

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (the "Agreement") is entered into this ____ day of _____, 2021, by, and between Rafael A. Paz ("Paz") and the CITY OF MIAMI BEACH, FLORIDA (the "City") (each, a "Party" and collectively, the "Parties").

WHEREAS, on December 9, 2020, the Mayor and City Commission appointed PAZ as Acting City Attorney of the City of Miami Beach during City Attorney Raul Aguila's period of service as Interim City Manager, effective December 12, 2020; and

WHEREAS, on February 10, 2021, at a Committee of the Whole meeting, the Mayor and City Commission approved the execution of this Agreement.

NOW, THEREFORE, the Parties agree as follows:

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

2. Employment and Duties. The City hereby agrees to engage PAZ, and PAZ agrees to be engaged, as Acting City Attorney for the City of Miami Beach. PAZ shall devote his full working time to his duties as Acting City Attorney, and shall perform all duties and responsibilities of the 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 Acting City Attorney and such other appropriate duties as may be assigned by the City Commission or its designee from time to time.

- a. PAZ will not accept or perform any other employment, paid or unpaid, while he is employed as Acting 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.
- b. However, nothing in this Agreement shall prohibit 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 Acting City Attorney, provided, however, that such work shall not interfere with PAZ's duties as Acting City Attorney and shall not in any way reflect unfavorably on the City.
- c. PAZ shall at all times apply his best efforts to the performance of his duties as Acting City Attorney.

3. Employment at Will. PAZ is employed at will and serves at the pleasure of the City Commission. This Agreement and 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. Effective Date. This Agreement shall become effective as of December 12, 2019 (the "Effective Date").

5. Term. The term of this Agreement shall be deemed to have commenced retroactively as of December 12, 2020 (Commencement Date), and shall expire on June 1, 2021, unless otherwise extended by the City Commission at its sole option, or terminated earlier in accordance with the Termination provisions set forth herein.

- a. Upon the City's engagement of a permanent City Manager and Raul Aguila's return to his position as City Attorney, this Agreement shall automatically expire and PAZ shall revert to his position as Deputy City Attorney, provided, however, that if Paz is terminated or demoted to a lesser position within a period of 120 days from his return to his position as Deputy City Attorney, then Paz shall be entitled to the Severance Payment described in Section 8(a).
- b. Upon reverting to the position of Deputy City Attorney, any salary adjustment provided to PAZ under this Agreement shall automatically expire, and PAZ's base salary will be adjusted downward to an amount equal to Paz's base salary as Deputy City Attorney as of December 11, 2021.
- c. In addition to the automatic termination of this Agreement pursuant to Section 5(a), the City Commission may also terminate this Agreement, at any time, without cause and for convenience, upon fifteen (15) days prior written notice to PAZ, as provided in Section 8(a) of this Agreement. The City Commission may also terminate this Agreement, and PAZ's employment with the City, for "Cause," as provided in Section 8(b) of this Agreement.

6. Compensation. PAZ shall receive compensation for performing the duties of Acting City Attorney as set forth in this Section 6. Nothing other than those items set forth in this Section 6 shall be considered or treated as compensation, wages, salary, earnings or remuneration to 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 PAZ the base salary PAZ earned as Deputy City Attorney as of December 11, 2020, plus an adjustment of ____% during the term of this Agreement, to be earned and to be accrued bi-weekly, and any cost-of-living adjustment in FY20/21, if any such adjustment is provided to general unclassified employees of the City. This salary shall be paid bi-weekly according to the usual payroll practices of the City applicable to unclassified general employees.
- b. Employee Benefits. The Parties agree and acknowledge that PAZ shall be entitled to and shall continue to receive the same employee benefits which PAZ earned as Deputy City Attorney as of December 11, 2020, including, without limitation, the City-offered group medical, dental and life insurance benefits; annual leave, holidays and sick leave; vehicle allowance; mobile telephone allowance; payment of any professional bar dues or professional development expenses, in the same manner as generally made available to attorneys in the Office of the City Attorney; and any other fringe benefits available to any other general unclassified employee of the City.
- c. Other terms and conditions. The City Commission shall fix any such other terms and conditions of employment, as it may reasonably determine from time to time during the Term, provided such terms or conditions do not conflict with the City Charter or any other law, or do not reduce the salary and benefits provided in this

Section 6 of this Agreement, except to the degree of a reduction (or reductions) in salaries and/or benefits which are made across-the-board for, and apply to, all general unclassified employees of the City.

7. Termination by PAZ. In the event PAZ voluntarily resigns his position with the City prior to the expiration or earlier termination of this Agreement, PAZ shall give the City Commission at least thirty (30) days prior written notice, and the City shall have no obligation to pay, and PAZ shall have no right to collect, the Severance Payment under this Agreement, unless the Parties otherwise agree.

8. Termination by the City. In addition to the automatic termination of this Agreement upon the engagement of a new City Manager as provided in Section 5(a), the City Commission may terminate this Agreement and, thereby, PAZ's employment, at any time, with or without notice, and for any reason or for no reason.

a. Without Cause. Should the City Commission terminate this Agreement without Cause, it shall pay PAZ an amount equivalent to 20 weeks of the salary amount set forth in Section 6(a) (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 shall have no further liability to him whatsoever.

b. With Cause. Should the City terminate this Agreement with Cause, as herein defined, the City shall pay 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 have no further liability to him whatsoever, including no obligation to pay the Severance Payment as defined in Section 8(a). "Cause" is defined as one or more of the following: material breach of this Agreement; 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.

9. Pension. PAZ shall continue his participation as a member of the Miami Beach Employees Retirement Plan 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 PAZ's period of service in the position of City Attorney).

10. Indemnification. The City shall indemnify and defend PAZ or, at its option, provide a defense to 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.

11. 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

Interim City Manager Raul Aguila (or successor)
City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139

PAZ: Rafael A. Paz
[Address exempt from public disclosure under Fla. Law]

12. No Assignment or Delegation; No Third-Party Beneficiaries. The services provided by PAZ are considered unique and personal to him. Accordingly, 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 of PAZ and not for the benefit of any other person or entity.

13. 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. 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.

14. 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.

15. 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.

16. 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 ACTING CITY ATTORNEY:

Witness Signature

Rafael A. Paz,

Print Name

_____ day of _____, 2021.

Witness Signature

Print Name

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

JOHN R. HUNT 2/3/2021
City Attorney Date