

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ACCEPTING THE RECOMMENDATION OF THE COMMITTEE OF THE WHOLE RELATING TO THE ANNUAL PERFORMANCE EVALUATION OF RAUL J. AGUILA; AND, IN CONSIDERATION AND RECOGNITION OF RAUL J. AGUILA'S PERFORMANCE DURING THE CONTRACT YEAR MAY 16, 2019, THROUGH MAY 16, 2020, AND IN FURTHER CONSIDERATION OF THE CITY COMMISSION APPOINTING RAUL J. AGUILA AS THE INTERIM CITY MANAGER, AMENDING RAUL J. AGUILA'S EMPLOYMENT AGREEMENT BY: (1) PROVIDING (AND AS PERMITTED BY CITY CHARTER SECTION 3.01(g)), THAT RAUL J. AGUILA WILL SERVE AS INTERIM CITY MANAGER AND EXERCISE ALL POWERS AND DUTIES OF THE CITY MANGER UNDER THE CITY CHARTER AND CITY CODE FUNCTION UNTIL JUNE 1, 2021, OR UPON COMMENCEMENT OF THE EMPLOYMENT TERM OF A NEW CITY MANAGER, WHICHEVER IS EARLIER; (2) RAUL J. AGUILA SHALL, DURING HIS PERIOD OF SERVICE AS INTERIM CITY MANAGER, DIVEST HIMSELF OF ALL RESPONSIBILITY FOR THE MANAGEMENT, DECISION MAKING, POWERS AND DUTIES OF THE CITY ATTORNEY UNDER THE CITY CHARTER AND CITY CODE; (3) RAUL J. AGUILA SHALL AUTOMATICALLY, AND WITH NO FURTHER COMMISSION ACTION NECESSARY, RESUME HIS POSITION AS CITY ATTORNEY ON THE EARLIER OF JUNE 2, 2021 OR UPON THE COMMENCEMENT OF THE EMPLOYMENT TERM OF A NEW CITY MANAGER; (4) PROVIDING A MERIT INCREASE AND COMMENSURATE SALARY ADJUSTMENT OF 2%, WHICH SHALL BE RETROACTIVE TO MAY 16, 2020, AND A COST OF LIVING ADJUSTMENT FOR FY20/21 IN THE AMOUNT OF 1%, IF PROVIDED TO GENERAL UNCLASSIFIED EMPLOYEES; (5) AMENDING THE CAP ON ACCRUED ANNUAL LEAVE FROM 500 HOURS TO 650 HOURS, EFFECTIVE IMMEDIATELY; AND (6) ADJUSTING RAUL J. AGUILA'S IRA CONTRIBUTION FROM \$6,700 TO \$7,000 (THE MAXIMUM ALLOWABLE BY LAW FOR 2020) AND HIS 401 CONTRIBUTION FROM \$24,000 TO \$26,000 (THE MAXIMUM ALLOWABLE BY LAW FOR 2020).

WHEREAS, at its meeting on April 9, 2014, the Mayor and City Commission unanimously approved Resolution No. 2014-28540, appointing Raul J. Aguila to the position of City Attorney of the City of Miami Beach, effective May 16, 2014; and

WHEREAS, Mr. Aguila's engagement is reflected in an Employment Agreement, dated July 24, 2014, and unanimously approved by the City Commission pursuant to Resolution No. 2014-28692 (the Employment Agreement); and

WHEREAS, on May 15, 2015 Mr. Aguila's contract was further amended pursuant to Resolution No. 2015-29186; and;

WHEREAS, on July 7, 2016 Mr. Aguila's contract was further amended pursuant to Resolution No. 2016-29514; and;

WHEREAS, on July 26, 2017 Mr. Aguila's contract was further amended pursuant to Resolution No. 2017-29959; and;

WHEREAS, on July 17, 2018 Mr. Aguila's contract was further amended pursuant to Resolution No. 2018-30383; and;

WHEREAS, on September 11, 2019 Mr. Aguila's contract was further amended pursuant to Resolution No. 2019-30991; and;

WHEREAS, on October 7, 2020, City Manager Jimmy Morales, submitted his letter of resignation to the Mayor and City Commission; and

WHEREAS, subsequently, Mr. Morales advised the City Commission that his last day as the City Manager would be December 11, 2020; and

WHEREAS, immediately following Mr. Morales' resignation, the City Commission initiated the recruitment process for the selection of a permanent City Manager, while also recognizing the need to appoint an Interim City Manager during the course of the selection process; and

WHEREAS, in view of the strong internal candidates for the permanent City Manager position, the City Commission determined that it would be unfair to appoint any internal candidate interesting in the permanent position to serve as Interim City Manager, as the City Commission desired not to provide any undue advantage to any one candidate over others; and

WHEREAS, based on the City Commission's desire to level the playing field for the recruitment process for the permanent City Manager position, the City Commission determined that it would only appoint an Interim City Manager who would pledge and commit to not apply for the permanent position; and

WHEREAS, five extremely talented and capable internal candidates indicated their interest to serve as Interim City Manager until a permanent City Manager is appointed; and

WHEREAS, among those candidates was Raul J. Aguila, the then City Attorney; and

WHEREAS, Mr. Aguila is a dedicated public servant with twenty-nine (29) years in municipal public service - he served in the City Attorney's Office for Miami

Beach for twenty-three (23) years as either a First Assistant City Attorney or Chief Deputy City Attorney, before being unanimously appointed by the City Commission to serve as the City Attorney in 2014 (on February 1, 2021, he started his 29th year with the City); and

WHEREAS, Mr. Aguila's tenure as the City Attorney will end in March 2022, both as a matter of his employment contract, and the requirements of the City's Deferred Retirement Option Program ("DROP"); and

WHEREAS, Mr. Aguila, in addition to being an exceptional chief legal officer for the City, is familiar with the workings of every City department and possesses the institutional history and intimate knowledge of the City's business and the policy objectives the City Commission desires to achieve; and

WHEREAS, when Mr. Aguila advised the Mayor, the City Commissioners, and the City Clerk of his interest in the position as Interim City Manager, he advised that he would only accept the position if the ultimate vote of the City Commission to appoint him as Interim City Manager was unanimous; and, further, that once the permanent new City Manager was appointed, that he be allowed to return to his permanent position as City Attorney, until the end of his tenure in March 2022; and

WHEREAS, on December 9, 2020, the City Commission unanimously appointed Raul J. Aguila as the Interim City Manager until the term of a new City Manager commenced; and

WHEREAS, Raul J. Aguila's Employment Agreement provides for an annual performance review and evaluation of the City Attorney, at which time the City Commission shall review the annual salary and/or other benefits of the City Attorney, and shall make adjustments in such amounts and to such extent as the City Commission may determine it is desirable to do so; and

WHEREAS, the Employment Agreement further provides that an annual salary review of the City Attorney will be made every year within thirty (30) days after May 1st of each Contract year; and

WHEREAS, in prior years, the City's informal policy has been to refer the evaluation for the performance of the constitutional officers to the Finance and Economic Resiliency Committee ("FERC"), where the Chair of the Committee was instructed to meet separately with each constitutional officer with regard to their performance and, in particular, any proposed contract changes the officer was proposing to their employment contract, and the FERC Chair would then give a recommendation at the Committee of the Whole meeting, which would then conduct its own evaluation; engage in discussion; ask questions; make comments; and formally move any proposed action; and

WHEREAS, this year, in no small part due to the COVID-19 pandemic - which necessitated in other matters taking priority on Commission agendas and Commissioners' schedules - the FERC Chair, Commissioner Ricky Arriola, requested that the evaluations be done directly at a Committee of the Whole meeting; and

WHEREAS, on January 27, 2021, the Committee of the Whole met, and discussed the annual performance evaluation and salary/benefits review of the now Interim City Manager; and

WHEREAS, in consideration and recognition of the Interim City Manager's performance for Contract Year May 16, 2019 through May 16, 2020, and in further consideration of the Mayor and City Commission appointment of Raul J. Aguila as Interim City Manager, the Mayor and City Commission hereby deem that it is in the best interest of the City to approve an amendment to Raul J. Aguila's Employment Agreement, all as further set forth below.

NOW THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH FLORIDA, that, in consideration and recognition of Raul J. Aguila's exemplary performance during Contract Year May 16, 2019, through May 16, 2020, and in further consideration of the City Commission appointing Raul J. Aguila as the Interim City Manager, the Mayor and City Commission hereby approve the following amendments to Raul J. Aguila's Employment Agreement:

1. **MERIT INCREASE**

Annual Present Base Salary:	\$314,908.70
+ 2% Salary Increase ¹ :	\$6,298.17
New Base Salary:	\$321,206.87

2. **INTERIM CITY MANAGER**

Serve as Interim City Manager and exercise all powers and duties of the City Manager under the City Charter and City Code function until June 1, 2021, or upon commencement of the employment term of new City Manager, whichever is earlier; divest himself, during his period of service as Interim City Manager, of all responsibility for the management, decision-making, powers and duties of the City Attorney under the City Charter and City Code; and automatically resume his position as City Attorney on June 2, 2021, or upon commencement of employment term of new City Manager, whichever is earlier, without any City Commission action necessary.

¹ Because Mr. Aguila's merit raises have been traditionally conducted following his contract anniversary dates, the merit increase shall be retroactive to May 16, 2020.

3. **ACCRUED ANNUAL LEAVE**

Increase cap on accrued annual leave, from maximum of 500 hours, to maximum of 650 hours, effective upon adoption of this Resolution.

4. **FY 2021 COLA**

Raul J. Aguila shall be entitled to any COLA provided to unclassified employees in FY 20/21.

5. **CITY'S IRA AND 457 CONTRIBUTIONS**

In accordance with the maximum allowable contribution afforded by the IRS for 2020, the City's contribution to Mr. Aguila's IRA shall increase from \$6,700 to \$7,000; and the City's contribution to Mr. Aguila's 457 account, shall be increased from \$24,000 to \$26,000.

PASSED and ADOPTED this ____ day of _____, 2021.

Dan Gelber, Mayor

ATTEST:

Rafael E. Granado, City Clerk

**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**

City Attorney

Date

2-3-21