New Mexico
Department *of* Finance
and Administration

407 Galisteo St,
Santa Fe, NM 87501
(505) 827-4985

Cabinet Secretary Wayne Propst

Governor Michelle Lujan Grisham

STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION
OFFICE OF GENERAL COUNSEL
JOINT POWERS AGREEMENTS — POLICY AND PROCEDURE

- **Effective Date:** August 1, 2026
- **Supersedes:** Department of Finance and Administration, Administrative Services Division, Joint Powers Agreements Policy and Procedures (rev. February 20, 2003), and all prior memoranda addressing Joint Powers Agreements.

I. POLICY

Every Joint Powers Agreement ("**JPA**"), as defined in § 11-1-2, NMSA 1978, and every amendment to an existing JPA must be approved by the Secretary of Finance and Administration ("**Secretary**") for its terms and conditions before it becomes effective, pursuant to the Joint Powers Agreements Act, § 11-1-1 et seq., NMSA 1978 ("**Act**"). No state officer, board, commission, department, agency, institution, or authority, and no county, municipality, public corporation, or public district, may enter into a JPA without the Secretary's approval.

The Office of General Counsel ("**OGC**") reviews each JPA and amendment for statutory compliance, coordinates any required revisions with the submitting public agency, prepares a recommendation for the Secretary, and, after approval, reports the approved JPA to the State Board of Finance ("**SBOF**"). All public agencies, as defined in § 11-1-2, NMSA 1978, must follow the procedures below to obtain approval of a JPA or amendment.

II. STATUTORY REQUIREMENTS FOR EACH JPA

Under the Act, a JPA is required when two or more public agencies intend to jointly exercise any power common to the contracting parties. Every JPA must clearly set forth the joint exercise of a power common to the contracting parties and must express both the individual and the common powers, even when they appear obvious. Certain statutes independently require two or more parties to enter into a JPA to accomplish the statute's purpose.

A. Authorization and Common Power[1]:

1. Governing-body authorization (§ 11-1-3, NMSA 1978). Each party must be authorized to enter into the JPA by its legislative or other governing body. The JPA must be duly approved by the governing bodies of all parties before it is submitted to the Department of Finance and Administration ("**DFA**"), and evidence of that approval (resolutions or comparable authorizations) must accompany the submission.

[1] **Caveat**. Transferring funds or programs from one public agency to another, without the joint exercise of a common power, does not constitute the joint exercise of a common power.

2. Recital of enabling authority. The JPA must contain at least one recital identifying the statute, statutes, or other authority (such as an ordinance or executive order) that enables or authorizes each public agency to perform the stated work and purpose of the JPA.

3. Recital of common power. The JPA must contain an additional recital expressly explaining how the parties are jointly exercising a power common to the contracting parties. See § 11-1-3, NMSA 1978.

B. Public Agencies Only: Only "**public agencies**," as defined in § 11-1-2, NMSA 1978, may enter into a JPA. Each party must expressly state how it fits within the statutory definition of a public agency. A public corporation must present proof of its status.

C. Required Terms and Conditions (§11-1-4, NMSA 1978): Every JPA must:

1. Clearly specify the purpose of the agreement and each power to be exercised;

2. Provide the method by which the purpose will be accomplished and the manner in which each power will be exercised under the agreement;

3. Provide for the strict accountability of all receipts and disbursements (if no money is involved, expressly state this fact and that the provision is inapplicable);

4. Provide for the disposition, division, or distribution of any property acquired as a result of the joint exercise of powers (if no property is involved, expressly state this fact and that the provision is inapplicable); and

5. Provide that, after completion of the agreement's purpose, any surplus money on hand will be returned in proportion to the contributions made (if there will be no surplus money, expressly state this fact and explain why).

D. Term: Consistent with § 11-1-4(E), NMSA 1978, a JPA may be continued for a definite term or may continue until rescinded or terminated, and must specify the method by which any party may rescind or terminate it. A JPA becomes effective only upon approval by the Secretary and, where the JPA so provides, remains in effect in perpetuity unless and until terminated in accordance with its terms.

E. Administering Agency: Under § 11-1-5, NMSA 1978, the agency designated to administer or execute the JPA may be one of the parties or a board, commission, or authority established by the agreement. It is treated as an entity separate from the parties. The administering entity possesses and exercises only the common power specified in the agreement, subject to any restrictions imposed on the contracting parties.

F. Revenue Bonds and Immunities: Any board, commission, or authority established by a JPA may issue revenue bonds only as authorized by and subject to § 11-1-7, NMSA 1978, and the New Mexico Constitution. The privileges and immunities that apply to officers, agents, and employees of a public agency continue to apply while they perform functions extraterritorially under the Act. See § 11-1-6, NMSA 1978.

III. CONSTITUTIONAL REQUIREMENTS

The New Mexico Constitution prohibits certain delegations of statutory authority. To avoid an unconstitutional delegation, a JPA may designate one party as the lead agency and require any secondary agency to report to the lead agency. The lead agency must:

A. Monitor the actions of the secondary agency; and

B. Possess the ability to take corrective action, including terminating the JPA, if it determines the secondary agency is not performing its duties.

DFA reserves the right to reject any JPA containing language that may be construed as creating a contingent liability in violation of the New Mexico Constitution's debt provisions or the Bateman Act.

IV. FORM OF AGREEMENT — JPA TEMPLATE

Public agencies should prepare each JPA using the current DFA Joint Powers Agreement Template, which is designed to meet the statutory, constitutional, and DFA requirements set forth in this Policy. The Template addresses, at a minimum:

A. Recitals**:** Identifying each party's status as a public agency, each party's enabling statutory authority, and the purpose and common power to be exercised;

B. Purpose: A description of the joint undertaking, with specific funding sources, roles, and responsibilities set out in an Exhibit that may be updated by mutual consent without a formal amendment;

C. Powers, Authorities, and Duties: Identified for each party;

D. Governance and Management: Including, where a separate authority is created, a Board of Directors, staggered terms, meeting and quorum requirements, supermajority voting, and the adoption of bylaws;

E. Open Meetings Act compliance (§10-15-1 et seq., NMSA 1978): For any governing board created by the JPA;

F. Financing: Including initial and supplemental financing, depositing and budgeting funds, and incorporating new funding sources by mutual consent;

G. Strict accountability: Of all receipts and disbursements;

H. Term: Effectiveness upon the Secretary's approval, and the method of termination, including disposition of funds and property in proportion to contributions upon termination;

I. Records and Audits: Permitting inspection and audit by the State Auditor;

J. Confidentiality: Consistent with the Inspection of Public Records Act (Chapter 14, Article 2, NMSA 1978);

K. Notices: To the named parties;

L. New Mexico Tort Claims Act: § 41-4-1 et seq., NMSA 1978, allocating responsibility without waiving sovereign immunity; and

M. General Provisions: Including that venue is proper only in a New Mexico court of competent jurisdiction in accordance with § 38-3-1(G), NMSA 1978, that amendments must be in writing and approved by DFA, and signature blocks providing for approval "as to legal form and sufficiency" by the Secretary of the Department of Finance and Administration.

N. Liability Provisions: The Act does not require any provision addressing the liability of the parties, and liability provisions may be omitted. Public agencies may, however, allocate responsibility between themselves. Where they choose to do so, the JPA should use language consistent with the New Mexico Tort Claims Act, such as:

   a. Neither party shall be liable for any liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act.

   b. Nothing in this Policy authorizes a public agency to agree to indemnify or hold harmless a third party. A JPA that includes an indemnification provision in favor of a third party will be rejected. Public agencies may agree to reimburse one another, subject to a sufficient appropriation by the Legislature or to sufficient funds being available to the local public body, as determined by the agency responsible for payment.

Questions regarding proposed liability or reimbursement language should be directed to the Office of General Counsel before such language is incorporated into a JPA.

V. SUBMISSION AND REVIEW PROCEDURE

A. What to Submit: Each JPA or amendment must be submitted to DFA, through the **DFA Website** together with:

1. A completed Joint Powers Agreement Brief Form, in which the submitting agency certifies compliance with the statutory requirements;
2. The JPA or amendment, including all exhibits;
3. The resolutions or other approvals of the governing bodies of all parties authorizing the agreement; and
4. Any prior amendments and any other ancillary documents necessary for review.

Submissions must be transmitted electronically to the DFA Office of General Counsel. An incomplete submission will be identified to the submitting agency, and review will be suspended until the deficiency is cured.

B. OGC Review:

1. Intake and logging. Upon receipt, OGC records the submission in its legal matter management system, confirms receipt with the submitting agency, and requests any missing documents or certifications.

2. Preliminary review. OGC performs a threshold completeness check to confirm that the JPA includes all required documents and exhibits.

3. Legal compliance review. An assigned reviewer performs a substantive legal review for compliance with the Act. Required corrections are communicated to the submitting agency, and review is suspended pending cure. The process repeats until the JPA is ready for the Secretary's approval.

C. Approval and Reporting:

1. Secretary's approval. When the review is complete, OGC prepares a summary and recommendation and submits the JPA to the Secretary for approval and execution. A JPA is not effective unless and until the Secretary approves it as to its terms and conditions
.

2. Return to submitting agency. After execution, OGC provides an electronically executed copy of the JPA to the submitting agency.

3. Reporting to the State Board of Finance. OGC reports each approved JPA to the State Board of Finance for inclusion in the board packet for its next regularly scheduled public meeting, and a list of approved agreements is filed with the SBOF, as required by § 11-1-3 NMSA 1978.

D. Deadlines and Service Standards:

1. Expiring agreements. A JPA that expires on June 30 (end of the state fiscal year) or September 30 (end of the federal fiscal year), and for which a public agency seeks an extension by new agreement or amendment, must be received by May 30 or August 31, respectively, to assure approval before expiration.

2. Retroactive approval. If a JPA or amendment has a start date earlier than the date submitted to DFA, or if the original JPA has expired, the submission must include a detailed justification letter, signed by the agency head of one of the parties, requesting retroactive approval.

3. Service standards. OGC endeavors to acknowledge receipt within two business days, complete preliminary review within four business days of receipt, and complete full legal review within seven business days after the submission is complete, subject to complexity. Expedited timelines may be accommodated on written justification from the submitting agency and approval by the General Counsel.