

**1<sup>ST</sup> AVENUE  
MAINTENANCE AGREEMENT  
BETWEEN THE CITY OF MESA,  
TEMPLE CORPORATION OF THE CHURCH OF LDS, AND  
SUBURBAN LAND RESERVE**

This 1<sup>ST</sup> Avenue Maintenance Agreement (this “Agreement”) is made as of the \_\_\_\_ day of \_\_\_\_\_, 2020 among and between Temple Corporation of the Church of LDS, a Utah corporation (“Temple Corporation”), Suburban Land Reserve, Inc., a Utah corporation (“Developer”), and the City of Mesa, an Arizona municipal corporation (“City”).

**RECITALS**

A. The passage of Transportation Bonds by Mesa residents in 2013 provided funds for the improvement of various streets and intersections throughout Mesa. One of the projects identified by the City for use of the bond funds is a capital improvement program for street improvements on 1st Avenue from South Country Club Drive to South LeSueur, which will include the installation of new landscape, underground utilities, and reconstructed traffic lanes (“1<sup>st</sup> Avenue CIP”). The 1<sup>st</sup> Avenue CIP will be completed in multiple phases with the first phase of the project extending from South Hibbert to South LeSueur.

B. Developer owns certain real property near downtown Mesa, Arizona on which Developer began a redevelopment project including the construction of residential and commercial buildings (the “Mesa & Main Project”).

C. Temple Corporation owns certain real property near downtown Mesa, Arizona on which Temple Corporation began a renovation project including the removal and renovation of structures, as well as the installation of landscape, underground utilities and reconstructed traffic lanes east of the 1<sup>st</sup> Avenue CIP.

D. The improvements, planned and budgeted for in the first phase of the 1<sup>st</sup> Avenue CIP are to be designed, constructed, and installed by the City along 1<sup>st</sup> Avenue between South Hibbert & South LeSueur and include, but are not limited to, improvements involving the sewer, water, overhead and underground electric, storm drain, roadway, pedestrian, and limited landscape improvements (“City Streetscape Elements” as more fully described and depicted in **Exhibits A and B**). The City Streetscape Elements are to be located in publicly dedicated rights-of-way or easements.

E. Due to the accelerated schedule for connection of sewer to service on the Mesa & Main Project, a new sewer line on 1<sup>st</sup> Avenue from South Hibbert to South LeSueur, was designed by the Developer’s engineer and will be constructed by the City’s contractor.

F. As a part of the Mesa & Main Project, Developer desired for additional or upgraded improvements, beyond those budgeted and planned for as the City Streetscape Elements, to be designed, constructed and installed along 1<sup>st</sup> Avenue between South Mesa Drive & South LeSueur; such additional or upgraded improvements involve the water, sewer, gas, landscaping, pedestrian areas, streetlights and public utilities (“Enhanced Streetscape Elements” as more fully described and depicted in **Exhibits A and B**) All the Enhanced Streetscape Elements are to be located in publicly dedicated rights-of-way or easements.

G. Developer has agreed that it will design, construct and install the Enhanced Streetscape Elements.

H. Temple Corporation, a third-party, affiliate of Developer, as well as Developer and the City, have each agreed to take on certain responsibilities related to the maintenance, repair and replacement of the Streetscape Elements (as that term is defined below).

I. Temple Corporation, Developer and the City desire to enter into this Agreement to set forth their respective rights and obligations regarding, among other things, the construction, maintenance, repair and replacement of the Enhanced Streetscape Elements.

## **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Temple Corporation and the City agree as follows:

1. Definitions. In this Agreement, unless a different meaning clearly appears from the context:
  - a. “1<sup>st</sup> Avenue CIP” means as defined in Recital A.
  - b. “A.R.S.” means the Arizona Revised Statutes.
  - c. “City” means the City of Mesa, an Arizona municipal corporation (and any successor public body or officer hereafter designated by or pursuant to law).
  - d. “City Indemnified Parties” means, collectively, the City, its agents, representatives, officers, directors, elected and appointed officials and employees.
  - e. “City Streetscape Elements” means as defined in Recital D and as more fully described and depicted in **Exhibits A and B**.
  - f. “Claims” means, collectively, all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including attorneys’ fees, experts’ fees and court costs associated with all such matters).

g. “Developer” means Suburban Land Reserve, Inc., a Utah corporation, or its successors and assigns.

h. “Enhanced Streetscape Elements” means as defined in Recital F, and as more fully described and depicted in **Exhibits A and B**.

i. “Failing Party” means as defined under Subsection 3(k).

j. “Mesa & Main Project” means as defined in Recital B.

k. “Notice of Default” means as defined in Subsection 4(b).

l. “Parties” means the City, Developer and Temple Corporation collectively.

m. “Party” means the City, Developer and Temple Corporation individually.

n. “Repair Notice” means as defined under Subsection 3(k).

o. “Streetscape Construction” means as defined in Subsection 2(a) and as more specifically described and depicted in **Exhibits A and B**.

p. “Streetscape Elements” means the City Streetscape Elements and Enhanced Streetscape Elements collectively.

q. “Streetscape Maintenance” means as defined in Subsection 3(a) and as more specifically described and depicted in **Exhibits A and B**.

r. “Temple Corporation” means Temple Corporation of the Church of LDS, a Utah corporation, or its successors and assigns.

2. Design, Construction, and Installation (Streetscape Construction) of the Streetscape Elements.

a. Streetscape Construction; Responsible Party. Developer and the City have agreed to divide between them the responsibility of the design, construction and installation of the Streetscape Elements (“Streetscape Construction”). As discussed in the Recitals, Developer will perform the Streetscape Construction of the Enhanced Streetscape Elements and the City will perform the Streetscape Construction of the City Streetscape Elements. The specific Streetscape Elements that the City and Developer are each responsible for are listed in **Exhibit A**, with the location of the Streetscape Elements marked in **Exhibit B**. For the purpose of clarity, the Parties acknowledge that Temple Corporation has no responsibility or obligation for the Streetscape Construction of any Streetscape Elements.

b. City Obligations. In performing the Streetscape Construction of the City Streetscape Elements, the City shall: (1) pay for the Streetscape Construction at the City’s sole

cost and expense; (2) ensure the Streetscape Construction is performed and completed in compliance with all applicable laws including, but not limited to, the City of Mesa Zoning Code, City of Mesa Standard Details and Specifications, and the requirements of the Maricopa Association of Governments; and (3) obtain all licenses, easements, authorizations, permits and permissions required of the City for the lawful Streetscape Construction.

c. Developer Obligations. In performing the Streetscape Construction of the Enhanced Streetscape Elements, Developer shall: (1) pay for the Streetscape Construction at the Developer's sole cost and expense; (2) ensure the Streetscape Construction is performed and completed in compliance with all applicable laws including, but not limited to, the City of Mesa Zoning Code, City of Mesa Standard Details and Specifications, and the requirements of the Maricopa Association of Governments; and (3) obtain all licenses, easements, authorizations, permits and permissions required of Developer for the lawful Streetscape Construction. Developer acknowledges that the design of the Enhanced Streetscape Elements is subject to the approval of the City, which will be provided at the City's sole discretion, in accordance with applicable law and policy.

d. Time for Completion. The City and Developer agree that the completion of the Streetscape Construction will be completed in a reasonable amount of time that is: (1) agreed upon by the City and Developer; and (2) in line with the construction schedule of the 1<sup>st</sup> Avenue CIP and Mesa & Main Project.

e. Ownership of the Streetscape Elements.

i. Enhanced Streetscape Elements. The Enhanced Streetscape Elements shall, upon the completion of the Streetscape Construction, be deemed owned by the City, subject to acceptance by the City and the terms of this Agreement. Following acceptance by the City, Developer shall transfer any manufacturer warranties or other warranty rights of the Enhanced Streetscape Elements to the City. Notwithstanding the preceding, acceptance of the Enhanced Streetscape Elements will be conditioned on City's receipt of a one (1) year warranty of workmanship, materials and equipment, in form and content reasonably acceptable to City, provided however that such warranty or warranties may be provided by Developer's contractor or contractors directly to City and are not required from Developer, and that any such warranties will commence on the date of acceptance by the City of the Streetscape Construction of any Enhanced Streetscape Element, any component thereof, or the work of any specific trade or contractor, as applicable.

ii. City Streetscape Elements. The City Streetscape Elements shall, upon the acceptance by the City of the Streetscape Construction, be deemed owned by the City.

f. Remedy of Defects. If it is proven that the Streetscape Construction or manufacture of any of the Streetscape Elements is defective or causes Developer or the City to potentially be subject to greater, future liability or risk of liability to third parties, then, upon request by either Developer or the City, Developer and the City shall confer and reach a mutually

acceptable means to address the problem within a reasonably prompt period of time.

3. Maintenance, Repair and Replacement (Streetscape Maintenance) of Streetscape Elements.

a. Streetscape Maintenance; Responsible Party. Following the completion of the Streetscape Construction, the Parties have agreed to divide the responsibility amongst each other for the maintenance, repair and replacement of the Streetscape Elements which includes, but is not limited to, any damage caused by normal wear and tear or damage by the public (“Streetscape Maintenance”). The specific Streetscape Elements that each Party will be responsible for the Streetscape Maintenance of is listed in **Exhibit C**, and as may more fully be described and depicted in **Exhibit A** and **Exhibit B**.

b. Temple Corporation Responsibilities.

i. Landscaping. Temple Corporation shall, at its sole cost and expense and in compliance with applicable law, be responsible for the Streetscape Maintenance of the landscaping Enhanced Streetscape Elements outlined in **Exhibit C**.

ii. Enhanced Landscaping. The Parties acknowledge and agree that the Enhanced Streetscape Elements landscaping will be improved, in certain respects (which may include, for example, greater size and/or density of plant materials, different plant palettes, and heavier or more frequent watering), as compared to the City-standard landscaping found in other streets. As Temple Corporation is responsible for the Streetscape Maintenance of the landscaping Enhanced Streetscape Elements, Temple Corporation agrees that it will perform the landscaping Streetscape Maintenance in a manner that meets the heightened (improved) standard.

c. City Responsibilities. The City shall, at its sole cost and expense and in compliance with applicable law, be responsible for the Streetscape Maintenance of the City Streetscape Elements outlined in **Exhibit C**.

d. Developer Responsibilities. Developer shall, at its sole cost and expense and in compliance with applicable law, be responsible for the Streetscape Maintenance of the Streetscape Elements outlined in **Exhibit C**.

e. City Maintenance Authority. In addition to the Streetscape Maintenance that is the responsibility of the City under this Agreement, the City reserves its existing authority to undertake any Streetscape Maintenance including, without limitation, any Streetscape Maintenance: (1) that is required, in the reasonable opinion of the City Manager or his/her designee, to address an emergency or threat to public safety, in which event no notice or opportunity to cure is required (see Subsection (h) below); (2) that is otherwise appropriate under applicable City standards, subject to notice and cure as provided herein; or (3) the City has the right to maintain tree canopies located closer than 18-feet from a street light when the canopy negatively impacts street lighting with notification to Developer and/or Temple Corporation. To the extent that the City does not already have the authority to undertake the foregoing Streetscape

Maintenance, then Temple Corporation and Developer hereby grant such authority to the City.

f. City-Standard Components. In all cases where the City retains responsibility for the Streetscape Maintenance of City-standard component lighting (including the maintenance of light poles and LED heads), Temple Corporation and Developer shall have the right to undertake minor maintenance and repair of the City-standard lighting components in the form of cleaning or painting light poles in the same color as maintained or allowed by the City, without Temple Corporation or Developer having or incurring any obligation to do such minor maintenance and repair, and Temple Corporation and Developer shall each do so at its sole cost and expense, with no obligation on the City to provide reimbursement.

g. Streetscape Maintenance Standards for All Parties. All Streetscape Maintenance required or permitted to be performed by or on behalf of a Party (including by that Party's employees, agents and contractors) must: (1) comply with the requirements of applicable local, state and federal standards then in effect for work done in, on or about a public street, including all applicable procedures regarding safety and minimizing any inconvenience to the public; and be performed in a first-class, sound, clean, safe and attractive manner that at all times maintains the safety of the public.

h. Streetscape Maintenance Design Standards. Streetscape Maintenance performed by Developer or Temple Corporation must adhere to the design elements of the Mesa & Main Project and the 1<sup>st</sup> Avenue CIP, which the City has the right to grant changes to at the City's sole and absolute discretion. For further clarity, the Parties acknowledge that Streetscape Maintenance performed by the City is not required to meet a specific design standard; the City need only meet the minimum standard for the Streetscape Maintenance required by law or applicable City policy.

i. Other Obligations Required by Law. Any Streetscape Maintenance obligations of a Party set forth in this Agreement are in addition to, and not in lieu of, any other maintenance, repair, and replacement responsibilities a Party would have by law as the owner of real property.

j. Licenses.

i. City Real Property. In all cases where Temple Corporation or Developer are obligated under this Agreement to perform Streetscape Maintenance on Streetscape Elements, the City hereby grants, subject to the terms of this Agreement, Temple Corporation and Developer a license to enter upon all applicable dedicated right of way and easement areas to the extent reasonably necessary to effect the Streetscape Maintenance.

ii. Temple Corporation Real Property. It is the intent of the Parties that the Streetscape Elements are to be in publicly owned rights-of-way or easements; however, in all cases where the City or Developer are obligated under this Agreement to perform Streetscape Maintenance, Temple Corporation hereby grants, subject to the terms of this Agreement, to the City and Developer a license to enter upon all applicable Temple Corporation real property to the

extent reasonably necessary to effect such Streetscape Maintenance.

iii. Developer Real Property. It is the intent of the Parties that the Streetscape Elements are to be in publicly owned rights-of-way or easements; however, in all cases where the City or Temple Corporation are obligated under this Agreement to perform the Streetscape Maintenance of Streetscape Elements, Developer hereby grants, subject to the terms of this Agreement, to the City and Temple Corporation a license to enter upon all applicable Developer real property to the extent reasonably necessary to effect the Streetscape Maintenance.

iv. Term of Licenses. The licenses given by and to each Party under this Subsection (j) shall remain effective until this Agreement is terminated.

k. Failure to Meet Streetscape Maintenance Obligations.

i. Failure; Repair Notice. Unless specifically set forth herein, no Party shall have the obligation to perform Streetscape Maintenance on any Streetscape Element that is specifically stated in the Agreement to be the responsibility of another Party. If any Party fails to maintain or make repairs (including replacement, when necessary) within a reasonable time to any Streetscape Elements for which it is responsible (“Failing Party”), then any other Party shall promptly notify the Failing Party in writing of the nature and character of such reasonably necessary repairs (the “Repair Notice”).

ii. Repair Notice to Developer or Temple Corporation. If Developer or Temple Corporation is the Failing Party and is provided a Repair Notice by the City, and the Failing Party does not make the repairs set forth in the Repair Notice within thirty (30) days after receipt of the same, or if the repairs are of such character as to require more than thirty (30) days to cure and the Failing Party does not commence to cure within thirty (30) days after receipt of the Repair Notice and thereafter to diligently proceed to make such repairs, then, in either such event, the City may make such reasonably necessary repairs and such repairs shall: (a) be at the Failing Party’s sole cost and expense; (b) do not have to meet any Enhanced Streetscape Element design standard and need only be completed to a standard that meets the minimum requirements under the law or City policy for such improvements; and (c) not alleviate the Failing Party from any of its obligations under this Agreement.

iii. Repair Notice to City. If the City is the Failing Party and Temple Corporation or Developer provides a Repair Notice to the City, the City shall, at a minimum, respond within thirty (30) days after receipt of the Repair Notice advising whether or when the City intends to undertake such Streetscape Maintenance. Developer and Temple Corporation have no cure rights to perform any Streetscape Maintenance for a City maintained Streetscape Element without the City’s express, written permission.

iv. Emergency Repairs. Notwithstanding the requirements of this Subsection (k), a Repair Notice is not required for any emergency repairs (whether or not required under this Agreement) necessary to be performed by the City to reasonably protect the health and safety of the public. If the City performs such emergency repairs on or related to a Streetscape

Element which the Developer or Temple Corporation is responsible for the Streetscape Maintenance of, then Developer or Temple Corporation (as applicable) shall reimburse the City for all costs and expenses of the emergency repair within thirty (30) days of invoice.

4. Default; Remedies.

a. Default. A Party will be in default of the Agreement if that Party:

i. Is or becomes insolvent or is a party to any voluntary bankruptcy or receivership proceeding, makes an assignment for a creditor, or there is any similar action that affects the Party's capability to perform under the Agreement;

ii. Is the subject of a petition for involuntary bankruptcy not removed within sixty (60) calendar days; or

iii. Fails to carry out any material term, promise, or condition of the Agreement.

b. Notice and Opportunity to Cure. In the event a Party is in default then another Party will provide written notice to the defaulting Party of the default ("Notice of Default"). A Notice of Default provided pursuant to this Subsection 4(b) is in addition to, and not in lieu of, a Repair Notice that must be provided pursuant to this Agreement. Upon receipt of a Notice of Default, the defaulting Party will have thirty (30) days to cure the default, unless the default is of a nature that it is reasonably anticipated to affect the health, safety or welfare of the public and, in such an event, the non-defaulting Party who provided the Notice of Default may require a minimum seven (7) days to cure the default from the date of receipt of the notice; the cure period may be extended by mutual agreement of all Parties, but no cure period may exceed ninety (90) days. A Notice of Default will be deemed to be sufficient if it is reasonably calculated to provide notice of the nature and extent of such default. Failure of a non-defaulting Party to provide a Notice of Default does not waive any rights under the Agreement. If the defaulting Party fails to cure the failure within the required period of time, any non-defaulting Party may require that a senior officer or governing board/body member of that Party, or their designee, confer and use their reasonable best efforts to resolve the dispute. If the dispute cannot be resolved to the mutual satisfaction of the Parties, any Party may seek the remedies available to it in Subsection (c) below.

c. Default Remedies.

i. Specific Performance as a Remedy. Should any defaulting Party fail to meet its obligations under this Agreement related to the Streetscape Maintenance of the Streetscape Elements, this could leave a substantial portion of the 1<sup>st</sup> Avenue CIP and/or the Mesa & Main Project requiring construction, installation, maintenance or repair, resulting in the expenditure of additional large sums of resources by a non-defaulting Party. Accordingly, the Parties agree that specific performance is an essential remedy, without which none of the Parties would have entered into this Agreement, and the Parties agree that specific performance shall be



an available remedy to any non-defaulting Party against a defaulting Party for any default.

ii. Remedy for Developer and Temple Corporation. Developer and Temple Corporation acknowledge and agree that the only remedy available for a default of the City is specific performance as set forth in Subsection (i) above. Developer and Temple Corporation will not seek any other available remedies or damages allowed by/in law or at equity for a default of the City.

iii. Remedy for the City. In addition to specific performance as outlined in Subsection (i) above, the City may seek any available remedies allowed by/in law or at equity, including, monetary damages, against Developer or Temple Corporation for any default of this Agreement; however, Developer and Temple Corporation will not be liable for any incidental, special or consequential damages for a default under this Agreement.

## 5. Indemnification.

a. Temple Corporation Indemnification of City. To the fullest extent not prohibited by law, Temple Corporation shall indemnify, defend, pay and hold the City Indemnified Parties, harmless for, from and against all Claims imposed upon or asserted against the City Indemnified Parties by a third party by reason of any accident, injury to or death of persons (including workmen) or loss of or damage to property arising from, in whole or in part, an act or omission of Temple Corporation, its agents, representatives, officers, directors, and employees for any failure on its/their part or on the part of Temple Corporation's contractors, subcontractors, agents, representatives, or independent contractors to comply with any applicable laws or requirements under this Agreement for the Streetscape Maintenance of the Streetscape Elements that are the responsibility of Temple Corporation. The indemnification, duty to defend and hold harmless set forth in this Subsection (a) shall apply to all Claims except Claims arising from the negligence or intentional acts of the City Indemnified Parties.

b. Developer Indemnification of City. To the fullest extent not prohibited by law, Developer shall indemnify, defend, pay and hold the City Indemnified Parties, harmless for, from and against all Claims imposed upon or asserted against the City Indemnified Parties by a third party by reason of any accident, injury to or death of persons (including workmen) or loss of or damage to property arising from, in whole or in part, an act or omission of Developer, its agents, representatives, officers, directors, and employees for any failure on its/their part or on the part of Developer's contractors, subcontractors, agents, representatives, or independent contractors to comply with any applicable laws or requirements under this Agreement for: (a) the Streetscape Maintenance of the Streetscape Elements that are the responsibility of Developer; or (b) the design, installation, or construction of the Enhanced Streetscape Elements, to the extent designed, installed, or constructed by Developer or Developer's contractors, subcontractors, agents, representatives, or independent contractors. The indemnification, duty to defend and hold harmless set forth in this Subsection (b) shall apply to all Claims except Claims arising from the negligence or intentional acts of the City Indemnified Parties.

c. In the event the City should be made a defendant in any action, suit or

proceeding brought by a third party by reason of any of the occurrences described in Subsections (a) or (b), as applicable, the indemnifying Party (Temple Corporation or Developer) shall at its own expense: (i) resist and defend such action, suit or proceeding or cause the same to be resisted and defended by counsel designated by the indemnifying Party and reasonably approved by the City; and (ii) if any such action, suit or proceeding should result in a final judgment against the City, the indemnifying Party shall promptly satisfy and discharge such judgment or shall cause such judgment to be promptly satisfied and discharged. The obligations of this Section 5 arising by reason of any such occurrence taking place while this Agreement is in effect shall survive any termination or other form of cancellation of this Agreement.

6. Insurance. Developer and Temple Corporation shall each, at its own expense and at all times, maintain insurance against policies for injury to persons or damage to property which may arise from or in connection with this Agreement. Such policies shall provide, at minimum, \$3,000,000/\$3,000,000 (per occurrence/aggregate) in general liability coverage (including contractual liability coverage for indemnity obligations under this Agreement) from insurance companies authorized to do business in the state of Arizona. The City Manager's Office may also allow Developer and Temple Corporation, each respectively, through prior, written approval, to meet the insurance requirements of this Agreement through a form of self-insurance; provided that Developer and Temple Corporation maintain actuarial sound reserves for each self-insurance program. Developer and Temple Corporation shall each provide the City with a Certificate of Insurance endorsing the City Indemnified Parties as additional insureds up to the full coverage limit. Developer's and Temple Corporation's insurance policies shall be primary and non-contributory with respect to all other City insurance sources (including City's Self Insurance Retention), and must contain a waiver of transfer rights of recovery (waiver of subrogation) against the City Indemnified Parties. All Insurance Certificates are to be sent to:

City of Mesa  
P.O. Box 1466  
Mesa, AZ 85211-1466  
Attn: Risk Manager

7. Term. The rights and obligations set forth in this Agreement shall continue for fifty (50) years and will automatically renew for periods of five (5) years each unless notice is given by a Party to the other Parties that it no longer desires to continue this Agreement. This Agreement may be automatically renewed a maximum of ten (10) times.

8. Running of Benefits and Burdens; Assignment. All provisions of this Agreement, including the benefits and burdens, are binding upon and shall inure to the benefit of the successors and assigns of the Parties hereto. No Party may assign any of its rights under this Agreement without the prior written consent of the other Party.

9. Notices. All notices provided for herein shall be delivered personally or sent by certified United States Mail, postage pre-paid, return receipt requested to:

To the City:                      City of Mesa

P.O. Box 1466  
Mesa, AZ 85211-1466  
Attn: City Manager

With a copy to: City of Mesa  
P.O. Box 1466  
Mesa, AZ 85211-1466  
Attn: City Attorney

To Developer: Suburban Land Reserve, Inc.  
c/o City Creek Reserve  
15 W. South Temple, Suite 250  
Salt Lake City, UT 84101  
Attn: Carl Duke

With a copy to: Kirton McConkie  
50 E. South Temple #400  
Salt Lake City, UT 84111  
Attn: Robert Hyde

To Temple Corporation: Temple Corporation of the Church of LDS, Inc.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Or to such other address or addresses as may hereafter be specified by notice given by any of the above for itself to the others. Any notice or other communication directed to a Party to this Agreement shall become effective upon the earliest of the following: (a) actual receipt by that Party; (b) personal delivery to the address of the Party, addressed to the Party; or (c) if given by certified or registered U.S. Mail, return receipt requested, thirty-six (36) hours after deposit with the United States Postal Service, addressed to the Party.

10. Independent Contractor; Taxes. It is expressly understood that the relationship of the Parties to each other is that of an independent contractor and no joint venture is created between the Parties by this Agreement. Each Party is responsible for the payment of all taxes including

federal, state, and local taxes related to or arising out of its responsibilities under this Agreement including, by way of illustration but not limitation, federal and state income tax, Social Security tax, unemployment insurance taxes, and any other taxes or business license fees, as required. If any taxing authority should deem a Party's employees an employee of the another Party, or should otherwise claim that another Party is liable for the payment of taxes that are a Party's responsibility under this Agreement, then the responsible Party will indemnify the other Party(-ies) for any tax liability, interest, and penalties imposed.

11. Further Assurances. Each Party shall execute, acknowledge and deliver to the other such other documents, and shall take such other actions, as the other may reasonably request in order to carry out the intent and purposes of this Agreement.

12. No Third-Party Beneficiaries. This Agreement is intended for the exclusive benefit of the Parties. Nothing set forth in this Agreement is intended to create, or will create, any benefits, rights, or responsibilities in any third parties.

13. Headings. The headings in this Agreement are for reference only and shall not limit or define the meaning of any provision of this Agreement.

14. Exhibits and Recitals. The recitals and exhibits attached to this Agreement are incorporated as if fully set forth herein as terms of this Agreement.

15. Time of Essence. Time is of the essence of this Agreement. The foregoing to the contrary notwithstanding, if this Agreement requires any act to be done or action to be taken on a date that falls on a Saturday, Sunday or legal holiday, such act or action shall be deemed to have been timely done or taken if done or taken on the next succeeding day that is not a Friday, Saturday, Sunday or legal holiday.

16. Waiver. The waiver by any Party of any right granted under this Agreement shall not be deemed a waiver of any other right granted hereunder, nor shall the same be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived. Nothing in this Agreement will be deemed a waiver of any rights, laws, or obligations of the City as the local governmental entity in which the Streetscape Elements will be located.

17. Entire Agreement. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof.

18. Amendment. This Agreement may not be altered or amended except pursuant to an instrument in writing signed by all of the parties hereto.

19. Surviving Provisions. Notwithstanding any completion, termination, or other expiration of this Agreement, all provisions which, by the terms of reasonable interpretation thereof, set forth rights and obligations that extend beyond completion, termination, or other expiration of this Agreement, will survive and remain in full force and effect. Except as specifically provided in this Agreement, completion, termination, or other expiration of this

Agreement will not release any Party from any liability or obligation arising prior to the date of termination

20. Construction. This Agreement is the result of negotiations between the Parties. The Parties acknowledge and agree: (a) they were advised and had the opportunity to obtain independent legal counsel to review this Agreement; (b) this Agreement is the product of arm's length negotiations among the Parties and shall not be construed against any Party due to authorship; and (c) the Parties understand the terms and conditions contained herein. The terms and provisions of this Agreement shall be construed in accordance with their usual and customary meanings, and the Parties hereby waive the application of any rule or law that otherwise might require the construction of this Agreement against the Party who (or whose attorney) prepared the executed Agreement.

21. Attorneys' Fees and Costs. In the event of a breach by any Party and commencement of a subsequent legal action in an appropriate forum, the prevailing Party in any such dispute will be entitled to reimbursement of its reasonable attorney's fees and court costs, including, but not limited to, its costs of expert witnesses, transportation, lodging and meal costs of the parties and witnesses, costs of transcript preparation and other reasonable and necessary direct and incidental costs of such dispute.

22. Ownership and Authority to Execute. The individuals executing this document represent and warrant that: (i) he or she is authorized to do so on behalf of the Party for which they are signing; and (ii) he or she has full legal power and authority to bind the Party for which they are signing in accordance with the terms herein and, if necessary, has obtained all required consents or delegations of such power and authority.

23. Public Records. Temple Corporation and Developer acknowledge that the City is a public body, subject to Arizona's public records laws (A.R.S. § 39-121 *et seq.*) and any documents related to this Agreement may be subject to disclosure pursuant to state law in response to a public records request or to subpoena or other judicial process.

24. Governing Law, Venue, Jurisdiction, and Severability. This instrument shall be construed in accordance with the laws of the State of Arizona. A Party shall bring any action related to a dispute arising out of this Agreement in a court of appropriate venue and jurisdiction in Maricopa County, State of Arizona. If any provision of this Agreement is or becomes illegal, is found to be null or void for any reason or is held unenforceable by a court of competent jurisdiction, then the remaining portions of the Agreement shall remain in full force and effect so long as removing the severed portion does not materially alter the overall intent of the Agreement.

25. Conflict of Interest Statute. This Agreement is subject to, and may be terminated by City in accordance with, the provisions of A.R.S. § 38-511.

26. No Boycott of Israel. Developer and Temple Corporation each certify pursuant to A.R.S. § 35-393.01 that it is not currently engaged in, and for the duration of this Agreement will not engage in, a boycott of Israel.

27. Effectiveness. This Agreement shall be effective immediately upon its execution by all Parties.

28. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one in the same instrument, which instrument shall be deemed fully executed when one or more counterparts have been executed by each of the Parties.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.)

IN WITNESS WHEREOF, the Parties have executed this instrument as of the date first written above.

THE CITY OF MESA, an Arizona municipal corporation

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

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

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

STATE OF ARIZONA       )  
                                      ) ss.  
County of Maricopa       )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_, the \_\_\_\_\_ of THE CITY OF MESA, an Arizona municipal corporation, on behalf of the municipal corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires:





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

17

# **Exhibit A**

## **Streetscape Elements: Construction Responsibilities (City and Developer)**

**SEE ATTACHED**

**CITY - STREETSCAPE CONSTRUCTION RESPONSIBILITIES**

Item No.	Facility	Location	Description
<b>Public Sanitary Sewer</b>			
1	6" Sewer	1st Ave east of Mesa Drive	Replace existing 6" sewer with new 8" SDR-35 PVC sewer and associated service connections
2	8" Sewer	1st Ave - east side of Mesa Drive LeSueur	Install new 8" SDR-35 PVC sewer and associated manhole structures, parallel to existing 6" sewer. Includes Udall stub
3	8" Sewer	1st Ave - Pomeroy to east side of Mesa Drive	Install new 8" SDR-35 PVC sewer and associated manhole structures.
4	10" Sewer	1st Ave - Hibbert to Pomeroy	Install 10" SDR-35 PVC sewer and associated manhole structures, parallel to existing 6" sewer to be upsized.
5	8" Sewer	1st Ave - Hibbert to Pomeroy	Replace 6" VCP sewer with 8" sewer and MH re-lining/coating.
<b>Public Water</b>			
6	6" Water	Mesa Drive - Main Street to Villa	Remove 3 abandoned water service lines.
<b>City of Mesa Electric</b>			
7	Overhead Electric	Crossing of 1st Ave east of Hibbert	Underground existing service to Republica Empanada
8	Overhead Electric	1st Ave - Mesa Drive to Pomeroy	Underground existing overhead facilities through the intersection. Undergrounding of associated facilities north and south of intersection.
9	Overhead Electric	1st Ave - east of Mesa Drive	Underground existing overhead facilities on north side of 1st Avenue.
10	Underground Electric	Mesa Drive - Main Street to Villa	Vault construction remobilization due to out of sequence construction. Private conduit and conductors will be placed in vault, so shared cost (SW corner of Mesa and Main development).
<b>Public Storm Sewer</b>			
11	Storm Drain	1st Ave - Mesa Drive to LeSueur	Install 24" storm drain pipe, manhole(s) and catch basins.
<b>Public Roadway</b>			
12	Roadway	Mesa Drive - Main Street to Villa	2-ft sidewalk widening (from 6-ft to 8-ft sidewalk). Elevated sidewalk section with downturn and larger 1" - 3" cobbles for slope protection.
13	Roadway	1st Ave - Mesa Drive to LeSueur	Roadway narrowing with new pavement, curb, gutter and median. Driveway adjustments to match new pavement grades. New ADA compliant historic sidewalks. New pavement signing and striping. Repair or replacement of damaged street lights.
14	Roadway	1st Ave - Mesa Drive to LeSueur	Upgrade of existing street lights for LED light fixture conversion, paint poles and possible install new street lights.
15	Roadway	1st Ave - Hibbert to Mesa Drive	Pavement rebuild leaving existing curb and gutter. Replacement of any damaged curb and gutter. New curb return at northwest corner of 1st Ave and Pomeroy. Driveway rehabilitation where required. ADA sidewalk replacements. Repair or replacement of damaged street lights.
<b>1st Avenue Streetscape</b>			
16	Landscape	1st Ave - Mesa Drive to LeSueur	Rough grading and grading of bioswale/flood irrigation areas adjacent to parallel parking to bare ground.
17	Landscape	1st Ave - Hibbert to Mesa Drive	Landscape to fill in bare ground. Install general landscaping. Protect existing mature trees.

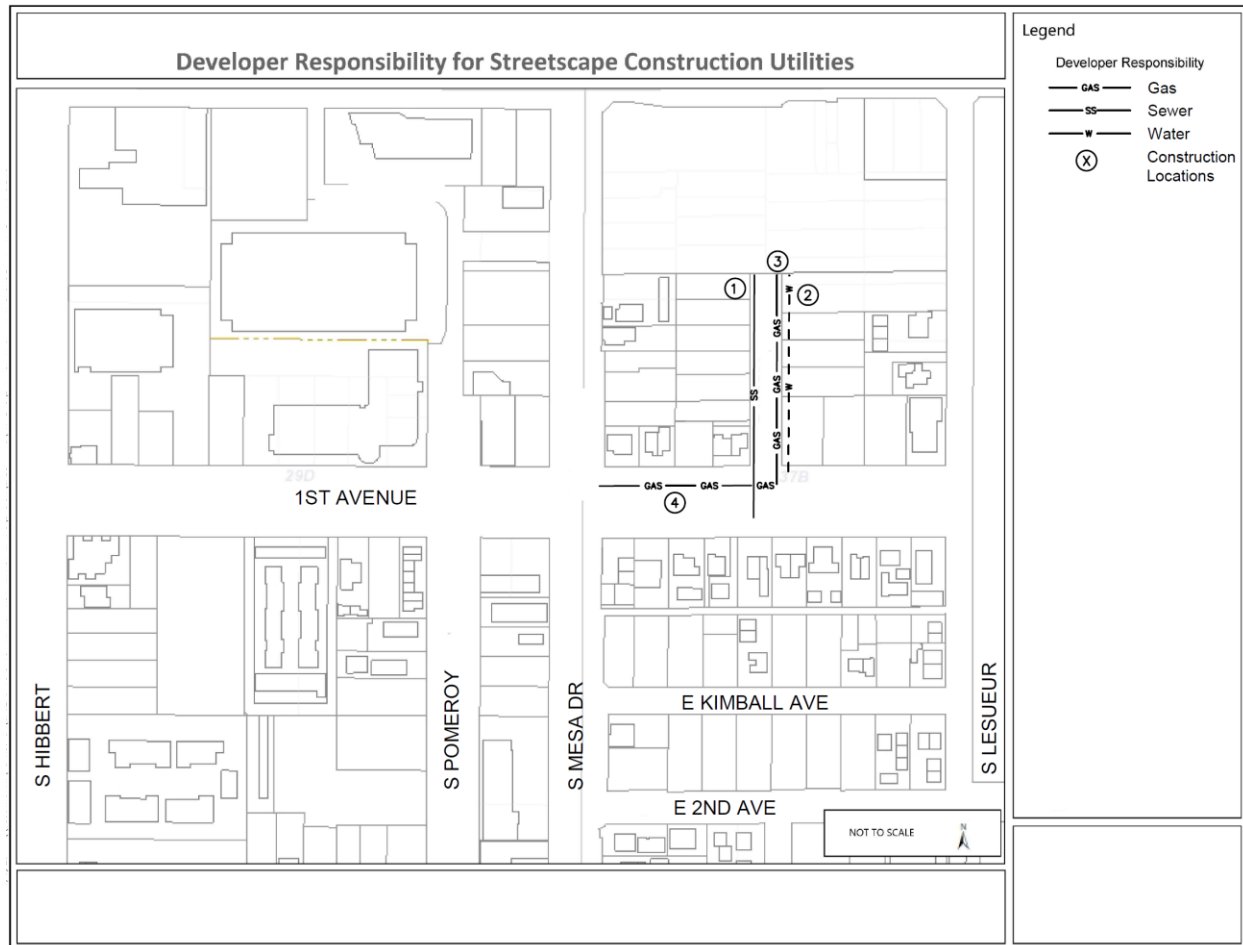
# DEVELOPER - STREETSCAPE CONSTRUCTION RESPONSIBILITIES

Item No.	Facility	Location	Description
<b>Public Sanitary Sewer</b>			
1	8" Sewer	Udall - 1st Ave north ROW to Villa	Install new 8" SDR-35 PVC sewer, service connections and associated manhole structures.
<b>Public Water</b>			
2	6" Water	Udall - 1st Ave to Villa	Replace Existing 6" ACP with 8" DIP
<b>City of Mesa Gas</b>			
3	4" Gas	Udall - 1st Ave to Villa	Replace and upsize existing 2" steel pipe with 4" PE.
4	4" Gas	1st Ave - Mesa Drive to Udall	Replacing existing 2"PE with 4" PE.
<b>1st Avenue Streetscape</b>			
5	Landscape	1st Ave - Mesa Drive to LeSueur	New palm trees, trees, shrubs, turf, ground cover, finished grading, small vertical monuments, median landscaping, associated landscape irrigation equipment. Protect historic preservation identified trees.
6	Landscape	1st Ave - Mesa Drive to LeSueur	New concrete landscape header.
7	Landscape	1st Ave - Mesa Drive to LeSueur	New accent tree lighting (up lighting).

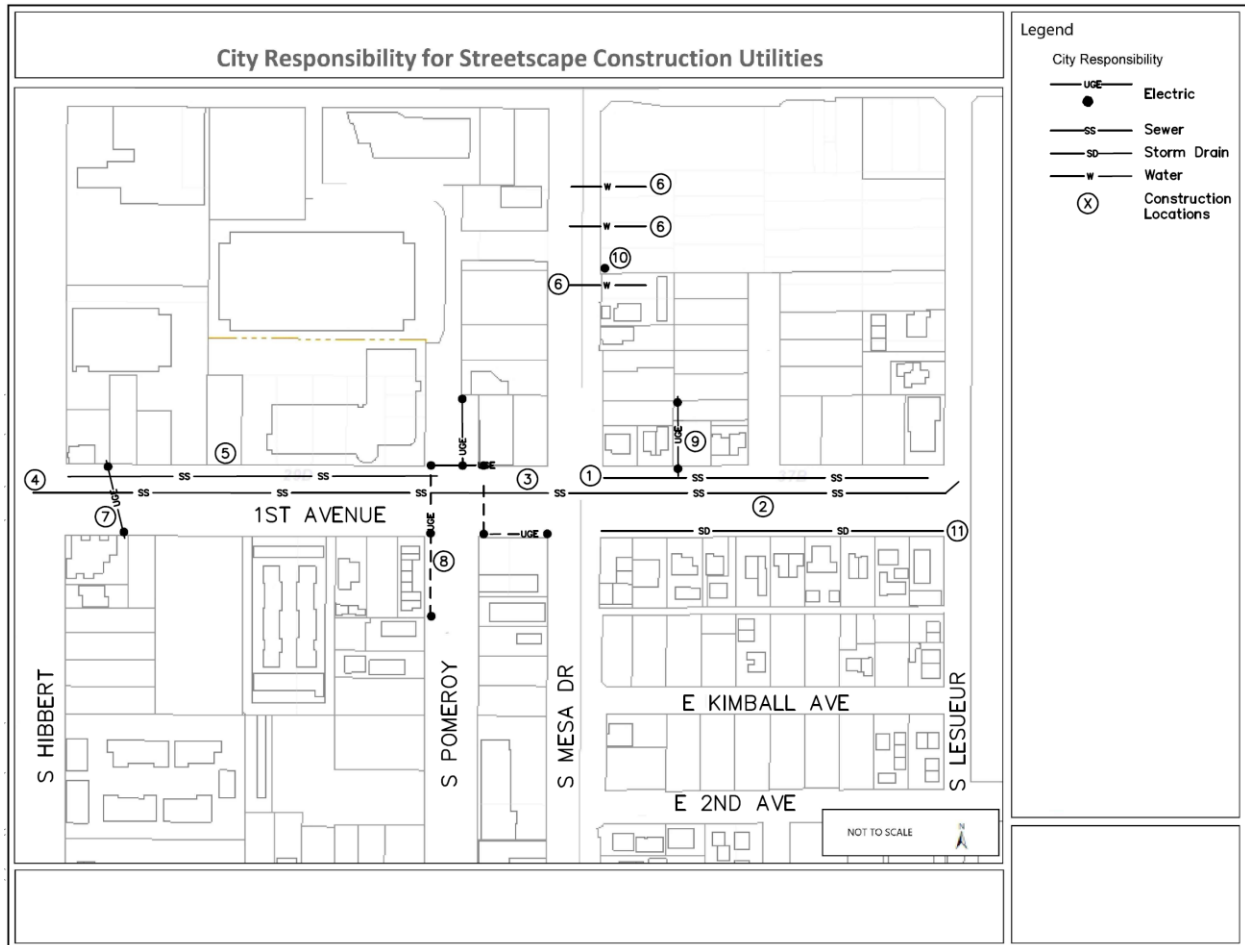
## **Exhibit B**

Streetscape Elements:  
Location Maps

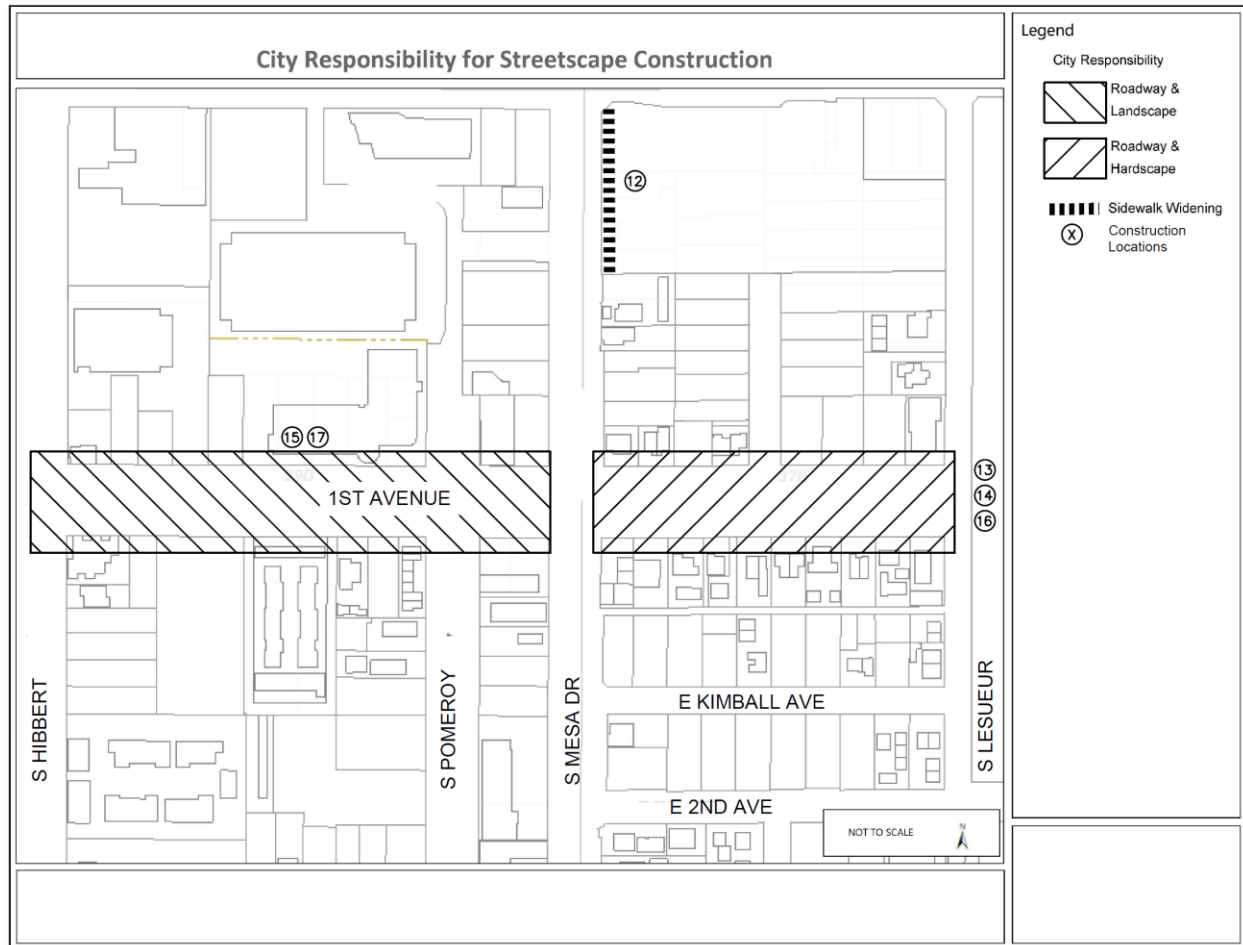
SEE ATTACHED











## **Exhibit C**

Streetscape Elements:  
Maintenance Responsibilities  
(City, Developer, and  
Temple Corporation)

SEE ATTACHED

**STREETSCAPE MAINTENANCE RESPONSIBILITY - CITY**

Item No.	Improvement	Location	Description
1	Electric, Gas, Sewer, Water	Udall - Mesa & Main project to 1st Avenue	Operate and maintain City utilities.
2	Electric, Gas, Sewer, Water	1st Avenue - South Hibbert to South LeSueur	Operate and maintain City utilities.
3	Public Storm Sewer	1st Avenue - South Mesa Drive to South LeSueur	Operate and maintain storm drain pipe, manholes and catch basins.
4	Roadway	1st Avenue - South Mesa Drive to South LeSueur	Operate and maintain pavement, curb, gutter, standard City street signs and streetlight fixtures. Monthly street sweeping.

**STREETSCAPE MAINTENANCE RESPONSIBILITY - SUBURBAN LAND RESERVE**

Item No.	Improvement	Location	Description
5	Streetscape	1st Ave - South Mesa Drive to South LeSueur	Maintain historic style sidewalk and landscape header curb.
6	Streetscape	1st Ave - South Mesa Drive to South LeSueur	Maintain paint on street light poles.

**STREETSCAPE MAINTENANCE RESPONSIBILITY - TEMPLE CORPORATION**

Item No.	Improvement	Location	Description
7	Landscape	1st Ave - South Mesa Drive to South LeSueur	Operate and maintain north and south yard landscaping to right-of-way, vertical monuments, accent tree lighting (up lighting), median landscaping, photo platforms, and associated landscape irrigation and flood irrigation equipment.