

DAHL MEMORIAL CLINIC EXECUTIVE DIRECTOR EMPLOYMENT AGREEMENT

This Employment Agreement, dated December 17, 2021 is between Tremaine Consulting Group (Tremaine) and the Dahl Memorial Clinic, a division of the Municipality of Skagway, Alaska (“Clinic”). The Municipality of Skagway may be referenced in this Agreement as the “Municipality” or the “Borough,” with each meaning the same governmental entity.

WHEREAS, the Clinic is willing to employ Tremaine to serve as a Clinic Executive Director at the Clinic; and

WHEREAS, Tremaine wishes to be employed by the Clinic, subject to the terms and conditions of this Agreement. This Agreement replaces all other existing written or oral Agreements.

NOW, THEREFORE, the parties agree as follows:

1) EMPLOYMENT

- A. The Clinic extends this offer of employment to Tremaine as Clinic Executive Director.
- B. Tremaine shall perform the duties and responsibilities listed in this Agreement and in the Job Description, which is attached hereto and made a part hereof, and such other duties and responsibilities as may be assigned to Tremaine from time to time by the Clinic Board or the Borough Manager.
- C. Tremaine shall be subject to the direction of the Clinic Board and Borough Manager in the performance of duties of the Clinic Executive Director.
- D. Tremaine shall devote sufficient time and effort to the proper performance of Executive Director duties and responsibilities under this Agreement. Tremaine may have some flexibility with hours but expected hours of work are to be 40 hours per week documented routine absences excepted. Due to specific deadlines Tremaine may be expected to work in excess of 40 hours per week and is permitted flexibility to adjust their hours and schedule and work less than 40 hours per week when duties and responsibilities allow.
- E. Tremaine shall conscientiously, diligently, in good faith, and to the best of Tremaine’s ability, experience and talents perform all the duties and responsibilities required of the Executive Director pursuant to the express terms in this Agreement to the reasonable satisfaction of the Clinic and the Borough Assembly. Tremaine further agrees to faithfully observe the terms of this Agreement. Tremaine shall work cooperatively with the Borough Manager and the Borough Assembly.
- F. Tremaine shall comply with the Equal Employment Opportunity Policy, the Policy against Harassment, the Employee Conduct policy, and the Drug Free Workplace Notification Policy set out in the Municipality of Skagway Personnel Policy Manual.
- G. Tremaine agrees to comply with and adhere to all HIPAA laws and regulations and all other federal and state laws related to patient confidentiality and the confidentiality of patient records, treatment and information and will comply with all DMC policies and procedures regarding release of information.
- H. Tremaine agrees to comply with all federal, state and local laws, regulations, mandates, resolutions and health protocols related to COVID-19 as long those directives and procedures remain in effect;

- I. Tremaine agrees to cooperate with the Clinic to maximize the health protective measures instituted by the Clinic and will comply with all protocols and policies established by the Clinic or the Municipality related to COVID-19;

2) **TERMS**

- A. Term of this Agreement shall commence on January 3, 2022 through April 2, 2022 (hereinafter the “Expiration Date”). If an Executive Director is hired within this term, this contract shall terminate. This Agreement shall terminate automatically at the end of the contract term unless the parties agree in writing to extend the Agreement for one or more additional one-year terms. Notwithstanding this provision, this Agreement may be terminated as provided in Article 4 of this Agreement.
- B. Tremaine understands that no Assembly member, Municipal employee, Clinic Board member, or Clinic employee or consultant has any actual or apparent authority or authorization to make any oral promises or guarantees to the Executive Director, nor any actual or apparent authority or authorization to modify this agreement in any respect, nor any actual or apparent authority to extend this agreement orally. Tremaine acknowledges and understands that only the Assembly, after approval by the Clinic Board, is authorized to approve this agreement or to authorize any extension of this Agreement.

3) **BENEFITS**

- A. Provider will receive a \$4,000.00 (Four Thousand & no/100 Dollars) relocation advance for certain expenditures incurred during the relocation process. All itemized receipts for proof of expenses along with any unspent funds must be submitted to the Municipality within 30 days of the first day of Municipal employment. Provider will not be paid for any expenses without proof of payment in the form of itemized receipts. Provider shall refund to the clinic all of the funds advanced by the Clinic for which Provider does not have itemized receipts within 60 days of provider beginning employment.
- B. Provider shall repay the Municipality a pro-rated amount of the \$4,000 relocation advance if they voluntarily end their service with the Municipality of Skagway in less than 18 months of their start date. The pro-rated daily dollar amount to cover any reimbursement to the Municipality shall be determined upon receipt of itemized receipts submitted by Provider and proof of actual expenses. The pro-rated dollar amount shall be considered 33.33% of the \$4,000 relocation advance per month.
- C. Housing will be provided.

4) **TERMINATION**

- A. This Agreement shall run for the Term unless terminated earlier as provided herein.
- B. Automatic Termination. This Agreement shall terminate automatically upon the occurrence of any of the following events:
 1. Death of Tremaine;
 2. The Borough ceases to operate the Clinic, either due to lack of funding, or in the event the Borough transfers the ownership or operation of the Clinic to another entity.
- C. Termination for Cause

1. If Tremaine commits a material breach of any of the terms or conditions of this Agreement and fails to correct such breach within ten (10) days after written notice from the Clinic Board or Borough Manager, the Municipality may, at its own option, terminate this Agreement for cause immediately, or at any designated future time provided that the breach still exists, by delivering to Tremaine, a written notice of termination, which may be made effective immediately.
2. Mental or physical disability of Tremaine that renders Tremaine unable to effectively perform their responsibilities under this Agreement for more than ninety (90) continuous days in a twelve (12) month period.
3. The Clinic Board or Borough Manager, with approval of the Assembly, may terminate this Agreement immediately for cause in the event of any breach of confidentiality by Tremaine or any violation of HIPAA laws and regulations.

D. Other Termination

1. This Agreement may be terminated at any time upon the mutual consent of the parties.
 2. Employment of Tremaine is as an “At Will” contract employee with the Clinic, and the Clinic Board of Directors, with approval of the Borough Assembly, or the Borough Assembly may terminate this Agreement anytime without cause.
 3. This Agreement may be terminated by either party by giving written notice of not less than ninety (30) days.
- E. All obligations of the Clinic under this Agreement shall terminate immediately upon termination of this Agreement.
- F. Tremaine hereby expressly agrees and understands that Tremaine’s obligations not to disclose confidential information, as set forth in Article VII of this Agreement shall continue in full force and effect, notwithstanding termination of this Agreement.

5) EVALUATIONS

- A. Job Performance Evaluations will be conducted by the Clinic Board and the Borough Manager on an annual basis.
- B. The Clinic Board will provide to the Borough Manager copies of the Board’s annual evaluation along with a recommendation to extend or not extend further contract terms to Tremaine.

6) COMPENSATION

- A. Hourly: The Municipality shall pay and Tremaine shall accept in payment for Tremaine services hereunder, compensation at a rate of \$115.00 per hour, payable in equal bi-monthly installments on the Municipality’s regular paydays.
- B. Fair Labor Standards Act: Tremaine acknowledges that the Executive Director position is exempt from overtime requirements. Tremaine understands and agrees that she is exempt under Fair Labor Standards Act (FLSA) and that she is not entitled to any overtime in such circumstances. The provisions of the Alaska Wage and Hour Act, 23.10.010 et seq., do not apply to the employment of this position. AS 23.10.060(d)(12).

7) CONFIDENTIALITY

- A. Unless required to do so by law, Tremaine shall not either directly or indirectly divulge, disclose or communicate in any manner whatsoever to any person not employed or affiliated

with the Clinic any confidential or proprietary information concerning any matters affecting or relating to the business or operations of future plans of the Clinic or the Borough, and any confidential records regarding patient information, quality assurance, risk management and peer review activities. This prohibition extends to, but is not limited to, divulging such information for the purpose of acting as an expert witness, reviewer, or consultant on behalf of a plaintiff or an attorney acting on behalf of a plaintiff, in a claim or action against the Clinic or the Borough. The parties stipulate that, as between them, such matters are important, material and confidential, and gravely affect the effective and successful conduct of the business of the Clinic and the goodwill each maintains, and that any breach of the terms of this section shall be a material breach of this Agreement.

- B. This confidentiality provision shall survive the termination of this Agreement, regardless of cause. The existence of any claim or cause of action against the Clinic by Tremaine whether predicated on this Agreement or otherwise, shall not constitute a defense to enforcement of this provision.

8) RETURN OF CLINIC OR MUNICIPALITY PROPERTY

- A. Upon termination of this Agreement for any reason whatsoever, Tremaine shall return to the Clinic all books, records, lists and other written, typed or printed materials, whether furnished by the Clinic or prepared by Tremaine, which contains any information related to the Clinic and its business, activities, or existing or prospective customers or clients, and Tremaine shall neither make nor retain any copies of such materials after termination of this Agreement without the prior written consent of the Borough Manager.
- B. Upon termination of this Agreement for any reason whatsoever, Tremaine shall immediately turn over to the Borough Manager any laptop, iPad, cell phone, or any other similar electronic device provided to them for use in their employment, and shall not delete or remove any content from any such electronic device before returning it to the Borough Manager;
- C. Upon termination of this Agreement for any reason whatsoever, Tremaine shall immediately turn over to the Borough Manager any and all keys to the Clinic.

9) NO OWNERSHIP INTEREST

Tremaine acknowledges that their employment does not confer upon them any ownership interest in or personal claim to Clinic's business, including patients, medical charts or records, x-rays, nor any ownership interest or right to any laptop, iPad, cell phone or any other similar electronic device. Tremaine expressly agrees that the compensation and benefits received or payable to Tremaine is all the compensation due the Tremaine with respect to Tremaine services.

10) REMEDY FOR BREACH

The parties recognize that the services to be rendered by Tremaine hereunder will of necessity provide Tremaine with specialized knowledge of the Clinic and that the Clinic will be irreparably harmed in the event Tremaine were to use Tremaine's special skill, knowledge and talents and Tremaine's knowledge of the Clinic or the Borough, in competition with the Clinic, in violation of this Agreement. In such event, the Clinic and the Municipality, without limitation as to other remedies that may be available, shall be entitled to institute and prosecute proceedings in law or in equity to enforce the specific performance by Tremaine or to enjoin Tremaine from breaching the provisions in the Agreement.

11) ASSIGNMENT

The services to be provided hereunder constitute personal services and therefore this Agreement shall not be assignable nor assigned whether individually or by operation of law by Tremaine. The Municipality may assign the Agreement in the event the Municipality transfers ownership or operation or management of the Clinic to a private entity.

12) COOPERATION REGARDING CLAIMS AND LITIGATION

Tremaine shall fully cooperate in assisting the Clinic and the Borough and its duly authorized agents, representative, and attorneys, in investigating, defending or prosecuting incidents involving potential claims or lawsuits arising out of or in connection with the services provided under this Agreement. This paragraph shall be without prejudice to the prosecution of any claims which the Clinic may have against Tremaine and shall not require cooperation in the event of such claims.

13) AGENCY

Tremaine has no actual or apparent authority to impose or bind the Clinic or the Municipality to any obligation, duty, or act without the prior written consent of the Municipality.

14) GOVERNING LAW

This Agreement has been negotiated and executed in the State of Alaska, and the laws of Alaska shall govern its construction and interpretation. The Superior Court for the State of Alaska, First Judicial District at Juneau, Alaska, shall be the exclusive jurisdiction and venue for any action of any kind and any nature arising out of or related to this Agreement or arising out of or related to the performance or non-performance of this Agreement. Tremaine agrees that trial in any such action shall be in Skagway, Alaska. Tremaine specifically waives any right or opportunity to request a change of venue for trial pursuant to A.S. 22.10.040.

15) SEVERABILITY

Should any provision(s) of this Agreement be held invalid, unlawful or unenforceable, the validity of any other provision(s) of this Agreement or the Agreement as a whole shall not be affected.

16) ENTIRE AGREEMENT: AMENDMENT

- A. This Agreement contains the final and entire agreement between the parties, and they shall not be bound by any terms, conditions, statements or representations, oral or written, not herein contained, or contained in a written amendment of this Agreement executed by the parties hereto. This Agreement may be amended only by written agreement executed by the parties. This Agreement supersedes any and all previous and existing agreements.
- B. Any amendment to this Agreement must be in writing and signed by both parties to be effective. Tremaine understands and agrees that no Borough employee, nor the Mayor nor any individual member of the Assembly, nor any member of the Clinic Board, has any authority to make any promises to Tremaine, nor any actual or apparent authority to modify or alter the terms and conditions of this Agreement.

17) HEADINGS

Headings used in this Agreement are solely for the convenience of the parties and shall be given no effect in the construction or interpretation of this Agreement.

18) WAIVER

No waiver of any breach shall be valid or binding unless approved in writing by the nonbreaching party. Forbearance or indulgence by the nonbreaching party shall not constitute a waiver of the covenant or condition to be performed by the breaching party or of any remedy available to the nonbreaching party. No waiver of any breach of this Agreement shall constitute or be deemed a waiver of any other or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative to every other remedy provided hereby or at law.

19) CHANGES IN LAW

In the event there are changes to or clarification of federal, state or local statutes, regulations or rules, or any Rules and Regulations which would materially affect the operation of the Clinic, including but not limited to confidentiality, third party reimbursement or the status of the Clinic under federal law, the parties agree to fulfill their obligations under this Agreement in accordance with the changes in law, regulations, rules, and by-laws.

20) MEDIATION

As a condition precedent to filing any action in court with respect to any dispute arising out of or relating to this Agreement or arising out of or relating to Tremaine's employment with the Borough, Tremaine agrees to submit that dispute to mediation with a professional mediator mutually agreed to by Tremaine and the Borough, and Tremaine agrees to make a good faith effort to resolve the dispute in mediation

21) ACKNOWLEDGEMENT OF REPRESENTATION:

Tremaine acknowledges that she has had a full opportunity to consult with attorneys of their choice before signing this Agreement. Tremaine acknowledges that she is not relying on any statements or representations made by the Clinic Board President or any Clinic Board members or any employees, representatives, officers, consultants, the Mayor, or Assembly members of the Borough in entering this agreement, and she further acknowledges that she has not received and is not relying on any legal advice or representations by the Borough attorneys.

22) NOTICES

Notices pursuant to this Agreement shall be given by personal delivery or by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

Borough Manager:
Brad Ryan
Municipality of Skagway
PO Box 415 Skagway, Alaska 99840

Executive Director:
Tremaine Consulting Group
1958 Kinvarra Way, Redding, CA 96001

Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service

Tremaine acknowledges that she signs this Employment Agreement on the date shown below, with the understanding that she has read the Personnel Manual and agrees to perform their job duties and responsibilities, as outlined in the attached job description.

IN WITNESS WHEREOF, the Clinic and Tremaine have caused this Agreement to be executed in their respective behalf as of the date first above written.

Andrew Cremata, Mayor

Eileen Lisa Tremaine, M.P.A.
for Tremaine Consulting Group

Date:

Date:

ATTEST:

Steve Burnham Jr., Borough Clerk

(Seal)