

**STATE OF NEW MEXICO
COUNTY OF COLFAX
EIGHTH JUDICIAL DISTRICT**

STATE ETHICS COMMISSION ex rel.
VILLAGE OF ANGEL FIRE

Plaintiff,

v.

D-809-CV-2024-00091

BARRY LINDSEY; JULIE KULHAN, in her
Official capacity as Chief Procurement Officer
for the Village of Angel Fire; and CARRISTO
CREATIVE CONSULTING, LLC,

Defendants.

**ORDER GRANTING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY
JUDGMENT**

This matter comes before the Court on Plaintiff State Ethics Commission's Motion for Partial Summary Judgment on Count I, filed Feb. 21, 2025 ("Pl.'s Mot for Partial Summ. J."); Defendant Lindsey's Response in Opposition to Plaintiff's Motion for Partial Summary Judgment on Count I, filed March 24, 2025 ("Resp."); and Plaintiff State Ethics Commission's Reply in Support of the Motion for Partial Summary Judgment on Count I, filed April 15, 2025 ("Reply"). The Court held a hearing on the motion on May 7, 2025. Having reviewed the record, proposed findings and conclusions submitted by the parties, and being otherwise fully advised, the Court hereby adopts the below Findings of Fact and Conclusions of Law as submitted by the Plaintiff.

FINDINGS OF FACT

I. The March 18, 2024 contract between the Village of Angel Fire and Carristo Creative Consulting, LLC

1. On March 18, 2024, Defendant Barry Lindsey, acting on behalf of the Village of Angel Fire entered into a contract with Carristo Creative Consulting, LLC ("Carristo"). Ex. 1 to

Pl.’s Mot. for Partial Summ. J., Contract between the Village of Angel Fire and Carristo (Mar. 18, 2024), KULHAN_001–024; *see also* Ex. 18 to Compl. (same); Ex. 2, to Pl.’s Mot. for Partial Summ. J., Christofferson Dep. at 17:4–9, 18:1–23; Ex. 3 to Pl.’s Mot. for Partial Summ. J., Wier Dep. at 88:17–89:5.

2. Under the contract, the Village and Carristo agreed that Carristo would provide the following deliverables at the corresponding compensation terms: (i) Branding Creation, \$32,000; (ii) Video & Photography Assets, \$90,600; (iii) 2024 Winter Visitors Guide, \$50,765; (iv) Website Upgrades & New Features, \$175,000; (v) Trade Show Booth/Promotional Items, \$39,000; (vi) Digital Billboard Hardware Only, \$34,000; (vii) Branding Signage & Install, TBD; (viii) Digital and Print Advertising Buy, \$450,000; (ix) Advertising Consulting and Design Services (Apr. – Dec. 2024), \$112,000; and (x) Social Media Management, \$33,000. Ex. 1 to Pl.’s Mot. for Partial Summ. J., KULHAN_023.

3. As the contract and its deliverables reflect, the Village agreed to purchase advertising buys in digital and print media and an array of services, including services for design, marketing, research, consulting, and social media management. *Id.*; *see generally id.*, KULHAN_001–024.

4. Under the contract, the Village agreed to pay Carristo at least \$1,016,365. *Id.*, KULHAN_023.

II. The branding-creation deliverable

5. Under the contract deliverable for “Branding Creation,” the Village agreed to purchase three sub-deliverables for (i) a new logo design; (ii) collateral materials; and (iii) a comprehensive branding guidelines document. *Id.*, KULHAN_003.

6. Under the branding sub-deliverables for logo design and collateral design, the Village agreed to purchase Carristo's services to: (i) develop "multiple design options"; (ii) "present the three most impactful finalists" for the Village's consideration; (iii) refine the chosen logo; (iv) create a logo library with appropriate file formats; (v) design business cards, letterheads, envelopes, and email signatures; and (vi) specify guidelines for printed materials. *Id.*, KULHAN_004-005.

7. In performing the services related to the logo-design and collateral-design deliverables, Carristo conferred with Village staff about a new logo and used Adobe to design logos. Ex. 2 to Pl.'s Mot. for Partial Summ. J., Christofferson Dep. at 23:4-9; 23:22-24:5; 25:18-20; 26:12-13.

8. Under the branding sub-deliverable for branding guidelines, the Village agreed to pay Carristo for a "working document that will serve as the guidelines for the Village of Angel Fire Brand moving forward." Ex. 1 to Pl.'s Mot. for Partial Summ. J., KULHAN_006.

9. In satisfaction of the branding guidelines sub-deliverable, Carristo provided a five-page "brand book" that "tells the client how to use their logo and how not to use their logo." Ex. 2 to Pl.'s Mot. for Partial Summ. J., Christofferson Dep. at 27:9-20; 28:1-9; 29:8-12; Ex. 4 to Pl.'s Mot. for Partial Summ. J., Branding Guidelines.

10. The invoice that Carristo submitted for the logo design, collateral materials design, and branding guidelines does not reflect any purchase of any advertising buy in any media. Ex. 5 to Pl.'s Mot. for Partial Summ. J., Invoice 2457.

III. The video-&-photography-assets deliverable

11. Under the contract deliverable for "Video & Photography Assets," the Village agreed to purchase from Carristo "an assets library to highlight Summer and Fall in Angel Fire,"

which included a 30-second and a 15-second summer highlight reels and 65 photographs, perpetual licenses to these assets, and the option to purchase additional photographs. Ex. 1 to Pl.’s Mot. for Partial Summ. J., KULHAN_007–008.

12. In providing the summer 2024 video and photography assets library, Carristo delivered to the Village “55 photographs and a three-minute B-roll reel,” which are video clips. Ex. 2 to Pl.’s Mot. for Partial Summ. J., Christofferson Dep. at 37:7–9.

13. To provide these video and photography assets, Carristo performed both “preproduction work” for a three-day video and photography shoot and “postproduction work,” which entailed reviewing 14 hours of footage and selecting video footage “to fulfill the story and plot line[.]” *Id.* at 35:8–36:9.

IV. The website-upgrades-and-new-features deliverable

14. Under the contract deliverable for Website Upgrades and New Features, the Village agreed to pay Carristo for upgrades to the Village’s website. Ex. 1 to Pl.’s Mot. for Partial Summ. J., KULHAN_014.

15. In providing this deliverable, Carristo “completed site mapping, design, full design, all the project management, [and] client meetings[.]” Ex. 2 to Pl.’s Mot. for Partial Summ. J., Christofferson Dep. at 44:13–18.

16. In providing this deliverable, Carristo also secured a “third-party booking system called ‘Book Direct[.]’” which allows visitors to visit the Village’s website, visitangelfirenm.com, and book private lodging accommodations directly from the Village’s website. *Id.* at 44:18–21; 45:18–46:4.

17. Carristo sent the Village an invoice corresponding to the website upgrades it provided, including a line item passing along the costs of a “yearly subscription” and a “set up fee” for Book Direct. Ex. 6 to Pl.’s Mot. for Partial Summ. J., Invoice 2464 (Apr. 25, 2024).

18. Invoice 2464 does not reflect any purchase of any advertising buy that Carristo made on the Village’s behalf. *See id.*; Ex. 2 to Pl.’s Mot. for Partial Summ. J.; Christofferson Dep. at 49:1–3.

V. The monthly-services deliverable

19. Under the contract deliverables for monthly services, the Village agreed to pay Carristo for monthly advertising consulting services, monthly advertising design services, and monthly social media management services. Ex. 1 to Pl.’s Mot. for Partial Summ. J., KULHAN_019–022.

20. As to monthly consulting services, the Village agreed to purchase Carristo’s services related to “creative direction and branding,” “marketing planning and strategy,” “event marketing,” and “meetings and communication” between Carristo and the Village’s lodgers’ tax committee and tourism director. *Id.*, KULHAN_020.

21. In performing monthly consulting services, Carristo “[l]ook[ed] for advertising opportunities, ma[de] recommendations on where it would be best to advertise, what markets would be best, what demographics would be best.” Ex. 2 to Pl.’s Mot. for Partial Summ. J., Christofferson Dep. at 52:21–24. Carristo also provided the Village with research into those demographics that the Village would like to target. *Id.* at 53:9–54:4.

22. As to monthly design services, the Village agreed to purchase Carristo’s services related to the design of advertisements for publications and the design of graphics for events, social media, and digital signage. Ex. 1 to Pl.’s Mot. for Partial Summ. J., KULHAN_021.

23. In providing monthly design services, Carristo “design[ed] every ad that goes out,” which included “gather[ing] all the information[,] gather[ing] the assets of the imagery[,] spend[ing] hours designing[,]” followed by client approval. Ex. 2 to Pl.’s Mot. for Partial Summ. J., Christofferson Dep. at 54:14, 20–24. Then, “[t]here’s rounds of revisions. There’s changes. Then these have to be set up specifically for whatever publication or online platform they’re placed in.” *Id.* at 54:24–55:2.

24. Carristo’s design work, which it provides through its monthly design services, does not interact with Carristo’s decision to purchase ad placements. *Id.* at 55:7–12 (“Q. Okay. So when Carristo is doing its design work, how does the design work interact with Carristo’s decision on purchasing ad placements? A. It doesn’t. Q. It doesn’t? A. No.”).

25. Carristo submitted invoice 2456 for its performance of monthly consulting and design work. The line items in invoice 2456 for monthly consulting and design services do not reflect the purchase of any advertising buy or placement in any media. Ex. 7 to Pl.’s Mot. for Partial Summ. J., Invoice 2456.

26. As to monthly social media services, the Village agreed to pay Carristo for a “strategic approach” to social media across three platforms, including Carristo’s “[c]reat[ion of] customized content,” Carristo’s commitment to “[r]espond to comments and engage with the online community,” and Carristo’s commitment to provide “[q]uarterly reports with key metrics such as impressions, engagements, top-performing posts, and areas for improvement.” Ex. 1 to Pl.’s Mot. for Partial Summ. J., KULHAN_022.

27. In performing the monthly social-media services, Carristo responded to comments on the Village’s social media accounts. *See* Ex. 2 to Pl.’s Mot. for Partial Summ. J., Christofferson Dep. at 56:7–11 (“A. You just -- if someone comments something that needs a

response, you respond. It's part of the algorithm is the more you respond, the more interaction there is, the more your posts show. So you get better results for your client.”).

28. Also, in performing the monthly social-media services, Carristo provided reports on key metrics related to social media platforms to the Village's tourism director and lodgers tax committee. *See id.* at 45:7–10, 56:17–25.

VI. The Village also agreed to purchase, through Carristo, advertising in digital media.

29. In contradistinction to Carristo's design, video and photography, website, consulting, and social media management commitments, the Village also agreed to pay Carristo to place advertising buys in electronic media. *See Ex. 1 to Pl.'s Mot. for Partial Summ. J., KULHAN_017–18.*

30. In making purchases of advertising in electronic media, Carristo purchased advertising with Meta, for ads on Facebook and Instagram. *See Ex. 2 to Pl.'s Mot. for Partial Summ. J., Christofferson Dep. at 49:22–50:1.*

VII. The Village canceled the March 18 contract with Carristo and issued an RFP.

31. Following the commencement of this lawsuit, the Village canceled the March 18, 2024 contract with Carristo. *See Ex. 2 to Pl.'s Mot. for Partial Summ. J., Christofferson Dep. at 20:9–23; Ex. 3 to Pl.'s Mot. for Partial Summ. J., Wier Dep. at 71:19–72:21.*

32. 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.” *Ex. 8, to Pl.'s Mot. for Partial Summ. J. Village of Angel Fire RFP #2024-020, at 8 (Scope of Services).*

33. Six advertising and marketing companies submitted proposals in response to RFP #2024-020. Ex. 3 to Pl.’s Mot. for Partial Summ. J., Wier Dep. at 75:6–9.

CONCLUSIONS OF LAW

I. Summary judgment

1. “Summary judgment is appropriate where there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law. Where reasonable minds will not differ as to an issue of material fact, the court may properly grant summary judgment. All reasonable inferences are construed in favor of the non-moving party.” *Romero v. Philip Morris Inc.*, 2010-NMSC-035, ¶ 7, 148 N.M. 713 (quoting *Montgomery v. Lomos Altos, Inc.*, 2007-NMSC-002, ¶ 16, 141 N.M. 21).

2. “In New Mexico, summary judgment may be proper when the moving party has met its initial burden of establishing a prima facie case for summary judgment.” *Romero*, 2010-NMSC-035, ¶ 7 (citing *Roth v. Thompson*, 113 N.M. 331, 334–35 (1992)). “By a prima facie showing is meant such evidence as is sufficient in law to raise a presumption of fact or establish the fact in question unless rebutted.” *Romero*, 2010-NMSC-035, ¶ 7 (quoting *Goodman v. Brock*, 83 N.M. 789, 792–93 (1972)).

3. “Once this prima facie showing has been made, the burden shifts to the non-movant ‘to demonstrate the existence of specific evidentiary facts which would require trial on the merits.’” *Romero*, 2010-NMSC-035, ¶ 7 (citing *Roth*, 113 N.M. at 335). “A party may not simply argue that such [evidentiary] facts might exist, nor may it rest upon the allegations of the complaint.” *Romero*, 2010-NMSC-035, ¶ 7 (alteration original) (quoting *Dow v. Chilili Coop. Ass’n*, 105 N.M. 52, 55 (1986)). “Rather, ‘[t]he party opposing the summary judgment motion

must adduce evidence to justify a trial on the issues.” *Romero*, 2010-NMSC-035, ¶ 7 (alteration original) (quoting *Clough v. Adventist Health Sys., Inc.*, 108 N.M. 801, 803 (1989)). “Such evidence adduced must result in reasonable inferences.” *Romero*, 2010-NMSC-035, ¶ 7 (citing *Montgomery*, 2007-NMSC-002, ¶ 16). “An inference is not a supposition or a conjecture, but is a logical deduction from facts proved and guess work is not a substitute therefor.” *Romero*, 2010-NMSC-035, ¶ 7 (citing *Stambaugh v. Hayes*, 44 N.M. 443, 451 (1940)).

4. “When disputed facts do not support reasonable inferences, they cannot serve as a basis for denying summary judgment. Only when the inferences are reasonable is summary judgment inappropriate.” *Romero*, 2010-NMSC-035, ¶ 10.

5. To determine whether a specific dispute of fact is material, “the [C]ourt must ‘look to the substantive law governing the dispute[.]’” *Romero*, 2010-NMSC-035, ¶ 11 (alterations added) (quoting *Farmington Police Officers Ass’n v. City of Farmington*, 2006-NMCA-077, ¶ 17, 139 N.M. 750). “An issue of fact is ‘material’ if the existence (or non-existence) of the fact is of consequence under the substantive rules of law governing the parties’ dispute.” *Martin v. Franklin Capital Corp.*, 2008-NMCA-152, ¶ 6, 145 N.M. 179.

6. In this case, the Procurement Code, NMSA 1978, §§ 13-1-28 to -199 (1984, as amended through 2023), and in particular NMSA 1978, Section 13-1-98(V) (2023), “is the filter through which the [the Court] must determine whether genuine issues of material fact exist.” *Romero*, 2010-NMSC-035, ¶ 11 (alteration added) (citation omitted).

II. The Procurement Code

7. The Procurement Code is the statutory law that regulates purchases by public entities in New Mexico. *Morningstar Water Users Ass’n, Inc. v. Farmington Mun. Sch. Dist. No. 5*, 1995-NMSC-052, ¶ 11, 120 N.M. 307.

8. “The Procurement Code shall be liberally construed and applied to promote its purposes and policies.” NMSA 1978, § 13-1-29(A) (1984). “The purposes of the Procurement Code are to provide for the fair and equitable treatment of all persons involved in public procurement, to maximize the purchasing value of public funds and to provide safeguards for maintaining a procurement system of quality and integrity.” NMSA 1978, § 13-1-29(C) (1984).

9. In expounding upon these statutory purposes, the Supreme Court has explained that the Procurement Code “protects ‘against the evils of favoritism, nepotism, patronage, collusion, fraud, and corruption in the award of public contracts.’” *Mem’l Med. Ctr., Inc. v. Tatsch Const., Inc.*, 2000-NMSC-030, ¶ 25, 129 N.M. 677 (quoting *Planning and Design Sols. v. City of Santa Fe*, 1994-NMSC-117, ¶ 8, 118 N.M. 707).

10. “Except as otherwise provided in the Procurement Code, that code shall apply to every expenditure by state agencies and local public bodies for the procurement of items of tangible personal property, services and construction.” NMSA 1978, § 13-1-30(A) (2005).

11. The Supreme Court has recognized the Procurement Code’s default “requirement that, within certain limitations, all procurements by government entities ‘shall be achieved by competitive sealed bid.’” *Morningstar*, 1995-NMSC-052, ¶ 11 (quoting NMSA 1978, § 13-1-102)).

12. For example, “when a state agency or local public body is procuring professional services . . . a procurement shall be effected by competitive sealed proposals.” NMSA 1978, § 13-1-111 (2007).

13. “There are several exemptions in the Procurement Code, pointing to situations in which purchases by a public entity do not require competitive bidding” or competitive sealed proposals. *Morningstar*, 1995-NMSC-052, ¶ 12.

14. The Legislature provided for one such exemption in NMSA 1978, Section 13-1-98(V) (2023), which provides “The provisions of the Procurement Code shall not apply to . . . purchases of advertising in all media, including radio, television, print and electronic[.]”

III. Relevant principles of statutory interpretation

15. “Interpretation of a statute is a matter of law[.]” *State v. Rael*, 2024-NMSC-010, ¶ 38, 548 P.3d 66 (quoting *State v. Rivera*, 2004-NMSC-001, ¶ 9, 134 N.M. 768). Statutory interpretation is therefore the province of the Court. *See id.*; *see also Mikeska v. Las Cruces Reg'l Med. Ctr., LLC*, 2016-NMCA-068, ¶ 17, 388 P.3d 266.

16. “When interpreting a statute, a court’s primary goal is to ‘facilitate and promote the [L]egislature’s purpose.’” *Dep’t of Game & Fish v. Rawlings*, 2019-NMCA-018, ¶ 6, 436 P.3d 741 (quoting *United Rentals Nw., Inc. v. Yearout Mech., Inc.*, 2010-NMSC-030, ¶ 17, 148 N.M. 426).

17. “The starting point in every case involving the construction of a statute is an examination of the language utilized by the Legislature in drafting the pertinent statutory provisions.” *Rael*, 2024-NMSC-010, ¶ 38 (quoting *State v. Rivera*, 2004-NMSC-001, ¶ 10, 134 N.M. 768 (brackets, internal quotation marks, and citation omitted) and citing 2A Norman J. Singer & J.D. Shambie Singer, *Statutes & Statutory Construction* § 46:3 at 178 (7th ed. 2014) (“[C]ourts consider statutory text to be the best evidence of legislative intent or will.”)).

18. In interpreting statutes, the Court “consider[s] all parts of the statute together, ‘read[ing] the statute in its entirety and constru[ing] each part in connection with every other part to produce a harmonious whole.’” *Rawlings*, 2019-NMCA-018, ¶ 6, 436 P.3d 741 (alterations in original) (quoting *Key v. Chrysler Motors Corp.*, 1996-NMSC-038, ¶ 14, 121 N.M. 764).

19. The Court also “interprets statutes ‘to avoid rendering the Legislature’s language superfluous.” *Rawlings*, 2019-NMCA-018, ¶ 6 (quoting *Baker v. Hedstrom*, 2013-NMSC-043, ¶ 24).

20. In considering the Legislature’s purpose, the Court also considers the statute’s history and background. *See Butkus v. Pub. Emps. Ret. Ass’n*, 2024-NMCA-041, ¶ 10 (“In interpreting statutes, we seek to give effect to the Legislature’s intent, and in determining intent we look to the language used and consider the statute’s history and background.” (quoting *Key*, 1996-NMSC-038, ¶ 13)).

21. While the Court recognizes that “[f]iscal impact reports are not authoritative sources of legislative history . . . [and] are only a forecast of the fiscal impact of the proposed bill,” *Aztec Mun. Sch. v. Cardenas*, 2024-NMSC-015, ¶ 20 (quoting *Grisham v. Reeb*, 2021-NMSC-006, ¶ 33), the Court also recognizes that fiscal impact reports are “contemporaneous documents, presented to and presumably considered by the [L]egislature during the course of enactment of a statute,” *Butkus*, 2024-NMCA-041, ¶ 14 (quoting *State ex rel. Helman v. Gallegos*, 1994-NMSC-023, ¶ 25, 117 N.M. 346), and may be used in the Court’s overall effort to interpret a statute’s meaning.

IV. Section 13-1-98(V) exempts from the Procurement Code purchases of advertising in media outlets only and, therefore, does not exempt professional services for branding, design, marketing, research, or consulting.

22. Considering that Section 13-1-98(V) “is the filter through which the [the Court] must determine whether genuine issues of material fact exist,” *Romero*, 2010-NMSC-035, ¶ 11 (alteration added) (citation omitted), the Court must first interpret the meaning of Section 13-1-98(V) to determine both whether the moving party can establish a prima facie case for summary

judgment and whether there are genuine issues of material fact that would defeat summary judgment and require a trial.

23. The Court begins its interpretation with the statutory text, observing that Section 13-1-98(V) exempts from the Procurement Code “purchases of advertising *in all media*, including radio, television, print and electronic[.]” § 13-1-98(V) (emphasis added). The statutory phrase “in all media” modifies “advertising,” § 13-1-98(V), limiting the scope of the statutory exemption. It also clarifies that the statute exempts from the Procurement Code expenditures of public funds only for purchases of advertisements in media outlets, i.e., ad buys. The phrase “in all media” thus limits the scope of the Section 13-1-98(V) exemption, meaning the exemption does not extend to purchases of any professional service that an advertising agency might provide to a public body, including design, branding, marketing, research or consulting.

24. The Court’s interpretation follows traditional canons of statutory interpretation, including the canon to “interpret[] statutes ‘to avoid rendering the Legislature’s language superfluous[.]’” *Rawlings*, 2019-NMCA-018, ¶ 6 (alteration added) (quoting *Baker v. Hedström*, 2013-NMSC-043, ¶ 24)). A reading that Section 13-1-98(V) exempts the entire suite of professional services that an advertising agency might provide to a public body would render the Legislature’s language “*in all media*” superfluous, in violation of the well-established law of statutory interpretation. *See, e.g., Rawlings*, 2019-NMCA-018, ¶ 6.

25. The Court’s textual reading is also confirmed by the topline dictionary definition of “advertising” as meaning the placement of advertisements in media outlets. *See, e.g., Advertising*, Merriam-Webster Online, <https://www.merriam-webster.com/dictionary/advertising>

(last visited June 23, 2025) (“[T]he action of calling something to the public especially by paid announcements”).

26. Having focused on the statutory text, the Court next considers the Procurement Code as a whole. The Court’s interpretation of Section 13-1-98(V) as exempting only the purchase of advertisements in media outlets and, thus, not purchases of all professional services that an advertising agency might provide to a local public body is supported by reading Section 13-1-98(V) in connection with the Procurement Code in its entirety “to produce a harmonious whole.” *See Rawlings*, 2019-NMCA-018, ¶ 6 (internal quotation marks and citation omitted). Read as a whole, the Procurement Code requires local public bodies to purchase professional services through a competitive proposal process, unless the Code expressly says otherwise.

27. The Procurement Code requires public bodies, with certain limitations (such as the exception for small purchases), to use a competitive, request-for-proposals process to purchase professional services from a private vendor. § 13-1-111; *see also* NMSA 1978, § 13-1-125(B) (2019) (allowing a public body to purchase professional services having a value not exceeding \$60,000 without use of requests for proposals).

28. Whenever, in any of its enumerated subsections, Section 13-1-98 exempts a public body’s purchase of *services*, the statute expressly does so. *See, e.g.*, NMSA 1978, §§ 13-1-98(A) (exempting procurement of goods or “services” from “a state agency, a local public body, or external procurement unit”); 13-1-98(B) (exempting procurement of goods or “services” for the governor’s mansion and grounds”); 13-1-98(H) (exempting “contracts with businesses for public schools *transportation services*”) (emphasis added); 13-1-98(R) (exempting “contracts and expenditures for legal subscription and *research services* and litigation expenses in connection with [adjudicatory] proceedings . . . including experts, mediators, court reporters,

process services and witness fees . . .”) (emphasis added); 13-1-98(CC) (exempting “contracts for *investment advisory services, investment management services* or other investment-related services entered into by the educational retirement board, [or] the state investment officer . . .”) (emphasis added); & 13-1-98(GG) (exempting “procurement of *services of commissioned advertising sales representatives for New Mexico magazine*”) (emphasis added).

29. In contrast to other subsections in Section 13-1-98, Section 13-1-98(V) makes no mention of any professional “advisory,” “research,” or “advertising-sales” services; in fact, it does not mention services at all.

30. Accordingly, reading the Procurement Code as a harmonious whole supports the Court’s interpretation that Section 13-1-98(V) exempts only the purchase of advertisements in media outlets and not an array of advertising-adjacent professional services that a public body could purchase from an advertising agency, such as services related to design, branding, marketing, research, or consulting.

31. The Court’s interpretation of Section 13-1-98 (exempting certain purchases) in connection with Section 13-1-111 (requiring requests for proposals for the purchase of professional services) is supported by the Legislature’s instruction to interpret the Code “to promote its purposes and policies,” § 13-1-29(A), including its purpose to provide for the fair and equitable treatment of all persons involved in public procurement, to maximize the purchasing value of public funds and to provide safeguards for maintaining a procurement system of quality and integrity,” § 13-1-29(C). Section 13-1-29 counsels against reading the Section 13-1-98 exemptions to the Procurement Code broadly to exempt broad swaths of government purchases of professional services that the Legislature intended to be subject to the

Code's provisions requiring competitive process and disclosure and prohibiting conflicts of interest. *See, e.g.*, NMSA 1978, §§ 13-1-11, 13-1-190 to -195.

32. The Court's interpretation that Section 13-1-98(V) exempts only the government's purchases of advertising placements in media outlets is further supported by the legislative history. The fiscal impact report associated with the bill that was enacted and codified as Section 13-1-98(V) indicates that the procurement vehicle will not affect the price the government pays when purchasing advertisement spaces from media outlets. *See, e.g.*, Fiscal Impact Report for H.B. 239, *Fiscal Implications*, at 2 (Jan. 29, 2004), www.nmlegis.gov/Sessions/04%20Regular/firs/hb0239.pdf ("DOH claims that advertising rates do not go down as a result of being subject to the Procurement Code. Rates paid by state agencies will not go up as a result of this exemption."); *see also Butkus*, 2024-NMCA-041, ¶ 14 (allowing the use of fiscal impact reports in statutory interpretation). But the legislative history focuses on "advertising rates," which the Court understands to be prices for advertisements in media outlets. Neither the Procurement Code nor the legislative history of Section 13-1-98(V) suggests the same is true when the government purchases professional services, including professional services that an advertising agency might provide to the government, including for design, consulting, marketing, and branding.

V. Section 13-1-98(V) does not exempt from the Procurement Code several deliverables in the March 18, 2024 contract with Carristo.

33. Having interpreted Section 13-1-98(V), the Court turns to whether there are any genuine issues of material fact with respect to the Plaintiff's declaratory judgment claim.

34. The Plaintiff State Ethics Commission has moved for partial summary judgment on Count I of its complaint, seeking entry of a declaratory judgment that Section 13-1-98(V) does not exempt from the Procurement Code expenditures of Village funds 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; (v) design services; (vi) social media management services; and (vii) marketing-research services. *See* Pl.'s Mot. for Partial Summ. J. at 10.

35. The Court's interpretation of Section 13-1-98(V) is the substantive law that governs and, therefore, "is the filter through which the [the Court] must determine whether genuine issues of material fact exist." *Romero*, 2010-NMSC-035, ¶ 11 (alteration added) (citation omitted).

36. In light of the Court's interpretation of Section 13-1-98(V), a genuine issue of material fact exists if there is a genuine dispute whether any of the following deliverables in the March 18, 2024 contract between the Village and Carristo included the purchase of an advertising placement in a media outlet: (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; (v) design services; (vi) social media management services; and (vii) marketing-research services.

A. Section 13-1-98(V) does not exempt either the branding-creation deliverable or the video-and-photography assets deliverable.

37. The movant, Plaintiff State Ethics Commission, has made a prima facie case that the branding-creation deliverable in the March 18, 2024 contract between the Village and Carristo did not include the purchase of an advertising placement in any media outlet. *See* Fact Nos. 5–10.

38. The movant has also made a prima facie case that the video-and-photography-assets deliverable in the March 18, 2024 contract between the Village and Carristo did not include the purchase of an advertising placement in any media outlet. *See* Fact Nos. 11–13.

39. Defendant Lindsey adduced no facts indicating the contract deliverable for branding creation included any purchase of an advertising placement in media. *See Romero*, 2010-NMSC-035, ¶ 7 (“[T]he party opposing the summary judgment motion must adduce evidence to justify a trial on the issues.”) (quoting *Clough*, 108 N.M. at 803)). Defendant Lindsey also adduced no facts indicating the contract deliverable for “Video and Photography Assets” included any purchase of an advertising placement in media. *See Romero*, 2010-NMSC-035, ¶ 7 (“[T]he party opposing the summary judgment motion must adduce evidence to justify a trial on the issues.”) (quoting *Clough*, 108 N.M. at 803)). Nor did Defendant Lindsey respond to any of the Commission’s undisputed material facts regarding the video-and-photography-assets deliverable. *See Resp.* at 2.

40. Defendant Lindsey points to the Affidavit of Kristelle Siarza Moon, who opines that, “[u]nder a modern definition of ‘advertising’ that reflects the realities of the industry today,” all the Village purchases, as reflected in the March 18, 2024 contract and associated invoices, are for advertising.” *Aff. of Siarza Moon*, ¶ 25 (emphasis added). Ms. Siarza Moon’s view of a “modern definition of advertising” is based on her opinions, among others, that “[m]odern advertising includes much more than traditional ad buys” and “is not a single act but a process.” *Id.* ¶¶ 19, 21, 25.

41. The Court concludes that Ms. Siarza Moon’s testimony is directed to the interpretation of Section 13-1-98(V) and is not evidence justifying a trial whether the branding creation deliverable included the purchase of advertising in a media outlet. Ms. Siarza Moon’s testimony does not raise any issue of fact as to the deliverables that the Village sought to purchase from Carristo; rather, her testimony goes to how the statutory term “advertising” ought to be interpreted and applied.

42. It is role of the Court, however, and not a witness, to decide what the statutory phrase “purchases of advertising in all media,” or even, within that phrase, what the term “advertising” in means. *See Mikeska*, 2016-NMCA-068, ¶ 17 (concluding that “the district court abused its discretion in allowing . . . [a witness] to give his expert opinion on the purpose and scope of the EMTALA”).

43. Defendant Lindsey also argues that because the branding-creation deliverables are services that would eventually be “used in advertisements by the Village,” Resp. at 2, those deliverables are themselves exempt “purchases of advertising in all media[.]” This is also legal argument about the scope of the statutory term “advertising;” it is not grounded in evidence that Defendant Lindsey has adduced about the contract, the branding-creation deliverable, or any invoice under the contract. Moreover, for the reasons articulated *supra*, the Court rejects the interpretation of Section 13-1-98(V) that would exempt any professional service that bears on the advertisements that the Village purchases in media as itself an exempt “purchase of advertising in . . . media.”

44. There is no genuine factual dispute regarding whether the deliverables in the March 18, 2024 contract with Carristo for the creation or design of the Village’s brand or photography and video assets (and access thereto) included the purchase of any advertisement placement in any media outlet.

45. Accordingly, summary judgment is warranted on the Commission’s claim for a declaratory judgment that Section 13-1-98(V) does not exempt from the Procurement Code expenditures of Village funds for Carristo’s deliverables for the creation or design of the Village’s brand, video and photography services, or access to video and photography assets.

B. Section 13-1-98(V) does not exempt the deliverables for monthly consulting and marketing-research services, monthly advertising design services, or monthly social media management services.

46. The movant, Plaintiff State Ethics Commission, has made a prima facie case that the monthly consulting and marketing-research services, monthly design services, and monthly services for social media management in the March 18, 2024 contract between the Village and Carristo did not include the purchase of an advertising placement in any media outlet. *See* Fact Nos. 19–28.

47. Defendant Lindsey adduced no facts indicating the contract deliverables for the monthly consulting services, monthly design services, or monthly social-media-management services that the Village contracted to purchase from Carristo included any purchase of an advertising placement in any media outlet. *See Romero*, 2010-NMSC-035, ¶ 7 (“[T]he party opposing the summary judgment motion must adduce evidence to justify a trial on the issues.” (quoting *Clough*, 108 N.M. at 803)).

48. Instead, Defendant Lindsey presents a legal argument, relying on Ms. Siarza Moon’s affidavit, that because “[t]he modern advertising process frequently involves ‘strategic planning’ and ‘brand storytelling,’” Section 13-1-98(V)’s reference to “advertising” works to exempt the Village’s purchases of monthly consulting, marketing-research and design services from the Procurement Code. *See* Resp. at 3–4 (citing *Siarza Moon Aff.* at ¶ 19). Again, the Court concludes that Ms. Siarza Moon’s testimony is directed to the interpretation of Section 13-1-98(V) and does not raise an issue of material fact. To that end, the Court rejects the interpretation of Section 13-1-98(V) as exempting all services that are adjacent to the advertising industry and instead reads Section 13-1-98(V) to exempt only the government’s purchases of advertising placements in media outlets.

49. As to the monthly social media management services, the Court concludes that the Village's agreement to purchase Carristo's creation of content, Carristo's services to respond to comments and to engage with the online community, and Carristo's provision of quarterly reports with key metrics such as impressions, engagements, top-performing posts, and areas for improvement are not purchases of advertising placements in media outlets. *See* Fact Nos. 26–28. Rather, they are expenditures for *services* that related to the management of the Village's social media accounts.

50. While the Village's agreed to purchase \$450,000 in advertisements in digital and print media, including from Meta, and while those "purchases of advertising in . . . media" are exempt under Section 13-1-98(V), *see* Fact Nos. 2, 29–30, the Court concludes that Carristo's services to post on the Village's social media accounts, to respond to comments from other social media, and to provide metrics to the Village on engagements are *not* equivalent to the purchase of digital advertising space.

51. The Court's conclusion is supported by the Legislature's purposes in both the Procurement Code and Section 13-1-98(V), as reflected in the legislative history. That history indicates that a request for proposal process will *not* result in the government obtaining a better price or a more conflict-free procurement when purchasing advertisement spaces from media outlets. *See, e.g.,* Fiscal Impact Report for H.B. 239, *Fiscal Implications*, at 2 (Jan. 29, 2004), www.nmlegis.gov/Sessions/04%20Regular/firs/hb0239.pdf ("DOH claims that advertising rates do not go down as a result of being subject to the Procurement Code. Rates paid by state agencies will not go up as a result of this exemption."); *see also* *Butkus*, 2024-NMCA-041, ¶ 14 (allowing the use of fiscal impact reports in statutory interpretation) But neither the Procurement Code nor the legislative history of Section 13-1-98(V) suggests the same is true

when the government purchases professional services, including professional services to manage a government social media account. Professional services, including services to manage a government's social media account, are still subject to the request for proposals process, furthering the Legislature's purpose to maximize the value of public funds and maintain a procurement system of integrity.

52. There is no genuine factual dispute regarding whether the deliverables in the March 18, 2024 contract with Carristo for monthly consulting and marketing research services, monthly design services, and monthly social-media-management services included the purchase of any advertisement placement in any media outlet.

53. Accordingly, summary judgment is warranted on the Commission's claim for a declaratory judgment that Section 13-1-98(V) does not exempt from the Procurement Code expenditures of Village funds for Carristo's deliverables for monthly consulting and marketing-research services, monthly design services, and monthly social-media-management services.

C. Section 13-1-98(V) does not exempt the deliverables for upgrades to the functionality of any Village website.

54. The movant, Plaintiff State Ethics Commission, has made a prima facie case that the deliverables for website upgrades and new features of the Village in the March 18, 2024 contract between the Village and Carristo did not include the purchase of an advertising placement in any media outlet. *See* Fact Nos. 14–18.

55. A close examination of the facts shows that the Village purchased from Carristo site mapping, design, and the development on its website of a third-party booking system, allowing visitors to the Village's website to book private accommodation directly from the Village's own website. *See* Fact Nos. 15–17. These purchases of software and website functionality are not purchases of advertising placements in any media outlet.

56. Defendant Lindsey adduced no facts controverting the movant's prima facie case and indicating that that contract deliverables for website upgrades and new features included any purchase of advertising placement in media. *See Romero*, 2010-NMSC-035, ¶ 7 (“ [T]he party opposing the summary judgment motion must adduce evidence to justify a trial on the issues.” (quoting *Clough*, 108 N.M. at 803)). Although he claims as much, Defendant Lindsey adduced no facts to support his view that the “Village’s website inherently advertises the Village.” Resp. at 2. As to Defendant Lindsey’s argument itself, the Court rejects it because it proves too much. The Section 13-1-98(V) exemption for purchases of advertising in all media plainly does not allow all government agencies in New Mexico to contract any professional services related to website design and functionality free from any application of the Procurement Code. Elsewhere, the Procurement Code treats internet-related purchases in some detail, exempting “purchases not exceeding ten thousand dollars (\$10,000) consisting of . . . web-based or electronic subscriptions.” NMSA 1978, § 13-1-98(J) (2023). If the Legislature intended to exempt from the Procurement Code *all* government purchases related to web-based subscriptions, website design, and website functionality, the Legislature would have expressly said so.

57. Instead, Defendant Lindsey presents a legal argument, relying on Ms. Siarza Moon’s affidavit that because a website “serves as the cornerstone of an advertising plan” and “as the foundation for any successful advertising strategy,” Section 13-1-98(V)’s reference to “advertising” exempts the Village’s purchase of Carristo’s services for upgrading the Village’s website and adding new features. Resp. at 2 (citing Aff. of Siarza Moon at ¶ 16). Once again, the Court concludes that Ms. Siarza Moon’s testimony is directed to the interpretation of Section 13-1-98(V) and does not raise an issue of material fact. To that end, the Court rejects the interpretation of Section 13-1-98(V) as exempting all services adjacent to the advertising

industry and instead reads Section 13-1-98(V) to exempt only the government's purchase of advertising placements in media outlets.

58. There is no genuine factual dispute regarding whether the deliverables in the March 18, 2024 contract with Carristo for website upgrades and new features included the purchase of any advertisement placement in any media outlet.

59. Accordingly, summary judgment is warranted on the Commission's claim for a declaratory judgment that Section 13-1-98(V) does not exempt from the Procurement Code expenditures of Village funds for upgrades to the functionality of any Village website.

VI. Conclusion

60. For the foregoing reasons, the Court concludes that Plaintiff State Ethics Commission's Motion for Partial Summary Judgment on Count I should be granted.

IT IS SO ORDERED.



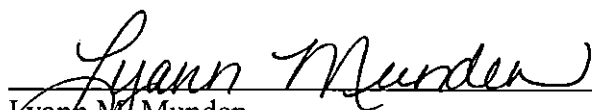
The Honorable Steven A. Romero
District Court Judge

CERTIFICATE OF SERVICE

I, the undersigned Employee of the Eighth Judicial District Court of New Mexico, do hereby CERTIFY that I submitted this Order to the parties of record on June 23, 2025

A true and correct copy was mailed to the following on the date of service:

All parties of record via File & Serve



Lyann M. Munden,
Trial Court Administrative Assistant to the
Honorable Steven A. Romero