

**INDEPENDENT CONTRACTOR AGREEMENT**  
(Zoning Administrator)

THIS INDEPENDENT CONTRACTOR AGREEMENT ("Agreement") is made and entered into on the 15<sup>th</sup> day of March, 2023, by between VIRGIN TOWN, a Utah municipal corporation ("the Town") and GENE GARATE, an individual ("Contractor"). Throughout this Agreement, the Town and Contractor may individually referred to as a "Party" and collectively as "the Parties".

AGREEMENT

IN CONSIDERATION OF the mutual covenants set forth below, the Town agrees to engage Contractor and Contractor agrees to work for the Town as set forth in this Agreement.

1. Appointment/Description of Duties/Terms of Employment:

a. *Appointment.* The Town, by and thru its governing body, the Virgin Town Council ("Town Council") consent to the Virgin Town Mayor's ("Mayor") appointment of Contractor as the Virgin Town Zoning Administrator.

b. *Engagement & Name of Position.* Accordingly, the Town hereby appoints and engages Contractor, and Contractor accepts said appointment and engagement from the Town in the capacity and position of Virgin Town Zoning Administrator.

c. *Essential Job Functions and Duties.* Contractor shall be responsible to perform a variety of duties and activities. Contractor's essential job functions and duties are set forth in Chapter 4, Section 4.A. of the Virgin Uniform Land Use ("VULU") Ordinances. Contractor's essential job functions and duties shall also include performing assignments and activities as directed by the Mayor and the Town Council.

d. *Duty of Loyalty and Best Efforts.* Contractor shall devote all of his working time, attention, knowledge, and skills to the Town's interests and shall do so in good faith, with best efforts, and to the reasonable satisfaction of the Town. Contractor understands that he shall only be entitled to compensation as set forth in this Agreement. The Contractor further acknowledges that he shall not engage in any activity that produces a "conflict of interest" with the activities of the Town unless agreed to in advance and in writing.

e. *Place and Hours of Employment.* Contractor agrees that his duties shall be primarily rendered outside of Town's offices or at such other places as the Town shall in good faith require. Contractor is expected to work at least twelve (12) hours per week, less vacation, or any other form of leave as described within this Agreement.

f. *Professional Licenses, Memberships & Certifications.* Contractor shall maintain any of those professional licenses, memberships and/or certifications necessary for the carrying out the functions and duties set forth in this Agreement.

2. Compensation Terms:

a. *Contract Rate.* Contractor shall be paid the "Contract Rate" of Thirty-Two Thousand Dollars (\$32,000.00) annually paid to Contractor on a bi-weekly basis at the same time and in the same means in which Town employees are paid.

b. *Exempt Status.* Contractor understands that at all times he is engaged as an independent contractor and is thus exempt from the right to be paid overtime wages. When required to work hours outside the scope of his contract services, Contractor may decline if the Contractor has a valid reason. Such refusal shall be accepted provided there is another Town employee or independent contractor on the shift when overtime is required who is prepared to work the overtime and has the ability to perform the work required.

c. *Expense Reimbursement.* Contractor shall be entitled to reimbursement of any or all expenses authorized or reasonably incurred in the performance of his functions and duties under this Agreement. In order to receive reimbursement, Contractor must timely provide the Town with an itemized account of all

expenditures, along with suitable receipts therefore. Any expenditure over the dollar amount of One Hundred Dollars (\$100.00) shall require prior written authorization from the Mayor and the Virgin Town Treasurer.

3. Benefits:

The Parties acknowledge and agree that presently the Town does not offer any sort of health insurance, disability insurance, retirement benefits or any other form of benefits, whether individually or via a cafeteria or flex benefit plan or arrangement. Contractor expressly acknowledges and waives any rights to claim the same during and after his engagement with Town unless at some point in time the Town provides such benefit to all full-time employees.

4. "At Will" Engagement:

Contractor engaged "At-Will" and reports to the Town Council. "[A]t will engagement" in the State of Utah is defined as allowing either Contractor or the Town to terminate the Agreement at any time, for any reason permitted by law, with or without cause and with or without notice. Accordingly, the Town Council may terminate Contractor's engagement at any time, with or without cause. Only if Contractor is terminated by the Town, without "Cause", as defined in Section 9.c. of this Agreement, shall Contractor be entitled to a Severance pursuant to Section 9.d., below.

5. Express Covenants of Contractor:

a. *Adherence to the Town's Policies, Procedures, Rules and Regulations.* Contractor agrees to adhere by all of the policies, procedures, rules and regulations set forth by the Town. To the extent that the Town's "Personnel Policies & Procedures Manual", rules and regulations conflict with the terms of this Agreement, the specific terms of this Agreement shall control.

b. *Covenant to Notify the Town of Unlawful Acts or Practices.* Contractor agrees to abide by the legal and ethics policies of the Town as well as the Town's other rules, regulations, policies and procedures (including, but not limited to the Town's "Personnel Policies & Procedures Manual"). Contractor shall comply in full with all governmental laws and regulations as well as any ethics code applicable to the Town and elected and appointed officials of the Town. In the event that Contractor is aware of the Town, or any of its elected or appointed officials, agents or employees, violating any such laws ethics codes, rules, regulations, policies or procedures, Contractor agrees to bring forth all such actual and suspected violations to the attention of the Town immediately so that the matter may be properly investigated and appropriate action taken. Contractor acknowledges that failure to do so could be grounds for immediate termination.

6. Property of the Town:

a. *Records and Accounts.* Contractor agrees that all documents, reports, credit cards, vehicles, computers, phones, equipment, electronic devices, keys and records and accounts maintained during the course of Contractor's engagement are the property of the Town, shall remain current and be maintained at the Town's offices.

b. *Return upon Termination.* Contractor agrees that upon termination he shall return to the Town all of the Town's property, including, but not limited to, records and accounts, credit cards, business documents, reports, equipment, vehicles, computers, phones, electronic devices, keys, passes, and security devices.

7. Indemnification For Third Party Claims:

Contractor hereby agrees to indemnify, defend, save, and hold harmless the Town from and against all claims, liabilities, causes of action, damages, judgments, attorney fees, court costs, and expenses which arise out of or are related to the Contractor's performance of this Agreement, Contractor's failure to perform job functions or duties as required by this Agreement, or result from conduct while engaging in any activity outside the scope of this Agreement and Contractor's engagement with the Town, before, during or after the termination of this Agreement. Contractor understands that this obligation of indemnification survives the expiration or termination of this Agreement. Likewise, the Town agrees to indemnify, defend and hold harmless Contractor from and against all claims, liabilities, causes of action, damages, judgments, attorney fees, court costs and expenses which arise out of

or are related to Contractor's reasonable and proper performance of his duties arising under this Agreement and within the scope of his engagement with the Town.

8. Mediation and Binding Arbitration:

The Town and Contractor agree to first mediate and may then submit to binding arbitration any claims that they may have against each other, of any nature whatsoever, other than those prohibited by law or for workers compensation, unemployment or disability benefits, pursuant to the rules prescribed by the Utah Uniform Arbitration Act (Utah Code Ann. § 78B-11-101 *et seq.*).

9. Termination of Appointment & Employment/Severance:

a. *Voluntary Resignation.* Contractor may terminate this Agreement and resign from the position of Zoning Administrator at any time upon giving the Town at least Sixty (60) calendar days advanced written notice of the effective date of this Agreement's termination. Promptly after the effective date of this Agreement's termination, the Town shall pay Contractor the Contract Rate and benefits accrued and owing under this Agreement. In the event of a voluntary termination by the Parties, Contractor shall not be entitled to a Severance as set forth in Section 9.c. below.

b. *Termination by Town Council.* The Town Council may, with or without cause or prior notice, terminate Contractor's appointment, engagement and this Agreement. Contractor shall be given a written notice of the termination of this Agreement by setting forth the grounds for such termination. If Contractor is terminated for cause, as defined in Section 9.c. below, the Town shall not be required to pay a Severance under this Agreement, and the Town shall have no other obligation to Contractor beyond the Base Contract Rate, Additional Compensation and benefits accrued as of Contractor's last day of work and those things the Town is obligated to provide under federal or state law.

c. *"Cause" Defined.* For purposes of this Agreement, the term "Cause" shall mean a fair and honest cause or reason for termination and include those set forth in Section VIII.3.A. of the Virgin Town Employee Policies & Procedures Manual.

d. *Termination Without Cause.* In the event the Town Council terminates Contractor's engagement and this Agreement without Cause, the Town shall pay Contractor a "Severance" the sum of eight (8) months of his Contract Rate. Severance shall be paid to Contractor in the same manner as other Town employees, unless otherwise agreed to by the Town and Contractor in writing.

10. Limitation of Damages:

Contractor agrees and stipulates that any remedies he may have for the breach of any obligation arising under this Agreement, whether under law or by way of contract, shall be limited to the Severance defined in Section 9.d., above. This limitation is inclusive of any claims for special damages, general damage, compensatory damage, loss of income, emotional damage, or punitive damages.

11. Attorney Fees and Costs:

Contractor and the Town agree that should any action be instituted by either Party against the other regarding the enforcement of the terms of this Agreement, the prevailing Party shall be entitled to all of its expenses related to such litigation including, but not limited to, reasonable attorney fees and costs, both before and after judgment.

12. Miscellaneous Provisions:

a. *Notices.* Contractor agrees that any notices that are required to be given under this Agreement shall be given in writing, sent by certified mail, return receipt requested, to the offices of the the Town or residence of the Contractor as set forth herein.

b. *Entire Agreement.* This Agreement represents the complete and exclusive statement of the independent contractor agreement between the Town and Contractor. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by the Parties concerning the independent contractor arrangement between the Parties.

- c. *The Effect of Prior Agreements or Understandings.* This Agreement supersedes any and all prior Agreements or understandings between the parties, including letters of intent or understanding, except for those documents specifically referred to within this Agreement.
- d. *Modifications.* Contractor and the Town agree that this writing constitutes the entirety of the Employment Agreement between the parties. Any modifications to this Agreement may only be done in writing and must be signed by the Mayor.
- e. *Severability of Agreement.* To the extent that any provision hereof is deemed unenforceable, all remaining provisions of this Agreement shall not be affected thereby and shall remain in full force and effect.
- f. *Waiver of Breach.* The waiver by the Town of a breach of any provision of this Agreement by Contractor shall not operate as a waiver of any subsequent breach by the Contractor. No waiver shall be valid unless placed in writing and signed by the Mayor.
- g. *Ambiguities Related to Drafting.* The Town and Contractor agree that any ambiguity created by this document shall not be construed against the drafter of same.
- h. *Choice of Law, Jurisdiction and Venue.* Contractor agrees that this Agreement shall be interpreted and construed in accordance with the laws of the State of Utah and that should any claims be brought against the Town related to terms or conditions of his engagement it shall be brought within a court of competent jurisdiction within Washington County, Utah. Contractor also consents to jurisdiction of any claims by the Town related to the terms or conditions of his engagement by a court of competent jurisdiction within Washington County, Utah.
- i. *Submission to Drug Testing.* Contractor agrees and understands that it is the policy of the Town to maintain a drug-free workplace. Contractor understands that the Town has the right, upon reasonable suspicion, to demand that Contractor immediately undergo testing for the presence of illegal or inappropriate drug usage.
- j. *Statute of Limitations.* Contractor has a ninety (90) day statute of limitation for the filing of any requests for mediation, or arbitration, or for any lawsuit related to this Agreement or the terms and conditions of his engagement. If said claim is filed more than one year subsequent to Contractor's last day of work it is precluded by this provision, regardless of whether the claim had accrued at that time or not.
- k. *Attorney Review.* Contractor warrants and represents that Contractor in executing his Agreement has had the opportunity to rely on legal advice from an attorney of Contractor's choice, so that the terms of this Agreement and their consequences could have been fully read and explained to Contractor by an attorney and that Contractor fully understands the terms of this Agreement.

(Signature Page to Follow)

SO EXECUTED effective that date first set forth above.

**TOWN:**

VIRGIN TOWN  
a Utah municipal corporation

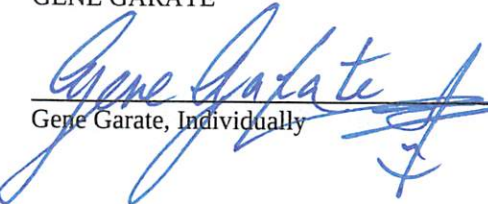
Attest:

  
\_\_\_\_\_  
Jean Krause, Mayor Date

\_\_\_\_\_  
Krystal Percival, Town Clerk/Recorder

**CONTRACTOR:**

GENE GARATE

  
\_\_\_\_\_  
Gene Garate, Individually Date

3/14/23