

**RESOLUTION No. 21-214**

**A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXECUTE A HOLD HARMLESS AGREEMENT BETWEEN THE CITY OF DORAL AND KAUFMAN LYNN CONSTRUCTION FOR PARKING LOT ACCESS FOR DORAL CENTRAL PARK; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, pursuant to the Interlocal Agreement in December 2004, Miami Dade County (County) and the City of Doral (City), agreed to make parking available at Central Park to the County during elections and election related activities; and

**WHEREAS**, Miami-Dade County wishes to utilize a southeast portion of the project for the overflow parking for uses related to the 2021 elections from September 20, 2021- November 24, 2021; and

**WHEREAS**, during these dates, the construction of the Project will be in process and will remain ongoing; and

**WHEREAS**, Kaufman Lynn, the Construction Manager hired by the city to perform improvements at Doral Central Park, will create and access point, clear and fence off an area closest to the Department of Elections building; and

**WHEREAS**, as the area will remain unimproved, Kaufman Lynn is requesting releases, indemnities and hold harmless agreements from both the County and the City to address the risks posed by the County's use of the Parking Area.

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals.** The above recitals are confirmed, adopted, and incorporated herein and made part hereof by this reference.

**Section 2. Authorization.** The City of Doral hereby authorizes the City Manager to execute the hold harmless agreement as Exhibit A.

**Section 3. Approval.** Staff recommends that the Mayor and Council authorize the City Manager to execute the Release, Indemnity and Hold Harmless Agreement

**Section 4. Effective Date.** This Resolution shall be effective immediately upon adoption.

The foregoing Resolution was offered by Councilmember Cabral who moved its adoption. The motion was seconded by Councilmember Puig-Corve and upon being put to a vote, the vote was as follows:

Mayor Juan Carlos Bermudez	Yes
Vice Mayor Pete Cabrera	Yes
Councilwoman Digna Cabral	Yes
Councilwoman Claudia Mariaca	Yes
Councilman Oscar Puig-Corve	Yes

PASSED AND ADOPTED this 8 day of September, 2021.

  
\_\_\_\_\_  
JUAN CARLOS BERMUDEZ, MAYOR

ATTEST:

  
\_\_\_\_\_  
CONNIE DIAZ, MMC  
CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY  
FOR THE USE AND RELIANCE OF THE CITY OF DORAL ONLY:

  
\_\_\_\_\_  
LUIS FIGUEREDO, ESQ.  
CITY ATTORNEY

# EXHIBIT “A”

## **RELEASE, INDEMNITY, AND HOLD HARMLESS AGREEMENT**

This Release, Indemnity, and Hold Harmless Agreement (the “Agreement”) is entered into by and between the City of Doral (the “City”), whose address is 8401 N.W. 53<sup>rd</sup> Terrace, Doral, Florida, 33166, and Kaufman Lynn Construction, Inc. (“KL”), whose address is 3185 S. Congress Avenue, Delray Beach, Florida, 33445 (all of whom shall collectively be referred to herein as the “Parties” or a “Party” if referring to only one of them).

### **RECITALS**

WHEREAS, the City is the owner of real property located at or near 3000 N.W. 87<sup>th</sup> Avenue, Doral, Florida, 33172; and

WHEREAS, KL is the construction manager hired by the City to perform improvements on real property known as Doral Central Park (the “Project”); and

WHEREAS, the City and KL entered into a Standard Form of Agreement Between Owner and Construction Manager as Constructor, AIA Document A133, on or about June 25, 2019, for the construction of the Project (the “Construction Contract”); and

WHEREAS, KL has commenced construction on certain portions of the Project; and

WHEREAS, Miami-Dade County (the “County”)—with the City’s consent—wishes to utilize a southeastern portion of the Project for County employee overflow parking (the “Parking Area”) for uses related to the 2021 Miami-Dade County elections; and

WHEREAS, the County requires use of the Parking Area from and including September 20, 2021, through and including November 24, 2021 (the “Use Dates”); and

WHEREAS, the City represents that it is in dominion, possession, and control of the portion of the Project to be used as the Parking Area in the City’s capacity as the lessee of said portion pursuant to a Lease Agreement with the lessor, the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (the “Lessor”), executed on August 24, 2009, which is a material representation on which KL relies in entering into this Agreement; and

WHEREAS, the City represents that the County’s use of the Parking Area is consistent with the terms of the Lease Agreement and/or is otherwise authorized by the Lessor, which is a material representation on which KL relies in entering into this Agreement; and

WHEREAS, during the Use Dates, the construction of the Project will be in process and will remain ongoing, including mobilization and demobilization; and

WHEREAS, pursuant to the terms of the Construction Contract, KL is responsible for the Project, including the safety surrounding access and use of the Project; and

WHEREAS, the Parties can reasonably foresee that the conditions of the Project will be incomplete and not necessarily suitable for the presence of non-construction personnel, which could pose a risk of damage or injury to person or property; and

WHEREAS, such “non-construction personnel” is expected to include, but is not necessarily be limited to the County’s employees and staff members of the County’s vendors related to the elections; and

WHEREAS, to address the risks posed by the County’s use of the Project for the Parking Area, the Parties agree to enter into this Agreement; and

WHEREAS, contemporaneous with the execution of this Agreement, KL and the City have agreed to execute a change order related to KL’s additional expenses incurred, and estimated Project schedule time expended, as a result of the County’s use of the Parking Area, which shall include an adjustment to the Construction Contract price and Contract Time for performance (the “Change Order”), the execution of which is a condition precedent to KL permitting the County to use the Parking Area during the Use Dates pursuant to this Agreement; and

WHEREAS, this Agreement is intended only to supplement the Construction Contract and in no way whatsoever is this Agreement understood to supersede or alter the Construction Contract’s terms, and to the extent that this Agreement may conflict with the Construction Contract’s terms this Agreement shall control with respect to the portion of the Project being used for the Parking Area during the Use Dates only; and

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**AGREEMENT**

1. The foregoing Recitals are true and correct and are incorporated by reference into this Agreement as if fully set forth herein.
2. The City is fully aware or has been provided a reasonable opportunity to become fully aware, of the risks of damage or injury to person or property potentially posed by utilizing the Project for the Parking Area. The City enters into this Agreement with such awareness.
3. No warranty, either express or implied, is given by KL as to the condition of the Project and whether it is, or will be, suitable for use as the Parking Area and/or suitable for non-construction personnel to be present at the portion of the Project being used as the Parking Area.
4. The City, as consideration for KL permitting the County to use a portion of the Project as the Parking Area during the Use Dates, hereby voluntarily waives and releases KL and its officers, directors, board members, shareholders, principals, heirs, employees, parent entities, subsidiaries, related entities, executors, administrators, subrogees, assignors, assignees, sureties, and insurers (the “Released Parties”) from any and all claims, rights, counts, causes of action, obligations, damages, expenses, debts, demands, notices of claim, attorneys’ fees, costs, and

liabilities of every kind and nature, whether direct or consequential, that may be asserted by the City against the Released Parties in any way pertaining to, arising out of, or relating to the Parking Area, whether based in tort, contract, statute, common law, and/or any other legal or equitable theory of recovery.

5. Consistent with the requirements of Section 725.06(2), Florida Statutes, the City shall indemnify and hold harmless KL, its officers, and its employees from and against any and all liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the City, as well as of persons employed or utilized by the City in the performance of the Construction Contract. The City's indemnity obligations under this Agreement are limited to the dollar amounts set forth in Section 768.28(5)(a), Florida Statutes. The indemnity obligations of this Agreement shall terminate at 12:00 a.m. on November 25, 2021, and at that time the indemnity obligations between the Parties shall revert back to those as stated in the Construction Contract.

6. Notwithstanding any other term in this Agreement, nothing herein shall be deemed a waiver of the City's immunity, or sovereign rights, or limitations of liability as provided by Section 768.28, Florida Statutes, as may be amended from time to time.

7. This Agreement may be amended only in writing, signed by or on behalf of all Parties.

8. In the event that any provision of this Agreement is determined to be unenforceable, said determination shall not affect the remaining provisions hereof which shall remain in full force and effect. Any section or portion of a section so declared to be unenforceable shall, if possible, be construed in a manner which will give effect to the terms of such section or portion of a section to the fullest extent possible while remaining enforceable.

9. It is acknowledged that all Parties participated in the drafting of this Agreement and this language shall not be presumptively construed either in favor or against any of the Parties. This Agreement shall be construed in accordance with the laws of the State of Florida.

10. The Parties to this Agreement may execute the Agreement by facsimile and/or in counterparts, all of which shall constitute one agreement and be deemed an original.

11. The Parties further warrant and represent that: (1) they have full authority to enter into this Agreement; (2) no promise, inducement or agreement not expressed in this Agreement has been made; (3) this Agreement has been carefully read and they know the contents thereof; (4) they have either consulted with legal counsel or have chosen not to do so; (5) they (or their representative executing this Agreement) are of legal age and competent to execute the Agreement; and (6) in executing this Agreement, they have not been influenced by any misrepresentation of any of the Parties being released.

This Agreement shall be considered fully executed on the date the last Party below provides its execution.

City of Doral

Kaufman Lynn Construction, Inc.

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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