

**DAHL MEMORIAL CLINIC EXECUTIVE DIRECTOR EMPLOYMENT AGREEMENT**

This Employment Agreement dated \_\_\_\_\_ is between Albert Wall (“WALL”) and the Municipality of Skagway, for employment as the Executive Director of 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 Municipality is willing to employ WALL to serve as a Clinic Executive Director at the Clinic; and

WHEREAS, WALL wishes to be employed by the Municipality, 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 Municipality, with approval of the Clinic Board, extends this offer of employment to WALL as Clinic Executive Director.
- B. WALL shall perform the duties and responsibilities listed in this Agreement and in the Job Description, which is attached to this Agreement and incorporated into the Agreement, and such other duties and responsibilities as may be assigned to WALL from time to time by the Clinic Board or the Borough Manager.
- C. WALL shall be subject to the direction of the Clinic Board and Borough Manager in the performance of duties of the Clinic Executive Director.
- D. WALL shall devote sufficient time and effort to the proper performance of Executive Director duties and responsibilities under this Agreement. WALL may have some flexibility with hours, but the expected hours of work are 50 hours per week, documented routine absences excepted. Due to specific deadlines or Clinic needs, WALL may be expected to work in excess of 40 hours per week and is permitted flexibility to adjust his hours and schedule and work less than 40 hours per week when duties and responsibilities allow.
- E. WALL shall conscientiously, diligently, in good faith, and to the best of WALL’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. WALL further agrees to faithfully observe the terms of this Agreement. WALL shall work cooperatively with the Borough Manager, the Clinic Board, and the Borough Assembly.
- F. WALL 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.

**2) TERMS**

- A. Term of this Agreement is December 1, 2023, through November 30, 2025 (hereinafter the “Expiration Date”). 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 two-year terms. Notwithstanding this provision, this Agreement may be terminated as

provided in Article III of this Agreement. WALL understands that an extension or a new contract may include other or different terms as may be mutually agreed upon.

- B. WALL 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. WALL acknowledges and understands that only the Assembly is authorized to approve this agreement. This agreement may only be modified, amended, or changed as allowed by municipal code.

### 3) **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 WALL;
  - 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 a private entity or other public entity.
- C. **Termination for Cause**
  - 1. If WALL 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 WALL, a written notice of termination, which may be made effective immediately.
  - 2. Mental or physical disability of WALL that renders WALL unable to effectively perform his 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 WALL 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. WALL agrees that upon his agreement to a mutual consent termination pursuant to this section, he knowingly and voluntarily waives any claim of wrongful termination or retaliation or constructive termination.
  - 2. Employment of WALL 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 (90) days.
- E. If the Borough Assembly terminates WALL’s employment with cause, or if WALL terminates his employment, then WALL shall receive no severance pay.
- F. In the event that the Borough Assembly terminates WALL’s employment pursuant to Section 3(D) above, the Borough shall pay WALL severance pay of two months’ salary.

- G. All obligations of the Clinic under this Agreement shall terminate immediately upon termination of this Agreement.
- H. WALL hereby expressly agrees and understands that WALL's obligations not to disclose confidential information, as set forth in Article 7 of this Agreement, shall continue in full force and effect, notwithstanding termination of this Agreement.

**4) EVALUATIONS**

- A. Job Performance Evaluations may be conducted by the Clinic Board and the Borough Manager on an annual basis, or at other times as determined by the Clinic Board.
- B. The Clinic Board will provide to the Borough Manager copies of the Board's evaluation along with a recommendation to extend or not extend the contract to WALL.

**5) COMPENSATION**

- A. Salary: The Municipality shall pay, and WALL shall accept in payment for WALL services hereunder, compensation at a rate of \$160,000 (One Hundred and Sixty Thousand Dollars and 00/100) per year, payable in equal semi-monthly installments on the Municipality's regular paydays.
- B. Fair Labor Standards Act: WALL acknowledges that the Executive Director position is exempt from overtime requirements. WALL understands and agrees that he is exempt under Fair Labor Standards Act (FLSA) and that he 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. AS23.10.060(d)(12).

**6) BENEFITS**

- A. WALL shall not be entitled to the benefits of full-time Municipal employees, except as specified in this agreement. WALL understands and acknowledges that he is a direct contract employee as specified in the Municipality of Skagway Personnel Policy Manual.
- B. Municipal Benefits Provided. WALL shall be entitled to the following Municipal Benefits: Medical/Dental Insurance including HRA plan, Life Insurance, Public Employee's Retirement System (PERS), Optional 457 Retirement Plan, and Optional Flexible Spending Plan for pre-tax medical spending deductions. These benefits are subject to change upon direction of the Skagway Borough Assembly and shall be equivalent to but not greater than those benefits provided to regular full-time Municipal employees.
- C. Vacation Time. WALL shall accrue vacation leave at the rate of 10 hours per month for each full month worked for the term of the contract. At no time will it be allowed for WALL to take more than three (3) weeks of vacation leave at one continuous time. This shall apply for each year of the contract until the term of the contract expires.
  - 1. Unused vacation accrual time shall carry over to a new anniversary year during existing contract terms but shall not exceed two years (480 hours) of accrual time on the first day of the anniversary year. If WALL enters into a new contract, any unused vacation hours will carry forward into a new contract but may not exceed two years (480-hours) of accrual time. If WALL does not enter into a new contract, WALL will be paid for unused accrued vacation time based on total years of service with the Municipality of Skagway as follows:
    - One year of services - Actual unused accrued vacation hours not to exceed 120 hours.

- Two years of services – Actual unused accrued vacation hours not to exceed 240 hours.
  - Two to five years of services – Actual unused accrued vacation hours not to exceed 336 hours.
  - Five to ten years of services – Actual unused accrued vacation hours not to exceed 384 hours.
  - Ten or more years of services – Actual unused accrued vacation hours not to exceed 480 hours.
2. If the contract is terminated by either party before the expiration date of the contract, WALL will be paid for any unused accrued vacation time accumulated on a pro-rated month-to-month basis for time worked up to the point of the last day of work (10 hours vacation accrual per month) based on the years of service schedule listed above.
- D. Pet-friendly, temporary housing will be provided for the first six months of the contract, December 1, 2023, through May 31, 2024.
- E. Sick Leave: WALL shall accrue sick leave at the rate of 10 hours per month for each full month worked for the term of the contract, but accrual hours will at no time exceed 360 hours (45 days). Upon expiration or termination of the contract, WALL loses all rights to any accrued sick leave unless the separation is due to retirement. A retiring full-time employee shall receive a lump sum payment for their sick leave balance at the time of separation if the employee has worked at least 10 consecutive years for the Municipality. WALL will not be paid for any accrued sick leave upon termination of employment. Sick leave can be carried forward into a new contract or with an extension of an original contract.
1. WALL must notify the Borough Manager regarding the reasons for his absence. Sick leave will be allowed in the follow circumstances:
- a) Personal illness or physical incapacity.
  - b) Forced quarantine of WALL in accordance with State or Community Health Regulations.
  - c) Medical or Dental appointments.
  - d) Inpatient or outpatient treatment or counseling for mental or emotional problems, alcohol or drug abuse when the appointments conflict with regular work schedules.
  - e) Attend to family members if WALL's attendance is required due to illness or disability of a member of the Executive Director's immediate family. Immediate family members for purposes of this contract is defined as a spouse, parent, child, sibling, mother or father-in-law, grandparent or grandchild, or any person who is legally dependent upon the Executive Director.
  - f) Maternity Leave.
2. WALL may use accrued vacation leave if he has exhausted the accrued sick leave but must obtain approval from the Clinic Board and the Borough Manager and may be required to provide medical progress reports prior to approval of such leave.
- F. Family Leave: The Municipality of Skagway is a covered employer under the Family and Medical Leave Act (FMLA) and the Alaska Family Leave Act (AFLA). FMLA and AFLA are designed to help employees balance the demands of their jobs and the needs of their families. The Federal Family Medical Leave Act (FMLA) provides the following:
1. Up to 12 workweeks off from work to care for the employee or a family member with a serious health condition;

2. Up to 12 workweeks off from work to bond with a newborn, adopted or foster child;
3. The Municipality is obligated to maintain the employee's health insurance for the duration of the leave;
4. FMLA leave is job-protected leave; in most cases, an employee is restored to the same position he or he occupied prior to taking the leave.

G. Compassionate Leave

In the event of death in the employee's immediate family the Borough Manager will grant time off with pay, not to exceed five (5) working days.

H. Continuing Medical Education.

When educational leave/professional development time is deemed appropriate by WALL and the Clinic Board of Directors, the Clinic will pay the cost of registration, tuition and publications, transportation, lodging, and a per diem. WALL shall provide expense receipts to the Municipality by completing the Municipality expense form. The employee will receive compensation at their regular rate of pay while attending training sessions. Such time shall not be deemed vacation leave and shall be treated as such upon termination.

**7) CONFIDENTIALITY**

- A. Unless required to do so by law, WALL 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 WALL 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, WALL shall return to the Clinic all books, records, lists, and other written, typed or printed materials, whether furnished by the Clinic or prepared by WALL, which contains any information related to the Clinic and its business, activities, or existing or prospective customers or clients, and WALL 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, WALL shall immediately turn over to the Borough Manager any laptop, iPad, cell phone, or any other similar electronic device provided to him for use in his 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, WALL shall immediately turn over to the Borough Manager all keys to the Clinic.

**9) NO OWNERSHIP INTEREST**

WALL acknowledges that his employment does not confer upon him 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. WALL expressly agrees that the compensation and benefits received or payable to WALL is all the compensation due to WALL with respect to WALL's services.

**10) REMEDY FOR BREACH**

The parties recognize that the services to be rendered by WALL hereunder will of necessity provide WALL with specialized knowledge of the Clinic and that the Clinic will be irreparably harmed in the event WALL were to use WALL's special skill, knowledge, and talents and WALL'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 WALL or to enjoin WALL 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 WALL. The Municipality may assign the Agreement in the event the Municipality transfers ownership or operation or management of the Clinic to a private entity or another public entity.

**12) COOPERATION REGARDING CLAIMS AND LITIGATION**

WALL 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 WALL and shall not require cooperation in the event of such claims.

**13) AGENCY**

WALL 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. WALL agrees that trial in any such action shall be in Skagway, Alaska. WALL 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 Municipality and WALL , 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. This Agreement may be amended only by written agreement executed by the parties and as allowed by municipal code. 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. WALL 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 WALL, 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 WALL's employment with the Borough, WALL agrees to submit that dispute to mediation with a professional mediator mutually agreed to by WALL and the Borough, and WALL agrees to make a good faith effort to resolve the dispute in mediation.

**21) ACKNOWLEDGEMENT OF REPRESENTATION:**

WALL acknowledges that he has had a full opportunity to consult with attorneys of his choice before signing this Agreement. WALL acknowledges that he 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 he further acknowledges that he 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 Mayor:  
Sam Bass, Mayor  
Municipality of Skagway  
PO Box 415 Skagway, Alaska 99840

Executive Director:  
Albert Wall  
Post Office Box \_\_\_\_\_  
XXXXXX, Alaska XXXXX

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.

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

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

\_\_\_\_\_  
Sam Bass, Mayor

\_\_\_\_\_  
Albert E. Wall, Executive Director

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Date:

ATTEST MAYOR:

\_\_\_\_\_  
Steve Burnham, Jr., Borough Clerk

(Seal)