

Agenda Item # 29

DISTRIBUTION
County Board
County Clerk
County Administrator
Public Works

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

COUNTY BOARD, LAKE COUNTY, ILLINOIS
ADJOURNED REGULAR SEPTEMBER A.D., 2007 SESSION
APRIL 8, A.D., 2008

MADAM CHAIR AND MEMBERS OF THE COUNTY BOARD:

Your Public Works and Transportation Committee presents herewith a Resolution authorizing execution of an Agreement for Interim Use of Reserved Sewer Capacity with W.W. Grainger, Inc.; and request its adoption.

Respectfully submitted,

	<i>Alanna O'Kelly</i>	Aye	Nay
CHAIR	<i>[Signature]</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
VICE CHAIR	<i>Ann B. Main</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	<i>Susan L. Gravenhorst</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	_____	<input type="checkbox"/>	<input type="checkbox"/>
	_____	<input type="checkbox"/>	<input type="checkbox"/>

PUBLIC WORKS AND TRANSPORTATION
COMMITTEE

RESOLUTION

WHEREAS, the County of Lake (County) and W.W. Grainger Inc. (Grainger) entered into an Agreement for Sanitary Sewer and Water Supply Services on November 10, 1994 and a First Amendment to Agreement for Sanitary Sewer and Water Supply Services on December 28, 1998; and

WHEREAS, per the County-Grainger agreements sufficient water and sewer capacity is to be reserved and provided for 1.5 million square feet of office space to the Grainger Office Parcel; and

WHEREAS, the Agreed Consent Order in the Millennium Maintenance Management, Inc. v. County of Lake, Case No. 06 MR 752 contemplates that the County will construct a second force main and certain lift station improvements to serve specific parcels with sanitary sewer; and

WHEREAS, the County desires to make interim use of the reserved capacity in the Route 60 sewer improvements until such time as the second force main and lift station improvements are completed; and

WHEREAS, Grainger is willing to allow interim use of the reserved capacity to serve additional parcels contemplated to receive sanitary sewer service in the Agreed Consent Order; and

WHEREAS, the County and Grainger desire to enter into an agreement for interim use of reserved sewer capacity; and

WHEREAS, execution of an Agreement for Interim Use of Reserved Sewer Capacity must be authorized by Resolution of this County Board.

NOW, THEREFORE, BE IT RESOLVED, by this County Board of Lake County, Illinois, that the Chairman of the County Board and the Clerk of said County be and they are hereby authorized and directed to execute an Agreement for Interim Use of Reserved Sewer Capacity with W.W. Grainger, Inc. in substantially the attached form.

DATED at WAUKEGAN, LAKE COUNTY, ILLINOIS, on this 8th day of April A.D.,
2008.

Wisch, Linda R.

From: Ostrander, Vicki
Sent: Thursday, March 27, 2008 2:23 PM
To: Wisch, Linda R.
Subject: Resolutions for PW&T Meeting
Attachments: 04.08.08 FY 2008 WM Construction Award.doc; 04.08.08 Grainger Agreement for Interim Sewer Capacity.doc; 04.08.08 Grainger Dedication Sewer and Water Facilities.doc

The FY 2008 WM Construction Award needs to go to Finance, the other resolutions only go to PW&T Committee.

Victoria Ostrander
Executive Secretary
Lake County Public Works Department
847.377.7148
vostrander@co.lake.il.us

3/27/2008

AGREEMENT FOR INTERIM USE OF RESERVED SEWER CAPACITY

This Agreement is dated as of this ____ day of _____, 2008, and is made and entered into by and between the COUNTY OF LAKE, an Illinois unit of local government (the "County"), and W.W. GRAINGER, INC., an Illinois corporation ("Grainger").

WHEREAS, the County and Grainger have entered into an "Agreement for Sanitary Sewer and Water Supply Services" dated November 10, 1994, and as amended thereafter (the County-Grainger Sewer and Water Agreement"), which provided for sanitary sewer and water supply facilities to serve the Grainger Office Parcel, all as described in the County-Grainger Sewer and Water Agreement; and

WHEREAS, in order to ensure that adequate sanitary sewer service will be available for the Grainger Office Parcel, Grainger has constructed for dedication to the County sanitary sewer improvements, including a lift station and a force main along Route 60 (the "Route 60 Sewer Improvements") pursuant to the provisions of the County-Grainger Sewer and Water Agreement; and

WHEREAS, under the County-Grainger Sewer and Water Agreement, the County was required to reserve the entire capacity of the Route 60 Sewer Improvements to the Grainger Office Parcel; and

WHEREAS, the County and Grainger entered into a "First Amendment to Agreement for Sanitary Sewer and Water Supply Services" dated December 28, 1998 (the First Amendment to the County-Grainger Sewer and Water Agreement"), pursuant to which amendment Grainger, subject to certain terms and conditions, agreed to allow certain additional parcels to be served with sanitary sewer service through the Route 60 Sewer Improvements; and

WHEREAS, Section 4.1 of the County-Grainger Sewer and Water Agreement provides that one of the conditions of sanitary sewer service to these additional parcels is that "sufficient capacity at all times shall be reserved for, and available to provide, Sanitary Sewer and Water Supply Service to the Grainger Office Parcel for 1.5 million square feet of office space"; and

WHEREAS, the Grainger Office Parcel is currently developed with less than 1.5 million square feet of office space, and therefore additional reserved capacity for Grainger in the Route 60 Sewer Improvements currently exists (with such additional capacity as is necessary to provide Sanitary Sewer Service to the Grainger Office Parcel for 1.5 million square feet of office space being hereinafter termed as "Reserved Capacity"); and

WHEREAS, pursuant to that certain contemplated Agreed Consent Order to be entered in the case captioned *Millenium Maintenance Management, Inc. et al. v. County of Lake, et al.*, Case No. 06 MR 752, in the Lake County Circuit Court (the "Consent Order"), it is contemplated that the County will be constructing a second sanitary sewer force main adjacent and parallel to the Route 60 Sewer Improvements (the "New Force Main") and making certain related improvements to the lift station that will serve the Route 60 Sewer Improvements and the New Force Main in order to serve specific parcels contemplated to be served with sanitary sewer

service in the Consent Order; and

WHEREAS, in the event any of the specific parcels contemplated to receive sanitary sewer service pursuant to the Consent Order are prepared to deliver sewer flows to the County prior to completion of the New Force Main, the County desires to be able to make interim use of the Reserved Capacity in the Route 60 Sewer Improvements until such time as the New Force Main is constructed, tested and approved for operation to receive sanitary sewage; and

WHEREAS, Grainger is willing to allow interim use of the Reserved Capacity in the Route 60 Sewer Improvements to serve the additional parcels contemplated to receive sanitary sewer service in the Consent Order prior to completion of the New Force Main, subject to the terms and conditions as set forth herein.

WHEREFORE, in consideration of the mutual covenants and agreements contained herein, the County and Grainger do hereby agree as follows:

Section 1. Recitals.

The foregoing recitals are, by this reference, fully incorporated into and made a part of this Agreement.

Section 2. Interim Use of Reserved Capacity in Route 60 Sewer Improvements.

Grainger agrees to allow the County to make interim use of the Reserved Capacity in the Route 60 Sewer Improvements to serve the specific parcels contemplated to receive sanitary sewer service in the Consent Order in the event such parcels are entitled, able and prepared to deliver sanitary sewage to the County-Vernon Hills Sewerage System prior to completion, testing, and approval for operation of the New Force Main.

Section 3. Duration of Interim Use.

The County agrees that the right to interim use of the Route 60 Sewer Improvements contemplated in this Agreement shall expire on the earlier of the following: 1) thirty-six months from June 1, 2008, or 2) one hundred twenty (120) days after the completion, testing, and approval for operation of the New Force Main.

Section 4. Conditions of Interim Use.

The County agrees that the interim use of the Route 60 Sewer Improvements is subject to the following additional conditions:

- a) The interim use of the Route 60 Sewer Improvements shall be at no out-of-pocket cost to Grainger;

b) Upon completion, testing, and approval for operation of the New Force Main, the County shall restore and make available to Grainger the Reserved Capacity in the Route 60 Sewer Improvements and/or New Force Main.

c) Notwithstanding anything to the contrary in this Agreement, in the event Grainger provides written notice to the County of Grainger's intent to construct additional improvements on the Grainger Office Parcel that will require the utilization of some or all of the Reserved Capacity at any time during the term of this Agreement, then, within twelve (12) months of the date of such notice (or such later date as the Parties may otherwise agree), the County shall provide and make available to Grainger the Reserved Capacity, or such portion thereof, in the Route 60 Sewer Improvements and/or New Force Main as shall be necessary to serve the additional improvements on the Grainger Office Parcel.

Section 5. No Third Party Beneficiaries.

Nothing in this Agreement shall create, or shall be construed or interpreted to create, any third party beneficiary rights.

Section 6. Successors/Assignment.

This Agreement shall be binding on, and shall inure to the benefit of, the heirs, successors, and assigns of Grainger. This Agreement also shall be binding upon, and shall inure to the benefit of, any future owner of any legal or equitable interest in all or portion of the Grainger Office Parcel. The County may, upon notice to Grainger, assign to a public utility or unit of local government this Agreement, in whole or in part, or any or all of the County's rights or obligations under this Agreement, without the consent of Grainger.

Section 7. Effective Date.

This Agreement shall be in full force and effect from and after the date set forth above.

Section 8. Notices.

All notices and other communications in connection with this Agreement shall be in writing and shall be deemed delivered to the addressee thereof when delivered in person or by express mail or messenger, or by overnight mail to the address set forth below with notice being deemed given the next business day after deposit with the carrier, or three business days after deposit thereof in any main or branch United States post office, certified or registered mail, return receipt requested, postage prepaid, properly addressed to the parties, respectively, as follows:

For notices and communication to the County:

Lake County Department of Public Works
650 Winchester Road
Libertyville, Illinois 60048
Attn: Director of Public Works

with a copy to:

Lake County State's Attorney
18 North County Street
Waukegan, IL 60085
Attn: Chief, Civil Trial Division

For notices and communication to Grainger:

W.W. Grainger, Inc.
100 Grainger Parkway
Lake Forest, IL 60045

Attn: Phil Lippert, Vice President, Administrative Services
c/o Real Estate Department

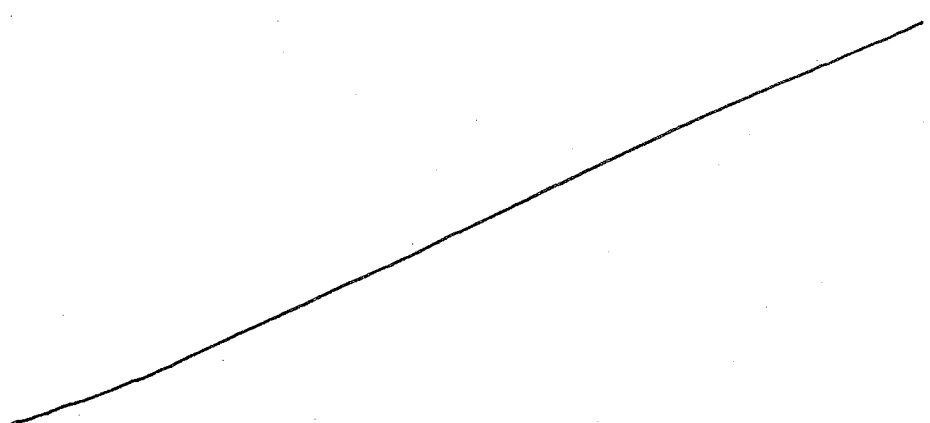
By notice complying with the foregoing requirements of this Section, each party shall have the right to change the addressees or addresses or both for all future notices and communication to such party, but no notice of a change of address shall be effective until actually received.

Section 9. Execution in Counterparts.

This Agreement may be executed in multiple identical counterparts, and all of said counterparts shall, taken together, constitute the Agreement.

Section 10. Amendments.

Except as expressly provided otherwise in this Agreement, this Agreement shall not be modified, changed, altered, amended, or terminated without the written and duly authorized consent of the County and Grainger.



PART OF AGREEMENT FOR INTERIM USE OF RESERVED SEWER CAPACITY

IN WITNESS WHEREOF, the County of Lake and W.W. Grainger, Inc. have set their hands and affixed their seals on the date first above written.

COUNTY OF LAKE

BY:

Suzi Schmidt
County Board Chairman

ATTEST:

Willard Helander
County Clerk

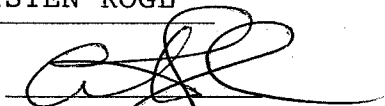
W.W. GRAINGER, INC.

By: Philip A. Lisout

Its: VICE PRESIDENT, ADMINISTRATIVE SERVICES

ATTEST:

CRISTEN KOGL

By: 

Its: Secretary

