

VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL MEETING
APRIL 19, 2011 AGENDA

SUBJECT:	TYPE:	SUBMITTED BY:
Lease Agreement for Commuter Parking with Rexnord Industries LLC and Lorig Construction Company	✓ Resolution Ordinance Motion Discussion Only	Nan Newlon, P.E. Director of Public Works

SYNOPSIS

A resolution has been prepared authorizing execution of an agreement between the Village of Downers Grove Rexnord Industries LLC and Lorig Construction Company. This agreement states that Lorig will lease from Rexnord approximately 75 outdoor reserved parking spaces for the use of Village permit parking within the Property.

STRATEGIC PLAN ALIGNMENT

The goals for 2011 to 2018 include *Exceptional Municipal Services*.

FISCAL IMPACT

The cost of the leased parking will be paid by Lorig Construction Company. The permit parking revenue for these spaces will be retained by the Village, who will be responsible for parking enforcement and for the clearing of snow and ice in the leased area.

RECOMMENDATION

Approval on the April 19, 2011 consent agenda.

BACKGROUND

To complete the construction of the Belmont Underpass and the associated site improvements at the Belmont Station approximately 104 commuter parking spaces in Lot H must be taken out of service for up to one year. To minimize disruption to commuters Village staff worked with Metra and Lorig to identify potential alternate parking and to negotiate the terms of a lease. Approximately 75 spaces will be provided in the leased area, and about 30 daily fee or meter spaces are available and will be relocated to other commuter parking lots near the Belmont Station. The cost of the leased parking will be paid by Lorig and reimbursed by Metra as a project construction cost. The Village will retain the commuter parking revenue for the leased spaces and will be responsible for parking enforcement and for the clearing of snow and ice.

ATTACHMENTS

Resolution
Agreement

RESOLUTION NO. ____

**A RESOLUTION AUTHORIZING EXECUTION OF A PARKING LOT LIMITED USE
AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE
AND REXNORD INDUSTRIES, LLC**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That the form and substance of a certain Agreement (the “Agreement”), between the Village of Downers Grove (the “Village”) and Rexnord Industries, LLC (“Rexnord”), for use of a private parking lot for public purposes, as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Village Manager and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.

4. That the parking regulations outlined in Chapter 14 of the Downers Grove Municipal Code relating to Parking Lot H shall apply equally to Temporary Parking Lot H as designated in the attached Agreement for the duration of the Agreement. The Village is hereby authorized and directed to enforce such parking restrictions in this temporary public parking lot or portions thereof.

5. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

6. That this Resolution shall be in full force and effect from and after its passage as provided by law.

Mayor

Passed:

Attest: _____
Village Clerk

PARKING LOT LIMITED USE AGREEMENT

This Agreement, made this 14TH day of April, 2011, by and between Rexnord Industries, LLC, with offices at 2324 Curtiss Street, Downers Grove, Illinois 60515 (hereinafter referred to as "Rexnord"); Lorig Construction Company, with offices at 250 East Touhy Avenue, Des Plaines, IL 60018 (hereinafter referred to as "Lorig"), and the Village of Downers Grove, with offices located at 801 Burlington Avenue, Downers Grove, IL 60515 (hereinafter referred to as the "the Village"), collectively referred to as ("the Parties"):

WHEREAS, Rexnord is the owner of property located at 2324 Curtiss Street, Downers Grove, Illinois 60515 ("the Property"); and

WHEREAS, Parties desire to enter into a parking lot limited use arrangement wherein the Lorig will lease from Rexnord approximately 75 outdoor reserved parking spaces for the use of Village permit parking within the Property (the "Designating Parking Spaces").

In consideration of the rent and of the mutual promises hereinafter contained, the parties, intending to be legally bound, hereto covenant and agree as follows:

1. DESIGNATED PARKING LOCATION/DESCRIPTION.

The parking lot in question is located at 2324 Curtiss Street, Downers Grove, Illinois, as more clearly identified on Exhibit A attached hereto and incorporated herein by reference (the "Leased Parking").

2. USE

Lorig and the Village are granted the limited right to use the Designated Parking Spaces during the term identified in this Agreement. The Village and Lorig's use of the Designated Parking Spaces shall be limited to vehicles that display a clearly visible parking permit issued by the Village. Lorig and the Village agree not to engage in any business or storage of equipment on the Property without first obtaining written consent from Rexnord. Lorig and the Village warrant that it shall comply with all applicable laws, rules, and regulations in the performance of its obligations under this Agreement.

3. CONSTRUCTION

Rexnord and Lorig agree that Lorig hereby takes the Leased Parking in an "as is" condition. Should Lorig desire to perform any construction necessary for the installation of any improvements, repairs or replacements (including painting parking space stripes), Lorig must first obtain written approval from Rexnord for any such work. If approved by Rexnord, said work shall be performed at the Lorig's sole cost and expense and by contractors approved by Rexnord. Any and all such improvements shall, immediately upon their installation, become a part of the property of the Rexnord. Any layout of parking spaces must maintain adequate access to the Rexnord employee parking, as well as a large enough access aisle to the rear garage door of the manufacturing facility, and adequate and unobstructed access to the storage garage.

4. TERM

The term of this Lease shall commence on May 1, 2011 (the Commencement Date"), and automatically expire on June 30, 2012, unless extended by mutual agreement of the parties. Rexnord may terminate this Agreement and the grant of use at any time for any reason upon written notice to Lorig and the Village. Upon expiration of the Agreement, Lorig shall ensure that the Leased Parking is returned to the condition it was in immediately following the commencement of the Agreement.

5. COMPENSATION

During the term of this Agreement, beginning with the Commencement Date, Lorig agrees to pay to Rexnord rent, in equal monthly payments, on the first day of every month, without advance notice or demand, the amount of \$2400.00 per month. All payments of rent shall be made by Lorig to Rexnord Industries, LLC, without notice or demand, either in person or via US Mail at: 2324 Curtiss Street, Downers Grove, IL 60515, Attn.: Dennis Bozych.

6. REPAIRS & MAINTENANCE

Rexnord shall not be responsible to make any improvements or repairs of any kind in or upon the Leased Parking. Lorig covenants and agrees to keep and maintain at its own cost and expense in good order, condition and repair the Leased Parking and every part thereof and not to commit waste thereon, ordinary wear and tear excepted. Lorig further covenants and agrees to provide and pay for any and all reasonable and mutually agree upon other charges and expenses occasioned by the Lorig's occupancy of the leased space and not otherwise provided for under the terms of this Lease. The Village shall be responsible for snow removal for the entire parking lot.

7. INDEMNIFICATION

Lorig hereby agrees to defend, indemnify and hold Rexnord and the Village, its parents, affiliates and each of its agents, officers and employees harmless against all claims, losses or liabilities for injury or death to any person or for damage to or loss of use of any property arising out of any occurrence in, on or about the Property, (including the coming and going of employees and/or invitees), if caused or contributed to by Lorig or Lorig's employees, agents, invitees or contractors, or if arising by reason of or relating to any condition respecting Lorig's use or obligations under this Lease. It is the intent of the parties that the indemnity contained in this Section shall not be limited or barred by reason of any contributing negligence on the part of Rexnord or the Village. Such indemnification shall include and apply to reasonable attorneys' fees, investigation costs, and other reasonable costs actually incurred by Rexnord and the Village. Lorig shall further indemnify, defend and hold harmless Rexnord and the Village from and against any and all claims arising from any breach or default in the performance of any obligation on Lorig's part to be performed under the terms of this Agreement. This Agreement is made on the express conditions that Rexnord and the Village shall not be liable for, or suffer loss, by reason of injury to person or property from whatever cause, in any way connected with the condition, use, occupational safety or parking on the Property. This obligation of indemnification shall survive the expiration or termination of this Agreement.

As to any matter from which Lorig is required to defend and/or indemnify Rexnord and the Village, any insurance maintained or provided by Lorig shall be primary and non-contributing to any insurance maintained by Rexnord or the Village (and Rexnord and the Village's insurance shall be secondary or excess).

8. HAZARDOUS SUBSTANCES

Lorig covenants that the Leased Parking shall be kept free of any Hazardous Substance which is causing or could cause Contamination and shall not be used to generate, manufacture, refine, transport, treat, store, handle, dispose of, transfer, produce or process any Hazardous Substance which is causing or could cause Contamination. Lorig shall not cause or permit as a result of any intentional or unintentional act or omission on the part of Lorig the installation of any Hazardous Substance in or on the Leased Parking or a release of any Hazardous Substance onto or from the Leased Parking or suffer the presence of any Hazardous Substance on the Leased Parking which, in any such case, is causing or could cause Contamination. Lorig shall comply with and ensure compliance with all applicable federal, state and local laws, ordinances, rules and regulations, now or hereafter in effect, with respect to Hazardous Substances and shall keep the Leased Parking free and clear of any liens imposed pursuant to such laws, ordinances, rules and regulations. If Lorig has placed or places Hazardous Substance on the Leased Parking, Lorig shall conduct and complete all investigations, studies, sampling and testing and all Remedial, removal and other actions necessary to clean up and remove all Hazardous Substances on, from or affecting the Leased Parking caused by or contributed to by Lorig, in accordance with all applicable federal, state and local laws, ordinances, rules, regulations and policies, now or hereafter in effect, to the reasonable satisfaction of Rexnord. If Lorig shall fail to take such action, Rexnord may make advances or payments towards performance or satisfaction of the same, but shall be under no obligation to do so; and all sums so advanced or paid, including all sums advanced or paid in connection with any Remedial action and/or with any judicial or administrative investigation or proceeding relating thereto, including, without limitation, reasonable attorney's fees, fines or penalty payments, shall be immediately repayable by Lorig to Rexnord and all sums so advanced shall be considered rent.

"Hazardous Substances" shall include, without limitation, any flammable explosives; radioactive materials; hazardous materials; hazardous wastes; hazardous or toxic substances; hazardous or toxic pollutant or related materials; asbestos or any material containing asbestos; or any other substance, mixture, waste, compound, material, element, product or matter as defined by any federal, state or local environmental law, ordinance, rule or regulation, now or hereafter in effect, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (49 U.S.C. §1801, et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §9601, et seq.), the Clean Water Act, as amended (33 U.S.C. §1251, et seq.), the Clean Air Act, as amended (42 U.S.C. §7401, et seq.), the Toxic Substances Control Act (15 U.S.C. §2601, et seq.), the Solid Waste Management Act (35 P.S. 6018.101 et seq.), the Clean Streams Law (35 P.S. §691.1 et seq.), or any other law relating to the protection of the environment or public health and the regulations adopted and publications promulgated pursuant thereto at any time. "Contamination" shall mean the uncontained presence of Hazardous Substances on the Leased Parking or arising from the Leased Parking which may require Remedial action under applicable law. "Remedial" shall mean, without limitation, (a) clean-up or removal of Hazardous Substances; (b) such actions as may be necessary to monitor, assess or evaluate the release or threatened release of Hazardous Substances; (c) the proper disposal or release of Hazardous Substances; and (d) the taking of such other actions as may be necessary to prevent, minimize or mitigate the damages caused by a release or threatened release of Hazardous Substances to the public health or welfare or to the environment.

In addition to, and not in limitation of, any other indemnification obligation of Lorig hereunder, Lorig shall defend, indemnify and hold Rexnord harmless from and against any losses, expenses, liabilities, fines, penalties, payments, costs and claims arising from any breach or default by Lorig of its representations or obligations under this Section 15, including, without limitation, enforcing the obligations of Lorig hereunder, and including, without limitation, consultants and attorneys' fees. This obligation of indemnification shall survive the expiration or termination of this Lease.

9. NOTICES

Any notices required or permitted hereunder shall be in writing and delivered personally or by certified mail, postage prepaid or a nationally recognized overnight delivery service requiring receipted delivery to the address set forth hereinafter or to such other address as either party may designate in writing in accordance with this Section ____:

Lorig Construction Company
250 East Touhy Avenue
Des Plaines, IL. 60018

Attn: David H. Lorig

Rexnord Industries, LLC
4701 W. Greenfield Avenue
Milwaukee, WI 53214

Attn: Kenneth C. Witter

The Village of Downers Grove
801 Burlington Avenue
Downers Grove, IL 60515

Attn: Village Manager

10. FORCE MAJEURE

Either party shall be excused for the period of any delay in the performance of any obligations hereunder or non-performance of any such obligations of this Lease, when prevented from so doing by cause beyond such party's control which shall include, without limitation, all labor disputes, civil commotion, war, war-like operations, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or controls, administrative hearings or judicial litigation including any adverse findings, orders, verdicts or judgments therein, fire or other casualty, inability to obtain material, services or financing or through acts of God or through any other causes beyond such party's control whatsoever.

11. ASSIGNMENTS

Lorig and the Village shall not have the right to assign this Lease, or any interest therein, or to sublet the Leased Parking, or any part thereof.

12. SIGNS

Any and all signs placed on the Leased Parking or Property shall be pre-approved by Rexnord.

13. INDEPENDENT CONTRACTORS

The parties are independent contractors and nothing in this Lease shall be deemed to make them partners or joint venturers.

14. NON-LIABILITY OF REXNORD.

It is expressly understood and agreed by and between the parties that Rexnord shall not be liable for any damage or injury to person or property caused by or resulting from steam, electricity, gas, water, rain, ice or snow, or any leak or flow from or into any part of the Property, or from any damage or

injury resulting or arising from any other cause or happening whatsoever, nor shall Rexnord be liable for any damage caused by any invitees. It is expressly understood and agreed, in any event, that Lorig assumes all risk of damage occurring in or about the Property to its property or the property of any third party as it relates to the any vehicle parked in the Leased Parking.

15. ENFORCEABILITY OF PARKING REGULATIONS

Pursuant to Section 11-209 of the Illinois Vehicle Code (625 ILCS 5/11-209), Rexnord authorizes the Village to enforce the parking regulations established upon the Leased Parking. Also pursuant to Section 11-209, in order for the parking regulations to be effective and enforceable, the Village shall record this agreement in the office of the DuPage County Recorder of Deeds.

16. ENTIRE AGREEMENT

This Agreement shall constitute the entire agreement between the parties hereto and the same shall not be modified in any fashion except in writing agreed to and signed by the Parties.

17. VALIDITY

The provisions of this Agreement shall be deemed to be independent and separable. Any portion which may be declared void or otherwise unenforceable shall not affect the validity of the remainder of this Agreement, and such remaining provisions shall be fully enforceable.

18. WAIVER

Any waiver of any provision or right given in this Lease shall be deemed a waiver for that occasion only and shall not be construed as a waiver of that provision or right on any other occasion.

19. GOVERNING LAW

This Agreement shall be construed under and in accordance with the laws of the State of Illinois.

18. COMPLIANCE WITH LAWS.

Lorig and the Village warrant that it and its invitees shall comply with all applicable laws, rules and regulations in connection with the use of the Leased Parking.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first written above.

LORIG CONSTRUCTION COMPANY

By: [Signature]
Printed Name: David H. Lorig
Title: President
Date: 4/14/11

REXNORD INDUSTRIES, LLC

By: [Signature]
Printed Name: Kenneth C. Witter
Title: Director Real Estate
Date: 4/14/11

THE VILLAGE OF DOWNERS GROVE

By: _____
Printed Name: _____
Title: _____
Date: _____

Exhibit A

Proposed Leased Area for Commuter Parking

Rexnord Industries, LLC
2324 Curtiss Street
Downers Grove, IL.

