

MEMORANDUM

TO: Honorable Mayor and City Council Members

PREPARED BY: Chester Murray, Interim City Manager

DATE: January 6, 2009

SUBJECT: Approval of Interlocal Joint Project Agreement with Volusia County

PURPOSE

To approve Resolution 521-09, therein approving a joint project agreement with Volusia County to construct South Sparkman Avenue from West Ohio Avenue to West Rhode Island Avenue.

BACKGROUND

As the Council is aware, the Manatee Cove Elementary and the River Springs Middle School opened in 2007 and 2008 respectively. The High School, which is currently under construction, will open in either August of 2009 or January of 2010. Certain road improvements have been made over the past two years to provide access to these schools, of which, West Rhode Island is considered to be the main access to the three schools, which is currently under construction.

A very important segment intended to link Ohio Avenue with Rhode Island was proposed to be built when the Sparkman Ridge subdivision is constructed in order to provide adequate traffic circulation from Rhode Island. Staff believes that the Sparkman Avenue extension to Rhode Island is an important project that affects the health, safety or welfare of our residents.

The County is currently constructing West Rhode Island Avenue from US 17/92 to the new High School which is also currently under construction. The City desires to construct an extension of Sparkman Avenue between Ohio Avenue and Rhode Island Avenue, thereby completing the missing link of Sparkman Avenue.

Both Volusia County and City staff agree that it would be in the best interest of the general public and to the economic advantage of both parties to enter into a joint project agreement wherein Volusia County will build Sparkman Avenue in conjunction with the existing contract for the construction of West Rhode Island Avenue. Volusia County will be compensated via the special assessment district currently being processed.

RECOMMENDATION

Staff recommends City Council approval of Resolution No. 521-09, thereby approving a joint project agreement with Volusia County to construct South Sparkman Avenue from West Ohio Avenue to West Rhode Island Avenue.

RESOLUTION NO. 521-09

A RESOLUTION OF THE CITY OF ORANGE CITY, FLORIDA, APPROVING A JOINT PROJECT AGREEMENT WITH VOLUSIA COUNTY TO CONSTRUCT SOUTH SPARKMAN AVENUE BETWEEN OHIO AVENUE AND RHODE ISLAND AVENUE; REPEALING ALL RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Manatee Cove Elementary and the River Springs Middle School opened in 2007 and 2008 respectively. The High School, which is currently under construction, will open in either August of 2009 or January of 2010; and

WHEREAS, certain road improvements have been made over the past two years to provide access to these schools, of which, West Rhode Island Avenue is considered to be the main access to the three schools; and

WHEREAS, The County of Volusia is currently constructing West Rhode Island Avenue from US 17/92 to the new high school; and

WHEREAS, Orange City desires to construct an extension of Sparkman Avenue between Ohio Avenue and Rhode Island Avenue, thereby completing a "missing link" of Sparkman Avenue; and

WHEREAS, the County of Volusia and the City of Orange City agree that it would be in the best interest of the general public and to the economic advantage of both parties to enter into a joint project agreement wherein Volusia County will build the missing link of South Sparkman Avenue in conjunction with the existing contract for the construction of West Rhode Island Avenue.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ORANGE CITY:

SECTION 1. That the City Council of the City of Orange City herein approves the joint project agreement with Volusia County and authorizes the execution thereof, for the construction of that portion of South Sparkman Avenue located between Ohio Avenue and Rhode Island Avenue, said joint project agreement attached hereto as Exhibit "A", and by reference incorporated herein with full force and effect.

SECTION 2. That all resolutions or parts of resolutions in conflict herewith be and the same are hereby repealed.

SECTION 3. That this resolution shall take effect immediately upon its adoption by the City Council of the City of Orange City, Florida.

ROLL CALL VOTE AS FOLLOWS:

Jim Mahoney	_____	Donald C. Sherrill	_____
Don Sandford	_____	Tom Abraham	_____
Tom Laputka	_____	Jeff Allebach, Vice Mayor	_____
Harley Strickland, Mayor	_____		

ADOPTED THIS _____ DAY OF _____, 2009.

ATTEST:

AUTHENTICATED:

Deborah J. Renner, CMC, City Clerk

Harley Strickland, Mayor

Approved as to form and legal sufficiency:

W. E. Reischmann, City Attorney

**JOINT PROJECT AGREEMENT
ROAD CONSTRUCTION
BY HIGHWAY CONTRACTOR**

THIS AGREEMENT made and entered into this _____ day of _____, 2009, by and between the **COUNTY OF VOLUSIA, FLORIDA**, hereinafter referred to as "COUNTY," and the **CITY OF ORANGE CITY, FLORIDA**, hereinafter referred to as "CITY."

W I T N E S S E T H:

WHEREAS, COUNTY is constructing, reconstructing, improving or otherwise changing a portion of the County Highway System designated by COUNTY as Project No. 4911 Rhode Island Avenue Extension West (from US 17/92 to the new high school currently under construction) and described hereafter as "COUNTY's Road Work;" and

WHEREAS, CITY desires to construct an extension of Sparkman Avenue between its current terminus at Ohio Avenue and the Rhode Island Avenue Extension being constructed by COUNTY, thereby completing the missing link of Sparkman Avenue; and

WHEREAS, once constructed, the Sparkman Avenue extension will provide an alternate means of access to the recently built elementary and middle schools and will reduce traffic on the heavily travelled Blue Springs Avenue; and

WHEREAS, drawings and specifications for said Sparkman Avenue extension have been prepared by engineering consultant CPH Engineers, Inc., referenced as Project # S10801 for Sparkman, LLC and dated May 5, 2008, and have been reviewed and approved by CITY and are described hereafter as "CITY's Road Work;" and

WHEREAS, COUNTY and CITY have determined that it would be in the best interest of the general public and to the economic advantage of both parties to enter into a JOINT PROJECT AGREEMENT providing for CITY's Road Work to be completed in association with "COUNTY's Road Work;" and

WHEREAS, CITY has furnished COUNTY with a complete set of drawings and specifications including a "Summary of Quantities" sheet covering all construction requirements for CITY's Road Work; and

WHEREAS, CITY has requested that COUNTY include CITY's Road Work as part of the COUNTY's Road Work and will assume all costs necessary for completion of CITY's Road Work; and

WHEREAS, the term "costs necessary for completion of City's Road Work" includes the entire

amount to be paid by CITY to COUNTY properly attributed to construction of City's Road Work; and

WHEREAS, COUNTY and CITY desire for CITY's Road Work to be accomplished by a change order to COUNTY's contract for COUNTY's Road Work; and

WHEREAS, COUNTY has authority pursuant to Section 125.01, Florida Statutes, to enter into agreements; and

WHEREAS, CITY has authority pursuant to Section 166.021, Florida Statutes, to enter into agreements.

NOW, THEREFORE, in consideration of the mutual covenants promises, warranties and undertakings of the parties contained herein and other good and valuable consideration given by each party to the other, the receipt and sufficiency of which is hereby acknowledged, the parties hereto stipulate and agree as follows:

1. The foregoing recitals are true and correct and are hereby incorporated herein by reference.
2. COUNTY and CITY shall participate in a JOINT PROJECT in order to complete City's Road Work as included in CITY'S drawings, specifications, and cost estimate.
3. COUNTY and CITY agree that CITY's Road Work will not proceed until all right of way needed for the CITY's Road Work has been conveyed to CITY; and
4. COUNTY and CITY agree that CITY's Road Work will not proceed until all right of way needed for COUNTY's Road Work, currently owned by Sparkman, LLC, has been conveyed to COUNTY by Sparkman, LLC in accordance with that certain agreement entitled AGREEMENT BETWEEN VOLUSIA COUNTY AND SPARKMAN, LLC, RHODE ISLAND AVENUE EXTENSION, Project P-4911, dated December 19, 2007.
5. All of City's Road Work on the JOINT PROJECT is to be done according to CITY's drawings and specifications as supplied to and approved by COUNTY. CITY will be responsible for verifying the accuracy of the information furnished to COUNTY and will also be responsible for any changes in CITY's drawings made necessary by errors or omissions in the information as furnished by CITY.
6. COUNTY will provide at COUNTY's cost the services of an on-site inspector to observe the construction of the CITY's Road Work and assist in coordination of any necessary testing. The costs of all of CITY's Road Work and testing required for CITY's Road Work, including soil density and compaction testing, will be borne by CITY as part of the JOINT PROJECT. The testing cost is estimated not to exceed \$10,000 and is included in the payment to be made to COUNTY as set forth in Paragraph 8 herein.

7. COUNTY will provide at COUNTY's cost all necessary engineering supervision to assure construction is in compliance with the drawings and specifications of the JOINT PROJECT.

8. COUNTY intends to construct CITY's Road Work by change order to its current contract with its contractor, Built-Rite Construction, Inc., for COUNTY's Road Work. Said change order is estimated to be in the amount of FOUR HUNDRED TWENTY TWO THOUSAND EIGHT HUNDRED NINETY-ONE DOLLARS AND SIXTY CENTS (\$422,891.60) and has been reviewed and approved by CITY. CITY shall make a cash payment to COUNTY in the amount of **FOUR HUNDRED FIFTY FOUR THOUSAND FIVE HUNDRED THIRTY-SIX DOLLARS AND EIGHTEEN CENTS (\$454,536.18)** which is one hundred and five percent (105%) of the estimated cost to construct City's Road Work, as set forth in said change order, including the testing costs. The contractor will not begin construction of CITY's Road Work and COUNTY will not issue the contractor a notice to proceed until CITY's above-referenced payment has been received by COUNTY. Any of said funds remaining after completion of construction of CITY's Road Work, if any, shall be refunded to CITY. **CITY acknowledges that the payment must be received by COUNTY no later than noon, February 20, 2009.** If payment is not received by COUNTY in accordance herewith, this Agreement shall automatically terminate and the parties hereto shall have no further obligation resulting there from. Time is of the essence.

9. If any adjustments, relocations, repair, and/or incidentals are required to be performed to CITY systems, utilities or facilities or any other parties' systems, utilities or facilities resulting from this JOINT PROJECT, which are not specifically addressed in this agreement, they shall be the sole responsibility of CITY and must be accomplished by written change order. All such work is to be coordinated with the construction of this JOINT PROJECT and in a manner that will not cause delay or expense to COUNTY's Road Work as determined in COUNTY's sole and absolute discretion.

10. All services and work under the construction contract shall be performed to the satisfaction of the County Engineer. All questions, difficulties, and disputes of whatever nature, which may arise under the construction contract for CITY's Road Work, including but not limited to the prosecution and fulfillment of the services thereunder, and the character, quality, amount and value thereof, shall be decided by the County Engineer after consultation with CITY. The decision of the County Engineer upon all such questions, difficulties and disputes shall be final and conclusive upon the contractor and CITY.

11. Notices. All notices, demands, or other writings required or permitted to be given or made or sent under this Agreement, by either party to the other, shall be in writing and shall be deemed to have been fully delivered upon (i) receipt of such notice when hand delivered (by personal courier or overnight delivery

service) to the party to whom such notice is addressed as set forth below, (ii) receipt of such notice as indicated by the signature and date on the return receipt of a certified mailing, or (iii) on the same day if sent by facsimile and a printed confirmation of transmission is obtained by the sender, addressed and transmitted to the party to whom such notice is to be delivered as set forth below.

COUNTY:

Volusia County
Attn: James T. Dinneen
Volusia County Manager
123 West Indiana Avenue
Deland, FL 32720

With a copy to:

Volusia County
Attn: Gerald N. Brinton, P.E.
Volusia County Engineer
123 West Indiana Avenue
Deland, FL 32720

CITY:

City of Orange City
Attn: Chester Murray
Interim City Manager
205 East Graves Avenue
Orange City, FL 32763

12. Upon completion and acceptance of the work and receipt by CITY of reproducible record drawings of the completed work, CITY shall own, control, maintain and be responsible for all of CITY's Road Work, systems and facilities involved in this JOINT PROJECT.

13. The salvage value of any materials related to CITY's Road Work and removed from the construction site will become the property of the contractor and shall be disposed of by the contractor.

14. Subject to the sovereign immunity limitations set forth below, CITY covenants and agrees that it shall indemnify and hold COUNTY harmless, as well as all of County's Council members, agents and employees, from any claim, loss, damage, cost, charge or expense arising out of any act, action, neglect or omission by anyone other than COUNTY resulting from or related to the performance of CITY's Road Work or this Agreement, whether direct or indirect and whether to any person or property to which COUNTY or said parties may be subject. CITY's obligation to indemnify shall be subject to the limitation set forth in Section 768.28(5), Florida Statutes.

15. Subject to the sovereign immunity limitations set forth below, COUNTY covenants and agrees that it shall indemnify and hold CITY harmless, as well as all of CITY's Council members, agents and employees, from any claim, loss, damage, cost, charge or expense arising out of any act, action, neglect, omission by COUNTY resulting from or related to its performance of this Agreement, whether direct or indirect and whether to any person or property to which CITY or said parties may be subject. COUNTY's obligation shall be subject to the limitation set forth in Section 768.28(5), Florida Statutes.

16. COUNTY and CITY each expressly retain all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, Florida Statutes. Notwithstanding anything set forth in any section, article or paragraph of this Agreement to the contrary, nothing in this Agreement shall be deemed as a waiver of sovereign immunity or limits of liability which may have been adopted by the Florida Legislature or may be adopted by the Florida Legislature and the cap on the amount and liability of either party for damages, attorney fees and costs, regardless of the number or nature of claims in tort, equity or contract shall not exceed the dollar amount set by the Florida Legislature for tort. Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against either party which would otherwise be barred under the Doctrine of Sovereign Immunity or operation of law.

17. Upon final completion of all work, COUNTY shall, within one hundred eighty (180) days, furnish CITY with two (2) copies of its final and complete accounting of all costs incurred in connection with CITY's Road Work performed hereunder, such statement to follow as closely as possible the order of the items contained in the job estimate. The final accounting shall show the description and site of the project; the date on which the first work was performed; the date on which the last work was performed or the last item of billed expense was incurred; and the location where the records and accounts bill can be audited. Adequate reference shall be made in the billing to COUNTY's records, accounts or other relevant documents. All cost records and accounts shall be subject to audit by a representative of CITY. In the event CITY's Road Work exceeds the amount of the cash payment to COUNTY by CITY for CITY's Road Work, COUNTY shall prepare a final invoice in accordance with COUNTY procedures. Upon receipt of the final invoice, CITY agrees to reimburse COUNTY, within ten (10) business days, the amount of such cost.

18. This Agreement, together with the schedules identified above, constitutes the entire agreement between COUNTY and CITY and supersedes all prior written or oral understandings. This Agreement and schedules may only be amended, supplemented, modified or canceled by a duly executed written instrument of equal dignity.

19. In any lawsuit filed by either Party to this Agreement for the purpose of enforcing the terms

contained herein, the Parties expressly agree to waive their “right to trial by jury” and expressly agree to a non-jury trial. Except as expressly provided for elsewhere herein, the Parties further agree to bear their own costs, expenses and attorney fees associated therewith.

- Remainder of page intentionally left blank -

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written.

ATTEST:

CITY OF ORANGE CITY, FLORIDA

CHESTER MURRAY
INTERIM CITY MANAGER

BY: _____
HARLEY STRICKLAND
MAYOR

DATE: _____

ATTEST:

COUNTY OF VOLUSIA, FLORIDA

JAMES T. DINNEEN
COUNTY MANAGER

BY: _____
FRANK T. BRUNO, JR.
COUNTY CHAIR

DATE: _____

Approved as to form
and correctness:

Approved as to form
and correctness:

STACEY J. MANNING
ASSISTANT COUNTY ATTORNEY

CITY ATTORNEY