

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 RICARDO J. DOPICO, TO PROVIDE FOR THE TERMS AND CONDITIONS OF THE CITY ATTORNEY'S EMPLOYMENT, FOR A TERM OF FOUR (4) YEARS, COMMENCING AS OF APRIL 3, 2024, AND EXPIRING ON APRIL 2, 2028, UNLESS TERMINATED EARLIER BY EITHER PARTY IN ACCORDANCE WITH THE TERMS OF THE EMPLOYMENT AGREEMENT; AND FUTHER, DIRECTING THE ADMINISTRATION TO TAKE ALL STEPS NECESSARY TO CLOSE OUT MR. PAZ'S EMPLOYMENT AGREEMENT FOLLOWING HIS SEPARATION DATE.

WHEREAS, on February 26, 2024, City Attorney Rafael A. Paz submitted a letter to the Mayor and City Commission advising the Commission of his decision to step down as City Attorney; and

WHEREAS, on March 13, 2024, following Mr. Paz's resignation notice, the City Commission initiated an internal selection process for a permanent City Attorney; and

WHEREAS, on April 3, 2024, pursuant to Resolution 2024-33001, the City Commission unanimously appointed Deputy City Attorney Ricardo J. Dopico to serve as Acting City Attorney until the expiration of Mr. Paz's employment agreement on May 3, 2024, following which Mr. Dopico continued to serve as City Attorney; and

WHEREAS, pursuant to Resolution 2024-33001, the City Commission authorized the Chair of the Finance and Economic Resiliency Committee to negotiate the terms of an Employment Agreement with Mr. Dopico, which Agreement is subject to final approval by the Mayor and City Commission; and

WHEREAS, the City Commission desires to provide certain benefits and to establish certain conditions of employment for Ricardo J. Dopico in his capacity as City Attorney as set forth in the attached Employment Agreement (including the period of time when Mr. Dopico served as Acting City Attorney, prior to the expiration of Mr. Paz's employment agreement); and

WHEREAS, Mr. Dopico desires to accept the position of City Attorney for the term of, and in accordance with the terms and conditions set forth in, the Employment Agreement; and

WHEREAS, promptly following Mr. Paz's separation on May 3, 2024, the Interim City Manager shall direct the Human Resources Department to take all necessary steps to close out his employment agreement, including payment of his separation payments as a lump sum.

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 Ricardo J. Dopico, engaging Mr. Dopico as City

Attorney for the City of Miami Beach; and further, directing the Administration to take all steps necessary to close out Mr. Paz's employment agreement following his separation date.

PASSED and **ADOPTED** this _____ day of _____, 2024.

ATTEST:

Steven Meiner, Mayor

Rafael E. Granado, City Clerk

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

Nick Kallig
for City Attorney

5/6/2024
Date

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (the "Agreement") is entered into as of this 3rdth day of April, 2024, by and between **RICARDO J. DOPICO** ("Dopico") and the **CITY OF MIAMI BEACH, FLORIDA** (the "City") (each, a "Party" and collectively, the "Parties").

WHEREAS, on April 3, 2024, pursuant to Resolution 2024-33001, the City Commission unanimously appointed Deputy City Attorney Ricardo J. Dopico to serve as Acting City Attorney until the expiration of Rafael Paz's employment agreement on May 3, 2024, following which Mr. Dopico shall serve as City Attorney; and

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

WHEREAS, on May 15, 2024, the Mayor and City Commission adopted Resolution No. 2024-_____, approving and authorizing the Mayor and City Clerk to execute this Agreement with Ricardo J. Dopico, for a term of up to four (4) years, commencing retroactively on April 3, 2024, and expiring on April 2, 2028; 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 Dopico as its City Attorney and Dopico agrees to be so employed. Dopico 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 Dopico 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 Dopico's duties as City Attorney and shall not in any way reflect unfavorably on the City. Dopico shall at all times apply his best efforts to the performance of his duties as City Attorney.
3. Employment At Will. Dopico is employed at will and serves at the pleasure of the City Commission. This Agreement and Dopico'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. Dopico 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 April 3, 2024 (the "Effective Date").

6. Term. Subject to the City Commission's annual review and evaluation of Dopico, as provided in Section 7(d) below, the Agreement shall have a term of up to four (4) years, commencing on April 3, 2024 (Commencement Date), and expiring at midnight, April 2, 2028, unless terminated earlier or renewed as set forth herein. By the mutual agreement of the Parties, the term may be extended for an additional period of two (2) years (the "Renewal Term"). In addition, the term may be further extended for such additional period or periods as the Parties shall agree. Except in the event of a termination of this Agreement by the City with Cause, at the end of the term of this agreement, Dopico shall be permitted to remain as an employee of the City in the position of Special Counsel or such other position as the City Attorney shall approve with salary and benefits commensurate with such position.

7. Compensation. Dopico 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 Dopico for any purpose whatsoever, including pension or for purposes of Section 448.08, Florida Statutes, or in arbitration.

a. Salary and Deferred Compensation. The City shall pay Dopico a salary annualized at \$350,000, 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. Dopico is a participant in the Section 457 deferred compensation plan (the "Plan"). Each tax year during the term of this Agreement, the City shall make a contribution on Dopico's behalf of (i) the maximum amount permitted to be contributed into the Plan in such tax year (pro-rated for any partial year) according to the terms of the Plan and applicable laws and (ii) the maximum post-tax deferred compensation IRA contribution permitted by applicable law in such tax year (pro-rated for any partial year). The deferred 457 Plan compensation payments referred to above shall accrue for the applicable tax year on a bi-weekly basis. Dopico is currently making contributions to the 457 Plan. The Human Resources Department shall make (or apply) any contributions contemplated herein on a retroactive basis to April 3, 2024. To the extent that Dopico's contributions during the period from April 3, 2024 through the date that the Human Resources Department makes the necessary adjustments to the 457 Plan contribution would cause the City's contribution of the pro-rated maximum amount permitted to be contributed for the remainder of the tax year (i.e. April 3, 2024 through December 31, 2024) to exceed such maximum pro-rated amount (the "Unpermitted Contribution Amount"), then Dopico shall be paid an amount equal to the Unpermitted Contribution Amount as additional salary. At the expiration or earlier termination of this Agreement, all accrued and unpaid deferred compensation payments for both the 457 Plan and the IRA shall be due and payable for the benefit of Dopico as soon as reasonably possible, in accordance with applicable laws. The deferred compensation IRA payments described above shall accrue also for the applicable tax year on a bi-weekly basis. To the extent possible, such payments shall be made not later than quarterly until the earlier of Dopico's next anniversary date or such time as the maximum contribution limit for the applicable tax year is reached. The City agrees to review the annual salary and/or other benefits of Dopico 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 Dopico will be made every year within forty-five (45) days after April 3rd of each year, or as soon as practicable thereafter, in accordance with the Agreement terms. Dopico shall be entitled to any cost-of-living adjustment (COLA) provided to unclassified general employees during the term of this Agreement (excluding only the COLA adjustment on April 8, 2024.)

b. Insurance. The City shall pay the full amount of premiums for the City-offered group medical and group dental plan selected by Dopico, 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 Dopico. Dopico 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. Dopico will be eligible to accrue, use, and convert leave hours to the extent and on the terms applicable to unclassified general employees. If any other charter officer receives more favorable annual leave terms during the term of this Agreement, Dopico shall be entitled to such more favorable annual leave terms.

d. Performance Evaluation and Incentive. Dopico'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. Dopico 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 Dopico 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 Dopico shall be in accordance with the specific goals, priority objectives and initiatives the City Commission shall establish, in consultation with Dopico, 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 Dopico 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 Dopico 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 Dopico 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. Dopico 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 Dopico 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 Dopico. 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. Dopico'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 Dopico 90 days' notice of intent not to renew or, if no notice is given, the City shall, pay Dopico upon the expiration of the term, a lump-sum payment equal to 12 weeks of the salary amount set forth in Section 7.a., as the same may have been adjusted (the "Non-Renewal 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 shall have no further liability to him whatsoever. In addition to the Separation Payments, if at the time of such non-renewal, Dopico and his eligible dependents are participating in any City-offered group medical or group dental plan, the City shall pay Dopico the full amount of premiums for the City-offered group medical and group dental plan selected by Dopico, for himself and his eligible dependents, for a period of one (1) year following the expiration of this Agreement. Should Dopico 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 Dopico.

a. With Notice. Should Dopico 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 Dopico 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, Dopico's 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 Dopico 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, Dopico 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 Dopico, 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 Dopico 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 Dopico, or if a majority of the members of the City Commission in a public meeting requests that Dopico resign, then Dopico 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 Dopico 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 Dopico 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. Dopico shall continue his participation as 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, is as set forth in Ordinance 2023-4549 and includes an accrual factor of four percent (4%) for his period of service in the position of City Attorney. If the pension ordinance is amended at any time following the date of this Agreement in a manner that would negatively affect any material term, including without limitation, the vesting schedule, accrual factor or benefits payable, Dopico shall be grandfathered such that more favorable provisions will continue to apply. If any other charter

officer is granted more favorable pension terms than those accorded to Dopico, Dopico shall be entitled to such more favorable pension terms.

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

14. Indemnification. The City shall indemnify and defend Dopico or, at its option, provide a defense to Dopico 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 Steven Meiner (or successor)
City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139

and

City Manager
City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139

Dopico: Ricardo J. Dopico (or heirs)
913 Escobar Avenue
Coral Gables, FL 33134

16. No Assignment or Delegation; No Third-Party Beneficiaries. The services provided by Dopico are considered unique and personal to him. Accordingly, Dopico 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 Dopico 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. Dopico 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.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

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

Steven Meiner, Mayor

_____ day of _____, 2024

FOR CITY ATTORNEY RICARDO J. DOPICO:

Witness Signature

Ricardo J. Dopico

Print Name

_____ day of _____, 2024

Witness Signature

Print Name

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

Nick LaLuz
for City Attorney

5/8/2024
Date