

VILLAGE OF DOWNERS GROVE
Report for the Village Council Meeting
6/9/2015

SUBJECT:	SUBMITTED BY:
Parking Lot Limited Use Agreement with Rexnord Industries, LLC	Nan Newlon Director of Public Works

SYNOPSIS

A resolution has been prepared to authorize a contract with Rexnord Industries, LLC in the amount of \$2,400.00 per month for up to four months for the purpose of leasing temporary, offsite parking spaces during the reconstruction of Commuter Parking Lot H.

STRATEGIC PLAN ALIGNMENT

The Goals for 2011 to 2018 identified *Top Quality Infrastructure*.

FISCAL IMPACT

This portion of the project is unbudgeted; however, there is sufficient budget authority in the Parking Fund in the annual maintenance budget for this cost.

RECOMMENDATION

Approval on the June 9, 2015 consent agenda.

BACKGROUND

This agreement will provide temporary offsite parking to help facilitate the reconstruction of Parking Lot H. Construction of Parking Lot H will be phased to minimize the disruption to commuters. A total of 174 spaces will be affected during each phase; the Village will make 172 spaces available (as shown below). The 172 spaces are anticipated to be sufficient as summer occupancy levels are typically below capacity.

Temporary offsite parking will be provided as follows:

- Rexnord Industries, LLC - 75 spaces
- Village Parcels north of Warren Avenue, east of Belmont Road - 85 spaces
- Haddow Avenue west of Belmont Road - 12

Through notification of the Parking Lot H Improvements, the Village will also inform commuters about 38 available spaces, the majority of which are currently unused, at the PACE 63rd Street and Belmont Road Park-n-Ride.

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

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PARKING LOT LIMITED USE AGREEMENT

This Agreement, made this 8TH day of June, 2015, by and between Rexnord Industries, LLC, with offices at 2324 Curtiss Street, Downers Grove, Illinois 60515 (hereinafter referred to as "Rexnord") 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, the Parties desire to enter into a parking lot limited use arrangement wherein the Village will lease from Rexnord approximately 75 outdoor reserved parking spaces for the use of Village permit parking within the Property (the "Designated 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

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

3. CONSTRUCTION

Rexnord and the Village agree that the Village hereby takes the Leased Parking in an "as is" condition. Should the Village desire to perform any construction necessary for the installation of any improvements, repairs or replacements (including painting parking space stripes), the Village must first obtain written approval from Rexnord for any such work. If approved by Rexnord, said work shall be performed at the Village'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 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 Agreement shall commence on June 15, 2015 (the "Commencement Date"), and automatically expire on October 2, 2015, unless extended by mutual agreement of the Parties. Either Party may terminate this Agreement at any time for any reason upon written notice to the other Party.

Upon expiration of the Agreement, the Village 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, the Village 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 \$2,400.00 per month except the payment for the month of June shall be prorated. All payments of rent shall be made by the Village to Rexnord Industries, LLC, without notice or demand, either in person or via US Mail at: 2400 Curtiss Street, Downers Grove, IL 60515.

6. REPAIRS & MAINTENANCE

Rexnord shall not be responsible to make any improvements or repairs of any kind in or upon the Leased Parking. The Village covenants and agrees to keep and maintain at its own cost and expense the Leased Parking in the same condition as it is on the Commencement Date, ordinary wear and tear excepted.

7. INDEMNIFICATION

The Village will indemnify, defend and hold harmless Rexnord from any and all liability, losses or damages Rexnord may suffer as a result of claims, demands, suits, actions or proceedings of any kind or nature in any way resulting from or arising out of negligent, willful or reckless acts or omissions on the part of the Village or any third party related to the use of the Designated Parking Spaces. Such indemnification shall include and apply to reasonable attorneys' fees, investigation costs, and other reasonable costs actually incurred by Rexnord. This indemnification does not apply to liability caused by Rexnord's own negligence or the negligent or intentional acts.

Rexnord will indemnify, defend and hold harmless the Village and its officers, employees and agents from any and all liability, losses or damages the Village may suffer as a result of claims, demands, suits, actions or proceedings of any kind or nature in any way resulting from or arising out of negligent, willful or reckless acts or omissions on the part of Rexnord related to this Agreement. Such indemnification shall include and apply to reasonable attorneys' fees, investigation costs, and other reasonable costs actually incurred by the Village. This indemnification does not apply to liability caused by the Village's own negligence or the negligent or intentional acts or any third party.

As to any matter from which either party is required to defend and/or indemnify the other party, any insurance maintained or provided by the indemnifying party shall be primary and non-contributing to any insurance maintained by the indemnified party (and the indemnified party's insurance shall be secondary or excess). Tenant will comply with all guidelines contained within Appendix A – Certificate of Insurance Requirements.

This section survives termination of this Agreement.

8. 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 8:

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

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

Attn: Village Manager

Attn: Kenneth C. Witter

9. 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 Agreement, 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.

10. ASSIGNMENTS

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

11. SIGNS

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

12. INDEPENDENT CONTRACTORS

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

13. 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.

14. 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.

15. 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.

16. 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.

17. WAIVER

Any waiver of any provision or right given in this Agreement 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.

18. GOVERNING LAW

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

18. COMPLIANCE WITH LAWS.

The Village warrants that it 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.

THE VILLAGE OF DOWNERS GROVE

REXNORD INDUSTRIES, LLC

By: _____

By: *Kenneth C. Witter*
Printed Name: Kenneth C. Witter
Title: Director of Real Estate
Date: June 8th, 2015

Printed Name: _____

Title: _____

Date: _____

Appendix A

Certificate of Insurance Requirements

Certificates of Insurance provided to Rexnord Industries LLC:

- Must indicate the outside party has the required insurance coverages and limits requested by Rexnord Industries LLC. See the General Guidelines section of this document for details.
- Must be signed by an authorized agent.
- Should be issued by insurers that have an AM Best Financial Strength Rating of "A-" or better, an AM Best Financial Size Rating of "VII" or better, and is licensed to do business in Wisconsin.
- Must name Rexnord Industries LLC & Subsidiaries as Additional Insured on all liability policies with the exception of Professional Liability and Worker's Compensation Insurance. The coverage shall contain no special limitations on the scope of protection afforded to Rexnord Industries LLC.
- Must indicate that the insurer shall have no right of recovery or subrogation against Rexnord Industries LLC.
- Must indicate that the described policies:
 - Include a Primary and Non-Contributory provision and a Severability of Interest provision for Commercial General Liability coverage.
 - These provisions may be standard in an insurance policy form. If not, endorsements are required.
 - Do not limit coverage provided to Rexnord Industries LLC through any failure to comply with the reporting provisions of the policy.
 - Are written on an "Occurrence" policy form.
 - "Claims Made" coverage is unacceptable with the exception of Professional Liability, and Commercial General Liability policies for Hazardous Materials related outside parties (i.e. Hazardous Materials Abatement, Removal, Hauling and Pest Control).

Exceptions to these requirements must be approved by Rexnord Industries LLC Risk Management.

Outside Party Requirements

- The outside party must assume all deductibles in the described insurance policies.
- Each required insurance policy shall not be suspended, voided, canceled or changed to be non-compliant, except after 30 days prior written notice by certified mail has been given to Rexnord Industries LLC.
- In the event of non-renewal, cancellation, or expiration of an outside party's insurance policy, the outside party shall provide Rexnord Industries LLC evidence of the new source(s) of required insurance within ten (10) calendar days after Rexnord Industries LLC's receipt of the thirty (30) day notice. Failure to maintain the required insurance in force may be cause for contract termination.
- In the event that the contractor fails to maintain and keep in force the required insurance, Rexnord Industries LLC shall have the right to cancel and terminate the contract or agreement without notice.
- A new COI must be submitted by the outside party:
 - Every year,
 - Before any new agreement, contract or contract renewal,
 - Upon the outside party's policy renewal date, whichever comes first.

General Guidelines:

- **Commercial General Liability:**
 - Minimum \$5,000,000 combined single limit per occurrence for property damage, bodily injury, personal and advertising injury.
 - Coverage should include Premises and Operations, Independent Contractors, Products and Completed Operations, Contractual Liability and Broad Form Property Damage coverage.
- **Automobile Liability:**
 - Minimum \$1,000,000 combined single limit per accident for bodily injury.
 - Coverage should extend to owned, hired and non-owned automobiles.
 - If the outside party does not own an automobile used in the execution of the contract, then only hired and non-owned coverage is required.
 - If a vehicle is not used in the execution of the contract then automobile coverage is not required.
- **Workers' Compensation and Employers Liability:**
 - Statutory coverage in compliance with the Compensation laws of the State of Colorado or equivalent.
 - Coverage shall include Employer's Liability with minimum limits of \$100,000 each accident, \$500,000 Policy Disease Limit, \$100,000 each employee.
- An Umbrella Policy may be used to meet the minimum liability limit guidelines (i.e. outside party has only \$1,000,000 of Commercial General Liability and Auto coverage, but purchases a \$4,000,000 Umbrella policy to meet the minimum \$5,000,000 liability limit requirement).
- **Property Insurance**
 - Provide appropriate description of all property for which insurance is required.
 - Certificate should evidence appropriate amounts of coverage for the property described.
 - Rexnord Industries LLC should be listed as a named Loss Payee for damage done to the property described.

Exhibit A

Proposed Leased Area for Commuter Parking

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

