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7  
8 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**  
9 **STATE OF CALIFORNIA**

10  
11 In the Matter of:

FPPC Case No. 17/1310

12 JUANITA PEREA,

STIPULATION, DECISION AND ORDER

13  
14 Respondent.

15  
16 **INTRODUCTION**

17 Juanita Perea (“Perea” or “Respondent”) was employed as Executive Director of the Oasis  
18 Charter Public School (the “School”) in Salinas from 2011 to 2018.

19 The conflict of interest provisions of the Political Reform Act (the “Act”)<sup>1</sup> prohibit a public  
20 official from making, participating in making, or attempting to use her official position to influence a  
21 governmental decision in which the official knows or has reason to know she has a financial interest.  
22 Perea violated the Act by approving contracts between the School and Jimenez Gardening Maintenance  
23 and Handyman (“Jimenez Gardening”), a landscaping and maintenance business in which Perea holds a  
24 financial interest.

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28 <sup>1</sup> The Political Reform Act is contained in Government Code §§ 81000 through 91014, and all statutory references are to this code. The regulations of the Fair Political Practices Commission are contained in §§ 18110 through 18997 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.

1 **SUMMARY OF THE LAW**

2 All legal references and discussions of law pertain to the Act’s provisions as they existed at the  
3 time of the applicable violations.

4 Need for Liberal Construction and Vigorous Enforcement of the Political Reform Act

5 When enacting the Act, the people of California found and declared that previous laws regulating  
6 political practices suffered from inadequate enforcement by state and local authorities.<sup>2</sup> For this reason,  
7 the Act is to be construed liberally to accomplish its purposes.<sup>3</sup>

8 There are many purposes of the Act. One purpose is to ensure that the assets and income of  
9 public officials be disclosed and public officials are disqualified from certain matters in order that  
10 conflicts of interest may be avoided.<sup>4</sup> Another is to provide adequate enforcement mechanisms so that  
11 the Act will be “vigorously enforced.”<sup>5</sup>

12 Conflicts of Interest

13 A public official may not make, participate in making, or attempt to use her official position to  
14 influence a governmental decision in which she knows, or has reason to know, she has a financial  
15 interest.<sup>6</sup> A public official has a financial interest in a decision if it is reasonably foreseeable that the  
16 decision will have a material financial effect, distinguishable from its effect on the public generally, on  
17 any source of income aggregating \$500 or more in value provided or promised to, received by, the public  
18 official within 12 months prior to the time when the decision is made.<sup>7</sup>

19 A material financial effect is reasonably foreseeable when the financial interest is explicitly  
20 involved in the governmental decision, such as being the named party or is the subject of a governmental  
21 decision before the official or the official’s agency.<sup>8</sup> A financial interest is the subject of a proceeding if  
22 the decision involves the issuance, renewal, approval, denial or revocation or any license, permit, or other  
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24 <sup>2</sup> Section 81001, subd. (h).

25 <sup>3</sup> Section 81003.

26 <sup>4</sup> Section 81002, subd. (c).

27 <sup>5</sup> Section 81002, subd. (f).

28 <sup>6</sup> Section 87100.

<sup>7</sup> Section 87103, subd. (a).

<sup>8</sup> Regulation 18701, subd. (a) (effective April 27, 2015 to current); Regulation 18706 (effective January 14, 2015 to April 26, 2015).

entitlement, or contract with, the financial interest. When the official or her spouse receives income in exchange for the sale of goods or services, the financial effect is material if the source is a claimant, applicant, respondent, contracting party, or is otherwise named or identified as the subject of the proceeding.<sup>9</sup>

### SUMMARY OF THE FACTS

While in office, Perea filed statements of economic interests (“SEI”), although the School did not have a Conflict of Interest Code until November 2017. On her annual SEIs for the years 2012 through 2016, Perea disclosed a financial interest in Jimenez Gardening.

Perea had a spousal income interest in Jimenez Gardening from at least 2012 to 2017. Perea’s spouse, Paulino Jimenez, is the sole proprietor of Jimenez Gardening. Jimenez Gardening has been in business since the 1980s, providing residential and commercial gardening and maintenance services in Monterey County.

From at least April 30, 2012 through August 11, 2017, Jimenez Gardening was paid by the School to perform gardening and maintenance work on the school grounds. There was no formal written contract. The School made 40 payments totaling \$132,069.51 to Jimenez Gardening between 2015 and 2017. Perea contends that all payments made to Jimenez Gardening were for fair market value. The payments are detailed as follows:

Check Date	Amount	
1/15/2015	4,400.00	
2/12/2015	1,270.00	
3/5/2015	1,700.00	
4/16/2015	400.00	
5/7/2015	3,500.00	
6/11/2015	1,600.00	
7/2/2015	3,140.00	
8/6/2015	7,250.00	
9/3/2015	4,550.00	
10/1/2015	5,650.00	
11/5/2015	4,350.00	
12/3/2015	1,550.00	

<sup>9</sup> Regulation 18702.3, subdivision (a)(1) (effective April 27, 2015 to current); Regulation 18705.3 (effective January 14, 2015 to April 26, 2015).

1	12/10/2015	480.00	
2		<b>39,840.00</b>	<b>2015 total</b>
3	1/21/2016	400.00	
4	2/11/2016	3,400.00	
5	3/3/2016	1,300.00	
6	3/31/2016	400.00	
7	5/5/2016	1,360.00	
8	6/9/2016	1,124.51	
9	7/7/2016	650.00	
10	8/11/2016	400.00	
11	8/18/2016	1,500.00	
12	9/1/2016	2,200.00	
13	9/15/2016	4,450.00	
14	10/6/2016	2,250.00	
15	11/3/2016	6,600.00	
16	12/1/2016	6,400.00	
17	12/8/2016	12,400.00	
18	12/15/2016	600.00	
19		<b>45,434.51</b>	<b>2016 total</b>
20	1/12/2017	6,515.00	
21	2/3/2017	950.00	
22	3/3/2017	8,000.00	
23	3/30/2017	3,650.00	
24	5/4/2017	2,650.00	
25	6/1/2017	7,280.00	
26	6/22/2017	4,000.00	
27	6/29/2017	1,050.00	
28	7/27/2017	7,800.00	
	8/3/2017	3,300.00	
	8/11/2017	1,600.00	
		<b>46,795.00</b>	<b>2017 total</b>

Perea directly and unilaterally hired and approved the payments to Jimenez Gardening. The decision to hire Jimenez Gardening was not approved by the school board, nor were other bids for the pertinent services solicited. Further, Perea personally initialed or stamped her approval on the majority of the Jimenez Gardening invoices, and for those that she did not, Perea conceded that she had final approval authority.

Perea received more than \$500 from her spousal income interest in Jimenez Gardening during the 12 months preceding the date of each paid invoice from Jimenez Gardening.

1 **VIOLATIONS**

2 Count 1: Conflict of Interest – Made Governmental Decisions in Which Public Official Had  
3 Financial Interest

4 Perea, a public official, made governmental decisions in 2015 in which she knew she had a  
5 financial interest, in violation of Section 87100. Between January 15, 2015 and December 10, 2015,  
6 Perea approved 13 payments totaling \$39,840 from the School to Jimenez Gardening, a spousal source of  
7 income to Perea from which she received \$500 or more within the 12 months preceding each  
8 governmental decision.

9 Count 2: Conflict of Interest – Made Governmental Decisions in Which Public Official Had  
10 Financial Interest

11 Perea, a public official, made governmental decisions in 2016 in which she knew she had a  
12 financial interest, in violation of Section 87100. Between January 21, 2016 and December 15, 2016,  
13 Perea approved 16 payments totaling \$45,434.51 from the School to Jimenez Gardening, a spousal  
14 source of income to Perea from which she received \$500 or more within the 12 months preceding each  
15 governmental decision.

16 Count 3: Conflict of Interest – Made Governmental Decisions in Which Public Official Had  
17 Financial Interest

18 Perea, a public official, made governmental decisions in 2017 in which she knew she had a  
19 financial interest, in violation of Section 87100. Between January 12, 2017 and August 11, 2017, Perea  
20 approved 11 payments totaling \$46,795 from the School to Jimenez Gardening, a spousal source of  
21 income to Perea from which she received \$500 or more within the 12 months preceding each  
22 governmental decision.

23 **PROPOSED PENALTY**

24 This matter consists of three counts. The maximum penalty that may be imposed is \$5,000 per  
25 count. Thus, the maximum penalty that may be imposed is \$15,000.<sup>10</sup>

26 In determining the appropriate penalty for a particular violation of the Act, the Commission  
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28 <sup>10</sup> Section 83116, subd. (c).

1 considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the  
2 Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of  
3 any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or  
4 inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective  
5 amendments voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior  
6 record of violations.<sup>11</sup>

7 In this case, although the Commission considers the violations serious in nature, the Enforcement  
8 Division found no evidence that Respondent intended to conceal, deceive, or mislead the public. To the  
9 contrary, while in office, Perea filed SEIs disclosing the pertinent financial interest, even though her  
10 employer did not have a Conflict of Interest Code. As a result, the violations appeared to be the result of  
11 negligence, at most. Further, Respondent does not have a prior history of violations.

12 The Commission also considers penalties in prior cases involving similar violations. Recent  
13 similar cases involving conflict of interest violations include the following:

14 • *In the Matter of Kendra Okonkwo*, FPPC No. 12/334. Respondent, the executive director of a  
15 public charter elementary school, used her official position to influence governmental decisions of the  
16 charter school's board of directors, and made governmental decisions, in which she had a financial  
17 interest, in violation of Section 87100. In particular, the respondent used her official position to  
18 influence decisions of the board of directors to enter into real property lease agreements with the  
19 respondent; and signed contracts, on behalf of the charter school, for improvements to her real property  
20 interests. In April 2016, the Commission approved a penalty of \$4,000 on each of four counts.

21 As to Counts 1 through 3, these violations are deserving of per count penalties similar to what  
22 was approved in the *Okonkwo* case. *Okonkwo* is factually similar to the facts contained herein, as it  
23 involves a respondent in a similar position who also made governmental decisions by approving  
24 payments that directly impacted her financial interests. Although the pertinent decisions in *Okonkwo*  
25 resulted in a greater financial impact on the respondent's financial interests than in this case, there are  
26 many more discrete governmental decisions at issue here.

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<sup>11</sup> Regulation 18361.5, subd. (d).

1 In aggravation, Perea approved \$35,400.58 in additional payments to Jimenez Gardening from  
2 2012 through 2014. However, in the interest of settlement, and given that the statute of limitations has  
3 expired as to many of these governmental decisions, these additional violations are not being charged  
4 herein.

5 In mitigation, Perea was fully cooperative during the investigation in this case. Further, Perea  
6 took corrective action once she discovered that she was violating the Act, which occurred prior to the  
7 complaint in this action. According to Perea, following a retreat in the summer of 2017, she discovered  
8 that the hiring of Jimenez Gardening could be a conflict of interest. After the retreat, Perea terminated  
9 the business relationship between the School and Jimenez Gardening. The last payment to Jimenez  
10 Gardening was made on August 11, 2017. The complaint in this case was filed approximately two  
11 months later.

12 Based on the foregoing, the following penalties are recommended:

<b>Count</b>	<b>Violation</b>	<b>Proposed Penalty</b>
1	Conflict of Interest – Made Governmental Decisions in Which Public Official Had Financial Interest	\$4,000
2	Conflict of Interest – Made Governmental Decisions in Which Public Official Had Financial Interest	\$4,000
3	Conflict of Interest – Made Governmental Decisions in Which Public Official Had Financial Interest	\$4,000
	<b>TOTAL:</b>	<b>\$12,000</b>

### 21 CONCLUSION

22 Complainant, the Enforcement Division of the Fair Political Practices Commission, and  
23 Respondent, Juanita Perea, hereby agree as follows:

- 24 1. Respondent violated the Act as described in the foregoing pages, which are a true and  
25 accurate summary of the facts in this matter.
- 26 2. This stipulation will be submitted for consideration by the Fair Political Practices  
27 Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.
- 28 3. This stipulation resolves all factual and legal issues raised in this matter—for the purpose

1 of reaching a final disposition without the necessity of holding an administrative hearing to determine the  
2 liability of Respondent pursuant to Section 83116.

3 4. Respondent has consulted with her attorney, Nimrod Haim Aviad, Crowell & Moring  
4 LLP, and understands, and hereby knowingly and voluntarily waives, all procedural rights set forth in  
5 Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9. This includes, but is not  
6 limited to, the right to appear personally at any administrative hearing held in this matter, to be  
7 represented by an attorney at Respondent's own expense, to confront and cross-examine all witnesses  
8 testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial  
9 administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially  
10 reviewed.

11 5. Respondent agrees to the issuance of the decision and order set forth below. Also,  
12 Respondent agrees to the Commission imposing against her an administrative penalty in the amount of  
13 \$12,000. One or more payments totaling this amount, to be paid to the General Fund of the State of  
14 California, is/are submitted with this stipulation as full payment of the administrative penalty described  
15 above, and they will be held by the State of California until the Commission issues its decision and order  
16 regarding this matter.

17 6. If the Commission declines to approve this stipulation—then this stipulation shall become  
18 null and void, and within fifteen business days after the Commission meeting at which the stipulation is  
19 rejected, all payments tendered by Respondent in connection with this stipulation shall be reimbursed to  
20 Respondent. If this stipulation is not approved by the Commission, and if a full evidentiary hearing  
21 before the Commission becomes necessary, neither any member of the Commission, nor the Executive  
22 Director, shall be disqualified because of prior consideration of this Stipulation.

23 7. The parties to this agreement may execute their respective signature pages separately. A  
24 copy of any party's executed signature page including a hardcopy of a signature page transmitted via fax  
25 or as a PDF email attachment is as effective and binding as the original.

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Dated: \_\_\_\_\_  
Galena West, Chief of Enforcement  
Fair Political Practices Commission

Dated: \_\_\_\_\_  
Juanita Perea

1 The foregoing stipulation of the parties “In the Matter of Juanita Perea,” FPPC Case No. 17/1310 is  
2 hereby accepted as the final decision and order of the Fair Political Practices Commission, effective upon  
3 execution below by the Chair.

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5 IT IS SO ORDERED.

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7 Dated: \_\_\_\_\_  
8 Richard C. Miadich, Chair  
9 Fair Political Practices Commission