

## **INDEPENDENT CONTRACTOR AGREEMENT – LOVE COMMUNICATIONS**

This agreement (the “Agreement”) is made and entered into as of the 1<sup>st</sup> day of July, 2024 (the “Effective Date”) between The Jackson County Tourism Development Authority (the “Authority”), an authority of Jackson County, North Carolina and having its principal offices at 98 Cope Creek Road, Suite D, Sylva, North Carolina, and Love Communications, LLC (SC), a Utah Limited Liability Corporation, doing business as Love Communications (the “Contractor” or “Consultant”) (collectively, the “Parties”).

WHEREAS, the Authority requests the Contractor to perform services for it and may request the Contractor to perform other services in the future; and

WHEREAS, the Authority and the Contractor desire to enter into an agreement, which will define respective rights and duties as to all services to be performed,

WHEREAS, the Contractor affirms that he or she understands all of the provisions contained in this Agreement, and in the case that he or she requires clarification as to one or more of the provisions contained herein, he or she has requested clarification or otherwise sought legal guidance,

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, the parties hereto agree as follows:

1.0 **Services.** Beginning on the Effective Date, and remaining in effect through June 30<sup>th</sup>, 2025, the Contractor shall provide the Authority with the following services, without limitation:

See the Scope of Work in the Love Communications Response to Jackson County RFP for SEM Services.pdf, identified as Exhibit “A” dated May 5, 2023 incorporated into this Agreement as if fully set forth herein, (“Scope of Work”).

2.0 **Contractor Representations and Warranties.** Beginning on the Effective Date, and remaining in effect for the duration of this Agreement, the Contractor makes the following representations and warranties.

2.1 That he or she is fully authorized and empowered to enter into this Agreement, and that his or her performance of the obligations under this Agreement will not violate any agreement between the Contractor and any other person, firm or organization or any law or governmental regulation.

2.2 That he or she is more than eighteen (18) years of age and not otherwise incapacitated at the time of the Agreement.

2.3 That he or she will notify the Authority of any change(s) to the Contractor’s schedule that could adversely affect the availability of the Contractor, whether known or unknown at the time of this Agreement, no later than three (3) weeks prior to such change(s). If the Contractor becomes aware of such change(s) within the three (3) week period, the Contractor shall promptly notify the Authority of such change(s) within a reasonable amount of time.

2.4 That he or she will bear all expenses incurred in the performance of this Agreement, excepting items contained as out of pocket expenses listed in 'Expenses' in the Scope of Work included as Exhibit "A".

**3.0 Authority Representations and Warranties.** Beginning on the Effective Date, and remaining in effect for the duration of this Agreement, the Authority makes the following representations and warranties.

3.1 That it is fully authorized and empowered to enter into this Agreement, and that its performance of the obligations under this Agreement will not violate any agreement between the Authority and any other person, firm or organization or any law or governmental regulation.

3.2 That it is in full compliance with any and all laws and/or statutes applicable to the services described hereunder.

**4.0 Compensation.** The work performed by the Contractor shall be performed at the rate set forth in Exhibit "A" and Exhibit "B" the Scope of Work and not exceed the total estimated amount specified in Exhibit "A" the Scope of Work. Contractor shall provide Authority with monthly reports showing each project worked on for the month and the time that each team member spent on each project.

**5.0 Independent Contractor Status.**

5.1 The Contractor is an independent contractor of Authority. Nothing contained in this Agreement shall be construed to create the relationship of employer and employee, principal and agent, partnership or joint venture, or any other fiduciary relationship.

5.2 The Contractor shall have no authority to act as agent for, or on behalf of, the Authority, or to represent the Authority, or bind the Authority in any manner.

5.3 The Contractor shall not be entitled to worker's compensation, retirement, insurance or other benefits afforded to employees of the Authority.

**6.0 Confidential Information.**

6.1 The Contractor and his or her employees shall not, during the time of rendering services to the Authority or thereafter, disclose to anyone other than authorized employees of the Authority (or persons designated by such duly authorized employees of the Authority) or use for the benefit of the Contractor and his or her employees or for any entity other than the Authority, any information of a confidential nature, including but not limited to, information relating to: any such materials or intellectual property; any of the Authority projects or programs; the technical, commercial or any other affairs of the Authority; or, any confidential information which the Authority has received from a third party.

**7.0 Intellectual Property.**

7.1 The Contractor represents that all content provided by the Contractor to the Authority, in furtherance of the services described hereunder, including, without limitation, images, videos and text, including any intellectual property, such as copyrights or trademarks (the "Content"), is owned solely and legally by the Contractor.

7.2 The Contractor grants the Authority a non-exclusive, transferable, sub-licensable, royalty-free, worldwide license to use any Content in connection with the services described hereunder.

7.3 Any materials developed by the Authority, making use of Content, remains the sole property of the Authority subject to all applicable laws and/or statutes.

7.4 During the course of performing under this Agreement, the Contractor and its directors, officers, employees, or other representatives may, independently or in conjunction with the Authority, develop information, produce work product, or achieve other results for the Authority in connection with the services it performs for the Authority under this Agreement. The contractor agrees that any such information, work product, and other results, systems and information developed by the Contractor and/or the Authority in connection with such services (hereinafter referred to collectively as the "Work Product") shall, to the extent permitted by law, be a "work made for hire" within the definition of Section 101 of the Copyright Act (17 U.S.C. § 101), and shall remain the sole and exclusive property of Authority. *Note that this provision shall have no effect on the status of the relationship between the Authority and the Contractor, as set out in Section 5 above.*

#### **8.0 Liability.**

8.1 The Authority shall not be responsible for any costs incurred by the Contractor, including, without limitation, any and all fees and expenses, such as those described in Section 2.4 above.

8.2 The Authority makes no guarantees regarding the physical and/or mental fitness of any Client. The Contractor shall perform the services set out in this Agreement at his or her own risk.

8.3 EXCEPT WITH RESPECT TO THE PARTIES' INDEMNIFICATION OBLIGATIONS, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES ARISING FROM OR RELATED TO THIS AGREEMENT, INCLUDING BODILY INJURY, DEATH, LOSS OF REVENUE, OR PROFITS OR OTHER BENEFITS, AND CLAIMS BY ANY THIRD PARTY, EVEN IF THE PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING WITHOUT LIMITATION TO BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, AND OTHER TORTS.

#### **9.0 Indemnification.**

10.1 The Contractor agrees to indemnify and hold harmless the Authority, its affiliates, and its respective officers, directors, agents and employees from any and all claims, demands, losses, causes of action, damage, lawsuits, judgments, including attorneys' fees and costs, arising out of, or relating to, the Contractor's services under this Agreement. This provision shall survive the duration of this Agreement.

10.2 The Contractor agrees to defend against any and all claims, demands, causes of action, lawsuits, and/or judgments arising out of, or relating to, the Contractor's services under this Agreement, unless expressly stated otherwise by the Authority, in writing.

#### **10.0 Duration, Scope and Severability.**

10.1 This Agreement shall take effect on the effective date, July 1<sup>st</sup>, 2023, and shall remain in full force and effect for one year, ending on June 30<sup>th</sup>, 2024 or until terminated pursuant to this Section 10 of this Agreement.

10.2 The Authority may terminate this Agreement for any reason upon ninety (90) days notice to the Contractor. Either party may terminate this Agreement for cause within 48 hours upon notice to the breaching party.

10.3 This Agreement, and any accompanying appendices, duplicates, or copies, constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement, and supersedes all prior negotiations, agreements, representations, and understandings of any kind, whether written or oral, between the Parties, preceding the date of this Agreement.

10.4 This Agreement may be amended only by written agreement duly executed by an authorized representative of each party.

10.5 If any provision or provisions of this Agreement shall be held unenforceable for any reason, then such provision shall be modified to reflect the parties' intention. All remaining provisions of this Agreement shall remain in full force and effect for the duration of this Agreement.

10.6 No modifications to this Agreement shall be binding upon the Authority without the express, written consent of the Authority.

10.7 This Agreement shall not be assigned by either party without the express consent of the other party.

10.8 If the Scope of Work, Exhibit "A" or Exhibit "B" conflicts with this Agreement, this Agreement shall control.

#### **11.0 Governing Law and Jurisdiction.**

11.1 This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina without reference to any principles of conflicts of laws, which might cause the application of the laws of another state. Any action instituted by either party arising out of this Agreement shall only be brought, tried and resolved in the applicable federal or state courts having jurisdiction in the State of North Carolina. EACH PARTY HEREBY CONSENTS TO THE EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF THE COURTS, STATE AND FEDERAL, HAVING JURISDICTION IN THE STATE OF North Carolina.

#### **12.0 Waiver of Rights.**

12.1 A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

12.2 The Authority shall not be responsible for federal, state and local taxes derived from the Contractor's net income or for the withholding and/or payment of any federal, state and local income and other payroll taxes, workers' compensation, disability benefits or other legal requirements applicable to the Contractor.

#### **13.0 E-Verify, Iran Divestment Act Certification, and Digital Signatures.**

13.1 E-Verify: Contractor shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, if Contractor utilizes a subcontractor, Contractor shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.

13.2 Iran Divestment Act Certification: As of the effective date of this contract, the Contractor is not listed on the Final Divestment List created by the State Treasurer pursuant to North Carolina General Statute § 147-86.58. The signatory below for the Contractor hereby certifies that he or she is authorized to make the foregoing statement.

13.3 Digital Copies: All parties agree that scanned, faxed, digital signatures, electronic signatures or e-mailed signatures by any or all of the parties to this Contract, shall be binding originals for all needed purposes including admissibility as evidence in any legal proceedings.

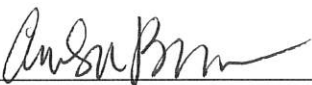
IN WITNESS WHEREOF, the Parties, intending to be legally bound, have each executed this agreement as of the Effective Date.

AUTHORITY:

\_\_\_\_\_  
Jackson County Tourism Development Authority  
Daniel Fletcher, Chair

\_\_\_\_\_  
Date

CONTRACTOR:

 Amber Banks  
Love Communications, L.L.C. (Utah) Managing Director

5/6/24  
\_\_\_\_\_  
Date

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
Signature of Finance Officer

\_\_\_\_\_  
Date



# Agreement

Client: Jackson County  
Date: April 22, 2024

## Budget Approval

### Jackson County | SEM Services Pricing Structure

Agreement: Timing: July 1, 2024- July 1, 2025

Love Communications will maintain a 15% commission of all SEM budget with no additional retainer fees or hard costs. With a \$188,600 annual budget as defined by Jackson County, Love will retain \$28,290 for services and fees and spend \$160,310 in ad placements.

Should Jackson County's annual budget change in upcoming fiscal years, Love will maintain a 15% commission unless otherwise negotiated and agreed upon by both parties.

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## Financial Breakdown

The following outline is an overview of the costs associated with the services:

Net Annual Spend on Advertising	\$160,310.00
Love Communications Commission (15%)	\$28,290.00
<b>Total Annual Budget</b>	<b>\$188,600.00</b>

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Signatures below approve this Letter of Agreement.

Client Representative

A handwritten signature in black ink, appearing to read "Andrew Farnsworth".

Date

04 / 22 / 2024

Agency Approval

Date