filed;
- C. Internal Compliance Violation: a violation of the Campaign Reporting Act identified by the SOS or SEC based on incomplete, misleading, false or incorrect campaign reports or a failure to file reports or failure to file timely reports;
- D. External Complaint: a complaint filed by a Complainant and not instituted by either the SOS or the SEC; and
- E. Voluntary compliance: a respondent's agreement to correct all violations alleged in a complaint or as identified by the SOS or SEC.

II. PARTIES' SHARED JURISDICTION. The Parties' shared jurisdiction to investigate, adjudicate, and enforce the provisions of the Campaign Reporting Act will be administered according to the following provisions:

- A. External Complaints filed with the SEC: Where an external complaint alleging a Campaign Reporting Act violation is filed with the SEC, the following procedures will apply:
 - 1. If the SEC receives any written complaint alleging a violation of the Campaign Reporting Act, and if the SEC has jurisdiction, the SEC shall refer that part of the complaint alleging the Campaign Reporting Act violation to the SOS, and the SEC shall promptly inform the complainant and the respondent that the complaint has been referred.
 - 2. The SOS will review all external complaints and complaints forwarded by the SEC that allege a violation of the Campaign Reporting Act.

3. After the SOS has reviewed the external complaint and if applicable, any response provided by the respondent, the SOS, within 35 days of receiving the external complaint from the SEC, will certify to the SEC whether or not the SOS achieved voluntary compliance.
 4. If, within 35 days of receiving the external complaint, the SOS certifies to the SEC that the SOS has achieved voluntary compliance, then the SEC will dismiss the claim alleging a violation of the Campaign Reporting Act.
 5. If the SOS does not certify to the SEC that the SOS achieved voluntary compliance within 35 days of receiving the complaint—because the Respondent disputes the claim, the Respondent otherwise does not voluntarily comply, or there is not enough information to certify that a violation has occurred—then the complaint automatically reverts to the SEC, and the SEC shall proceed on the complaint pursuant to the State Ethics Commission Act and the SEC’s rules of procedure, 1.8.3 NMAC.
- B. External Complaints filed with the SOS: Where an external complaint alleging a Campaign Reporting Act violation is filed with the SOS, but not with the SEC, the following procedures will apply:
1. If the SOS receives any written complaint alleging a violation of the Campaign Reporting Act that is not also received by the SEC, the SOS shall review the complaint and attempt to achieve voluntary compliance.
 2. Within 35 days after receiving the complaint, unless an extension is granted for good cause, the SOS shall forward that complaint to the SEC under Section 1-19-34.8(B) and, if applicable, a certification to the SEC that the SOS achieved voluntary compliance.
 3. Upon receiving a complaint filed with the SOS but not the SEC and notice from the SOS that the SOS was unable to achieve voluntary compliance, the SEC may:
 - a. proceed with the complaint pursuant to the terms of the State Ethics Commission Act and the SEC’s rules of procedure; or
 - b. pursue a civil enforcement action in state district court pursuant to Section 1-19-34.6 and Section 10-16G-9(F).
- C. Internal Compliance Violations: Under Section 1-19-32.1(A), the SOS must examine “at least ten percent of all reports filed during a year by reporting individuals, selected at random at least forty days after the general election and ten days after the April reports are filed in a non-election year, to determine compliance with the Campaign Reporting Act.” Where the SOS identifies a

discrepancy or potential violation of the Campaign Reporting Act through those examinations, the following procedures shall apply:

1. The SOS will notify the reporting individual in writing if a potential discrepancy is found in the report that the reporting individual filed. The reporting individual may file a written explanation for the potential discrepancy and come into voluntary compliance within ten working days of the notice.
2. If the discrepancy remains unresolved after 10 working days of the date of the notice, unless there is an extension granted for good cause, the SOS shall record the discrepancy and any records or communications relating to the discrepancy in an annual report.
3. The SOS shall transmit a copy of the annual report of unresolved discrepancies to the SEC for enforcement pursuant to the provisions of Section 1-19-34.6.
4. Based on the findings of the SOS's annual report, the SEC will consider pursuing a civil action in district court to remedy any violation of the Campaign Reporting Act or to prevent a violation of any provision of the Campaign Reporting Act.

D. Late Filings and Failures to File: The following provisions relate to the SOS's power to impose and collect fines under Section 1-19-35:

1. Under Section 1-19-35, the SOS has the power to impose fines where a reporting individual fails to file or files a late report of expenditures or contributions.
2. If the SOS imposes any fine related to a late filing or a failure to file, as provided by Section 1-19-35(H), and the reporting individual refuses to pay that fine, the SOS may refer the matter to the SEC, which may institute an appropriate civil enforcement action in district court.

E. Other Alleged Violations: If the SOS receives any other information or allegations concerning a potential violation of the Campaign Reporting Act, separate from the categories provided above, the following procedures will apply:

1. If the SOS receives any other information or allegation concerning to a potential violation of the Campaign Reporting Act, the SOS may refer the matter to the SEC.
2. Upon receiving a referral from the SOS under Section II(E)(1) of this agreement, the SEC may:

- c. initiate a complaint pursuant to the terms of the State Ethics Commission Act and the SEC's rules of procure; or
 - d. pursue a civil enforcement action in state district court pursuant to Section 1-19-34.6.
- F. Concurrent Jurisdiction: To facilitate concurrent jurisdiction over complaints that are separately or contemporaneously filed with the Parties, the SEC and the SOS will confer at least monthly to review the list of complaints forwarded by the SOS to the SEC and those complaints jointly received by both Parties.