

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is made as of this 10th day of March, 2025, between and among the New Mexico State Ethics Commission (“Commission” or “Releasor”), and Julie Kulhan, in her official capacity as Chief Procurement Officer for the Village of Angel Fire (“Ms. Kulhan,” “Releasee,” or “Released Party”). Each of the Releasor or Releasee may be referred to herein as a “Party” and collectively as the “Parties.”

WHEREAS, on May 24, 2024, the Commission authorized its attorney staff to commence a civil enforcement action to pursue declaratory and supplemental injunctive relief against the Released Party, in her official capacity as the Chief Procurement Officer for the Village of Angel Fire;

WHEREAS, the Commission filed a civil action, naming Ms. Kulhan as a Defendant in her official capacity only, on June 20, 2024 in New Mexico State District Court, Eighth Judicial District, County of Colfax, captioned *State Ethics Commission v. Barry Lindsey, et al.*, No. D-809-CV-2024-00091 (“the Lawsuit”);

WHEREAS, in the Complaint, the Commission seeks against Ms. Kulhan declaratory relief that NMSA 1978, Section 13-1-98(V) (2023), which exempts from the Procurement Code, NMSA 1978, §§ 13-1-28 to -199 (1984, as amended though 2024), “purchases of advertising in all media, including radio, television, print and electronic,” did not exempt portions of a March 18, 2024 contract between the Village of Angel Fire and Carristo Creative Consulting LLC from the requirements of the Procurement Code;

WHEREAS, in the Complaint, the Commission seeks against Ms. Kulhan supplemental injunctive relief requiring Ms. Kulhan to use competitive sealed proposals, as set forth in Sections 13-1-111 to 13-1-117 of the Procurement Code and any regulations the Village of Angel Fire promulgated pursuant to Section 13-1-117.1 of the Procurement Code, to select a contractor to provide the Village with branding, promotional, design, website and social media services;

WHEREAS, in July 2024, the Village cancelled the March 18, 2024 contract with Carristo Creative Consulting LLC;

WHEREAS, on July 15, 2024, consistent with the Procurement Code, the Village issued RFP #2024-020, a request for proposals for a “comprehensive

integrated advertising and marketing services to further enhance and develop the Angel Fire brand to drive increased visitation”;

WHEREAS, Releasor State Ethics Commission and Ms. Kulhan have agreed to amicably resolve this matter, including any and all issues, claims, demands, and/or damages, of whatever nature, that exist, or could exist, by and among them, relating in any way to claims made or which could have been made in the Lawsuit, without the need for further litigation; and

WHEREAS, the Releasor State Ethics Commission’s Executive Director has authority to enter the Agreement on the Commission’s behalf;

NOW, THEREFORE, without trial or adjudication of any issue of fact or law, without this Settlement Agreement constituting evidence against Ms. Kulhan, without any admission by Ms. Kulhan of any wrongdoing, in consideration of the foregoing recitals and the mutual promises hereinafter set forth, the Parties agree as follows:

1. **Execution Date.** As used in this Agreement, the “Execution Date” shall mean the date as of which the Agreement is fully executed.

2. **Consideration.** In consideration for Releasor State Ethics Commission’s Release of claims against Ms. Kulhan:

(a) Ms. Kulhan agrees to waive any and all demands, claims, or cause of action against Releasor for recovery of attorney fees or costs incurred in defending against the claims and cause of action asserted in the complaint.

(b) Ms. Kulhan, in the exercise of the authority vested in her by NMSA 1978, Section 13-1-95.2(E)(1) (2013), shall not make any determination that Section 13-1-98(V) exempts from the Procurement Code any contract for: (i) the creation or design of the Village’s brand; (ii) video and photography services or access to video and photography assets; (iii) upgrades to the functionality of any Village website; (iv) consulting services other than for the placement of advertising; (v) design services; (vi) social media management services (not including the placement of paid advertisements on social media sites); or (viii) marketing-research services, unless or until there are legislative revisions to the Procurement Code on or after the date of this agreement that contradict the terms of this paragraph.

(c) The duties that this Agreement imposes upon Ms. Kulhan, in her official capacity as the Chief Procurement Officer for the Village of Angel Fire, are, to the extent permissible by law, binding on her successors and assigns at the Village of Angel Fire.

3. **Release.** In consideration of satisfaction of the conditions set forth in Paragraph 2 and more fully contained herein, Releasor hereby releases, acquits, and forever discharges Releasee from any and all claims, demands, and damages, of whatever nature, actions and causes of action of any kind whatsoever, known or unknown, suspected or unsuspected, which Releasor could have asserted as part of the Lawsuit ("Released Claims"); *provided, however*, that the Released Claims shall not include claims to enforce this Agreement.

4. **Dismissal of Claims.** The Parties agree that, within (7) days after the Effective Date, Releasor will circulate and file appropriate papers to dismiss, with prejudice, all claims and requests for remedies against Ms. Kulhan *only* that Releasor asserted as part of the Lawsuit.

5. **Final Settlement and Adequate Consideration.** The Parties agree that Releasee's satisfaction of the conditions set forth in Paragraph 2 of this Agreement shall represent final and full satisfaction and settlement of the Released Claims. It is the intent of the Parties to fully and effectively release the Released Claims. This Agreement is intended to have the broadest possible effect so that the allegations arising from the Released Claims be finally and forever put to rest. The Parties agree that the consideration noted in Paragraph 2 represents adequate consideration for this Agreement.

6. **Construction.** The terms, provisions, and conditions of this Agreement are the result of negotiations in good faith and at arm's length between the Releasor State Ethics Commissions and the Releasee, each of which has been represented by legal counsel of their own choosing. Accordingly, the terms, provisions and conditions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings, without application of any rule of interpretation or construction suggesting that ambiguous or conflicting terms, conditions, or provisions shall be interpreted or construed against the Party whose legal counsel prepared the executed version of any prior drafts of the Agreement.

7. **Warranty of Capacity to Execute Settlement Agreement.** The Parties represent and warrant that each has the right and authority to execute this Agreement. Further, the Parties represent and warrant that the execution of this

Agreement violates no law, rule, agreement or instrument by which they may be bound or to which they are a party.

8. **Compromise of a Disputed Claim.** The Parties agree that this Agreement represents a compromise of disputed rights, demands, claims, actions and causes of action, taking into account, among other things, the costs, inconvenience, expenditure of time and energy, and risks associated with litigation. It is further agreed that nothing contained within this Agreement shall be considered an admission for any such claims, demands, damages, actions, or causes of action, such liability or wrongdoing being expressly denied. Nothing in this Agreement constitutes an admission of liability or wrongdoing by Releasee.

9. **Entire Agreement.** The Parties acknowledge and agree that no promises, representations, or agreements have been made in connection with this Agreement other than those set forth herein, and that they intend this to be the final and binding settlement and release of all of Releasor State Ethics Commission's Released Claims against Ms. Kulhan, on the terms set forth herein, whether or not they have been previously asserted or articulated.

10. **Enforcement Provisions.** The Parties stipulate and agree that should the Commission reasonably and in good faith believe Ms. Kulhan or her successors or assigns have failed to perform in accordance with Paragraph 2 of this Agreement, the Commission shall notify Ms. Kulhan, or her successors or assigns, of this concern and provide her fifteen (15) days to cure any alleged non-compliance if the alleged non-compliance is subject to cure through compliance with the Procurement Code. If at the expiration of the fifteen (15) day cure period, Ms. Kulhan has not resolved the Commission's concern, the Commission may file an appropriate motion to enforce this settlement agreement.

11. **Governing Law.** This Agreement shall be construed and interpreted in accordance with the laws of the State of New Mexico.

12. **Severability.** If, after the effective date hereof, any provision of this Agreement is held to be illegal, invalid or unenforceable, such provision shall be fully severable and shall be unenforceable between the Parties only to the extent of such prohibition or ineffectiveness without invalidating the remainder of the provision or of this Agreement.

13. **Amendment.** This Agreement shall not be modified or amended

except in writing signed by the Parties.

14. **Effective Date.** This Agreement shall become effective on the Execution Date, immediately upon execution by the Parties.

15. **Effective in Counterparts.** To expedite the conclusion of this matter, the Parties agree that this Agreement may be executed by electronic signature and further may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. By so proceeding, the Parties further agree that the Agreement shall be and is binding upon each of them, just as if the Agreement had been executed otherwise. Faxed or scanned and emailed copies of manually executed signature pages to this Agreement shall be enforceable without the need for delivery of an original signature.

16. **Fees and Costs.** Each Party agrees to pay its own attorneys' fees, and costs.

17. **Notices.** All notices, requests, demands or other communications required or contemplated hereunder or relating hereto shall be in writing and forwarded by mail or by hand, with a copy by email, and addressed as follows:

(a) If to Releasor State Ethics Commission: Executive Director

Jeremy Farris
Executive Director
State Ethics Commission
jeremy.farris@sec.nm.gov
800 Bradbury Dr. Ste. 215
Albuquerque, NM 87106

(b) If to Releasee:

Julie Kulhan
Chief Procurement Officer
Village of Angel Fire
c/o Eugene "Geno" Zamora
Ortiz & Zamora, Attorneys at Law, LLC

530 Harkle Road, Suite B
Santa Fe, NM 87505
geno@ortiz-zamora.com


Attorneys for Julie Kulhan



Jeremy Farris, Executive Director, State Ethics Commission,
on behalf of the New Mexico State Ethics Commission

3/10/25

(Date)



Julie Kulhan, Chief Procurement Officer, Village of Angel Fire, in her official
capacity only

3/10/25

(Date)