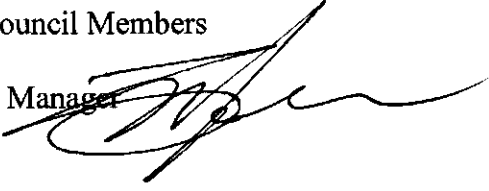


MEMORANDUM

TO: Honorable Mayor and City Council Members

PREPARED BY: Chester Murray, Interim City Manager 

DATE: January 21, 2009

SUBJECT: **Approval of Interlocal Joint Project Agreement with School Board**

PURPOSE

To approve Resolution 524-09, therein approving a joint project agreement with the Volusia County School Board to construct a waterline on 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 improvements were to be made by Sparkman LLC during the construction of the Sparkman Ridge subdivision, which has been delayed for an undetermined period of time.

A very important waterline segment intended to connect a waterline on Ohio Avenue with a new waterline on Rhode Island was proposed to be built when the Sparkman Ridge subdivision is constructed in order to provide adequate potable water circulation within the system and to provide adequate pressure at the new High School. Sparkman LLC agreed to reimburse the School Board if the School Board installed the waterline.

Staff believes that this Sparkman Avenue waterline extension from Ohio to Rhode Island is an important project that affects the health, safety and welfare of our residents. The School Board constructed the waterline, which is 97 percent complete, in conjunction with the roadway extension of Sparkman Avenue between Ohio Avenue and Rhode Island Avenue.

Both the Volusia County School Board and City staff agree that it would be in the best interest of both entities to enter into a joint project agreement wherein the School Board will be reimbursed for the construction of the waterline. Reimbursement to the School Board will be accomplished via the special assessment district currently being processed.

RECOMMENDATION

Staff recommends City Council approval of Resolution No. 524-09, thereby approving a joint project agreement with the Volusia County School Board regarding the reimbursement of the costs to install the waterline on South Sparkman Avenue from West Ohio Avenue to West Rhode Island Avenue.

RESOLUTION NO. 524-09

A RESOLUTION OF THE CITY OF ORANGE CITY, FLORIDA, APPROVING A JOINT PROJECT AGREEMENT WITH THE VOLUSIA COUNTY SCHOOL BOARD FOR REIMBURSEMENT OF THE INSTALLATION OF A WATERLINE WITHIN A PORTION OF 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, on April 22, 2008, the City Council of the City of Orange City approved the Sparkman Ridge R-PUD Residential Planned Development to be located on the northwest corner of West Rhode Island Avenue and South Sparkman Avenue, and

WHEREAS, the approval of the Sparkman Ridge R-PUD Residential Planned Development included the proposed installation of a waterline within a portion of South Sparkman Avenue from West Ohio Avenue to West Rhode Island Avenue, and

WHEREAS, the Sparkman Ridge R-PUD Residential Planned Development will not be constructed within a timely manner consistent with the need for the waterline, and agreed to reimburse the Volusia County School Board for the installation thereof; and

WHEREAS, the Volusia County School Board commenced to install the waterline on Sparkman Avenue between Ohio Avenue and Rhode Island Avenue, thereby completing a "missing link" of the potable water conveyance system; and

WHEREAS, the Volusia County School Board and the City of Orange City agree to enter into a joint project agreement wherein Orange City will reimburse the Volusia County School Board via the Sparkman LLC Special Assessment District.

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 the Volusia County School Board and authorizes the execution thereof, for the reimbursement of the costs of installation of a waterline on 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 WATERLINE CONSTRUCTION

THIS AGREEMENT made and entered into this _____ day of _____, 2009, by and between **THE SCHOOL BOARD OF VOLUSIA COUNTY, FLORIDA**, a public agency of the State of Florida, whose address is 200 N. Clara Avenue, DeLand, Florida 32721, hereinafter referred to as "SCHOOL BOARD", and the **CITY OF ORANGE CITY, FLORIDA**, a political subdivision existing and organized under the laws of the State of Florida hereinafter referred to as "CITY."

WITNESSETH:

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 (County's Road Work), 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, a potable waterline extension will improve the water supply and water pressure to the future High School "DDD" and future residential development; and

WHEREAS, drawings and specifications for said Sparkman Avenue waterline 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 and Waterline Work;" and

WHEREAS, SCHOOL BOARD has contracted with the County to install the waterline; and

WHEREAS, SCHOOL BOARD 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 Waterline Work to be completed in association with "COUNTY's Road Work;" and

WHEREAS, the term "costs necessary for completion of City's Waterline Work" includes the entire amount to be paid by CITY to County properly attributed to construction of City's Road Work, and City to SCHOOL BOARD properly attributed to construction of City's Waterline Work; and

WHEREAS, SCHOOL BOARD acknowledges that CITY and COUNTY have entered into a JOINT PROJECT AGREEMENT to accomplish the objectives related to City's Work; and

WHEREAS, SCHOOL BOARD has authority pursuant to Section 1013.51(3) 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. SCHOOL BOARD and CITY shall participate in a JOINT PROJECT in order to complete City's Waterline Work as included in CITY'S drawings, specifications, and cost estimate.
3. SCHOOL BOARD and CITY agree that CITY's Road and Waterline Work will not proceed until all right of way needed for the CITY's Road Work has been conveyed to CITY; and
4. All of City's Waterline 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.
5. City agrees to reimburse SCHOOL BOARD the total sum of One Hundred Ten Thousand Dollars (\$110,000.00) upon successful completion of construction of City's Waterline Work.
6. **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.

CITY:

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

SCHOOL BOARD

Attn: Saralee Morrissey
Director of Site Acquisition & Intergovernmental Coordination
Facilities Services
3750 Olson Drive
Daytona Beach, FL 32124

7. 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 Waterline Work, systems and facilities involved in this JOINT PROJECT.

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

9. Subject to the sovereign immunity limitations set forth below, CITY covenants and agrees that it shall indemnify and hold SCHOOL BOARD harmless, as well as all of School Board's 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 SCHOOL BOARD resulting from or related to the performance of CITY's Waterline Work or this Agreement, whether direct or indirect and whether to any person or property to which SCHOOL BOARD 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.

10. Subject to the sovereign immunity limitations set forth below, SCHOOL BOARD 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 SCHOOL BOARD 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. SCHOOL BOARD's obligation shall be subject to the limitation set forth in Section 768.28(5), Florida Statutes.

11. SCHOOL BOARD 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.

12. This Agreement constitutes the entire agreement between SCHOOL BOARD 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.

13. 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.

THE SCHOOL BOARD OF VOLUSIA COUNTY

By: _____
Mrs. Diane J. Smith, Chairman

Attest: _____
Margaret A. Smith, D.Ed., Secretary

ATTEST:

CHESTER MURRAY
INTERIM CITY MANAGER

CITY OF ORANGE CITY, FLORIDA

BY: _____
HARLEY STRICKLAND
MAYOR

DATE: _____