

BILL NO. 3152

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE APPROVING AN AGREEMENT TO EXERCISE POWER OF EMINENT DOMAIN FOR THE BRANSON PUBLIC SCHOOL DISTRICT, AND AUTHORIZING THE MAYOR TO ENTER INTO THE AGREEMENT PERTAINING TO A PUBLIC ROADWAY PROJECT**

---

**WHEREAS**, additional roadways are needed in the area surrounding the Cedar Ridge School campus to reduce traffic congestion on the existing city streets; and

**WHEREAS**, the Branson Public School District has allocated funds to construct new roadways near the Cedar Ridge School campus and is now in the process of negotiating the purchase of public street right-of-way for said roadways; and

**WHEREAS**, the Board of Aldermen desire to facilitate the construction of public roadways that will provide better traffic flow in the community.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF BRANSON, MISSOURI, AS FOLLOWS:**

Section 1: The Board of Aldermen hereby authorizes the Mayor to execute an agreement with the Branson Public School District in substantially the form attached as Exhibit "1" to exercise the power of eminent domain for the purpose of constructing new roadways in the area of the Cedar Ridge School campus.

Section 2: This ordinance shall be in full force and effect upon and after its passage and approval.

Read, this first time on this \_\_\_\_ day of \_\_\_\_\_, 2005.

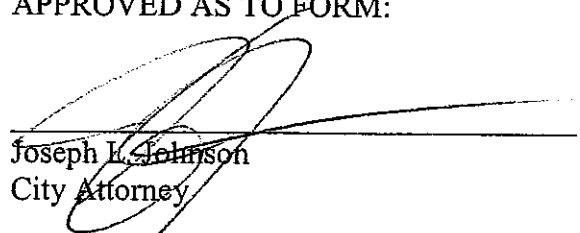
Read, this second time, passed and truly agreed to by the Board of Aldermen of City of Branson, Missouri this \_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Louis E. Schaefer, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Lisa K Westfall  
City Clerk

  
\_\_\_\_\_  
Joseph L. Johnson  
City Attorney

## AGREEMENT TO EXERCISE POWER OF EMINENT DOMAIN

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2005 by and between the City of Branson, Missouri, a city of the Fourth Class, hereinafter referred to as the "City", and Branson Public School District, hereinafter referred to as the "District".

WHEREAS, the District will design and construct an access road according to the attached plans and specifications approved by the City, and upon completion, inspection and approval by the City, will deed, convey and assign all right, title, interest and possession of the access road to the City at no charge, except as otherwise set forth herein; and

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

1. Incorporation of Documents: The following Exhibits attached hereto, are fully incorporated herein as express terms and conditions of this Agreement:

EXHIBIT A - Map of area served by the Project.

EXHIBIT B - Plans for the proposed access road.

EXHIBIT C - Legal description of right of way, which are not under District's ownership or control.

2. Construction and Dedication. District will construct the Project according to the plans and specifications, hereafter incorporated as Exhibit B, and upon completion, inspection and approval of the Project by the City, District will dedicate the access road and appurtenances to the City, for its use, operation and maintenance.
3. Construction on City right of way.
  - A. Grant of License. To the extent that construction of the Project will occur on right of way owned by the City, the City hereby grants to the District, his employees, contractors and subcontractors working on such construction, a license to enter upon and use the right of way described in Exhibit B for the purposes set forth herein.
  - B. Term. The construction of the Project shall commence as soon as practicable after District has entered into a Contract with a contractor, after such contract is approved by the City Engineer, and the work shall be undertaken and completed in such sequence as to assure its expeditious completion.

- C. Right to Terminate. Neither the City nor the District shall be deemed to have defaulted on any term or provision of this Agreement if after receiving notice from the other party, the party demonstrates good faith and cures any noncompliance within ten days after notice of default. If default is of a nature that cure cannot reasonably be completed within ten days, not default shall be declared if all reasonable steps to commence to cure are started within said ten-day period. Failure to cure a default within such time shall be reasonable cause for termination, and either party shall thereupon have the right to terminate this Agreement by giving at least 5 days prior written notice of such termination, specifying the effective date thereof. Provisions with respect to indemnity shall survive, notwithstanding termination of the Agreement.
- D. Limitations on Work. All work done by the District (or its contractor) shall be subject to the inspection and approval of the City Engineer or his authorized representative. The City Engineer reserves the right to place certain restrictions on the time and manner of work, in order that the performance of that work will have the least adverse impact on traffic flow and is consistent with the public safety. If the District (or its contractor) fails or refuses to construct or maintain the improvement in accordance with the approved plans, prior to acceptance by the City, or fails to comply with the City Engineer's directions, then the City Engineer or his authorized representative may issue a stop work order against the Project.
- E. Public Improvement Standards. District agrees to design, engineer and construct any road in accordance with the Technical Specifications for Public Improvement Projects, codified as Chapter 530 of the Branson City code.
- F. Insurance and Bond. District or District's contractor shall procure and maintain during the construction until the Project has been inspected, approved and accepted by the City, insurance and bond as hereafter specified:
- a. Manufacturers' and contractors' public liability insurance with Contractual Liability and Property Damage Insurance with a company licensed to do business in the State of Missouri with limits of liability not less than \$1,000,000 for all claims arising out of a single occurrence or \$100,000 for anyone person in a single occurrence and in an amount not less than \$1,000,000 for all claims arising out of a single occurrence and \$100,000 to any one owner for property damage.
  - b. In the event blasting operations are performed, the District shall be required to obtain and furnish copies to the City prior

to the blasting, a certificate of blasting coverage properly executed extending property damage coverage to blasting claims with limits of \$1,000,000.

- c. Automobile liability insurance with a company authorized to do business in the State of Missouri having limits of liability of not less than \$1,000,000 for all claims arising out of a single occurrence and \$100,000 for any one person in a single occurrence.
  - d. Worker's Compensation Insurance including occupational disease provisions for all employees of District and the District's contractor(s) and subcontractor(s) engaged in work relating to construction of the road.
  - e. Owner's and Contractor's protective liability insurance naming the City as an insured. The policy shall be for the same limits as the contractor's public liability and property damage insurance, and shall be underwritten by the same company.
  - f. The District will require all contractors to provide and maintain like insurance as set forth above unless the District's policies extend to claims made against or growing out of operations of the contractor.
  - g. Performance, Labor and Materials Bond for construction of the road and for labor and materials used. District shall provide a performance, labor and materials bond in the form and amount approved by the city attorney.
4. Condemnation of Right of Way. If the District is unable to acquire the necessary right of way and, if requested by the District, the City agrees to negotiate for and exercise its power of eminent domain, only if necessary to obtain the necessary right of way described on Exhibit C, and the District shall pay the City of the costs of the condemnation, including all filing fees and Commissioners' award as well as any jury verdict in excess of the Commissioners' award. In the event the District fails to pay such sum(s) to the City within ten (10) days after request to do so, the City will abandon the condemnation. District shall deposit a cashier's check in the amount of One Thousand Dollars (\$1,000.00) at the time the City files the condemnation petition to cover the cost of condemnation.

In the event the owner of the condemned property files exceptions to the Commissioners' award, the District will post with the City an escrow amount, a letter of credit, or a cashier's check in an amount sufficient to cover the

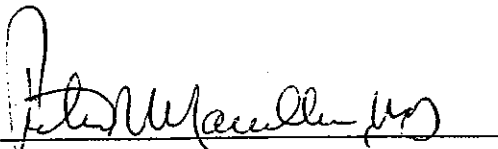
amount of the damages alleged by the owner. Furthermore, the District shall employ, at District's sole expense, outside legal counsel to represent the City as the condemning authority.

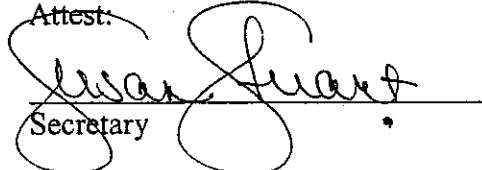
5. Conflicts. No salaried officer or employee of the City, and no member of the Board of Aldermen, shall have a financial interest, direct or indirect, in this Agreement. A violation of this provision renders the Agreement void. Any federal regulations and applicable provisions in Section 105.450 *et seq.*, RSMo shall not be violated.
6. Discrimination. The District agrees, in the performance of this Agreement, not to discriminate because of race, creed, color, national origin or ancestry, sex, religion, handicap, age, or political opinion or affiliation, against any employee of District or applicant for employment, and shall include a similar provision in all subcontracts let or awarded hereunder.
7. Independent contractor. The District is an independent contractor, and nothing contained herein shall constitute or designate the District, or any of the District's agents or employees as agents or employees of the City of Branson, Missouri.
8. Assignment. The District may not assign its rights, duties or obligations under this Agreement without the written approval of the City.
9. Indemnification. The parties mutually agree to the following:
  - A. In no event shall the City be liable to the District for special, indirect or consequential damages, except those caused by the City's gross negligence or willful or wanton misconduct arising out of, or in any way connected with, a breach of this Agreement. The maximum liability of the City shall be limited to the amount of money received by the City under this Agreement.
  - B. The District shall defend, indemnify, and hold the City harmless from any and all claims, losses, and liabilities for personal injuries, including death and damage to property, which are caused by the District, and arise out of, or are in any way connected with performance of this Agreement.
  - C. The District assumes full responsibility for relations with its contractors and subcontractors, and shall defend, indemnify and save harmless the City from and against any and all liability from contractor and subcontractor suits, claims, damages, costs (including attorney's fees), losses, outlays and expenses in any manner caused by, arising out of or connected with performance of this Agreement, notwithstanding any possible contributory negligence on the part of the City, its agents or

employees. This paragraph shall not apply if the City is the sole cause of the loss upon which the claim is based.

- D. The District shall cause provisions to be placed in any contracts for the supply of materials or services that require the Contractor to defend, indemnify and save harmless the City and District from and against any and all liability, suits, claims, damages, costs (including attorney's fees), losses, outlays and expenses in any manner arising out of or connected with the performance of this Agreement or any agreements related to the project which is the subject of this Agreement.
10. Waiver. If either party shall violate continuously or otherwise any of the terms of this agreement which are binding upon it, the other party shall not thereby be deemed to either have waived or relinquished any terms of this agreement or to have acquiesced in any such violation thereof, unless the other party shall express their consent thereto in writing.
11. Entire Agreement. This Agreement contains the entire agreement of the parties. No modification, amendment or waiver of any of the provisions of this Agreement shall be effective unless in writing specifically referring hereto, and signed by both parties.
12. Laws. The District shall comply with all applicable federal, state and local laws in the performance of this Agreement and shall include a similar provision in all subcontracts awarded hereunder. This Agreement and every question arising hereunder shall be construed or determined according to the laws of the State of Missouri. Should any part of this Agreement be litigated, venue shall be proper only in the Circuit Court of Taney County, Missouri.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year herein stated.

  
By: \_\_\_\_\_  
Branson R-IV School District

Attest:  
  
Secretary

ACKNOWLEDGMENT

STATE OF MISSOURI )  
 )ss.  
COUNTY OF TANEY )

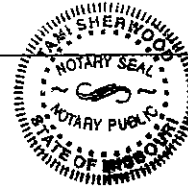
On this 21st day of September, 2005, before me personally appeared Peter Marcellus \_\_\_\_\_, to me known and who being by me duly sworn, did say that he is the Board President of the Branson R-IV School District and that the Agreement was signed in behalf of said school district by authority of its School Board, and said Peter Marcellus, President acknowledged said instrument to be free act and deed of said school district.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at my office in Branson, MO the day and year first above written.

Tami Sherwood  
Notary Public

My Commission expires:  
Feb. 19, 2007

City of Branson, Missouri



Tami Sherwood Notary Public  
Taney County State Of Missouri  
My Commission Expires Feb. 19, 2007

\_\_\_\_\_  
Louis E. Schaefer, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Lisa K Westfall, City Clerk

\_\_\_\_\_  
City Attorney

ACKNOWLEDGMENT

STATE OF MISSOURI )  
 )ss  
COUNTY OF TANEY )

On this \_\_\_ day of \_\_\_\_\_, 2005, before me personally appeared Louis E. Schaefer, Mayor and Lisa K Westfall, City Clerk, known to me to be the persons who executed the within Agreement in behalf of the City of Branson, and acknowledged that they executed the same for the purposes therein stated.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at my office in Branson, the day and year first above written.

\_\_\_\_\_  
Notary Public

Commission Expires: \_\_\_\_\_

Pinkley Dr

EXHIBIT A

LEDBETTER DARRELL T & VIRGINIA

Violyn Dr

Gretha Rd

BRANSON R-V SCHOOL DISTRICT

Highway 248

Shell Ln

Hummingbird Ln

Cedar Ridge Dr

James F Epps Rd

1 inch equals 400 feet

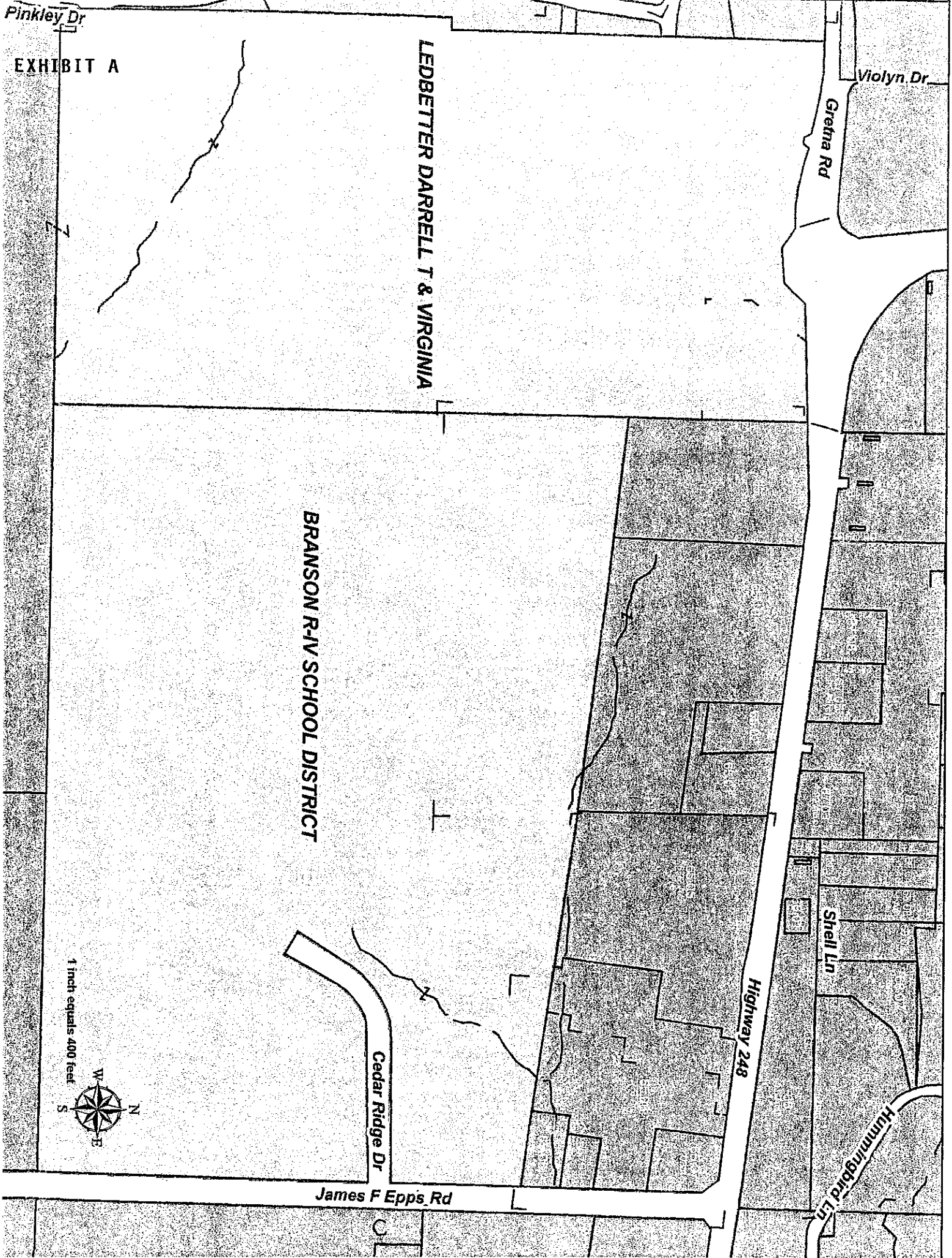


EXHIBIT B



## EXHIBIT C

A tract of land in Section 30, Township 23 North, Range 21 West, Taney County, Missouri, 100 feet wide, being 50 feet either side of the following described line:

Beginning at a point on the east line of the west half of said Section 30, Township 23 North, Range 21 West, said point being on the south right-of-way line of Missouri State Route 248, thence westerly along said south right-of-way line a distance of approximately 575 feet to the point of beginning of said right-of-way centerline, thence southerly a distance of approximately 1400 feet.

Plus a tract of land 60 feet wide, being 30 feet either side of the following described line:

Beginning at a point on the east line of the west half of said Section 30, said point being on the south right-of-way line of Missouri State Route 248, thence westerly along said south right-of-way line a distance of approximately 575 feet, thence southerly a distance of approximately 1400 feet, to the point of beginning of said right-of-way centerline, thence easterly a distance of approximately 230 feet to the east line of said west half of Section 30.

Subject to modification and correction upon the completion of a land survey of the tract of land.