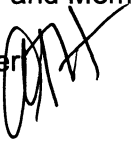


MIAMIBEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, FL 33139 www.miamibeachfl.gov

COMMISSION MEMORANDUM

TO: Honorable Mayor Dan Gelber and Members of the City Commission

FROM: Alina T. Hudak, City Manager 

DATE: October 27, 2021

SUBJECT: A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN EMPLOYMENT AGREEMENT BETWEEN THE CITY OF MIAMI BEACH AND CITY ATTORNEY RAFAEL A. PAZ, TO PROVIDE FOR THE TERMS AND CONDITIONS OF THE CITY ATTORNEY'S EMPLOYMENT, FOR A TERM OF UP TO FOUR (4) YEARS, COMMENCING AS OF OCTOBER 13, 2021, AND EXPIRING ON OCTOBER 12, 2025, UNLESS TERMINATED EARLIER BY EITHER PARTY IN ACCORDANCE WITH THE TERMS OF THE AGREEMENT.

Background/History

On October 13, 2021, the Mayor and City Commission appointed Rafael A. Paz as City Manager of the City of Miami Beach. At that meeting, the City Commission directed the City Attorney to meet with Commissioner Arriola, as Chair of the Finance and Economic Resiliency Committee ("Finance Committee"), to review the proposed terms of his employment agreement.

The proposed Employment Agreement is attached hereto as **Exhibit "A."**

The terms and conditions of the proposed Employment Agreement are summarized in the chart below, which includes a side-by-side comparison of the employment terms provided to City Attorney Raul J. Aguila, the most recent employment terms provided to the City Manager, as well as other comparable. As shown below, the proposed compensation and terms of employment for City Attorney Paz are consistent with the terms the City has provided to other Charter officers and is consistent with the compensation the City of Miami provides to its City Attorney.

On October 22, 2021, the City Attorney met with Commissioner Arriola, the Finance Committee Chair, to review the proposed terms, who has advised that the proposed terms are fair and commensurate with the responsibilities of the position of City Attorney.

The terms are summarized below:

	Raul Aguila Contract	Alina T. Hudak Contract	Paz's Proposed Terms
Term	Most recent extension was for term of 3 years and 10 months, through retirement date	Up to 4 years, terminable at any time and subject to annual evaluation	Up to 4 years, terminable at any time and subject to annual evaluation
Base Salary	\$324,418 (2021)	\$320,000* *Comparable to base salary for City Manager of City of Miami.	\$291,000* *Base salary for City Attorney of City of Miami is \$293,500. In addition, approximately 25 Assistant County Attorneys for Miami-Dade County earn a base salary at or above Paz's proposed salary (which is the standard 10% salary increase the City routinely provides to employees who are internally promoted).
457 Deferred Comp Plan	\$26,000 per year	\$26,000 , subject to annual increase as permitted by law	\$19,500 (subject to annual increase as permitted by law).* *Net additional amount is \$15,600, as Paz received a \$3,900 contribution to the 457 Plan as Chief Deputy City Attorney.

	Raul Aguila Contract	Alina T. Hudak Contract	Paz's Proposed Terms
			The 457 contribution for the other City Charter officers: City Clerk, \$25,000; Inspector Gen., \$26,000.
IRA contribution	\$7,000	\$7,000 , subject to automatic annual increase to maximum amount permitted by law	None* *Proposed amount is less than the \$7,000 annual amount received by all other City Charter officers
City Offered Insurance	City to pay premiums for Medical, Dental, Life Supplemental life, Short Term Disability, and Long Term Disability	City to pay premiums for Life, Supplemental life, Short Term Disability, Long-Term Disability, and Long Term Care City Manager will decline Medical/Dental coverage in FY2021. City Manager may elect to join City health plan during open enrollment each year, with City to pay premiums for City Manager/dependents	Similar to all other Charter officers. City to pay premiums for Medical and Dental (for Paz and eligible dependent), and life and supplemental life policy for Paz.
Annual leave	Same as general employees Cap of accrued leave at 650 hours	Same as general employees, plus accrual of 120 additional hours of annual leave per year Cap at 500 hours, same as general employees	Same as general employees. No additional leave requested.
Vehicle allowance	\$800 per month	\$800 per month	\$800 per month*

	Raul Aguila Contract	Alina T. Hudak Contract	Paz's Proposed Terms
			*Same as other City Charter officers, and same as currently provided to City Attorney for City of Miami.
Mobile phone allowance	\$2,600 annually	\$1,300 annually	\$1,300 annually* *Inspector General receives \$2,600 annually; City Clerk has elected to use a City-provided phone
Separation Benefits at Expiration of Agreement (i.e. non-renewal at end of 4- year term)	12 weeks	12 weeks Separation Payment, plus Medical and Dental for City Manager and dependents for one year (if CM elects to join plan). The Separation Payments will cease if the CM finds alternate employment during the 12 week period following her departure.	Similar to all other Charter officers: 12 weeks Separation Payment, plus Medical and Dental for City Attorney and eligible dependent(s) for one year. The Separation Payments will cease if Paz finds alternate employment during the 12 week period following departure.
Termination	May be terminated by the City Commission at any time, with or without cause	May be terminated by the City Commission at any time, with or without Cause.	May be terminated by the City Commission at any time, with or without Cause.

	Raul Aguila Contract	Alina T. Hudak Contract	Paz's Proposed Terms
Separation Payment if Termination Without Cause	20 weeks Separation Payment	20 weeks Separation Payment (the same severance provided to all other Charter officers), plus Medical and Dental for City Manager and dependents (if CM elects to join plan).	Similar to all other Charter officers: 20 weeks Separation Payment, plus Medical and Dental for City Attorney and eligible dependent(s).
Separation Payment if Termination for Cause	None	None	None
Termination by City Attorney	City Attorney may terminate upon 90 days prior written notice. No Separation Payment due if City Attorney elects to terminate.	If Manager terminates with 90 days' notice: 12 weeks Separation Payment, plus Medical and Dental for Manager and dependents for one year. If Manager terminates on less than 90 days' notice, no Separation Payment.	Similar to other Charter officers: If City Attorney terminates with 90 days' notice: 12 weeks Separation Payment, plus Medical and Dental for City Attorney and dependent(s) for one year. If City Attorney terminates on less than 90 days' notice, no Separation Payment.
Annual Evaluation/Goals	Annual Performance Evaluation (30 days after May 16 th)	Mandatory annual review, with agreed-upon goals and performance measures, and potential bonus up to 10% of base salary.	Mandatory annual review, with agreed-upon goals and performance measures. No bonus applicable.

In addition, consistent with City Manager Hudak's contract, the proposed Employment Agreement provides for a mandatory annual review of the City Attorney's performance, and

establishes a framework for assigning specific goals and priority objectives to the City Attorney, with the goals to be adopted as soon as possible in the next 60 days, in the same manner as structured for the City Manager's goals and objectives. Until such time as the City Commission and the City Attorney jointly establish such agreed-upon goals and priority objectives, Paz's immediate priorities shall focus upon (i) the City Attorney's key staffing and organizational plan, including filling of key vacancies with qualified, creative attorneys; (ii) piloting an e-contracts system for tracking and intake of contracts submitted to the City Attorney's Office for review; (iii) working with the Administration to identify areas where additional training of staff may be required, such as training on the City Charter, City Code and agenda process, and commencing such trainings; and (iv) any such other priorities as the City Commission may establish from time to time (i.e., with respect to litigation reporting and the City's municipal prosecution program).

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN EMPLOYMENT AGREEMENT BETWEEN THE CITY OF MIAMI BEACH AND CITY ATTORNEY RAFAEL A. PAZ, TO PROVIDE FOR THE TERMS AND CONDITIONS OF THE CITY ATTORNEY'S EMPLOYMENT, FOR A TERM OF UP TO FOUR (4) YEARS, COMMENCING AS OF OCTOBER 13, 2021, AND EXPIRING ON OCTOBER 12, 2025, UNLESS TERMINATED EARLIER BY EITHER PARTY IN ACCORDANCE WITH THE TERMS OF THE AGREEMENT.

WHEREAS, on August 30, 2021, City Attorney Raul J. Aguila submitted a letter to the Mayor and City Commission advising them of his intent for early retirement; and

WHEREAS, on September 9, 2021, following Mr. Aguila's early retirement notice, the City Commission initiated the selection process for a permanent City Attorney; and

WHEREAS, on October 13, 2021, the City Commission unanimously appointed the then Acting City Attorney Rafael Paz as the new City Attorney; and

WHEREAS, Mr. Paz served as Acting City Attorney from December 11, 2020 until April 21, 2021, during the period of time when City Attorney Raul J. Aguila served as the Interim City Manager until the term of a new City Manager commenced; and

WHEREAS, Mr. Paz then continued to serve as Acting City Attorney from April 27, 2021 until October 13, 2021, during the period of time City Attorney Raul Aguila was on an extended medical leave; and

WHEREAS, it is the desire of the City to provide certain benefits and to establish certain conditions of employment for Rafael Paz in his capacity as City Attorney; and

WHEREAS, Mr. Paz desires to accept the City Attorney position pursuant to the terms and conditions set forth in the attached Employment Agreement.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby approve and authorize the Mayor and City Clerk to execute the attached Employment Agreement between the City and Rafael A. Paz, engaging Mr. Paz as City Attorney for the City of Miami Beach.

PASSED and ADOPTED this _____ day of _____, 2021.

ATTEST:

Dan Gelber, Mayor

Rafael E. Granado, City Clerk

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

Deputy City Attorney

10/19/21

Date

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (the "Agreement") is entered into as of this 13th day of October, 2021, by and between **RAFAEL A. PAZ** ("Rafael Paz") and the **CITY OF MIAMI BEACH, FLORIDA** (the "City") (each, a "Party" and collectively, the "Parties").

WHEREAS, on October 13, 2021, the Mayor and City Commission appointed Acting City Attorney Rafael Paz as City Attorney of the City, effective immediately; and

WHEREAS, the City, acting by and through its City Commission, desires to employ Rafael Paz as its City Attorney on the terms and conditions set forth in this Agreement, and Rafael Paz desires to be employed as City Attorney on those same terms and conditions;

WHEREAS, on October 27, 2021, the Mayor and City Commission adopted Resolution No. 2021-_____, approving and authorizing the Mayor and City Clerk to execute this Agreement with Rafael Paz, for a term of up to four (4) years, commencing retroactively on October 13, 2021, and expiring on October 12, 2025; and

NOW, THEREFORE, the Parties agree as follows:

1. Recitations. The Parties agree that the recitations above are true and correct and are incorporated as if fully set forth here.

2. Employment. The City agrees to employ Rafael Paz as its City Attorney and Rafael Paz agrees to be so employed. Rafael Paz will devote his full working time to his duties as City Attorney and will not accept or perform any other employment, paid or unpaid, while he is employed as City Attorney, except as expressly set forth herein or expressly agreed to by the City Commission by Resolution and modification of this Agreement, according to its terms. Notwithstanding the foregoing, nothing in this Agreement shall prohibit Rafael Paz from occasional other work, such as teaching, writing, community activities, pro bono work, or civic or charitable activities as is appropriate to this position of City Attorney, provided, however, that such work shall not interfere with Rafael Paz's duties as City Attorney and shall not in any way reflect unfavorably on the City. Rafael Paz shall at all times apply his best efforts to the performance of his duties as City Attorney.

3. Employment At Will. Rafael Paz is employed at will and serves at the pleasure of the City Commission. This Agreement and Rafael Paz's employment may be terminated by the City Commission at any time and for any reason or for no reason, subject only to the express Termination provisions of this Agreement.

4. Duties. Rafael Paz will perform the duties of the office of City Attorney as set forth in the Charter of the City of Miami Beach, Florida, and in the Code of the City of Miami Beach, Florida, and all such duties customary and appropriate to this position of City Attorney and such other appropriate duties as may be assigned by the City Commission or its designee from time to time.

5. Effective Date. This Agreement shall become effective as of October 13, 2021 (the "Effective Date").

6. Term. Subject to the City Commission's annual review and evaluation of Rafael Paz, as provided in Section 7(d) below, the Agreement shall have a term of up to four (4) years,

commencing on October 13, 2021 (Commencement Date), and expiring at midnight, October 12, 2025, unless terminated earlier or renewed as set forth herein.

7. Compensation. Rafael Paz shall receive compensation for performing the duties of City Attorney as set forth in this Section 7. Nothing other than those items set forth in this Section 7 shall be considered or treated as compensation, wages, salary, earnings, or remuneration to Rafael Paz for any purpose whatsoever, including pension or for purposes of Section 448.08, Florida Statutes, or in arbitration.

a. Salary. The City shall pay Rafael Paz a salary annualized at \$291,000, to be earned and to accrue bi-weekly. This salary shall likewise be paid bi-weekly according to the usual payroll practices of the City applicable to unclassified general employees. Rafael Paz is a participant in the Section 457 deferred compensation plan (the Plan). Within fourteen (14) days following the execution of this Agreement, and thereafter on October 13th of each year during the Term of the Agreement, the City shall make a lump sum contribution on Rafael Paz's behalf into (i) the Plan, in the amount of \$19,500, according to the terms of the Plan and applicable laws, with such contribution subject to an automatic annual increase to the maximum amount permitted by applicable law. The City agrees to review the annual salary and/or other benefits of Rafael Paz at the time of evaluation of performance as provided in Section 7.d. and make adjustments as the City may determine. An annual salary review of Rafael Paz will be made every year within forty-five (45) days after October 13th of each year, or as soon as practicable thereafter, in accordance with the Agreement terms.

b. Insurance. The City shall pay the full amount of premiums for the City-offered group medical and group dental plan selected by Rafael Paz, for himself and his eligible dependents. The City will pay the full amount of premiums for the City-offered life insurance policy and supplemental life insurance policy for Rafael Paz. Rafael Paz may (or, if participation is mandatory, shall) participate in other City-offered insurance and benefits for which he is eligible on the terms applicable to unclassified general employees.

c. Leave. Rafael Paz will be eligible to accrue, use, and convert leave hours to the extent and on the terms applicable to unclassified general employees.

d. Performance Evaluation and Incentive. Rafael Paz's performance as City Attorney shall be evaluated by the City Commission at least once annually, within forty-five (45) days prior to or following the anniversary of the Commencement Date, or at any other time the City Commission may determine. Rafael Paz shall be responsible for notifying the City Commission that his annual performance review is due, and for placing the item on a City Commission meeting agenda within the time period specified herein. The annual performance evaluation of Rafael Paz as City Attorney shall occur without regard to whether any additional compensation is sought pursuant to this Agreement.

i. The annual review and evaluation of Rafael Paz shall be in accordance with the specific goals, priority objectives and initiatives the City Commission shall establish, in consultation with Rafael Paz, as being necessary for the proper operation of the City Attorney's Office and the achievement of the City Commission's policy objectives.

ii. The Parties anticipate that the performance priorities, goals and objectives for the City Attorney shall be adopted by the City Commission as soon as possible,

and not later than 60 days after the Commencement Date, and memorialized as an amendment to this Agreement. The City Attorney's immediate priorities and initial goals shall focus upon (i) the City Attorney's key staffing and organizational plan, including filling of key vacancies with qualified, creative attorneys; (ii) piloting an e-contracts system for tracking and intake of contracts submitted to the City Attorney's Office for review; (iii) working with the Administration to identify areas where additional training of staff may be required, such as training on the City Charter, City Code and agenda process, and commencing such trainings; and (iv) any such other priorities as the City Commission may establish from time to time (which are anticipated to include goals relating to regular litigation reporting and the City's municipal prosecution program).

8. Non-Compensation Expenses and Reimbursements. The City will pay for, reimburse, or otherwise provide for the items set forth in this Section 8. These items are paid for, reimbursed, or otherwise provided because they inure to the benefit of the City and do not constitute compensation, wages, salary, earnings, or remuneration to Rafael Paz for any purpose whatsoever, including pension or for purposes of Section 448.08, Florida Statutes, or in arbitration.

a. Vehicle. The City will pay to Rafael Paz a vehicle allowance in the amount of \$9,600.00 annually, paid in proportionate bi-weekly installments to reimburse him for the use of his personal vehicle for the benefit of the City.

b. Information and Communications Technology Expenses. The City will provide to Rafael Paz adequate and reasonable information and communications hardware, software, and services to support him in the performance of his duties as City Attorney.

c. Subscriptions, Memberships, and Fees. Paz may include, as an expense item in the budget of the Office of the City Attorney, an amount to be used to pay for such reasonable subscriptions, memberships, and fees and other similar costs, such as travel and lodging, as may be incurred for development and advancement related to, in support of, and inuring to the benefit of the City. No payment authorized hereunder may be made to an entity that illegally discriminates on the basis of any characteristics protected under the City's Human Rights Ordinance.

d. Mobile Telephone Allowance. The City will pay Paz a mobile telephone allowance in the amount of \$1,300 annually, paid in proportionate bi-weekly installments to reimburse him for the use of his personal mobile telephone for the benefit of the City.

9. Renewal and Non-Renewal. The City Commission may renew or extend the original term of this Agreement by resolution for succeeding periods as specified by the City Commission on the same terms and conditions as then set forth in this Agreement or on such modified terms and conditions to which it may agree with Rafael Paz. Should the City Commission not renew or extend the original or any succeeding term, this Agreement shall expire at the end of such original or succeeding term. Rafael Paz's employment shall simultaneously end with the expiration of the original or succeeding term or period. Should the City not renew this Agreement, it will either give Rafael Paz 90 days' notice of intent not to renew or, if no notice is given, the City shall, commencing upon the end of his employment, pay Rafael Paz an amount equivalent to 12 weeks of the salary amount set forth in Section 7.a. (the "Separation Payments"), along with all payments due for work performed through the date of termination and other payments due, if any,

upon termination on the same terms and conditions applicable to unclassified general employees and shall have no further liability to him whatsoever. The Separation Payments will be paid bi-weekly according to the City's usual payroll practices. In addition to the Separation Payments, if at the time of such non-renewal, Rafael Paz and his eligible dependents are participating in any City-offered group medical or group dental plan, the City shall pay Rafael Paz the full amount of premiums for the City-offered group medical and group dental plan selected by Rafael Paz, for himself and his eligible dependents, for a period of one (1) year following the expiration of this Agreement. Should Rafael Paz accept employment prior to the expiration of 12 weeks after the date of expiration of the original or succeeding term, the Separation Payments as provided herein shall immediately cease and the City shall have no obligation to make any Separation Payments then remaining unpaid.

10. Termination by Rafael Paz.

a. With Notice. Should Rafael Paz terminate this Agreement by giving notice not less than 90 days prior to termination, the City shall pay him in like manner as if the Agreement were not renewed pursuant to Section 9 of this Agreement.

b. Without Notice. Should Rafael Paz terminate this Agreement by giving notice less than 90 days prior to termination, the City shall pay him any payments due for work performed through the date of termination and other payments due, if any, upon termination on the same terms and conditions applicable to unclassified general employees, and shall thereafter have no further liability to him whatsoever.

11. Termination by the City. The City Commission may terminate this Agreement and, thereby, Rafael Paz' employment, at any time, without or without notice, and for any reason or for no reason.

a. Without Cause. Should the City terminate this Agreement without Cause, as defined in Section 11.b., it shall pay Rafael Paz an amount equivalent to 20 weeks of the salary amount set forth in Section 7.a., provided, however, that if at the time of such termination, Rafael Paz and his eligible dependents are participating in any City-offered group medical and group dental plan, the City shall also pay the full amount of premiums for the City-offered group medical and group dental plan selected by Rafael Paz, for himself and his eligible dependents, for a period of one-year following the date of termination of this Agreement (the "Severance Payment"), along with all payments due for work performed through the date of termination and other payments due, if any, upon termination on the same terms and conditions applicable to unclassified general employees, and thereafter City shall have no further liability to him whatsoever. Should Florida law be changed to permit a Severance Payment greater than that permitted under law at the time of the execution of this Agreement, the City Commission will review the amount of the Severance Payment set forth in this Agreement and consider making any adjustments thereto, at its sole discretion. In the event the City at any time during the term of this Agreement reduces the salary or other financial benefits of Rafael Paz in a greater percentage than an applicable across the board reduction for all employees of the City or in the event the City refuses after written notice to comply with any other provision of this Agreement benefiting Rafael Paz, or if a majority of the members of the City Commission in a public meeting requests that Rafael Paz resign, then Rafael Paz may, at his option, be deemed to be terminated as of the date of such reduction or such refusal to comply within the meaning and context of this Section 11.a.

b. With Cause. Should the City terminate this Agreement with Cause, as herein defined, it shall pay Rafael Paz any payments due for work performed through the date of termination and other payments due, if any, upon termination on the same terms and conditions applicable to unclassified general employees, and the City shall thereafter have no further liability to him whatsoever, including no obligation to pay the Severance Payment as defined in Section 11.a. Cause is defined as one or more of the following: any material breach of this Agreement, provided, however, that the City Attorney's progress or achievement of the goals and objectives as may be established by the City Commission (and memorialized in an amendment to this Agreement) shall be excluded from the definition of "Cause" and shall not form the basis for the termination of Rafael Paz with Cause; conviction of any felony; admission of conduct that would constitute any felony; conduct that would constitute a violation of any applicable code of ethics or professional conduct; conduct that would constitute malfeasance or misfeasance in office as those terms are interpreted under Section 112.3187, Florida Statutes; or other similar conduct that the City Commission reasonably determines merits termination.

12. Pension. Rafael Paz shall become a member of the Miami Beach Employees Retirement Plan as a condition of his employment pursuant to the governing ordinance of the plan (which plan, at the time of the execution of this Agreement, includes an accrual factor of 4 percent for his period of service in the position of City Attorney, and for the avoidance of doubt, for his period of service as Acting City Attorney from December 11, 2020 through April 21, 2021, and subsequently, from April 27, 2021 through October 13, 2021.

13. Bonds. The City shall bear the full expense of any fidelity or other bond required of Rafael Paz in his capacity as City Attorney under any statute, ordinance, or regulation.

14. Indemnification. The City shall indemnify and defend Rafael Paz or, at its option, provide a defense to Rafael Paz against claims arising out of and in the course and scope of his employment or function, consistent with and to the extent of Florida law under Chapter 111, Florida Statutes, and a public official's right to a defense against claims arising from their performance of their public duties performed while serving a public purpose under the common law of Florida.

15. Notice. Any notice hereunder shall be effective if made by delivery, postage paid, to the United States Postal Service or by a manner valid for personal service under the Florida Rules of Civil Procedure or by public statement on the record during a meeting of the City Commission in the presence of the party to whom notice is to be given. Notice, for purposes of this Agreement, is to be given to:

City: Mayor Dan Gelber (or successor)
City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139

and

City Manager Alina T. Hudak (or successor)
City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139

Rafael Paz: Rafael A. Paz (or heirs)
5 Island Avenue, Apt. 14C

16. No Assignment or Delegation; No Third-Party Beneficiaries. The services provided by Rafael Paz are considered unique and personal to him. Accordingly, Rafael Paz may not delegate or assign any duty, obligation, or benefit attaching or accruing hereunder. This Agreement is entered into and intended for the benefit solely of the City and Rafael Paz and not for the benefit of any other person or entity.

17. Entire Agreement, Severability, Modification, Waiver. The provisions of this Agreement constitute the entire agreement between the Parties on its subject matter and this Agreement supersedes any other agreement, understanding, representation, or promise whatsoever. Rafael Paz agrees that he has relied solely upon the express language of this Agreement in determining whether to enter into this Agreement and not upon any other understanding or communication of any kind, whether written or oral. Should a court or arbitrator of competent jurisdiction determine that any provision or portion thereof of this Agreement is illegal, invalid, or unenforceable, the remaining provisions or portions thereof shall remain in full force and effect. This Agreement may be modified only by a writing signed by both Parties and approved by the City Commission by Resolution. Waiver of any right or of any breach of this Agreement by either party in any instance or instances shall not constitute or be construed as a waiver in any other instance.

18. Construction, Governing Law, Headings. This Agreement shall be construed according to its express language and not strictly for or against either Party, regardless of authorship. This Agreement shall be governed by and according to the laws of the State of Florida. Section headings are for convenience only and shall have no legal effect.

19. Arbitration. The Parties agree that any claim or dispute arising from this Agreement, its interpretation, its renewal, or its breach shall be settled in final and binding arbitration by a single arbitrator under the Arbitration Policies and Procedures of the Federal Mediation and Conciliation Service. A panel of arbitrators may be requested by either Party and the Parties will select an arbitrator by alternative strikes. The first Party to strike will be determined by agreement or coin flip. Each Party may one time reject a proposed panel of arbitrators and request another. The party requesting any panel shall bear the expense of the request. The Parties shall bear equally the expense of the arbitrator and the location of the arbitration hearing. The Parties shall each bear their own litigation costs, including attorney's fees, court reporter fees, and witness fees, if any. The arbitrator shall apply a preponderance of the evidence standard of proof. The party asserting a claim or affirmative defense shall have the burden of persuasion as to that claim or affirmative defense. The arbitrator shall not have authority to make any award of attorney's fees or the costs of the arbitration. The arbitrator shall confine himself or herself strictly to the language of this Agreement and shall have no authority to add to, subtract from, or modify any term or provision of this Agreement. The arbitrator shall have no authority to construe any law, regulation, rule, principle of law, decision, or provision or provisions of this Agreement or to make any award that would result in or obligate the City, directly or indirectly, to incur any debt, cost, expense, or liability in excess of the amount initially budgeted, approved, and appropriated for the funding of this Agreement. Any such purported construction or award will be null and void. The arbitrator's award shall be subject to enforcement or vacation by the Circuit Court according to law. Moreover, and without waiving the preceding limitation, in no case shall the City be liable for any punitive, consequential, indirect, or incidental damages whatsoever.

20. Counterparts, Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute a single instrument. Execution and delivery of this Agreement by electronic exchange bearing the copies of a Party's signature shall constitute a valid and binding execution and delivery of this Agreement by such Party. Such electronic copies shall constitute enforceable original documents.

WHEREFORE, the Parties, after full consideration, including consultation with independent counsel, do knowingly, voluntarily, and intending to be legally bound, hereby enter into this Agreement duly executed on the dates written below.

Attest:

FOR CITY OF MIAMI BEACH, FLORIDA:

Rafael E. Granado, City Clerk

Dan Gelber, Mayor

_____ day of _____, 2021.

FOR CITY ATTORNEY RAFAEL A. PAZ:

Witness Signature

Rafael A. Paz

Print Name

____ day of _____, 2021.

Witness Signature

Print Name