

AGREEMENT NO. 142230--0

CITY OF PHOENIX  
AND  
THREE E ONE NORTH FIRST INVESTMENT CO., L.L.C.

AGREEMENT FOR PARKING SPACES

THIS AGREEMENT is entered into this 1st day of March 2016 between the CITY OF PHOENIX, an Arizona municipal corporation ("LICENSOR") and THREE E ONE NORTH FIRST INVESTMENT CO., L.L.C. a Delaware Limited Liability Company authorized to do business in the State of Arizona ("LICENSEE").

**RECITALS**

The City Manager of the City of Phoenix, Arizona, is authorized by the provisions of the City Charter to execute agreements for professional services.

The City as LICENSOR desires to provide parking spaces to LICENSEE as specifically set forth in this Agreement.

This Agreement is authorized by Formal Action of the City Council dated February 17, 2016.

NOW, THEREFORE, the parties agree as follows:

**SECTION 1: DEFINITIONS**

1. "Contract" or "Agreement" shall refer to this agreement.
2. "Contract Amendment" shall refer to any modifications to the terms and conditions of the agreement such as contract amount, due dates, or performance requirements.
3. "Contract Administrator" shall refer to PCCD staff member responsible for the professional services procurement process including drafting and executing the Department's professional services contracts. Please refer to Rosemarie Tirelli or Designee, Phoenix Convention Center & Venues, 100 North 3rd Street, Phoenix, AZ 85004-2231. Telephone (602) 262-6990, Fax (602) 744-2863, E-mail: [rosemarie.tirelli@phoenix.gov](mailto:rosemarie.tirelli@phoenix.gov)
4. "Contract Manager" shall refer to PCCD staff member responsible for managing the contract based on his/her training, skills, knowledge, expertise and job responsibilities that are relevant to the contract. Refer to Prasan DeSilva or Designee, Phoenix Convention Center & Venues, 100 North 3rd

Street, Phoenix, AZ 85004-2231. Telephone (602) 262-7503 E-mail: [Prasan.desilva@phoenix.gov](mailto:Prasan.desilva@phoenix.gov).

5. "**Deputy Director**" shall refer to the Business Services Division Deputy Director of the Phoenix Convention Center Department as having authority as the senior-level Agreement Administrator.
6. "**Director**" shall refer to the contracting authority for the City of Phoenix, authorized by the City Manager to sign contracts and amendments thereto on behalf of the City of Phoenix, Arizona and is the Director of the Phoenix Convention Center Department.
7. "**Licensee**" shall refer to Three E One North First Investment Co., L.L.C. and subcontractors, if any.
8. "**Licensor**" shall refer to the City of Phoenix.
9. "**Phoenix Convention Center (PCCD)**" shall refer to the Phoenix Convention Center including the West Building, South Building, North Building, Executive Conference Center and/or Phoenix Convention Center Department.
10. "**Venues**" shall refer to Symphony Hall, Orpheum Theatre, East Garage, North Garage, West Garage, Regency Garage, and the Heritage Garage all located in the City of Phoenix, Arizona.

## **SECTION 2: TERM; OPTIONS; GRATUITIES; DEFAULT; AND TERMINATION**

1. **Term**: LICENSOR's performance under this Agreement shall commence on March 1, 2016 and continue through December 31, 2021 unless otherwise terminated as provided herein or upon completion of the services, whichever shall first occur.
2. **Option**: LICENSOR, acting at its sole option and discretion, may extend this Agreement for one additional five-year period covering January 1, 2022 through December 31, 2027. The option to extend this Agreement may be exercised by LICENSOR at any time prior to the expiration of the initial term by giving written notice thereof to LICENSEE.
3. **Gratuities**: LICENSOR may, by written notice to LICENSEE, terminate the right of LICENSEE to continue to perform under this Agreement with 1 calendar day notice (or such other notice as LICENSOR may deem appropriate), if it is found that gratuities in the form of entertainment, gifts, or otherwise were offered or given by LICENSEE, or any agent or representative of LICENSEE, to any officer or employee of LICENSOR for the purpose of securing a LICENSOR Agreement or securing favorable treatment with respect to the awarding or amending, or the making of any determinations. In

addition, should such a determination be made, LICENSOR shall be entitled to pursue all of the legal remedies available under the laws of the State of Arizona.

4. **Default:** Should LICENSEE fail to perform, keep and observe any of the terms, covenants or conditions of this Agreement then LICENSOR shall give LICENSEE written notice of such default. In the event said default is not remedied by LICENSEE to LICENSOR's satisfaction, within 5 working days of receipt of such notice by LICENSEE, then LICENSEE may be declared to be in default and all of its rights hereunder terminated immediately or upon such notice as LICENSOR deems appropriate.
  
5. **Termination:** Except as specified above in Paragraph 3 ("Gratuities") and Paragraph 4 ("Default") and unless otherwise agreed upon in writing by the parties, LICENSOR reserves the right to terminate the service provided under this Agreement, in whole or in part, with or without cause, by giving 10 days written notice thereof to LICENSEE.
  - a) **Notice of Termination:** Termination of work shall be effected by delivery to LICENSEE of a Notice of Termination specifying the extent to which performance of work under this Agreement is terminated, the specific nature of such termination, and date upon which such termination becomes effective.
  
  - b) **Post-Termination Winding Up:** After receipt of a Notice of Termination, and except as otherwise directed by LICENSOR, LICENSEE shall:
    - i. Stop work under this Agreement on the date and to the extent specified in the Notice of Termination.
  
    - ii. Complete performance of such part of the work as shall not have been terminated by the Notice of Termination.
  
    - iii. Take such action as may be necessary, or as LICENSOR may direct, for the protection and preservation of all property related to this Agreement that is in the possession of LICENSEE.
  
6. **Additional Conditions and Causes for Termination:** Contract may be terminated at any time by mutual written consent, or by the LICENSOR, with or without cause, upon giving thirty (30) days written notice to LICENSEE. LICENSOR at its convenience, by written notice, may terminate contract, in whole or in part.
  
7. **Termination by Licensor for Condemnation:** If any or all part of the Leased Premises, substantial or otherwise and whether adversely

affecting LICENSEE's use of the property or not, is temporarily or permanently taken for any public or quasi-public use under any statute or by right of eminent domain, or purchased under threat of or in lieu of such taking, LICENSOR may, in LICENSOR's sole and unfettered discretion, terminate this Agreement upon 90-days written notice to LICENSEE.

8. **Termination by Licensor for Redevelopment:** The Agreement may be terminated with 180-days written notice to LICENSEE if the Phoenix City Council approves demolition or sale of the Regency or East Garage.

### **SECTION 3: SCOPE OF WORK**

1. **Parking:** Parking is available at the Phoenix Convention Center Department Regency and East garages for LICENSEE at the prevailing public rate. LICENSOR reserves the right to determine which PCCD garages will be used for parking as well as the location of the "Reserved Spaces" and "Regular Reserved Spaces". Upon 30-day written notification from PCCD, parking programs are subject to change and parking rates are subject to increase.
2. **Regency Garage:** The garage is located at 40 North 2<sup>nd</sup> Street, Phoenix, Arizona 85004.

LICENSOR agrees to provide up to 85 parking spaces in the Regency Garage as follows:

- a) LICENSOR will provide up to 37 "Reserved Spaces", available 24-hours, 7-days per week, Sunday through Saturday, at the prevailing monthly public rate (currently \$180).
  - b) LICENSOR will provide up to 10 "Regular Reserved Spaces", available 5-days per week, Monday through Friday, during normal business hours, 7am to 7pm, at the prevailing monthly public rate (currently \$90).
  - c) LICENSOR will provide up to 38 "Unreserved Spaces", available 5-days per week, Monday through Friday, during normal business hours, 7am to 7pm, at the prevailing monthly public rate (currently \$65).
3. **East Garage:** The garage is located at 601 East Washington Street, Phoenix, Arizona 85004.

LICENSOR agrees to provide up to 102 parking spaces in the East Garage as follows:

- a) LICENSOR agrees to provide two (2) "High-Profile Reserved Spaces", available 24-hours, 7-days per week, Sunday through Saturday, at the

prevailing monthly public rate (currently \$180) for use by the United States Military for two (2) over-sized vans.

- b) LICENSOR agrees to provide up to 100 "Unreserved Spaces", available 5-days per week, Monday through Friday, during normal business hours, 7am to 7pm, at the prevailing monthly public rate (currently \$45).
  - c) LICENSEE agrees to direct individuals needing motorcycle parking to the East Garage. *Motorcycle parking is only available at the East Garage Marshaling Yard, no exceptions.*
4. **Parking Validations:** LICENSEE agrees to pre-purchase validation stickers for short-term daily parking needs of LICENSEE's visitors, as needed. LICENSEE understands that validation stickers are available in hourly or full-day increments at the prevailing public rate (currently \$2 per hour, up to a maximum of \$12 per day) at the Regency Garage. There are no in and out privileges associated with the use of validation stickers.
5. **Monthly Parking Cards:** LICENSOR will provide LICENSEE with monthly parking cards for the parking spaces outlined above in the Regency and East garages. LICENSEE agrees to pay LICENSOR a \$10 initial fee for each monthly parking card issued as well as a \$10 replacement fee for any lost or stolen cards.
- a) **Lost or Stolen Cards** - LICENSEE agrees to immediately report any lost or stolen monthly parking cards. LICENSOR will invoice LICENSEE for the cost of lost or stolen parking cards until LICENSEE informs LICENSOR of the loss or theft.
6. **Parking Spaces – Increase or Reduction:** LICENSOR reserves the right to negotiate an increase or reduction in the number of parking spaces if LICENSEE has not consistently used the total number of parking spaces as outlined in this Agreement or if LICENSEE requests additional parking spaces. LICENSOR will try to accommodate LICENSEE request for additional parking spaces, if available, at either Garage.
7. **Reserved Signage:** LICENSEE shall install and/or maintain professionally made signs stating, "RESERVED" as well as identifying the company name for posting on the garage wall. Installation method is limited to liquid nails. Upon termination of this Agreement, LICENSEE shall restore the wall to its original condition.

#### **SECTION 4: PARKING FEES AND INVOICES**

1. **Parking Fees:** During the term of this Agreement, LICENSEE shall pay LICENSOR a fee for each parking card(s) issued and space(s) provided in

the Regency and East Garages as outlined in Section 3, Numbers 2 and 3 above. Parking fees are invoiced on a monthly basis. Written notification is required by LICENSEE no less than 30 days prior to the termination or deactivation of any monthly parking access card(s). Failure to provide written notification will result in full payment owed for each month in which parking card(s) remained active.

2. **Invoices:** Within 10 business days before the start of each month, LICENSOR's Parking Operator shall submit an invoice to LICENSEE for payment of the monthly invoice for each parking card(s) issued and space(s) outlined in Section 3, Numbers 2 and 3 above.

Each invoice will have a due date of 30-days from the invoice date. Payment shall be mailed or delivered to the LICENSOR's Parking Operator. The mailing address for payments is Ace Parking c/o Phoenix Convention Center, 601 East Washington Street, Phoenix, Arizona 85004.

If payment is not received by the due date, LICENSOR's Parking Operator will call LICENSEE's point of contact identified in Section 6 Number 30, to advise of the delinquent status and to provide written advanced notice that the Parking Operator will deactivate monthly parking cards and vehicle drivers will need to pay the prevailing public rate upon entering or exiting the garages.

If payment is still not received after notification of delinquency, the invoice will be forwarded to the LICENSOR's Finance Department to begin the collections process. LICENSOR will notify LICENSEE that the monthly parking cards are deactivated due to lack of payment.

## **SECTION 5: INDEMNIFICATION AND INSURANCE**

1. **Indemnification Clause:** LICENSEE shall indemnify, defend, save and hold harmless the City of Phoenix and its officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of LICENSEE or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such LICENSEE to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the

Indemnitee, be indemnified by LICENSEE from and against any and all claims. It is agreed that LICENSEE will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the LICENSEE agrees to waive all rights of subrogation against the LICENSOR, its officers, officials, agents and employees for losses arising from the work performed by the LICENSEE for the LICENSOR.

2. **Insurance Requirements:** LICENSEE and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Agreement are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the LICENSEE, his agents, representatives, employees or subcontractors.

The insurance requirements as specified in **Exhibit 1** are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. LICENSOR in no way warrants that the minimum limits contained herein are sufficient to protect the LICENSEE from liabilities that might arise out of the performance of the work under this Agreement by the LICENSEE, his agents, representatives, employees or subcontractors and LICENSEE is free to purchase additional insurance as may be determined necessary.

#### **SECTION 6: GENERAL TERMS AND CONDITIONS**

1. **Compliance with Laws; Indemnity:** LICENSEE shall comply with all applicable laws, ordinances, rules, regulations, and codes of Federal, State and local governments, including, but not limited to the Arizona Workers' Compensation Act and all Federal and State tax laws. Because LICENSEE will be acting as an independent LICENSEE, LICENSOR assumes no responsibility for the LICENSEE's acts.

LICENSEE shall indemnify, save, and hold harmless the LICENSOR from all loss, cost and damage by any reason of any violation of the provisions of this paragraph and from any liability including, but not limited to fines, penalties, and other costs arising therefrom.

2. **Federal – State – City Excise Taxes:** LICENSOR is exempt from Federal Excise Tax, including Federal Transportation Tax. Exemption certificates will be furnished upon request. Sales or leases to the LICENSOR are not exempt from State of Arizona or City of Phoenix Transaction Privilege or Privilege License Taxes.
3. **Tax Responsibility Qualification:** LICENSEE may be required to establish, to the satisfaction of LICENSOR that any and all fees and taxes due to the City

of Phoenix or the State of Arizona for any License or Transaction Privilege Taxes, Use Taxes or similar excise taxes are currently paid (except for matters under legal protest).

LICENSEE agrees to a waiver of the confidentiality provisions contained in the City of Phoenix Finance Code and any similar confidentiality provisions contained in the statutes of the State of Arizona relative to State Transaction Privilege Taxes or State Use Taxes.

LICENSEE agrees to provide written authorization to the Finance Department of LICENSOR and to the State Department of Revenue of the State of Arizona to release tax information relative to Arizona Transaction Privilege Taxes, Arizona Use Taxes to the procuring agency in order to assist the Department and LICENSOR in evaluating LICENSEE's qualifications as a responsible contracting party under this Agreement.

4. **Non-Waiver of Liability:** LICENSOR, as a public entity supported by tax money, in execution of its public trust, cannot agree to waive any lawful or legitimate right to protect the public treasury and the right of the taxpaying public to recover amounts lawfully due it. Therefore LICENSEE agrees that it will not insist upon or demand any statement whereby LICENSOR agrees to limit in advance or to waive any right LICENSOR might have to recover actual lawful damages in any court of law under applicable Arizona law.
5. **Applicable Laws:** Any and all legal disputes arising out of this Agreement shall be tried according to the laws of the State of Arizona and LICENSEE shall agree that the venue for any such action shall be in the State of Arizona, County of Maricopa.
6. **Continuation of Work During Disputes:** In the event of any dispute between the parties, provided no notice of termination has been given by LICENSOR, and if it is feasible under the terms of this Agreement, each party shall continue to perform its obligations not related to the dispute during the resolution of such dispute, unless enjoined or prohibited by a court of competent jurisdiction.

Failure or delay by either party to exercise any right, power or privilege specified in or appurtenant to this Agreement shall not be deemed a waiver thereof.

7. **Strict Performance:** Failure of either party to insist upon the strict performance of any item or condition of any resulting contract or to exercise or delay the exercise of any right or remedy provided in any resulting contract, or by law, or the acceptance of materials or services, obligations imposed by any resulting contract or by law shall not be deemed a waiver of any right of either party to insist upon the strict performance of any resulting contract.



8. **Agreement Administrator:** The Agreement Administrator shall be the Phoenix Convention Center Department Business Services Deputy Director or designee. In any dispute concerning an interpretation of this Agreement or concerning the work to be performed hereunder, the final determination shall be made by the Agreement Administrator and their decision shall be final and binding upon the parties.
9. **Copyright; Indemnity:** LICENSEE specifically warrants and covenants that none of the material, concepts, ideas, or other products provided under this Agreement shall in any way violate any copyright, license, trade secret, or other property right of any other person. At its own expense, LICENSEE shall indemnify, defend, save and hold harmless LICENSOR and its officers, agents, and employees from and against any and all claims, demands, suits, liabilities, damages, settlements, losses, and costs, including attorney's fees, suffered or incurred by LICENSOR as a result of any claim that the material, concepts, ideas, or other products provided within this Agreement infringe any U.S. copyright, license, trade secret or other property right, provided that LICENSEE is notified promptly in writing of such claim. If as a result of any claim of infringement against any copyright, license, trade secret, or other property right, LICENSEE or LICENSOR is enjoined from using the products provided under this Agreement, or if LICENSEE believes that the products are likely to become the subject of a claim of infringement, LICENSEE may, at LICENSEE's option and sole expense, (1) procure the right for LICENSOR to continue to use the products; or (2) to the satisfaction of LICENSOR, replace or modify the products so as to make them non-infringing and capable of performing the function for which the product was provided.
10. **Employment and Organization Disclaimer:** This Agreement will not constitute, create, give rise to or otherwise recognize a joint venture agreement or relationship, partnership or formal business organization of any kind between the parties, and the rights and obligations of the parties shall be only those expressly set forth therein. LICENSEE agrees that no persons supplied by it in the performance of this Agreement are employees of LICENSOR and further agrees that no rights to LICENSOR's civil service, retirement or personnel rules and benefits accrue to such persons.

LICENSEE shall be responsible for all salaries, wages, bonuses, retirement withholdings, workers' compensation, unemployment compensation, other benefits, and all taxes and premiums appurtenant thereto concerning such persons provided by such LICENSEE in the performance of the contract, and LICENSEE shall save and hold LICENSOR harmless with respect thereto.

Further it is understood and agreed by the parties that LICENSEE is, and shall remain, an independent LICENSEE under this Agreement. Neither party is the agent of the other, nor is either party authorized to act on behalf of the

other party. LICENSEE shall be liable to LICENSOR for any financial liability arising from any finding to the contrary by any forum or competent jurisdiction.

11. **Assignability of any Provisions:** This Agreement, and any rights or obligations hereunder, shall not be transferred, assigned or subcontracted by LICENSEE without the prior written consent of LICENSOR. Any attempt to assign without such prior written consent shall be void. This Agreement shall inure to the benefit of each of the parties and their permitted successors and assigns.
12. **Invalidity of any Provisions:** This Agreement shall remain in full force and effect even if one or more of its terms or provisions have been held to be invalid or unenforceable. Such a holding shall result in the offending term or provision being ineffective to the extent of its invalidity or unenforceability without invalidating the remaining terms and provisions of this agreement and shall thereafter be construed as though the invalid or unenforceable term or provision were not contained herein.
13. **Method of Payment:** Payment will be made only after submission of proper documentation to LICENSOR and in accordance with standard LICENSOR and Phoenix Convention Center business practice.  
  
Payment of any invoice shall not preclude LICENSOR from making claims for adjustment of any item or service found not to have been in accordance with the Agreement.
14. **Subcontractors:** LICENSEE shall hold LICENSOR harmless from any claims for supplying labor or material to LICENSEE or its subcontractors in the performance of the work required under this Agreement.
15. **Remedies:** LICENSOR shall have, in addition to the remedies provided herein, any other remedies provided by law.
16. **Transactional Conflicts of Interest:** LICENSEE acknowledges that this Agreement is subject to cancellation by LICENSOR pursuant to Section 38-511, Arizona Revised Statutes.
17. **Late Payments:** If LICENSEE fails to pay any fees required under Section 4, Number 1 when due, upon ten (10) days prior written notice from the LICENSOR to LICENSEE of such delinquency, LICENSEE shall pay LICENSOR a delinquent account fee of one and one-half percent (1 ½%) of the overdue balance per month not to exceed eighteen percent (18%) per annum.

18. **Equal Employment Opportunity:**

- A. In order to do business with the LICENSOR, LICENSEE must comply with Phoenix City Code, 1969, Chapter 18, Article V, as amended, Equal Employment Opportunity requirements. LICENSEE will direct any questions in regard to these requirements to the Equal Employment Department, (602) 262-6790.
- B. Any LICENSEE in performing under this Agreement shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The LICENSEE will ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability. Such action shall include but not be limited to the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The LICENSEE further agrees that this clause will be incorporated in all subcontracts related to this Agreement that involve furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Agreement. LICENSEE further agrees that this clause will be incorporated in all subcontracts, job-consultant agreements or subleases of this agreement entered into by supplier/lessee.
- C. Documentation. LICENSEE may be required to provide additional documentation to the Equal Opportunity Department affirming that a nondiscriminatory policy is being utilized.
- D. Monitoring. The Equal Opportunity Department shall monitor the employment policies and practices of suppliers and lessees subject to this article as deemed necessary. The Equal Opportunity Department is authorized to conduct on-site compliance reviews of selected firms, which may include an audit of personnel and payroll records, if necessary.

19. **Health, Environmental and Safety Requirements:** The LICENSEE's products, services and facilities shall be in full compliance with all applicable federal, state and local health, environmental and safety laws, regulations, standards, codes and ordinances, regardless of whether or not they are referred to by the LICENSOR.

20. **Force Majeure:** Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance under this contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Force majeure shall not include late performance by a subcontractor unless the

delay arises out of a force majeure occurrence in accordance with this force majeure term and condition.

If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practical, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be hand-delivered or mailed certified-return receipt and shall make a specific reference to this provision, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by contract modification for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

21. **Damage to City Property:** Proposer shall perform all work so that no damage to the building or grounds results. Proposer shall repair any damage caused to the satisfaction of the LICENSOR at no cost to the LICENSOR.
22. **Delay in Exercising Contract Remedy:** Failure or delay by LICENSOR to exercise any right, power or privilege shall not be deemed a waiver thereof.
23. **Quality and Acceptability of Work:** The PCCD Director or Designee is responsible for determining the quality and acceptability of any work performed under the contract. If, in the opinion of the Director, performance becomes unsatisfactory, LICENSOR shall notify the LICENSEE in writing.

LICENSEE will have 5 working days from the time of notification to correct any specific instance of unsatisfactory performance. In the event the unsatisfactory performance is not corrected within the time specified above, LICENSOR shall have the immediate right to complete the work to its satisfaction and shall deduct the cost from any balances due from LICENSOR or to become due or to bill LICENSEE directly. Repeated incidents of unsatisfactory performance may result in liquidated damages being assessed or cancellation of the Agreement for default.

24. **Performance Interference:** LICENSEE shall notify the Contract Manager immediately of any occurrence and/or condition that interferes with the full performance of the contract, and confirm it in writing within twenty-four (24) hours.
25. **Integration Clause:** Agreement constitutes and embodies the full and complete understanding and agreement of the parties hereto and supersedes all prior understandings, agreements, discussions, proposals, bids, negotiations, communications, and correspondence, whether oral or written. No representation, promise, inducement or statement of intention has been

made by any party hereto which is not embodied in any resulting Agreement, and no party hereto shall be bound by or liable for any statement of intention not so set forth.

26. **Entire Agreement; Modification (No Oral Modification):** This Agreement, and any Exhibits, Attachments, or Schedules attached hereto, constitute the full and complete understanding and agreement of the parties. There shall be no oral alteration or modification of this Agreement; this Agreement and its terms, may not be modified or changed except in writing signed by both parties.
27. **Alteration in Character of Work; Additional Work:** LICENSOR shall not be responsible for any oral instructions made by any employees or officers of LICENSOR regarding performance under this Agreement. Any minor changes in plans, specifications or work scope shall be in the form of a written addendum furnished to LICENSEE and Department Director or Designee for signature. Whenever an alteration in the character of work results in a substantial change in the nature of services, thereby materially increasing or decreasing the cost of the performance, the work will be performed in accordance with the Agreement. Before beginning to perform any substantially changed or altered work, an Amendment evidencing such changes shall be executed by LICENSOR and LICENSEE.

When authorized by an executed Amendment, additional work shall be compensated at a rate or for a fee mutually agreed upon by the parties.

28. **Special Event Consideration:** In the event that LICENSOR shall seek to bring a major political convention, NCAA tournament, Super Bowl, NBA All-Star Game or similar national or international events, LICENSEE will agree to modify the terms of the Agreement necessary to allow LICENSOR to successfully bid and host such events.
29. **Key Personnel:** The following individuals are designated by the parties as key personnel. Should any of the named individuals be unavailable to perform on behalf of LICENSEE under this Agreement, whether due to termination of employment or otherwise, then LICENSEE shall provide notice of a suitable replacement acceptable to LICENSOR within 30 calendar days. Acceptability is to be determined by LICENSOR at its option, sole and unfettered discretion. Key personnel under this Agreement are as follows:

Brad Routh, Chief Financial Officer  
Marketpace One, LLC  
1 North 1<sup>st</sup> Street, Suite 700  
Phoenix, Arizona 85004  
(602) 258-2777, Ext. 820

Failure to provide any or all of the above-named key personnel, or a replacement satisfactory to LICENSOR shall be deemed a material breach entitling LICENSOR, at its option and sole discretion, to immediately terminate this Agreement.

30. **Survival:** The indemnification and limitations of liability provided in this Agreement shall have full force and effect notwithstanding any other provisions of this Agreement and shall survive any termination or expiration hereof.
31. **Notice:** Any notice, consent, or other communication ("NOTICE") required or permitted under this Agreement shall be in writing and either delivered in person, sent by facsimile transmission, via electronic mail (e-mail), deposited in the United States Mail, postage prepaid, registered or certified mail, return receipt requested, or deposited with any commercial air courier or express service addressed as follows:

**If intended for LICENSEE:**

Brad Routh, Chief Financial Officer  
Marketpace One  
1 North 1<sup>st</sup> Street, Suite 700  
Phoenix, Arizona 85004  
Telephone: (602) 258-2777, Ext. 820  
Email: [brad.routh@mpone.com](mailto:brad.routh@mpone.com)

**If intended for LICENSOR:**

Phoenix Convention Center Department  
Prasan DeSilva, Contract Manager  
100 North 3rd Street, Level 2A  
Phoenix, AZ 85004-2231  
Telephone: (602) 534-3393  
Email: [prasan.desilva@phoenix.gov](mailto:prasan.desilva@phoenix.gov)

**COPY:**

John Chan, Director  
Phoenix Convention Center Department  
100 North 3rd Street, Level 2A  
Phoenix, AZ 85004-2231  
Telephone: (602) 256-3567  
Email: [john.chan@phoenix.gov](mailto:john.chan@phoenix.gov)

Notice shall be deemed received at the time it is personally served or, on the day it is sent by facsimile transmission, on the second day after its deposit

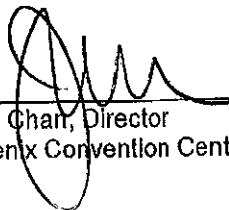
with any commercial air courier or express service or, if mailed, 10 days after the notice is deposited in the United States mail as above provided. Any time period stated in a notice shall be computed from the time the notice is deemed received. Either party may change its mailing address, FAX number, or the person to receive notice by notifying the other party as provided in this section.

Notice sent by facsimile transmission shall also be sent by regular mail to the recipient at the above address. This requirement for duplicate notice is not intended to change the effective date of the notice sent by facsimile transmission.

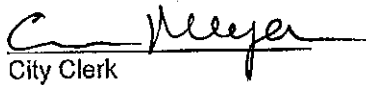
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IN WITNESS WHEREOF, the parties have executed one (1) original of this Agreement as of the date stated in the first paragraph on page one of this Agreement.

CITY OF PHOENIX, a municipal corporation  
ED ZUERCHER, City Manager


By:   
John Chan, Director  
Phoenix Convention Center Department

ATTEST:

  
City Clerk



APPROVED AS TO FORM:

  
ACTING City Attorney

THREE E ONE NORTH FIRST INVESTMENT  
CO., L.L.C., a Delaware Limited Liability  
Company

By:   
Brad Routh, Chief Financial Officer  
Marketplace One

CITY CLERK DEPT.  
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## EXHIBIT 1

### INSURANCE REQUIREMENTS

- A. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** LICENSEE shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a "following form" basis.

1. **Commercial General Liability – Occurrence Form**

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Each Occurrence \$1,000,000

- a. The policy shall be endorsed to include the following additional insured language: "The City of Phoenix shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the LICENSEE".

2. **Automobile Liability**

Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

- Combined Single Limit (CSL) \$1,000,000

- a. The policy shall be endorsed to include the following additional insured language: "The City of Phoenix shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the LICENSEE, including automobiles owned, leased, hired or borrowed by the LICENSEE".

3. **Worker's Compensation and Employers' Liability**

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$100,000
Disease – Each Employee	\$100,000
Disease – Policy Limit	\$500,000

- a. Policy shall contain a waiver of subrogation against the City of Phoenix.
- b. This requirement shall not apply when a LICENSEE or subcontractor is exempt under A.R.S. 23-901, **AND** when such LICENSEE or subcontractor executes the appropriate sole proprietor waiver form.

B. **ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, the following provisions:

1. On insurance policies where the City of Phoenix is named as an additional insured, the City of Phoenix shall be an additional insured to the full limits of liability purchased by the LICENSEE even if those limits of liability are in excess of those required by this Contract.
2. The LICENSEE's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

E. **NOTICE OF CANCELLATION:** For each insurance policy required by the insurance provisions of this Contract, the LICENSEE must provide to the LICENSOR, within 2 business days of receipt, a notice if a policy is suspended, voided or cancelled for any reason. Such notice shall be mailed, emailed, hand-delivered or sent by facsimile transmission to **Phoenix Convention Center, Management Services Section, 100 North 3<sup>rd</sup> Street, Level 2A, Phoenix, AZ 85004.**

F. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Arizona and with an "A.M. Best" rating of not less than B+ VI. LICENSOR in no way warrants that the above-required minimum insurer rating is sufficient to protect the LICENSEE from potential insurer insolvency.

G. **VERIFICATION OF COVERAGE:** LICENSEE shall furnish the LICENSOR with certificates of insurance (ACORD form or equivalent approved by the LICENSOR) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by the LICENSOR before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

All certificates required by this Contract shall be sent directly to **Phoenix Convention Center, Management Services Section, 100 North 3<sup>rd</sup> Street, Phoenix, AZ 85004.** The contract number and project description shall be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.**

- F. **SUBCONTRACTORS:** LICENSEES' certificate(s) shall include all subcontractors as additional insureds under its policies or LICENSEE shall furnish to the LICENSOR separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.
- G. **APPROVAL:** Any modification or variation from the insurance requirements in this Contract shall be made by the Law Department, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.



**City of Phoenix**

**Phoenix Convention Center Department**

**FIRST AMENDMENT TO AGREEMENT FOR PHOENIX CONVENTION CENTER PARKING SPACES  
(CONTRACT NO. 142230-1)**

**THIS FIRST AMENDMENT FOR PHOENIX CONVENTION CENTER PARKING SPACES (the "FIRST Amendment")** is between the CITY OF PHOENIX, an Arizona Municipal Corporation, ("LICENSOR"), and THREE E ONE NORTH FIRST INVESTMENT CO., L.L.C. a Delaware Limited Liability Company authorized to do business in the State of Arizona, ("LICENSEE").

**RECITALS**

- A. On March 1, 2016, LICENSOR entered into City Contract No. 142230-0 (the "Agreement") with LICENSEE for the provision of Phoenix Convention Center Parking Spaces.
- B. The parties desire to amend the Agreement as set forth below.

LICENSOR and LICENSEE, agree as follows:

- 1. With respect to Section 3(2)(a) of the Agreement, the LICENSOR hereby agrees to provide an additional twelve (12) "Reserved Spaces" in the Regency Garage, thereby increasing the total number of "Reserved Spaces" made available to LICENSEE in the Regency Garage to forty-nine (49) and increasing the total parking spaces made available to LICENSEE in the Regency Garage to ninety-seven (97).
- 2. Capitalized terms not specifically defined herein shall carry the meaning ascribed to them in the Agreement.
- 3. Except as amended by this First Amendment, the Agreement remains in full force and effect.
- 4. This First Amendment shall be in full force and effect only when it has been fully executed.

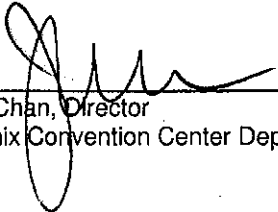
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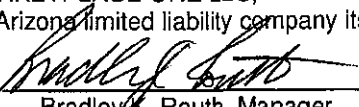
The parties have executed this First Amendment on this 1<sup>st</sup> day of May 2017.

CITY OF PHOENIX  
an Arizona Municipal Corporation  
ED ZUERCHER, City Manager

THREE E ONE NORTH FIRST INVESTMENT CO., L.L.C.  
an Arizona limited liability company

MARKETPLACE ONE LLC,  
an Arizona limited liability company its sole member

By:   
John Chan, Director  
Phoenix Convention Center Department

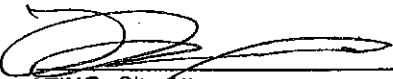
By:   
Bradley K. Routh, Manager

ATTEST:

  
\_\_\_\_\_  
**ACTING** City Clerk



APPROVED AS TO FORM

  
\_\_\_\_\_  
**ACTING** City Attorney *DA*

CITY CLERK DEPT.  
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