

## INDEPENDENT CONTRACTOR AGREEMENT

This **INDEPENDENT CONTRACTOR AGREEMENT** is hereby effective as of the 21st day of June 2022 (“Effective Date”) by and between **Grand County**, a political subdivision of the State of Utah, located at 125 E. Center Street, Moab, UT 84532 (the “County”) and Love Communications, a Utah corporation located at 546 S 200 W, Salt Lake City, UT (the “Contractor”).

### WITNESSETH

WHEREAS Contractor is willing to provide services to County as an Independent Contractor, and County is willing to accept services from and compensate Contractor for said services subject to this Agreement;

NOW THEREFORE, in consideration of the mutual promises and covenants set forth in this Agreement, County and Contractor agree as follows:

1. **SERVICES.** Contractor herewith agrees to perform the following services, as more particularly described in the Scope of Work attached hereto as *Exhibit A* (the “Services”):

Serve as the media agency of record for the County and support the execution of its goals to promote responsible recreation. Key needs include the development of marketing strategy, media planning, and media buying.

The Parties acknowledge that they may amend and modify the Services only through written Amendment, which shall be attached to this Agreement and incorporated herein upon mutual execution.

2. **PROJECT SCHEDULE.** Contractor shall complete the Services according to the schedule particularly described in the Project Timeline attached hereto as *Exhibit B* (the “Project Schedule”).

Contractor shall use commercially reasonable efforts to meet the Project Schedule, and the County agrees to cooperate in good faith to allow Contractor to meet the Project Schedule in a timely and professional manner. The Parties acknowledge that they may amend and modify the Project Schedule only through written Amendment, which shall be attached to this Agreement and incorporated herein upon mutual execution.

3. **TERM OF AGREEMENT.** Subject to Section 2, this Agreement shall begin on the Effective Date and shall expire on December 31, 2022.

a. **Opt-in Renewal.** County shall have the right to renew this Agreement prior to its expiration for 3 one-year terms upon mutual agreement of the parties (each an “Extended Term”). This Agreement cannot be renewed past December 31, 2025.

4. **PAYMENT.**

- a. Compensation. County shall pay Contractor, and Contractor shall accept from County, in full payment for the Services under this Agreement, the following compensation: ten percent (10%) commission on the total spending, up to the spending limit agreed to by the parties in writing. For 2022, the spending limit is set at \$300,000. Contractor shall invoice the County on the last day of each month for compensation commensurate to the amount of media buy during a given month, and the County shall pay Contractor within thirty (30) days of the County's approval of the same.
  - b. Media Buy Costs. Contractor shall pay vendors directly for ad placements or other media buy related costs. Contractor shall invoice the County on the last day of each month for the costs of ads placed during a given month, and the County shall pay Contractor within thirty (30) days of the County's approval of the same.
  - c. Non-appropriation. In the event that the County fails to budget and appropriate funds for the Services ("Non-appropriation") by January 1 of each year of the Term or Extended Term, then Non-appropriation shall be deemed to have occurred and the County shall not be obligated to make the payment otherwise required in this Section 5, and this Agreement shall terminate in accordance with Section 13.
5. **PROFESSIONAL LICENSES & COMPLIANCE WITH LAWS.** Contractor shall obtain and be responsible for all occupational and professional licenses and permits required to perform the Services prior to the commencement of the same. Further, Contractor shall comply with all federal, state, and local laws, ordinances and regulations governing the Services.
6. **CONTRACTOR, DEFINED.**
  - a. Independent Contractor. Contractor is and shall always be an independent contractor with respect to the Services performed hereunder. Contractor accepts full and exclusive liability for the payment of any and all premiums, contributions, or taxes for workers compensation, Social Security, unemployment benefits, or other employee benefits now and hereinafter imposed under any state or federal law which are measured as wages, salaries or other remuneration paid to persons employed by Contractors on work performed under the terms of this Agreement.
  - b. No Third-Party Beneficiary. Nothing contained in this Agreement, nor any act of the County or Contractor, shall be deemed or construed to create any third-party beneficiary or principal and agent association or relationship involving the County. The Contractor has no authority to take any action or execute any documents on behalf of the County.
  - c. Miscellaneous. As used herein, Contractor shall include all owners, members, shareholders, directors, officers, agents, employees, heirs, assigns, and subcontractors of Contractor. All Contractor's employees engaged hereunder shall

be at least 18 years of age. Further, the County reserves the right to remove employees of Contractor or Subcontractor engaged hereunder for substandard work, gross negligence or intentional disregard for county property, or drug or alcohol use.

- d. This Section shall survive expiration or termination of this Agreement.
7. **OWNERSHIP RIGHTS.** Contractor understands and agrees that the Work Product created by Contractor hereunder is for the sole and exclusive use of the County. Contractor further understands and agrees that the County shall be the sole and exclusive owner of all right, title, and interest in and to such Work Product. The County has the right to use or not use the Work Product and to use, reproduce, reuse, alter, modify, edit or change the Work Product as it sees fit and for any purpose. This Section shall survive expiration or termination of this Agreement.
  8. **CONFIDENTIALITY.** All designated confidential information disclosed by the County to the Contractor hereunder shall be kept confidential by Contractor. In such event, Contractor agrees to use all reasonable precautions to ensure that all such confidential information is properly protected and kept from unauthorized persons or disclosure. This Section shall survive expiration or termination of this Agreement.
  9. **REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to the County that Contractor is free to enter into this Agreement and that Contractor's performance hereunder shall not conflict with any other Agreements to which Contractor may be a party. Contractor further represents and warrants to the County that the Work Product is unique and original, is clear of claims or encumbrances, and does not infringe on the rights of any third parties. Contractor shall comply with all federal, state, and local laws, ordinances and regulations governing the Services. This Section shall survive expiration or termination of this Agreement.
10. **INSURANCE.**
    - a. General. Prior to Contractor's commencement of the Services and during the term of this Agreement, Contractor shall carry the following insurance with an insurance company duly admitted into the State of Utah which maintains an A.M. Best rating of "A-" or better:
      - i. *Commercial General Liability* with coverage not less than \$1 million each occurrence with a \$2 million combined single limit. Such insurance shall cover liability arising from premises, operations, independent contractors, product-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). There shall be no endorsement or modification of the Commercial General Liability form arising from

pollution, explosion, collapse, underground property damage, or work performed by Contractors;

- ii. *Professional Liability* with coverage of not less than \$1 million each claim and \$2 million aggregate;
- iii. Workers' Compensation and Employers' Liability Insurance with coverage of not less than \$1,000,000 for bodily injury caused by accident and \$1,000,000 for bodily injury by disease; and
- iv. *Business Auto Liability Insurance* with coverage of not less than \$1,000,000 for each accident.

b. Certificates of Insurance. Each Certificate of Insurance shall be attached hereto as *Exhibit C* and provide the following: a) designation of the County as an Additional Insured; and b) an endorsement for Waiver of Subrogation. Early cancellation or termination of the County's coverage hereunder shall constitute default.

c. Survival. This Section shall survive expiration or termination of this Agreement.

11. BREACH. As used herein, Breach shall mean any failure to by a party hereunder to perform any of its obligations under this Agreement, including but not limited to: Contractor's failure to commence or otherwise perform the Services in accordance with the provisions of this Contract, Contractor's failure to use an adequate amount or quality of personnel or equipment to complete the Services without delay, a party's adjudication as bankrupt, assignment of this Agreement for the benefit of its creditors, insolvency, or any party's failure to make prompt payments required hereunder, including Contractor's payments to its subcontractors, materialman, or laborers.

## 12. TERMINATION OF AGREEMENT.

a. By the County. In the event of Contractor's Breach hereunder or Non-appropriation pursuant to Section 5(c), the County may, after giving the Contractor three (3) days' written notice, terminate this Contract and take possession of the Services. Upon receipt of such notice, Contractor shall cease operations and terminate existing subcontractors and purchase orders to the extent directed in the notice and complete such portions of the Services and take all actions to mitigate any losses and damages arising from the termination, as specified in the notice. Upon termination pursuant to this Section, the Contractor shall be entitled to receive, as full and final compensation for the Services, the Contract Sum attributable to the Services properly performed prior to the effective date of termination to the extent not previously paid and reasonable and necessary termination expenses for demobilization (subject to the County's receipt of supporting documentation

acceptable to the County) and the ratable proportion of the Contractor's profit earned as of that date, provided, however, that the total amount paid to Contractor pursuant to this Section shall not exceed the Compensation.

- b. By the Contractor. Contractor shall have the right to terminate this Contract in the event the County has failed, without cause, to make payment required hereunder, or the Project has been suspended for more than one hundred twenty (120) days; however, provided that such suspension is not the result of acts of force majeure or acts or omissions of the Contractor.
  - c. Effect of Termination. In the event of termination under this Section, this Agreement (other than those Sections which survive termination, as stated herein), shall forthwith become wholly void and of no further force and effect; provided, however, that nothing herein shall relieve any party from liability for willful Breach of this Agreement.
13. **INDEMNIFICATION.** The Services performed by Contractor shall be at the risk of Contractor exclusively. Contractor herewith agrees to indemnify, defend, and hold the County, its officers, agents, officials and employees, harmless from any action, causes of action, claims for relief, demands, damages, expenses, costs, fees, taxes, or compensation, whether or not said actions, causes of action, claims for relief, demands, damages, costs, fees, expenses and/or compensations are known or unknown, are in law or equity, and without limitation, all claims of relief which can be set forth through a complaint or otherwise that may arise out of the acts or omissions, negligent or otherwise of the contractor, the County or their respective officers, officials, agents, or employees, or any person or persons. This Section shall survive expiration or termination of this Agreement.
14. **FORCE MAJEURE.** Neither party shall be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control ("Force Majeure"), including, without limitation, strikes; work stoppages; acts of war or terrorism; civil or military disturbances; nuclear or natural catastrophes or acts of God; global, state-wide or local pandemics; state-wide or local states of emergencies which cause travel or movement restrictions; and interruptions or malfunctions of utilities, communications or computer (software and hardware) services; provided, however, that each party shall use reasonable efforts consistent with accepted practices in their respective industries to resume performance as soon as practicable under the circumstances. This Section shall survive expiration or termination of this Agreement.
15. **ENTIRE AGREEMENT.** This Agreement together with its exhibits contains the complete Agreement concerning the contracted service arrangement between the parties and shall, as of the effective date hereof, supersede all other Agreements between the parties. The parties stipulate that neither of them has made any representations with respect to the subject matter of this Agreement or any representations including the execution and delivery of this Agreement except such representations as are specifically set forth in this Agreement and each of the parties acknowledges that they or it have relied on its own

judgment in entering into this Agreement. The Parties further acknowledge that any payments or representations that may have been made by either of them to the other prior to the date of executing this Agreement are of no effect and that neither of them has relied thereon in connection with their or its dealings with the other. The Contractor may subcontract out a portion of the work to another party only with the express written permission of Grand County. It is acknowledged that any Agreement between the Contractor and Subcontractor is not binding on Grand County.

16. **MODIFICATION OF AGREEMENT.** Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidenced by writing signed by each party or an authorized representative of each party.
17. **NO ASSIGNMENT.** This Agreement is not assignable without the written consent of the Parties.
18. **DISPUTES.** Should any disputes arise with respect to this Agreement, the Contractor and the County agrees to act immediately to resolve any such disputes. Time is of the essence in the resolution of disputes. The Contractor agrees that the existence of a dispute notwithstanding, it will continue without delay to carry out all its responsibilities under this Agreement in the accomplishment of all non-disputed work, any additional costs incurred by the Contractor or County as a result of such failure to proceed shall be borne by the Contractor; and the Contractor shall not make a claim against the County for such costs.

19. **CHOICE OF LAW.** It is the intention of the parties to this Agreement that this Agreement and the performance under this Agreement, and all suits and special proceedings under this Agreement, be construed in accordance with and under and pursuant to the laws of the State of Utah and that, in any action, administrative action, special proceeding or other proceeding that may be brought arising out of, in connection with, or by reason of this Agreement, the laws of the State of Utah shall be applicable and shall govern to the exclusion of the law of other forums. Any such action shall be brought in the 7<sup>th</sup> Judicial District, State of Utah, Grand County. This Section shall survive expiration or termination of this Agreement
20. **NO WAIVER.** The failure of either party to this Agreement to insist upon the performance of any of the terms and conditions of this Agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.
21. **SEVERABILITY.** The invalidity of any portion of this Agreement for any reason with not and shall not be deemed to affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the severing of the invalid provision.
22. **UNDERSTANDING AND EFFECT OF AGREEMENT.**
- a. Parties acknowledge that they have been advised to consult legal counsel and have had the opportunity to consult with legal counsel prior to entering into this Agreement.
  - b. Parties warrant that they enter into this Agreement with full knowledge of the meaning and future effect of the promises, releases and waivers contained herein.
  - c. Parties warrant that they have entered into the releases and waivers contained in this Agreement voluntarily and that they make them without any duress or undue influence of any nature by any person.
23. **PARAGRAPH HEADINGS.** The titles to the paragraphs of this Agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Agreement.
24. **ATTORNEYS' FEES AND COSTS.** In the event of dispute hereunder, the prevailing party, as determined by a court of competent jurisdiction, shall recover its attorneys' fees and costs incurred to enforce this Agreement.

25. DUTY OF NOTIFICATION. Upon filing for bankruptcy or insolvency proceeding by or against the Contractor, whether voluntary or involuntary, or upon appointment of a receiver, trustee, or assignee for the benefit of creditors, the Contractor shall immediately notify the County.

IN WITNESS WHEREOF, each party to this Agreement has caused it to be executed on the date indicated below.

\_\_\_\_\_  
Contractor's Signature      Printed Name of Contractor and Title      Date

\_\_\_\_\_  
County Signature      Chair, Grand County Commission      Date

ATTEST:

\_\_\_\_\_  
Grand County Clerk/Auditor      Date

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**Contact Information**

**Contractor's Contact Information**

Name: Jeremy Chase  
Title: VP, Business Development  
Address: 546 S 200 W SLC, UT 84101  
Phone: 801-865-1530  
Email: jchase@lovecomm.net

**County's Assigned Project Manager**

Name: August Granath  
Title: Economic Development Director  
Address: 84 N 100 E Moab, UT 8453  
Phone: 435-259-1340  
Email: agranath@grandcountyutah.net

## **Exhibit A Scope of Work**

Contractor herewith agrees to perform the Services as set forth in this Exhibit.

- 1) Marketing Strategy
  - a. The agency will assist the County with the development of an annual marketing strategy informed by County priorities, Travel Council Advisory Board (TCAB) advice, Co-op program criteria, and analysis of relevant market data; and
  - b. At the sole discretion of the County, the County Commissioners may modify and direct the marketing messaging to align with their priorities.
- 2) Media Planning
  - a. Develop an annual media plan based upon the previously described marketing strategy.
- 3) Media Buying
  - a. Buy media per the previously described media plan. Prioritize platforms that most effectively achieve our marketing strategy while negotiating the best possible placement and rates;
  - b. Ensure that all platforms and messaging adhere to the strategies set forth and authorized by the County.
  - c. Manage existing vendor relationships, including billing and contracting; and
  - d. Field requests from the sales representatives of potential new vendors.
- 4) Ongoing Management of Marketing Campaigns
  - a. Monitor key performance indicators (KPIs) of marketing campaigns throughout their duration;
  - b. Optimize media plan and media buying as necessary based upon insights from marketing campaign KPIs; and
  - c. Report final results of campaigns to County staff.

5) Client engagement

- a. Provide consistent communication to County staff as needed in order to accomplish the previously described tasks; and
- b. Attend Grand County Commission and TCAB meetings in order to accomplish the previously described tasks.

**EXHIBIT B**  
**Project Timeline and Cost Breakdown**  
(See following pages)

1. Develop a marketing strategy and media plan informed by County priorities, Travel Council Advisory Board (TCAB) advice, Utah Office of Tourism Co-operative Marketing Program (Co-op), and analysis of relevant market data with the following key deliverables:
  - a. Develop a strategy and media plan to support the County’s Round 2022 Co-op application by June 22, 2022.
  - b. Develop a strategy and media plan for the County’s “MidWest, & No. Utah Fly Markets to Moab” Round 2021 Co-op campaign by July 8, 2022.
  - c. Recommend a comprehensive 2023 marketing strategy and media plan that takes into account the previously mentioned co-op campaigns by December 31, 2022.
2. Buy media per the previously described media plan throughout the remainder of 2022.
3. Monitor key performance indicators of marketing campaigns throughout the remainder of 2022 and optimize media plan and media buying as necessary.
4. Provide a report to the County as to the impact of 2022 campaigns no later than December 31, 2022.

**EXHIBIT C**  
**Certificates of Insurance**