Legislation Details (With Text)

File #:	30884	**Version:**	1	**Name:**	10203 Lease East Rail Corridor 2318 Atwood
Type:	Resolution			**Status:**	Passed
File created:	7/9/2013			**In control:**	BOARD OF ESTIMATES (ended 4/2017)
On agenda:	8/6/2013			**Final action:**	8/6/2013
Enactment date:	8/9/2013			**Enactment #:**	RES-13-00590

Title: Authorizing the Mayor and City Clerk to execute a lease with Philip G. Plourd and Rhonda K. Plourd for a portion of the City's East Rail Corridor located adjacent to 2318 Atwood Avenue.

Sponsors: Marsha A. Rummel

Indexes:

Code sections:

Attachments: 1. 10203 Exhibit A.pdf

Date	Ver.	Action By	Action	Result
8/6/2013	1	COMMON COUNCIL	Adopt	Pass
7/29/2013	1	BOARD OF ESTIMATES (ended 4/2017)	RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER	Pass
7/24/2013	1	BOARD OF PUBLIC WORKS	Return to Lead with the Recommendation for Approval	Pass
7/22/2013	1	PLAN COMMISSION	Return to Lead with the Recommendation for Approval	Pass
7/17/2013	1	BOARD OF ESTIMATES (ended 4/2017)	Refer	
7/17/2013	1	BOARD OF ESTIMATES (ended 4/2017)	Refer	
7/16/2013	1	COMMON COUNCIL	Referred	
7/9/2013	1	Economic Development Division	Referred for Introduction	

Fiscal Note

Annual rent payable for the first lease year shall be in the amount of $803.25 and shall be deposited into the General Fund (Acct. No. GN01-78220). Rent shall be subject to a 3% annual increase beginning on the first anniversary date of the lease.

Title

Authorizing the Mayor and City Clerk to execute a lease with Philip G. Plourd and Rhonda K. Plourd for a portion of the City's East Rail Corridor located adjacent to 2318 Atwood Avenue.

Body

WHEREAS, Philip G. Plourd and Rhonda K. Plourd are the new owners of property located at 2318 Atwood Avenue (the "Abutting Property"); and

WHEREAS, a portion of the existing parking lot located on the Abutting Property encroaches into the City's East Rail Corridor; and

WHEREAS, Philip G. Plourd and Rhonda K. Plourd desire to enter into a lease with the City for the area of such encroachment; and

WHEREAS, the terms of a lease have been negotiated between the Office of Real Estate Services and Philip

G. Plourd and Rhonda K. Plourd.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and City Clerk are authorized to execute a lease with Philip G. Plourd and Rhonda K. Plourd (collectively, the "Lessees") on the following terms and conditions:

1. The City shall lease to the Lessees a portion of the East Rail Corridor identified on attached Exhibit A as the "Leased Premises", which area is contiguous to the Lessees' Property located at 2318 Atwood Avenue (the "Abutting Property").

2. The Leased Premises consists of approximately 892.5 sq. ft. and shall be used by the Lessees for the maintenance and operation of a parking lot ("Parking Lot"), which use shall be ancillary to the Abutting Property.

3. No encroachments, other than the Parking Lot improvements shown on Exhibit A, nor construction, other than construction related to the use of the Leased Premises for parking, shall be permitted without the prior written consent of the City, which consent the City may withhold in its sole discretion.

4. The Leased Premises shall be used exclusively by the Lessees and the tenants of the Abutting Property and their respective invitees. The Leased Premises shall not be used for parking by the general public, with general public defined as all persons other than the Lessees and the tenants of the Abutting Property and their respective invitees.

5. The primary term of the lease shall be ten (10) years, subject to earlier termination by the parties. The lease will automatically renew for successive terms of one (1) year each, unless terminated by either party.

6. The Lessees shall pay to the City an annual rent equal to ten percent (10%) of the square foot value of the Abutting Property, as last fixed by the City Assessor, multiplied by the square footage of the Leased Premises, calculated as follows: 892.5 sq. ft. x $9.00/sq. ft. x 10% = $803.25. Beginning on the first anniversary of the effective date of the lease and on each anniversary thereafter throughout the term of the lease, the rent shall increase by three percent (3%) per year. This rent adjustment shall continue throughout any renewal period(s) following the initial ten (10) year term of the lease.

7. The Lessees may assign their interest in the lease and the improvements located on the Leased Premises only if such assignment is made simultaneously with the transfer of ownership of the Abutting Property to the same assignee of the lease. Any assignment shall be subject to all of the conditions of the lease.

8. The Lessees shall be liable to and shall agree to indemnify, defend and hold harmless the City, and its officers, officials, agents, and employees, against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City or its officers, officials, agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the acts or omissions of the Lessees or their officers, officials, officers, agents, employees, assigns, guests, invitees, sublessees or subcontractors, in the performance of the lease, whether caused by or contributed to by the negligence of the City, its officers, officials, agents, or employees.

9. The Lessees shall carry commercial general liability insurance including contractual liability with no less than the following limits of liability, as may be adjusted, from time to time, by the City's Risk Manager: bodily injury, death and property damage of $1,000,000 per occurrence. The policy or policies shall name the City as an additional insured. As evidence of this coverage, the Lessees shall furnish to the City a certificate of insurance on a form provided by the City.

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10. The Lessees shall represent and warrant that their use of the Leased Premises will not generate any hazardous substance, and they will not store or dispose on the Leased Premises nor transport to or over the Leased Premises any hazardous substance in violation of any applicable federal, state or local law, regulation or rule. The Lessees shall further agree to hold the City harmless from and indemnify the City against any release of such hazardous substance and any damage, loss, or expense or liability resulting from such release including all attorneys' fees, costs and penalties incurred as a result thereof except any release caused by the sole negligence or intentional acts of the City, its employees or agents. “Hazardous substance” shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic radioactive substance, or other similar term by any federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease or damage to or loss of use of real or personal property.

11. Either party shall have the right, at their sole option, to terminate the lease by giving the other party a minimum of 180-days written notice.

12. Upon the expiration or termination of the lease, the Lessees, at the Lessees’ cost, shall remove from the Leased Premises all Parking Lot improvements and restore the Leased Premises by grading, adding top soil, and seeding with grass. Removal and restoration shall be accomplished within sixty (60) days of expiration or termination of the lease, except as may be adjusted by the City to allow for winter conditions.

13. The Lessees shall supervise, regulate and maintain the Leased Premises to permit parking only in parking stalls that have been approved by the City. The Lessees shall prohibit and prevent parking by anyone on any unimproved area of the Leased Premises.

14. The Lessees shall observe and promptly and effectively comply with all applicable statutes, rules, orders, ordinances, requirements and regulations of the City, the County of Dane, the State of Wisconsin, the federal government and any other governmental authority having jurisdiction over the Leased Premises.

15. The Lessees shall be jointly and severally liable for all terms and conditions, including payments, of the lease.

BE IT FURTHER RESOLVED that the Mayor and City Clerk are hereby authorized to execute, deliver and record such documents and to take such other actions as shall be necessary or desirable to accomplish the purposes of this Resolution.

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