LANDSCAPE CONSTRUCTION AND MAINTENANCE MEMORANDUM OF AGREEMENT

THIS	AZOZEDILIZ,					day of
	, 2020, 1	by and betwe	en the ST	ATE (OF FLORIDA I	DEPARTMENT
OF TRANSP	PORTATION, a con	nponent age	ncy of the	State	of Florida, herei	inafter called the
"DEPARTM	ENT" and the City o	f Orlando, a r	nunicipal o	corpora	tion duly enacte	ed under the laws
of the State of	f Florida, hereinafter	called the "I	OCAL G	OVER	NMENT."	
		WITN	ESSET	H		-

WHEREAS, the DEPARTMENT has jurisdiction over and mainta

WHEREAS, the DEPARTMENT has jurisdiction over and maintains State Road 527 as part of the State Highway System; and

WHEREAS, the LOCAL GOVERNMENT seeks to install and maintain certain landscaping within the right of way of State Road 527, specifically, sidewalk and other landscaping associated with the Foxtail Coffee project; and

WHEREAS, the LOCAL GOVERNMENT, as part of said landscaping, seeks to remove or has removed sidewalk from a portion of said right of way and replace existing sidewalk or connect the remaining sidewalk to a LOCAL GOVERNMENT sidewalk located off of said right of way; and

WHEREAS, the DEPARTMENT agrees to allow the landscaping only under certain conditions necessary to protect the traveling public using said right of way; and

WHEREAS, Rule 14-40.003, Florida Administrative Code, requires the parties to enter into an Agreement designating and setting forth the responsibilities of each party; and

	WHEREAS, the LOCAL GOVERNMENT, by Resolution No.	٠ .
dated_	, 2020, and attached hereto as Exhibit "A," has a	uthorized its
officers	s to execute this AGREEMENT on its behalf.	

NOW THEREFORE, for and in consideration of the mutual benefits to flow each to the other, the parties covenant and agree as follows:

- 1. The LOCAL GOVERNMENT hereby agrees to install or cause to be installed landscaping as specified in the Landscape Plan(s) included as Exhibit "B." Such installation shall be in conformance with Florida Administrative Code Rule 14-40.003, as it may be amended from time to time, and the Florida Highway Landscape Guide, which is incorporated into Rule 14-40.003 by reference. The LOCAL GOVERNMENT shall not change or deviate from said plans(s) without written approval of the DEPARTMENT.
- The LOCAL GOVERNMENT agrees to maintain the landscaping referenced above in accordance with the Landscape Maintenance Plan(s) included as Exhibits "C" & "C-1." Additionally, the LOCAL GOVERNMENT agrees to maintain existing sidewalk that

remains in the right of way, if any, within the area between the boundary line on either side of the abutting property extending forward to the back of the curb, or if no curb exists, then the edge of the travel lane, and within the area connecting with the sidewalk as shown in Exhibit "B", as well as any newly constructed pedestrian facilities depicted on Exhibit "B". Said maintenance will be in accordance with Florida Administrative Code Rule 14-40.003 and the Florida Highway Landscape Guide, as they may be amended from time to time. The LOCAL GOVERNMENT's responsibility for maintenance shall be consistent with the requirements of Florida Administrative Code Rule 14-40.003. The LOCAL GOVERNMENT also agrees to maintain the LOCAL GOVERNMENT sidewalk in conformance with generally accepted standards of sidewalk maintenance. The above-named functions to be performed by the LOCAL GOVERNMENT shall be subject to periodic inspections by the DEPARTMENT. The LOCAL GOVERNMENT shall not change or deviate from said plan(s) without written approval of the DEPARTMENT.

- 3. All landscape installation and all maintenance activities undertaken by the **LOCAL GOVERNMENT** shall be in accordance with the Maintenance of Traffic Plans(s) included as Exhibit "D" and Florida Administrative Code Rule 14-40.003.
- 4. If at any time after the LOCAL GOVERNMENT has assumed the landscaping installation or the maintenance responsibility above-mentioned, it shall come to the attention of the DEPARTMENT that the limits or a part thereof is not properly installed or maintained pursuant to the terms of this AGREEMENT, the District Secretary or his designee may issue a written notice that a deficiency or deficiencies exist(s), by sending a certified letter to the LOCAL GOVERNMENT to place said LOCAL GOVERNMENT on notice thereof. The certified letter shall be sent to the City Manager. Thereafter the LOCAL GOVERNMENT shall have a period of thirty (30) calendar days within which to correct the cited deficiencies. If said deficiencies are not corrected within this time period, the DEPARTMENT may at its option, proceed as follows:
 - (a) If installation is not completed in accordance with the plans in paragraph 1, the **DEPARTMENT** may complete the installation, with **DEPARTMENT** or Contractor's personnel, and invoice the **LOCAL GOVERNMENT** for expenses incurred.
 - (b) If installation has been properly completed or if the DEPARTMENT elects not to complete the installation under (a) above, and maintenance by the LOCAL GOVERNMENT is not in compliance with paragraphs 2 or 3, the DEPARTMENT may take action to maintain the landscaping or existing sidewalk or a part thereof, with DEPARTMENT or Contractor's personnel and invoice the LOCAL GOVERNMENT for expenses incurred, or
 - (c) The **DEPARTMENT** may terminate the **AGREEMENT**, in which case the **LOCAL GOVERNMENT** shall at its own expense and within sixty (60) days after written notice by the **DEPARTMENT**, remove all of the landscaping that the **DEPARTMENT** directs be removed and return the right-of-way to its original condition. The **LOCAL GOVERNMENT** will own such materials as it removes

and the **DEPARTMENT** shall own any materials remaining. The **DEPARTMENT** may, in its discretion, remove, relocate or adjust the landscaping materials, with the **LOCAL GOVERNMENT** being responsible for the cost of any removal.

Upon **DEPARTMENT** action under one of the above options and upon direction of the **DEPARTMENT**, the **LOCAL GOVERNMENT** shall cease installation and maintenance activities under this **AGREEMENT**.

- 5. It is understood between the parties hereto that the landscaping covered by this AGREEMENT may be removed, relocated or adjusted by the DEPARTMENT at any time in the future as determined to be necessary by the DEPARTMENT in order that the state road be widened, altered or otherwise changed which activities may include, but are not limited to, emergency or routine maintenance which may impact the landscaping. The LOCAL GOVERNMENT shall be given sixty (60) calendar days notice to remove said landscaping/hardscape after which time the DEPARTMENT may remove the same, with the LOCAL GOVERNMENT being responsible for the cost of removal.
- 6. The LOCAL GOVERNMENT may utilize its employees or third parties to accomplish its obligations under paragraphs 1, 2 or 3; however, the LOCAL GOVERNMENT remains responsible for proper performance under this AGREEMENT and shall take all steps necessary to ensure that its employees or third parties perform as required under this AGREEMENT.
- 7. The LOCAL GOVERNMENT agrees to include the following indemnification in all contracts with contractors, subcontractors, consultants, and subconsultants, who perform work in connection with this Agreement:

"The contractor/subcontractor/consultant/subconsultant shall indemnify, defend, save and hold harmless the State of Florida, Department of Transportation and all of its officers, agents or employees from all suits, actions, claims, demands, liability of any nature whatsoever arising out of, because of, or due to any negligent act or occurrence of omission or commission of the contractor/subcontractor/consultant/subconsultant, its officers, agents or employees."

- 8. The term of this AGREEMENT commences upon execution. The LOCAL GOVERNMENT shall notify or cause the Department's Maintenance Engineer or his designee to be notified a minimum of 48 hours, excluding Saturday, Sunday, and legal holidays, prior to starting work in the right-of-way, unless said Engineer or his designee waives this period in writing. When the Department through said Engineer or his designee issues a Notice to Proceed, the LOCAL GOVERNMENT may proceed with the project.
- 9. **LEGAL REQUIREMENTS.** This Agreement is executed and entered into in the State of Florida and will be construed, performed, and enforced in all respects in strict conformity with local, state, and federal laws, rules, and regulations.
 - (a) If any term or provision of the Agreement is found to be illegal or unenforceable, the remainder of the Agreement will remain in full force and effect and such term or provision will be deemed stricken.

- (b) The LOCAL GOVERNMENT shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the LOCAL GOVERNMENT in conjunction with this Agreement. Failure by the LOCAL GOVERNMENT to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the DEPARTMENT.
- (c) The LOCAL GOVERNMENT and the DEPARTMENT agree that the LOCAL GOVERNMENT, its employees, contractors, subcontractors, consultants, and sub consultants are not agents of the DEPARTMENT as a result of this Agreement.
- (d) The LOCAL GOVERNMENT shall not cause any liens or encumbrances to attach to any portion of the DEPARTMENT right-of-way.
- (e) Nothing herein shall be construed as a waiver of either party's sovereign immunity.
- (f) LOCAL GOVERNMENT:
 - shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the LOCAL GOVERNMENT during the term of the contract; and
 - ii. shall expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.
- 10. This writing embodies the entire **AGREEMENT** and understanding between the parties hereto and there are no other **AGREEMENTS** and understanding, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.
- 11. This AGREEMENT may not be assigned or transferred by the LOCAL GOVERNMENT in whole or part without the consent of the DEPARTMENT.
- 12. This **AGREEMENT** shall be governed by and construed in accordance with the laws of the State of Florida. In the event of a conflict between any portion of the **AGREEMENT** and Florida law, the laws of Florida shall prevail.
- 13. Public Entity Crime A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.
- 14. Anti-Discrimination An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a

public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity.

15. The Parties agree to comply with s.20.055(5), Florida Statutes, and to incorporate in all subcontracts the obligation to comply with s.20.055(5), Florida Statutes.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first above written.

(LOCAL GOVERNMENT)	
By:	-
Printed Name & Title	_
Attest:	_(SEAL)
Printed Name & Title	<u>-</u>
Legal Approval	_
STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION	ON
Ву:	· .
Director of Transportation Operations	,
Attest:	(SEAL)
Norma Mejias Executive Assistant	
egal Approval	

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RESUL	UTION NO.	
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A RESOLUTION OF THE CITY OF ORLANDO, FLORIDA, AUTHORIZING EXECUTION OF THE LANDSCAPE CONSTRUCTION AND MAINTENANCE MEMORANDUM OF AGREEMENT WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION RELATING TO STATE ROAD 527 RIGHT-OF-WAY PROPERTY, LOCATED AT 1101 SOUTH ORANGE AVE., ORLANDO FL, 32806; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, "FDOT", and CITY OF ORLANDO, "CITY", desire to enter into a Landscape Construction and Maintenance Memorandum of Agreement wherein the CITY OF ORLANDO will cause the installation and maintenance of certain landscaping within the FDOT right-of-way on State Road 527, "Orange Ave.", in the proximity of 1101 South Orange Ave.; and

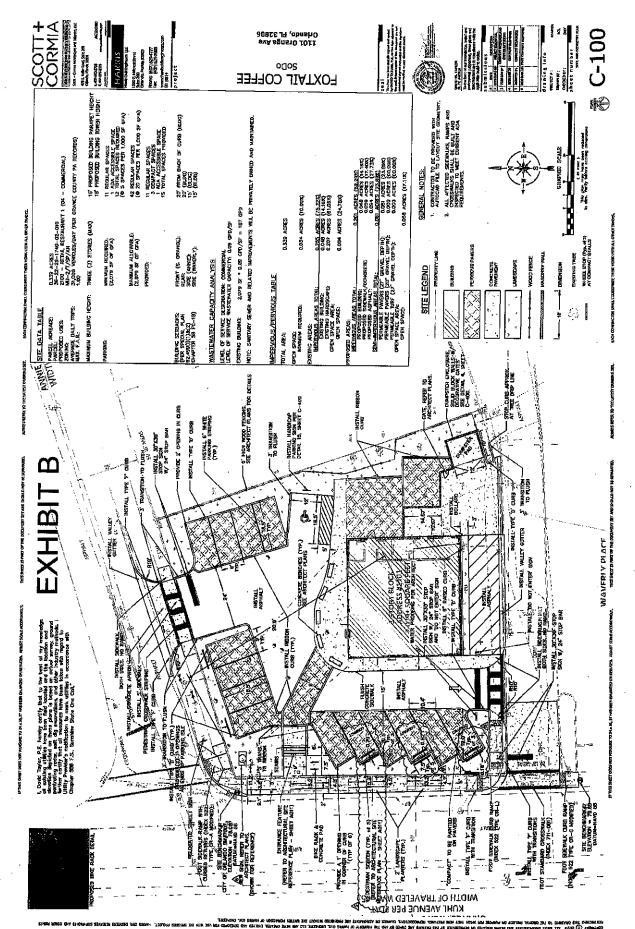
WHEREAS, the State of Florida Department of Transportation agrees to allow the landscaping/hardscape and sidewalk improvements only under certain conditions necessary to protect the traveling public using said right-of-way, and has therefore requested the City of Orlando to execute and deliver to the State of Florida Department of Transportation the Landscape Construction and Maintenance Memorandum of Agreement for the aforesaid project; and

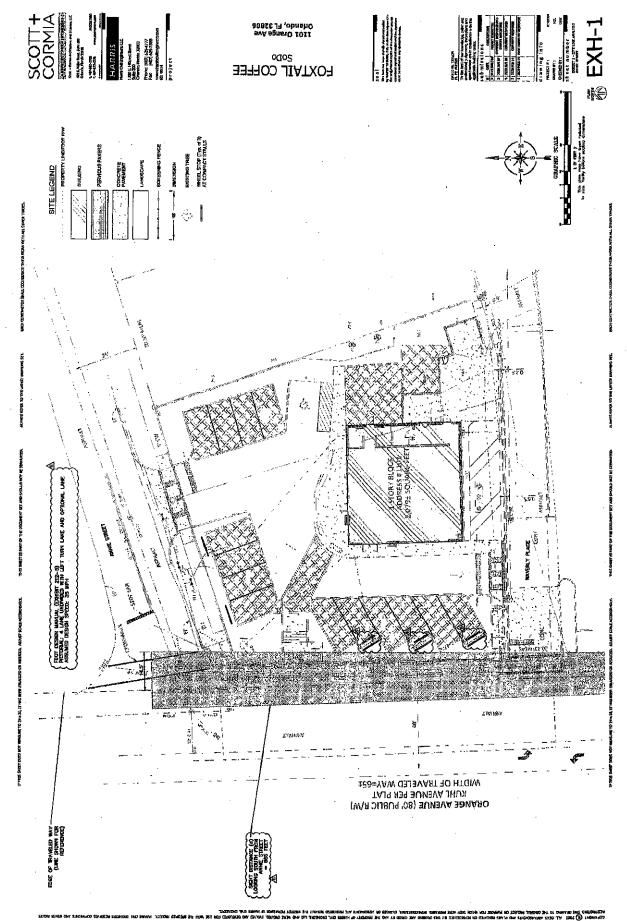
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF ORLANDO, FLORIDA, that:

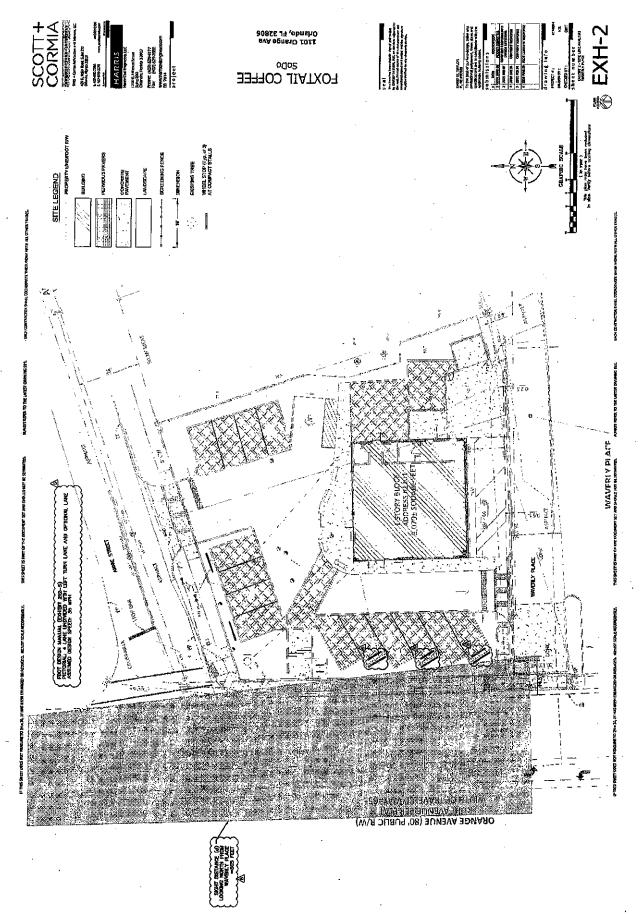
SECTION 1. - The City Council hereby authorizes the Mayor of the City of Orlando to execute and deliver to the State of Florida Department of Transportation the Landscape Construction and Maintenance Memorandum of Agreement for the aforementioned project.

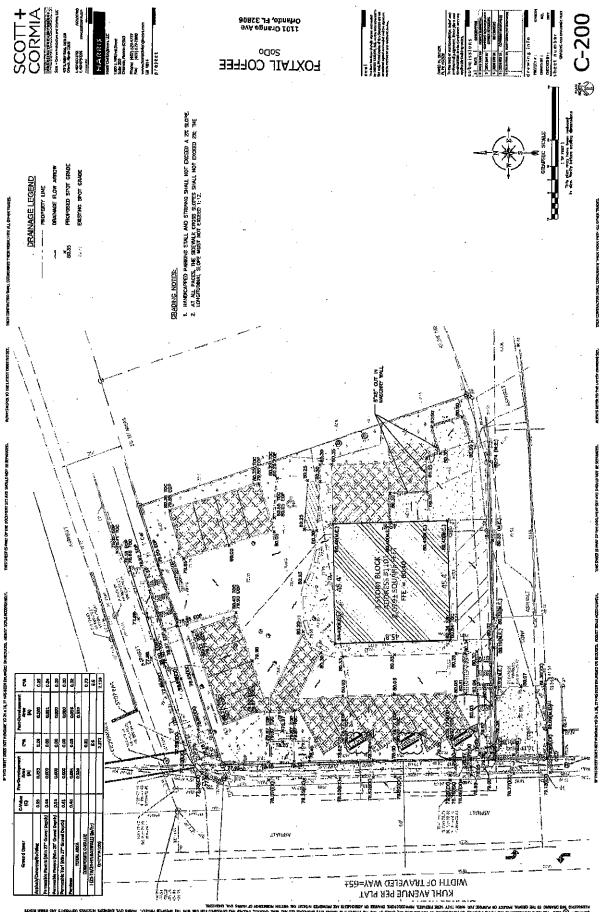
SECTION 2. - This Resolution shall take effect immediately upon its adoption.

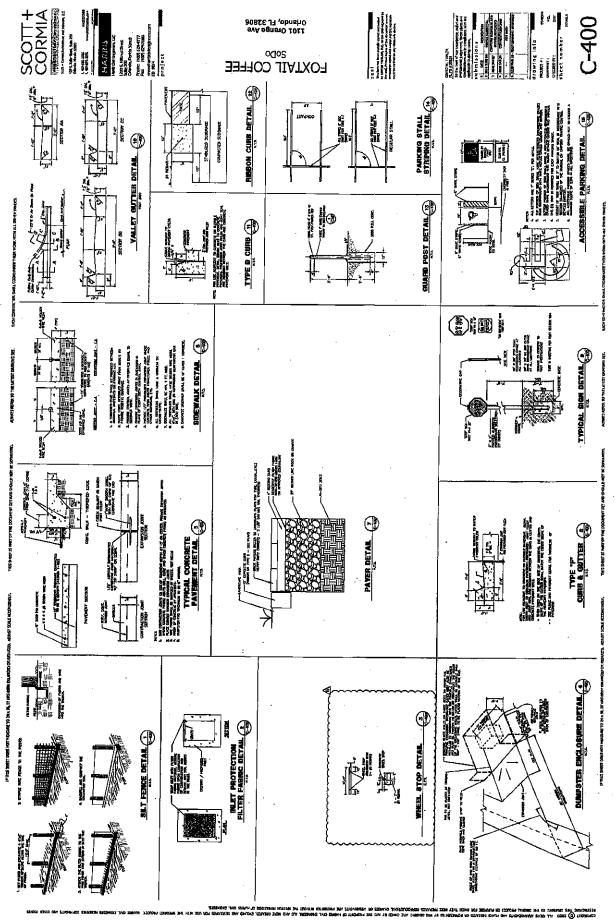
PASSED AND DULY ADO ORLANDO THIS DAY OF	PTED BY THE CITY COUNCIL OF THE CITY OF, 2020.
ATTEST:	CITY OF ORLANDO, FLORIDA, a municipal corporation, organized and existing under the laws of the State of Florida
By: Denise Aldridge, City Clerk	
Defilise Aldridge, City Clerk	By: Mayor / Mayor Pro Tem
EXHIBIT	Date:











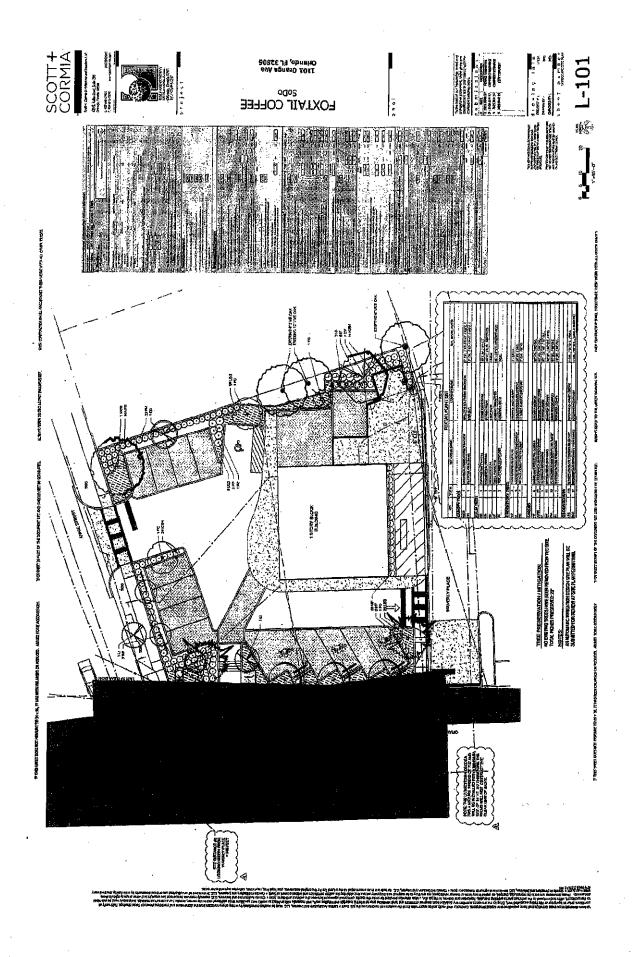


EXHIBIT C

MAINTENANCE PLAN

All elements of the Landscaping shall be maintained in accordance with the Landscape Agreement, Plans, Rule Chapter 14-40, FAC., and Standard Plans Indices 522-001 & 522-002.

EXHIBIT C-1

OVERVIEW

The project includes constructing sidewalk and making sidewalk planters with ground cover with the right-of-way of Orange Avenue. The sidewalks will include curb ramps on the north at Annie Street and on the south at Waverly Place.

There are no trees within the FDOT right of way. There are some on the property adjacent to the FDOT right of way. The planters will include drip irrigation.

SIDEWALK

The Owner of the site will maintain the appearance of the streetscape so as to present a neat, healthy and orderly appearance generally free of refuse and debris. The Owner will repair damage to the sidewalk only in the case where the damage has been caused by roots of trees located on the private property proper. Likewise, the Owner will repair the sidewalk if the damage is caused by operations of the private property. Damage to the sidewalks, curbs and/or curb ramps that are not the fault of the Owner will be the responsibility of the FDOT, or party responsible for the damage.

MAINTENANCE OF LANDSCAPING AND IRRIGATION

The Owner of the site shall be responsible for the maintenance of all landscaping and streetscaping so as to present a neat, healthy and orderly appearance generally free of refuse and debris. Any plant material, which is dead, dying or shaded out by trees shall promptly be replaced with the same or similar species material or shall be treated to restore a healthy growth to achieve a uniform appearance. Plant material that replaces shaded out material must be shade tolerant and blend well with the remaining landscape.

The drip irrigation system will be maintained using common practice methods.



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DETOUR

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