



City of Arlington Council Agenda Bill

**Item:
SM #1
Attachment
I**

COUNCIL MEETING DATE:	
March 26, 2018	
SUBJECT:	
Termination of Police Impound Lot Lease	
ATTACHMENTS:	
Lease and Agreement Terminating Lease	
DEPARTMENT OF ORIGIN	
Airport	
EXPENDITURES REQUESTED:	N/A
BUDGET CATEGORY:	
BUDGETED AMOUNT:	
LEGAL REVIEW:	
DESCRIPTION:	
The Council agreed to sell an airport building to 2BRND, the property company for Global Machine Works. The Police impound lot is located on that property and theoretically has a "lease" for 20 years from 2009 to 2029.	
HISTORY:	
The City located the police impound lot on Lot 77 at the airport. In 2009 in response to auditor concerns we signed formal "memorandum of leases" between the airport and departments using airport property, including the city police department. The property is being sold to 2BRND and they want to ensure the property isn't encumbered by a lease with 11 more years on it. 2BRND is willing to let the police department continue to use the property on the same terms on a month to month basis until they are ready to build.	
ALTERNATIVES:	
Do not terminate the lease, but the sale to 2BRND would likely not go through.	
RECOMMENDED MOTION:	
I move to authorize the Mayor and Police Chief to sign the lease termination agreement between the Airport and the Police Department for the police impound lot, and to authorize the mayor to sign a new month to month lease for the police impound lot.	

LEASE AGREEMENT

THIS LEASE AGREEMENT is dated this _____ day of _____, 2018, between 2BRND, a Washington limited liability company ("Landlord") and the City of Arlington (Tenant").

WITNESSETH:

WHEREAS, the Landlord represents that it has the full right, power and authority to lease the following described real property situated in the County of Snohomish, State of Washington, commonly known as a portion of Arlington Airport Lot 77, located at 5915 192nd Ave. NE, Arlington, WA 98223, all as more particularly described on Exhibit "A" attached hereto, which property, as described on Exhibit "A", is hereinafter referred to as the "premises", and

WHEREAS, Tenant desires to continue to lease the described premises and Landlord desires to let said property to the Tenant under the terms and conditions hereof;

NOW, THEREFORE, in consideration thereof, the Landlord hereby leases, demises and lets unto the Tenant, and the Tenant does hire and take from the Landlord, the premises described on Schedule A under the following terms and conditions:

1. LEASE OF PREMISES.

A. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the lease premises.

B. The term of this Lease shall be month to month, and shall commence on April 1, 2018, (the "commencement date") and continue until terminated by either party.

2. RENT.

A. Minimum Rent. Tenant shall pay to Landlord, without any setoff, abatement or deduction whatsoever (except as otherwise provided herein), as monthly "minimum rent" for the premises for the term, the following: \$1,134.00 per month.

B. Time of Payment; Place of Payment.

(1) Each monthly installment of minimum rent, together with each monthly expense impound (described in Section 2C below) and any applicable rent taxes (sometimes, collectively, the "monthly rental"), shall be due and payable in

advance on the first day of each and every calendar month during the term of this Lease, without any setoff, abatement or deduction whatsoever, except as otherwise provided herein. Concurrently with Tenant's execution of this Lease, Tenant shall pay the monthly rental for the first calendar month of the initial term.

(2) The monthly rental, together with all other monetary consideration payable under this Lease, shall be payable in lawful money of the United States at the following address: 2BRND, 19132--59TH Dr. NE, Arlington, WA, 98223.

C. Late Fees. Tenant hereby acknowledges that late payment by Tenant to Landlord of rent and other sums due under this Lease will cause Landlord to incur additional costs not otherwise contemplated by this Lease, the exact amount of which will be extremely difficult or impossible to ascertain. Such additional costs include processing, accounting, and late charges. Therefore, if any installment of rent or any other sum due from Tenant shall not be received by Landlord within ten (10) days after such amount is due, Tenant shall pay to Landlord a late charge equal to ten percent (10%) of the overdue amount, together with interest on all due but unpaid sums from the due date at the rate of eighteen percent (18%) per annum. The parties hereby acknowledge, warrant and represent that such late charges and interest represent a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant and are not a penalty. Acceptance of such late charges and interest by Landlord shall in no event constitute a waiver of an event of default with respect to such overdue amount or prevent Landlord from exercising any or all of the other rights or remedies granted under this Lease. Landlord may, as a matter of convenience, provide to Tenant from time to time billings or invoices for rent or other sums due under this Lease, but Tenant's failure to receive any such billing or invoice, or Landlord's omission or cessation of any such billing or invoice, shall not excuse Tenant's obligation for the timely payment of rent and other sums due in accordance with this Lease.

E. Due Upon Execution of Lease. Upon executing this Lease, Tenant shall pay to Landlord the following sums:

Minimum rent for one calendar month of term	\$1,300.00
Security deposit to be held by Landlord	N/A
TOTAL AMOUNT DUE FROM TENANT UPON EXECUTION OF LEASE:	\$1,300.00

In addition to, and together with, the sums set forth above, Tenant shall pay rent tax where applicable.

3. SECURITY DEPOSIT. Not Applicable.

4. UTILITIES. Tenant shall pay, when due, for all gas, water, sanitary sewer, electricity, telephone and other utilities used and consumed by Tenant with regard to the premises. There shall be no abatement of rent, and Landlord shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption, or discontinuance of any utility or service to the premises.

5. TENANT IMPROVEMENTS.

A. Tenant, at Tenant's own cost and expense, has installed and constructed fixtures and non-structural improvements (the "tenant improvements") in the premises. Any damage to the premises caused by such tenant improvements shall be repaired by Tenant, at Tenant's sole cost and expense.

B. Tenant shall not make any additional tenant improvements without first sending detailed plans to Landlord and having received the approvals of Landlord, and delivering to Landlord evidence of workers' compensation, liability and property damage insurance, naming Landlord as additional insureds, with policy limits acceptable to Landlord.

C. Any and all signs placed upon the premises by Tenant shall be in conformance with all applicable governmental rules, regulations, ordinances and laws and shall be subject to the prior written approval of Landlord.

6. INSURANCE.

A. Tenant, at its sole expense and costs, shall take out and maintain, with respect to the premises and Tenant's activities, insurance which shall meet the following minimum conditions and requirements:

(1) Include (a) commercial general liability insurance for bodily injury and property damage in an amount not less than \$1,000,000 per occurrence, \$2,000,000 in the aggregate, combine single limit for bodily injury and property damage; (b) contractual liability insurance in a like amount covering Tenant's liability under the hold harmless and indemnification provisions herein; (c) to the extent required by law, workers' compensation insurance covering Tenant's employees in statutory limits of such alternate coverages or arrangements as are legally permissible; and (d) fire and the extended coverage insurance covering loss or damage to the premises in the amount of the full replacement value of the building and improvements located upon the premises.

(2) Include Landlord as additional insureds.

(3) Provide that the insurer(s) shall notify all insureds, in writing, at least thirty (30) days prior to any cancellation or reduction in coverage of the amount of any particular policy.

(4) Obtained through the assistance of responsible insurer(s) licensed to do business in the State of Washington, reasonably satisfactory to Landlord, or through a self-insurance risk pool acceptable to Landlord.

Tenant shall provide to Landlord certificates showing that all of the foregoing requirements have been met on or prior to the commencement date, and renewal certificates shall be delivered to Landlord at least thirty (30) days prior to the expiration of any existing policies of insurance.

B. Each party hereby waives all rights it may have against the other, including any right of subrogation, on account of any loss or damage occasioned to such party as the case may be to the extent that insurance proceeds are actually received with respect to such loss or would have been received had the required insurance been obtained. Excluded from each party's waiver hereunder shall be loss or damage to such party caused by the willful misconduct of the other party.

C. The limits of any insurance coverage required herein shall not limit Tenant's liability hereunder.

7. NO WARRANTIES. Tenant acknowledges that Tenant has examined the premises and is relying solely on its examination thereof and that Landlord has made no representations or warranties of any kind whatsoever, express or implied, concerning the condition of the premises or its suitability for Tenant's use. Tenant accepts the premises in their present conditions "as is" and with all defects, patent or latent, known or unknown, and all faults, known or unknown, now existing or hereafter arising.

8. HAZARDOUS MATERIALS.

A. Tenant shall not use, discharge, dump, spill, generate, store, dispose of, or transport any hazardous materials (defined below) on or over the premises, nor shall Tenant disturb any existing asbestos in the premises or engage in any activity on or about the premises that violates any environmental law (defined below). Tenant shall promptly, at Tenant's sole cost and expense, take all investigatory and/or remedial action required or ordered by any governmental agency or environmental law for clean-up and removal of any contamination involving any hazardous material created or caused directly or indirectly by Tenant.

B. The term "environmental law" shall mean any federal, state or local law, statute, ordinance, rule, regulation, order, consent decree, judgment or common-law doctrine, or interpretation thereof, and provisions and conditions of permits, licenses, plans, approvals, and other operating authorizations whether currently in force

or hereafter enacted relating to health, industrial hygiene, or the environmental conditions on, under, or about the Premises, including, without limitation, (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601 *et seq.*; (ii) the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Sections 6901 *et seq.*; (iii) the Federal Water Pollution Control Act, 33 U.S.C. Section 1317 *et seq.* as such laws are amended and the regulations and administrative codes applicable thereto. The term "hazardous materials" includes, without limitation, any material or substance which is (i) defined or listed as a "hazardous waste", "extremely hazardous waste", "restrictive hazardous waste", or "hazardous substance", or considered a waste, condition of pollution, or nuisance under the environmental laws; (ii) petroleum or a petroleum product or fraction thereof; (iii) asbestos; and/or (iv) any substance known to cause cancer and/or reproductive toxicity. It is the intent of the parties hereto to construe the terms "hazardous materials" and "environmental laws" in their broadest sense.

C. Tenant shall indemnify, defend and hold harmless Landlord from and against any and all claims, judgments, damages, penalties, fines, costs, liabilities and losses (including, without limitation, reasonable attorney's fees, diminution in the value of the premises, damages for the loss or restriction on the use, marketability or any other amenity of the premises) which may arise as a result of Tenant's violation of this section.

9. ALTERATIONS AND REPAIRS:

A. Tenant may, at its own cost and expense, make non-structural, interior alterations and/or additions to the premises from time to time during the term of this Lease, provided that all such alterations and additions are in conformance with all applicable governmental rules, regulations, ordinances and laws, and Tenant shall obtain the prior approval of Landlord. Failure to obtain Landlord's consent for such alterations shall be deemed a material breach hereunder, which shall give Landlord the right to, in addition to all other remedies, to terminate this Lease. Tenant shall repair any damage to the premises caused by such alterations, at Tenant's sole cost and expense. Upon the expiration of the term or the earlier termination of this Lease, Landlord may require, at Landlord's sole discretion, the removal of any alterations placed upon the premises by Tenant (including the tenant improvements). Such removal should be at Tenant's sole cost and expense, and Tenant shall return the premises to Landlord in the condition required by this Lease.

B. Any alterations to the premises or to the building located thereon which are required by reason of any present or future law, ordinance, rule, regulation or order of any governmental authority having jurisdiction over the premises or of any insurance company insuring the premises, and regardless of whether or not such alterations pertain to the nature, construction, or structure of the premises or to the use made thereof by Tenant, shall be at the sole cost of Tenant regardless of whether the work is performed by Landlord or Tenant. The foregoing includes, without limitation,

any modifications to the premises required by the Americans With Disabilities Act or any similar state or local law, regulation or requirement.

C. Notwithstanding anything to the contrary contained herein specifically that which is stated in paragraph 9D. Tenant shall assume responsibility for all repairs and maintenance required to be performed by Landlord under the Lease, and Landlord shall not be required to perform any maintenance or to make any repairs or improvements of any kind upon the premises. If Tenant fails to perform maintenance or repairs or any other obligation required to be performed by Tenant hereunder, or if Landlord is required to make repairs or perform any other obligation by reason of Tenant's negligent acts or omissions, Landlord shall have the right but shall not be obligated to make such repairs or perform such obligations on behalf of and for the account of Tenant without declaring Tenant in default. In such event, Tenant shall, within three (3) days after Landlord presents a statement therefore to Tenant, pay or reimburse to Landlord all such costs and expenses (including an administrative fee equal to ten percent (10%) of such costs and expenses). Tenant hereby waives any and all rights provided in any statute, law, ordinance, or regulation to make repairs at the expense of Landlord.

D. From and after the commencement date, Tenant shall be solely responsible for the maintenance and repair of all non-structural elements of the premises including, without limitation, floor coverings, interior painting and/or plaster, wall coverings, ceilings, plate glass, and the plumbing and electrical systems. Landlord shall not be required to perform any maintenance or to make any repairs or improvements of any kind upon the premises, and Tenant assumes responsibility for same, as provided herein. If Tenant fails to perform maintenance or repairs or any other obligation required to be performed by Tenant hereunder, or if Landlord is required to make repairs or perform any other obligation by reason of Tenant's negligent acts or omissions, Landlord shall have the right but shall not be obligated to make such repairs or perform such obligation on behalf of and for the account of Tenant without declaring Tenant in default. In such event, Tenant shall, within three (3) days after Landlord presents a statement therefor to Tenant, pay or reimburse to Landlord all such costs and expenses (including an administration fee equal to ten percent (10%) of such costs and expenses). Tenant hereby waives any and all rights provided in any statute, law, ordinance or regulation to make repairs at the expense of Landlord.

10. TENANT TO DISCHARGE LIENS. Tenant shall pay, when due, all claims for labor and materials furnished to or for Tenant at or for use on the premises, which claims are or may be secured by any mechanics' or materialmen's lien against the premises, or any interest therein. Should any lien attach against the premises by reasons of any act or omission of Tenant or any of its agent's employees or contractors, then Tenant shall discharge the same of record within thirty (30) days thereafter at Tenant's sole cost and expense. Tenant shall give Landlord not less than thirty (30) days' written notice prior to the commencement of any and all work if improvement on the Premises which may give rise to a mechanics' or materialmen's lien, and Landlord

shall have the right to post notices of Landlord's nonresponsibility for such work or the cost thereof on the premises.

11. ASSIGNMENT; SUBLETTING.

A. Except as provided herein, Tenant shall not be permitted to assign or hypothecate this Lease or sublet or transfer by operation of law or otherwise any part of the premises without the prior written consent of Landlord (which consent shall not be unreasonably withheld). No lease, assignment or other approved transfer shall relieve Tenant of its obligations or liabilities hereunder.

B. As conditions to Landlord's consenting to any proposed assignment, lease or transfer, Landlord may require, among other things, (i) an adjustment of the minimum rent to the prevailing market rental rate at the time of such assignment, lease, or transfer; (ii) Landlord's approval of the credit, net worth, business background and general reputation of the assignee/ sublessee/transferee; and (iii) reimbursement of Landlord's reasonable expenses, but not less than three hundred fifty dollars (\$350.00) in reviewing and processing any request for assignment, sublease or transfer.

C. Any dissolution, merger, consolidation, or other reorganization of Tenant or the sale or transfer of more than fifty-one percent (51%) of the total combined voting power of Tenant's capital stock issued, outstanding and entitled to vote for the election of directors or the sale of more than fifty-one percent (51%) of the aggregate value of Tenant's assets shall similarly constitute a transfer. If Tenant is a limited liability company, any change, whether voluntary or involuntary, of any members or managers or dissolution of the limited liability company shall constitute a transfer.

D. Any attempted assignment, transfer, mortgage, subletting or encumbrance of this Lease without Landlord's consent shall be void and shall constitute a material default hereunder.

E. Landlord may, in its sole discretion and at any time, assign its interest hereunder to a third party.

12. ABANDONMENT OF PREMISES. Tenant shall neither vacate nor abandon the premises at any time during the term of this Lease, and if Tenant shall abandon or surrender the premises or be dispossessed by process of law or otherwise, any personal property belonging to Tenant and left on the premises shall be deemed to be abandoned at the option of Landlord. Failure to operate Tenant's business on the premises for seven (7) consecutive days without Landlord's prior written consent, whether or not rent is tendered, shall be deemed to be abandonment of the premises for the purposes of this section. Abandonment shall constitute a default under this Lease, and, in such event, Landlord shall be entitled to pursue all default remedies provided hereunder.

13. USE AND COMPLIANCE WITH UNDERLYING LEASE. Tenant's use shall be police impound storage and no other use shall be permitted without written amendment to this lease. Tenant acknowledges and agrees that Tenant shall at all times comply with the terms and conditions of the Landlord's underlying land lease with the City of Arlington, which lease is recorded under Snohomish County Auditor's File No. _____. Any breach of this provision is grounds for termination of this lease.

14. DEFAULT.

A. If Tenant fails to perform (a) any monetary term, covenant, condition or provision of this Lease within three (3) days after service of notice of such failure or (b) any non-monetary term, covenant, condition or provision of this Lease within twenty (20) days after service of notice of such failure, Tenant shall be deemed to be in default under this Lease; (however, if the breach of failure cannot reasonably be cured within twenty (20) days, Tenant shall not be in default if Tenant commences to cure the breach or failure within the twenty (20) day period and diligently and in good faith continues to cure the breach or failure); and Landlord, without further notice of any kind may, at its option, exercise, the following remedies, in addition to all other remedies provided by this Lease, or by applicable state law:

(1) Terminate Tenant's right to possession of the premises because of such default and recover from Tenant all damages allowed under applicable law, including, without limitation, the acceleration of all unpaid rents and other charges, all of which shall be immediately due and payable.

(2) Not terminate Tenant's right to possession because of such default, but continue this Lease including the right to recover the rent and all other charges as such rent and other charges become due hereunder.

(3) Not terminate this Lease, but remove Tenant from possession of the premises, and sublet the premises in Landlord's name, but for the account of Tenant, applying all rents received from such letting, first, to the cost of dispossessing Tenant and obtaining a new Tenant (including the costs of making the premises ready for occupancy by such new Tenant), and second, to the obligations of Tenant under this Lease (with Landlord being entitled to hold any surplus amounts received to apply toward future damages incurred by Landlord due to the default of Tenant.)

B. Any sum accruing to Landlord under the terms and provisions of this Lease which shall not be paid when due shall bear interest at the rate of eighteen percent (18%) per annum from the date the same becomes due and payable by the terms and provisions hereof, until paid (unless otherwise specifically provided in this Lease).

C. Tenant hereby waives all claims or demands for damages that may be caused by Landlord in re-entering and retaking possession of the premises after default by Tenant.

D. Nothing contained in this Lease shall limit Landlord to the remedies hereinabove set forth, and, upon Tenant's default, Landlord shall be entitled to exercise any right or remedy then provided by applicable state law.

E. The waiver by Landlord of any default in the performance by Tenant of any covenant contained herein shall not be construed to be a waiver of any preceding or subsequent default of the same or any other covenants contained herein. The subsequent acceptance of rent or other sums hereunder by Landlord shall not be deemed a waiver of any preceding default other than the failure of Tenant to pay the particular rental or other sums or portion thereof so accepted, regardless of Landlord's knowledge of such preceding default at the time of acceptance of such rent or other sum.

F. In the event of any default in performance of any material obligation by Landlord hereunder, and if Landlord fails to cure such default within thirty (30) days after Landlord's receipt of written notice from Tenant (unless within such thirty (30) day period Landlord's commences to cure and thereafter diligently prosecutes the same to completion), Tenant may, upon ten (10) days' prior written notice to Landlord, pursue injunctive relief to cause Landlord to cure.

G. Tenant hereby grants to Landlord a lien for payment of all sums agreed to be paid by Tenant herein upon all of Tenant's property located in the premises, if not prohibited by law, which shall be in addition to any statutory landlord's lien now or that may hereafter be provided by law.

15. INSOLVENCY.

A. The filing of any petition by or against Tenant under any state or federal bankruptcy act or insolvency statute, or any successor statute thereto, or the adjudication of Tenant as a bankrupt or insolvent, or the appointment of a receiver or trustee to take possession of all or substantially all of the assets of Tenant, or a general assignment by Tenant for the benefit of creditors, or any other action taken or suffered by Tenant under any state or federal insolvency or bankruptcy act, provided that any such action is not dismissed or removed within thirty (30) days after its initiation, shall, at Landlord's option, constitute a default under this Lease by Tenant, regardless of Tenant's compliance with the other provisions of this Lease, and Landlord, at its option by written notice to Tenant may exercise all rights and remedies provided for in Section 14 herein, including the termination of this Lease, effective upon service of such notice, without the necessity of further notice.

B. Neither this Lease nor any interest herein, nor any estate created

hereby, shall pass by operation of law under any state or federal insolvency or bankruptcy act to any trustee, receiver, assignee for the benefit of creditors, or any other person whatsoever without the prior written consent of Landlord.

C. The acceptance of rent at any time and from time to time by Landlord from Tenant as debtor in possession or from the transferee of the type mentioned in Section 15(b) shall not preclude Landlord from exercising its right under this section at any time thereafter.

16. WAIVER AND INDEMNITY.

A. Tenant agrees and this Lease is made upon the condition that Landlord shall not be liable, responsible or in any way accountable to Tenant, Tenant's agents, employees or invitees or to any person whomsoever for any damages suffered, including, without limitation, damages arising from:

(1) Loss or destruction of or damage to any merchandise, fixtures, equipment or other property located on or about the premises or on or about any of the facilities which Tenant may use in conjunction with this Lease.

(2) Injury to or death of any person or persons who may at anytime be using, occupying or visiting the premises or said facilities.

(3) Loss of business or profits, regardless of the nature or cause of such loss.

(4) Loss or damage that may be occasioned by or through the acts or omissions of persons occupying any part of the premises.

B. Tenant shall indemnify, defend and hold Landlord harmless from and against any and all claims, demands, liabilities, losses, costs and expenses of every kind whatsoever (including reasonable attorney's fees), arising out of in any way connected with Tenant's use or occupancy of the premises, the physical condition thereof, including any latent or patent defects, or the business conducted thereon during the term of this Lease, except such claims, demands, liabilities, losses, costs or expenses as may result from any act or omission of Landlord (other than with respect to an obligation expressly assumed by Tenant herein). Upon the assertion of any claim or demand covered by the foregoing indemnity, Tenant shall undertake the defense thereof and discharge any judgment, order, or compromise settlement rendered against or suffered by Landlord and shall pay all costs, interest and attorney's fees connected therewith. As to any claim or action brought by or on behalf of any employee of Tenant against Landlord as to any matter for which Tenant is obligated to indemnify Landlord, Tenant hereby expressly waives its immunity under Title 51 of the Revised Code of Washington and any other industrial insurance or workers' compensation laws, but solely as to any obligation to indemnify Landlord, and Tenant hereby acknowledges that

the above waiver has been expressly and specifically requested and agreed upon.

17. HOLDING OVER. In the event Tenant remains in possession of the premises after the expiration of this Lease, without a written lease, it shall be deemed to be occupying the premises as a tenant from month to month, subject to all of the conditions, provisions and obligations of this Lease insofar as they may be applicable to such month to month tenancy.

18. NOTICES. Any notice or demand from or by either party hereto to the other party in order to be validly served shall be in writing and signed by or on behalf of the party giving notice or making the demand and shall be served by personal delivery, by registered or certified mail or by air courier service (which provides written evidence of receipt), addressed to the party to whom such notice or demand is to be given. Service shall be deemed conclusively made upon proof of receipt or refusal to accept delivery. The addresses of the parties on the execution date are as follows:

Landlord: 2BRND, LLC
19132--59TH Dr. NE
Arlington, WA, 98223

Tenant: CITY OF ARLINGTON
238 N. Olympic Avenue
Arlington, WA, 98223

Addresses for receiving notices or demands may be changed for the purpose of this section by the party requesting such change notifying the other by the method herein provided at least ten (10) days prior to such change.

19. ATTORNEY'S FEES. If either party hereto shall file any action or bring any proceeding against the other party arising out of this Lease or for the enforcement or declaration of any rights hereunder, the prevailing party therein shall be entitled to have and recover from the other party all costs and expenses, including reasonable attorney's fees incurred by the substantially prevailing party in connection therewith.

20. CONDEMNATION. If the Premises or any portion thereof are taken under the power of eminent domain, or sold under the threat of the exercise of said power (all of which are herein called "condemnation"), this Lease shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the floor area of the building on the Premises, or more than 25% of the land area of the Premises which is not occupied by any building, is taken by condemnation, Lessee may, at Lessee's option, to be exercised in writing only within sixty (60) days after Lessor shall have given Lessee written notice of such taking, terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that

the rent shall be reduced in the proportion that the floor area of the building taken bears to the total floor area of the building situated on the Premises. No reduction of rent shall occur if the only area taken is that which does not have a building located thereon. Any award for the taking of all or any part of the Premises under the power of eminent domain or any payment made under threat of the exercise of such power shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold or for the taking of the fee, or as severance damages; provided, however, that Lessee shall be entitled to any award for loss of or damage to Lessee's trade fixtures and removable personal property. In the event that his Lease is not terminate by reason of such condemnation, Lessor shall to the extent of severance damages received by Lessor in connection with such condemnation, repair any damage to the Premises caused by such condemnation except to the extent that Lessee has been reimbursed therefor by the condemning authority. Lessee shall pay any amount in excess of such severance damages required to complete such repair.

21. GOVERNING LAW. This Lease shall be governed by the laws of the State of Washington.

22. GENERAL PROVISIONS.

A. Time is of the essence for this Lease.

B. No waiver of any breach of the covenants, agreements, obligations and conditions of this Lease to be kept or performed by either party hereto shall be construed to be a waiver of any succeeding breach of the same or any other covenant, agreement, obligation, condition or provision hereof.

C. Landlord and Tenant have negotiated this Lease, have had the opportunity to be advised respecting the provisions contained herein, and have had the right to approve each and every provision hereof; therefore, this Lease shall not be construed against either Landlord or Tenant as a result of the preparation of this Lease by or on behalf of either party.

D. If any clause, sentence or other portion of this Lease shall become illegal, null or void for any reason, or shall be held by any court of competent jurisdiction to be so, the remaining portions thereof shall remain in full force and effect.

E. This Lease sets forth all of the terms and conditions of the agreement of the parties hereto relating to the subject matter hereof, superseding all prior oral and written agreements and understandings and may not be modified orally or in any other manner other than by an agreement in writing signed by all the parties to this Lease or their respective successors in interest.

F. All exhibits attached hereto are incorporated herein by this reference.

G. Each provision to be performed by Tenant shall be construed to be both a covenant and a condition, and if there shall be more than one Tenant, they shall be bound jointly and severally by those provisions.

H. All rights and obligations under this Lease shall bind and inure to the benefit of the heirs, personal representatives, successors and assigns of the parties hereto.

I. The person executing this Lease on behalf of Tenant represents and warrants that he or she is an agent of Tenant and duly authorized to execute this Lease on behalf of Tenant and to bind Tenant to the performance of Tenant's obligations hereunder.

//

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first above written.

LANDLORD:

2BRND, LLC, a Washington Limited
Liability Company

By _____
Brent Barker, Member

By: _____
Brad Stuczynski, Member

TENANT:

CITY OF ARLINGTON

Barbara Tolbert, Mayor

STATE OF WASHINGTON)

: ss

COUNTY OF SNOHOMISH)

On this _____ day of _____, 2018, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared BRENT BARKER and BRAD STUCZYNSKI, to me known to be Members of 2BRND, LLC, the limited liability company that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said limited liability company, for the uses and purposes herein mentioned, and on oath stated that they are authorized to execute the said instrument.

Witness my hand and official seal hereto affixed the day and year first above written.

NOTARY PUBLIC in and for the
State of Washington, residing
at _____.

My commission expires: _____

Printed Name: _____

EXHIBIT "A"

AGREEMENT TERMINATING LEASE

BUILDING 78, Unit C; ACCOUNT 904 POLICE IMPOUND

The parties hereto are the CITY OF ARLINGTON, a municipal corporation of the State of Washington, Landlord, and the CITY OF ARLINGTON POLICE DEPARTMENT, Tenant.

The parties are parties to a Memorandum of Lease dated July 1, 2009. The Landlord is in the process of transferring the property and the parties desire to terminate the lease and allow the Tenant to enter into a new Lease with 2BRND, LLC, the party purchasing the property.

The parties are in agreement that the Lease may be terminated.

FOR AND IN CONSIDERATION of the mutual covenants hereinafter contained, the parties agree as follows:

1. The Memorandum of Lease between the parties originally dated July 1, 2009, including all amendments thereto, shall be and hereby is terminated.

IN WITNESS WHEREOF the parties hereto have executed this Agreement Terminating Lease on the ____ day of _____, 2018.

CITY OF ARLINGTON

By _____
Mayor Barbara Tolbert

ATTEST:

Kristin Banfield, City Clerk

CITY OF ARLINGTON
POLICE DEPARTMENT

By: _____
Jonathan Ventura, Police Chief

