

THIS INSTRUMENT PREPARED BY AND
RETURN TO:

City of Bonita Springs
9101 Bonita Beach Road
Bonita Springs, Florida 34135

Strap No:

**ALTERNATIVE MATERIALS CONSTRUCTION,
MAINTENANCE AND HOLD HARMLESS AGREEMENT**

This Agreement is made on _____, _____ by and between City of Bonita Springs, a Florida Municipal Corporation, whose address is 9101 Bonita Beach Road, Bonita Springs, Lee County, Florida 34135 (City), and _____, whose address is _____ (Owner).

WHEREAS, Owner is the fee title holder to the property located in the City of Bonita Springs and specifically described in Exhibit "A"; and

WHEREAS, City has maintenance jurisdiction over the road bordering Owner's property described in Exhibit "A". This road is commonly known as _____; and

WHEREAS, Owner has obtained City approval for construction on the property described in Exhibit "A" in accordance with permit number _____; and

WHEREAS, In order to improve the aesthetic appearance of the construction approved under the City permit, and enhance the property marketability, the Owner desires to use _____, rather than the standard construction materials required by the City of Bonita Springs Land Development Code; and

WHEREAS, the City does not object to the Owner's use of alternative construction materials, as long as the Owner agrees to maintain, repair and replace the alternative construction materials in perpetuity and at no cost to the City.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement and such other good and valuable consideration, the receipt of which is acknowledged, the parties agree as follows:

Owner will install improvements using the approved alternative construction materials within the city maintained right-of-way adjacent to the property described in Exhibit "A", in accordance with the plans and specifications depicted in attached Exhibit "B", as approved by the City through the appropriate permitting process. Exhibit "B" identifies the affected right-of-way and type of alternative materials that will be installed.

Owner agrees to perpetually maintain the improvements installed as indicated on Exhibit "B", at no cost to the City. This includes timely replacement of damaged or broken materials and the avoidance of uneven pavement surfaces. Owner is required to perform all maintenance at his expense.

In the event the Owner fails to make timely repairs, the parties agree that the City may revoke the underlying City approval for the improvements. The City agrees to provide the Owner with thirty (30) days written notice, identifying the repairs necessary, before revoking the permit.

Owner may alter the improvements within the right-of-way area, provided prior approval for the alteration is obtained from the City of Bonita Springs Public Works Department. Approval to alter the improvements will not diminish the Owner's responsibility for continued maintenance. Upon approval of the alteration, Exhibit "B" will also be deemed modified. However, the City of Bonita Springs Public Works Department is under no obligation to approve a proposed alteration.

Owner agrees to indemnify, hold harmless and defend the City and all of its officers, agents, consultants and employees from and against all losses, claims, demands, payments, suits, actions, recoveries and judgments of every nature and description brought or recoverable against it or them by reason of any act or omission of the Owner, or the Owners' agents, consultants, employees, or subcontractors during the installation or maintenance of the improvements identified in Exhibit "B" or as contemplated by this Agreement. This includes any legal fees incurred by the City and costs related to these actions.

Owner agrees to assume all risk and bear any loss or injury to property or persons occasioned by neglect or accident. Owner agrees to prevent the creation of any obstructions or conditions that may be dangerous to the public.

Owner agrees to assume all responsibility for loss because of neglect or violation of any state or federal law or local government rule, regulation or order. The Owner will give all required notices relating to the improvement or its maintenance contemplated by this Agreement to the proper authorities. In addition, Owner will obtain all necessary permits and licenses and pay all appropriate fees.

Owner agrees to repair any damage that may occur to any adjoining building, structure, utility easement, roadway, City property or private property during the course of this work. Owner also agrees to repair, restore or rebuild any damage to City property caused by the installation, construction or maintenance of the improvements contemplated by this Agreement.

If the right-of-way adjacent to the Owner's property is widened, repaired, replaced or reconstructed, then the Owner agrees to remove, relocate or replace the improvements as determined appropriate by the City, upon thirty (30) days written notice. The cost of relocation, removal or replacement of the Owner's improvements will be borne entirely by the Owner. If the City, or its contractor, needs to make any roadway improvements on an expedited basis, where the normal period of thirty (30) days notice is not appropriate or possible, then Owner agrees to allow the City to remove the improvements. However, Owner understands and agrees that replacement of the improvements will be at Owner's expense.

If any public utility, including water, sewage, gas, electric, telephone or cable is scheduled for placement, replacement, repair or reconstruction within the right-of-way adjacent to the property described in Exhibit "A", and this activity requires the removal or relocation of the improvements identified in Exhibit "B", then Owner agrees to remove and replace the improvements at his sole expense within thirty (30) days of receiving written notice.

This Agreement will continue in full force and be in effect until either the Bonita Springs City Council adopts a resolution vacating the road right-of-way adjacent to the Owners property, or a written notice terminating this Agreement is delivered to each party. If the Owner terminates this Agreement, then the City may, by written notice delivered within thirty (30) days after receipt of Owner's termination notice, require Owner to remove, at Owner's sole expense, all improvements placed within the right-of-way in accordance with this Agreement.

This Agreement runs with the property described in Exhibit "A".

This Agreement is binding upon, and inures to the benefit of the parties, their respective legal representatives, successors and assigns.

Owner may assign the rights and obligations set forth in this Agreement. Owner understands Owner will remain responsible for compliance with the terms of this Agreement until the assignee provides written documentation, acceptable to the City Attorney's Office, accepting responsibility for compliance with the terms and conditions of this Agreement, including indemnification. However, a transfer in the title to the property described in Exhibit "A" carries with it the responsibility for compliance with this Agreement as though the Agreement were a covenant on the property, with no further action by successor titleholder required.

This Agreement will be construed and enforced in accordance with Florida law.

This Agreement constitutes the entire Agreement between the parties and may not be modified except by written agreement executed with the same formality.

In witness of the above, the parties execute this Agreement.

WITNESSES:

OWNER:

Signature

Signature

Printed Name

Printed Name

Signature

Signature

Printed Name

Printed Name

STATE OF FLORIDA
CITY OF BONITA SPRINGS

The foregoing Agreement was acknowledged before me the _____ day of _____, _____, by _____. He/she is personally known to me or has produced the following identification: _____.

Notary Signature

Printed Name

ATTEST:

CITY OF BONITA SPRINGS, FLORIDA

By: _____
City Clerk

By: _____
Public Works Department

APPROVED AS TO FORM

By: _____
City Attorney