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Filed: 08-02-16

Sponsored by: Fishel

First Reading: _____ Second Reading: _____

COUNCIL BILL NO. 2016-191 SPECIAL ORDINANCE NO. _____

AN ORDINANCE

1 AUTHORIZING the City Manager, or his designee, to enter into an agreement with Missouri
2 Highways and Transportation Commission and KYTV/KYCW, for the purpose
3 of sharing video from the closed-circuit television traffic monitoring cameras
4 owned and operated by Missouri Department of Transportation and the City
5 of Springfield.
6 _____
7

8 WHEREAS, the City and Missouri Highways and Transportation Commission (MHTC)
9 desire to enter into an agreement to share video from the closed-circuit television (CCTV) traffic
10 monitoring cameras; and
11

12 WHEREAS, this agreement allows this media agency to access the CCTV traffic
13 monitoring cameras so that they can provide the community with a traffic report.
14

15 NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF
16 SPRINGFIELD, MISSOURI, as follows, that:
17

18 Section 1 – The City Manager, or his designee, is hereby authorized to enter into an
19 agreement with the MHTC and KYTV/KYCW, said agreement to be in substantially the form as
20 that document attached hereto and incorporated herein by reference as "Exhibit A."
21

22 Section 2 – This ordinance shall be in full force and effect from and after passage.
23

24 Passed at meeting: _____
25
26

27 _____
28 Mayor
29

30 Attest: _____, City Clerk
31

32 Filed as Ordinance: _____
33

34 Approved as to form: Amanda R. Callaway, Assistant City Attorney
35
36

37 Approved for Council action: [Signature], City Manager
38

EXPLANATION TO COUNCIL BILL NO: 2016-191

FILED: 08-02-16

ORIGINATING DEPARTMENT: Public Works

PURPOSE: Authorizing the City Manager, or his designee, to enter into an agreement with Missouri Highways and Transportation Commission and KYTV/KYCW (hereinafter, "Media Company") for the sharing of video from the closed-circuit television (CCTV) traffic monitoring cameras owned and operated by Missouri Department of Transportation (MoDOT) and the City of Springfield throughout the regional roadway network.

BACKGROUND INFORMATION: This agreement defines the terms under which the City and MoDOT will provide a web-based user account to the Media Company. The user account will allow access to the traffic monitoring video feed through the Transportation Management Center's video distribution software.

The agreement restricts the use of the video feed solely for the purpose of providing travel information to the public and specifically prohibits the Media Company from selling or charging a fee for the video; systematically recording the video for purposes other than traffic reports; misrepresenting the timing and source of the video; misrepresenting the availability of video to others; placing streaming video on websites; and/or showing video of any accident victims or close-ups of emergency response activities. Furthermore, the agreement requires that the OzarksTraffic logo remain visible on all video provided to the Media Company, and that the Media Company verbally acknowledge the source of the video each time it is used on air as "OzarksTraffic cameras" or as "OzarksTraffic cameras brought to you by (or courtesy of) MoDOT and City of Springfield".

This ordinance supports the following Field Guide 2030 goal(s): Chapter 12, Transportation; Major Goal 4, Multi-Modal, Interconnected System The City of Springfield should work within the region to develop, implement, and maintain a multi-modal transportation system that supports jobs, housing, education, accessibility, recreation, clean air, water conservation, and sustainability; Objective 4f, Provide accurate, up-to-date, real-time, user-friendly, and understandable transportation system information which is available to everyone, including first-time visitors and residents, which encompasses all forms of travel. Develop standards for making transportation maps available on the internet, including the use of MapQuest, Google, Yahoo, and other alternative formats, which can be easily updated and made accessible to all users, including the mobility impaired.

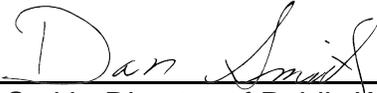
REMARKS: This agreement is an example of the City and MoDOT working together with local media to improve regional traveler information. There is no financial commitment for any of the parties to the agreement. Video access provided to KYTV/KYCW is non-exclusive, and the City and MoDOT reserve the right to allow access to other media companies through similar agreements. Public Works recommends approval of this Council bill.

Submitted by:



Martin Gugel, Assistant Director of Public Works

Recommended by:



Dan Smith, Director of Public Works

Approved by:



Greg Burris, City Manager

CCO Form: TR45
Approved: 02/08 (BDG)
Revised: 09/15 (TLP)
Modified:

**OZARKSTRAFFIC AGREEMENT BETWEEN MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION, THE CITY OF SPRINGFIELD, MISSOURI, AND
KYTV/KYCW.**

THIS AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "MHTC"), the City of Springfield, Missouri (hereinafter, "City"), Missouri Highways and Transportation Commission and City of Springfield, (hereinafter, collectively referred to as "OzarksTraffic"), and KYTV/KYCW (hereinafter, "Company"). Collectively referred to as the "Parties."

WITNESSETH:

WHEREAS, MHTC and City have undertaken an Intelligent Transportation Systems (ITS) program called OzarksTraffic which receives Closed Caption Television (hereinafter, "CCTV") on the respective state and city owned highways from devices installed on the area roadways and other means; and

WHEREAS, the Company has requested access to OzarksTraffic CCTV; and

WHEREAS, OzarksTraffic is willing to accommodate the Company's request for CCTV pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and representations contained in this Agreement, the parties agree as follows:

(1) DEFINITIONS:

(A) OzarksTraffic shall mean the ITS System and the Traffic Management Center (TMC) in Springfield, Missouri

(B) CCTV shall mean the closed circuit television streaming images from the OzarksTraffic TMC.

(2) PURPOSE: The Company agrees that OzarksTraffic CCTV shall be accessed in accordance with this Agreement and shall be used by the Company solely for the purposes of providing travel information, including related weather and emergency events, to the public. This Agreement only applies to media access to the OzarksTraffic greater Springfield area traffic management system at the TMC located at 1107 West Chestnut Expressway, Springfield, Missouri, 65802. Regardless of the access allowed by OzarksTraffic, the Company may need to acquire permission from other county or local municipality agencies to access the CCTV provided to OzarksTraffic from other county or local municipality agencies.

(3) CCTV TO BE ACCESSED:

(A) OzarksTraffic agrees to allow web-based access to the CCTV from the OzarksTraffic TMC via a user account under the general conditions described in Exhibit 1, which is attached hereto and incorporated herein by reference. OzarksTraffic, without notice, may interrupt or preempt the CCTV at any time. The Company's access to the CCTV system is non-exclusive and OzarksTraffic may allow other media companies or organizations access to the system. In addition, OzarksTraffic cannot guarantee that CCTV will always be available. OzarksTraffic shall have control of all camera views that are available from the OzarksTraffic TMC and does not guarantee that any particular camera view will be available at any given time.

(B) The Company agrees to immediately terminate the CCTV feed at their end when the live CCTV is showing close-up views of accident victims or of emergency response activities.

(4) DUTIES OF COMPANY: The Company assumes the following responsibilities under this Agreement:

(A) The Company shall be responsible for the purchase and maintenance of its own equipment needed to access the CCTV and OzarksTraffic TMC.

(B) The Company shall assume full responsibility to safeguard the video and/or video feed from unauthorized use or reproduction, and shall assume full responsibility in the event the video or video feed is used for purposes other than for providing travel information to the public. The Company agrees that at any time it becomes aware of unauthorized use, copying, disclosure of the CCTV, or any use of the CCTV other than in accordance with OzarksTraffic policy, including use by the Company or any other party, it shall immediately notify OzarksTraffic at 417-864-1160, send written notice to the person listed in (9)(B) of this Agreement, and fully cooperate with OzarksTraffic to protect its proprietary rights. Company shall agree that breach or threatened breach of its obligation to protect the CCTV may cause immediate and irreparable harm, entitling OzarksTraffic to seek injunctive relief or immediate termination of access to the CCTV. Company's compliance with this paragraph shall not be construed in any way as a waiver of OzarksTraffic's rights to recover damages or obtain other relief against Company for harm to OzarksTraffic's CCTV or for any other breach of its contractual rights.

(C) The Company understands and agrees that if it, or its employees, contractors, or agents violate any terms of this Agreement, OzarksTraffic may take all necessary steps to remedy the violation including, but not limited to, terminating the Company's access to and use of the CCTV.

(D) The Company agrees not to:

- (1) Sell or charge any fees for the use of the CCTV received from OzarksTraffic, except for the purpose of providing entire taped news broadcasts.
- (2) Duplicate or reproduce the CCTV in any manner for any cost or fee, except for the purpose of providing entire taped news broadcasts.

- (3) Systematically record CCTV for purposes other than traffic reports.
- (4) Misrepresent the timing and source of the CCTV.
- (5) Misrepresent the availability of CCTV to others.
- (6) Place streaming CCTV images on websites.
- (7) Show CCTV of any accident victims or close-ups of emergency response activities.

(E) The Company agrees that the rebroadcast of CCTV from OzarksTraffic will be primarily for providing traveler information only. The Company agrees to immediately stop the rebroadcast of taped images from OzarksTraffic upon any written or verbal request from OzarksTraffic. The Company agrees that OzarksTraffic has the right to immediately terminate the Company's access to CCTV from OzarksTraffic.

(F) The Company agrees to provide at no charge to OzarksTraffic the items listed in Exhibit 2, which is attached hereto and incorporated herein by reference.

(G) OzarksTraffic LOGO: The Company agrees the OzarksTraffic logo embedded on the video shall always be imposed on all CCTV video obtained from OzarksTraffic. The OzarksTraffic logo shall not be removed or obscured. The Company shall not use any CCTV (either "live" or taped) accessed from the OzarksTraffic system **without** the OzarksTraffic logo fully visible in the CCTV video stream.

(H) OzarksTraffic VERBAL TAG LINE: The Company agrees to use the OzarksTraffic verbal tag line, referenced in Exhibit 3, in all references to the OzarksTraffic CCTV video images used during "live" or taped broadcasts.

(5) INSTALLATION OF EQUIPMENT AT OzarksTraffic TMC: Installation of equipment by the Company to access OzarksTraffic CCTV is not necessary at the time of execution of this agreement. Should installation of equipment by the Company to access OzarksTraffic CCTV become necessary at a later date, the terms of installation will be solely at OzarksTraffic's discretion and will be set forth in a written addendum to this agreement.

(6) NO WARRANTY: OzarksTraffic makes no warranties, either expressed or implied, regarding the quality, quantity, or availability of the CCTV accessed under the terms of this Agreement. CCTV may be interrupted, be of poor quality, or otherwise be rendered unavailable. OzarksTraffic shall not be liable for warranties of fitness for any purpose, or for indirect, special or consequential damages such as loss of profits or inability to use the CCTV.

(7) INDEMNIFICATION: The Company does hereby agree to indemnify, hold harmless against, and defend OzarksTraffic, including its agents, employees and assigns or assignees, from any claims, costs, expenses, damages, and liabilities arising from or pertaining to the use and/or possession of the CCTV by the Company, its agents, employees, assigns or assignees, contractors, subcontractors or independent contractors.

(8) AMENDMENTS: Any change in this Agreement, whether by modification or supplementation, must be accomplished by a formal contract amendment signed and approved by the duly authorized representatives of the Parties.

(9) NOTICES: Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be deemed given three (3) days after delivery by United States mail, regular mail postage prepaid, or upon receipt by personal or facsimile delivery, addressed as follows: *KYTV/KYCW*

(A) *999 W. Sunshine*
Springfield, MO 65807

Telephone No.: *417-268-3299*
Facsimile No.: *417-268-3364*
Email Address: *NEWS@KY3.COM*

(B) OzarksTraffic
1107 West Chestnut Expressway
Springfield MO 65802
Telephone No.: 417-864-1160

or to such other place as the parties may designate in accordance with this Agreement. To be valid, facsimile delivery shall be followed by delivery of the original document, or a clear and legible copy thereof, within three (3) business days of the date of facsimile transmission of that document.

(10) ASSIGNMENT: The Company shall not assign, transfer or delegate any interest in this Agreement without the prior written consent of OzarksTraffic.

(11) LAWS TO GOVERN: For any action brought against the City and/or the employee(s) of the City, the laws of Missouri will govern and the Agreement shall be construed according to the laws of the State of Missouri. For any action brought against the State of Missouri, MHTC, its commissioners, Missouri Department of Transportation, and any employee(s), counsel, or agent of the Missouri Department of Transportation, in either the State of Missouri or any other jurisdiction, the laws of Missouri will govern and the Agreement shall be construed according to the laws of the State of Missouri.

(12) CANCELLATION: MHTC or the City may cancel this Agreement at any time for a material breach of contractual obligations by providing the Company with written notice of cancellation. In addition, OzarksTraffic, in its sole discretion, may cancel this Agreement at any time and for any reason whatsoever, including for the convenience of OzarksTraffic. Upon filing for any bankruptcy or insolvency proceeding by or against the Company, whether voluntarily, or upon the appointment of a receiver, trustee, or assignee, for the benefit of creditors, OzarksTraffic reserves the right and sole discretion to cancel this Agreement. If OzarksTraffic exercises its right to cancel this Agreement, cancellation shall become effective upon the date specified in the notice of cancellation sent to the Company. In the event of a cancellation, Company shall be relieved of its obligations under Exhibit 2 below.

(13) SOVEREIGN IMMUNITY: Nothing herein shall be construed as a waiver of MHTC's sovereign immunity or rights under the Eleventh Amendment of the Constitution of the United States. Nothing herein shall be construed as a waiver of the City's sovereign immunity of rights.

(14) SOLE BENEFICIARY: This Agreement is made for the sole benefit of the parties and nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Parties.

(15) SECTION HEADINGS: All section headings contained in this Agreement are for the convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

(16) DISPUTES: Any disputes that arise under this Agreement shall be decided by OzarksTraffic or its representatives.

(17) SEVERABILITY: If any clause or provision of this Agreement is found to be void or unenforceable by a court or agency of proper jurisdiction, then the remaining provisions not void or unenforceable shall remain in full force and effect.

(18) AUTHORITY TO EXECUTE: The signers of this Agreement warrant that they are acting officially and properly on behalf of their respective institutions and have been duly authorized, directed and empowered to execute this Agreement.

(19) DURATION:

(A) Unless otherwise cancelled, this Agreement shall be in effect for two (2) years from the date of execution of this Agreement. This Agreement may be renewed for two additional 2-year periods. Unless notice is otherwise given by either party at least 30 days prior to the termination date, the terms of this Agreement shall automatically renew for the applicable additional term (either the first renewal period or the second renewal period). If the Agreement automatically renews, OzarksTraffic may revise Exhibits 1, 2 and 3 to reflect changes in OzarksTraffic policy or technology. If OzarksTraffic revises Exhibits 1, 2 and 3, OzarksTraffic will send copies of the revised exhibits to the Company and the revised exhibits shall be included as part of this Agreement. If the Company is unwilling to abide by the terms of the revised exhibits, this Agreement will automatically terminate.

(B) Upon expiration of this Agreement, the Company shall promptly disconnect and remove all of its CCTV accessing equipment and any other equipment which may be located on OzarksTraffic, City or MHTC property and return OzarksTraffic, City and MHTC property to the condition it was in prior to the placement of Company's equipment on OzarksTraffic, City and MHTC property. If Company fails to remove the equipment, OzarksTraffic may remove the equipment at the Company's cost.

(C) The Company agrees that OzarksTraffic reserves the right to terminate the Company's access to OzarksTraffic CCTV if it violates any terms of this Agreement and this agreement will be immediately terminated.

(20) CHANGE IN LAW: This Agreement is entered into subject to changes in federal law, state law and OzarksTraffic policy.

(21) NO INTEREST: By allowing the Company access to its CCTV, OzarksTraffic is not granting any property interest to or in the OzarksTraffic's CCTV or the OzarksTraffic TMC to the Company. OzarksTraffic, in its sole discretion, may discontinue its CCTV feed at any time and for any reason whatsoever, including for the convenience of OzarksTraffic. OzarksTraffic shall not be obligated to maintain said CCTV feed solely for the benefit of the Company.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date last written below.

Executed by the Company this 29 day of June, 2010.

Executed by the MHTC this _____ day of _____, 20__.

Executed by City this _____ day of _____, 20__.

MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION

By _____

Title _____

Secretary to the Commission

Title _____

Approved as to Form:

Commission Counsel

Company

By Satt B...

Title KYTV/KYCW News Director

CITY OF SPRINGFIELD, MO

By _____

Title _____

Approved as to Form:

Staff Attorney

Exhibit 1

General Terms

1. The Company shall be provided access to the OzarksTraffic Video Server for selection of digital CCTV video streams via the OzarksTraffic website.
2. Any FCC licensing requirements and or costs to transport to Company's facilities shall be the sole responsibility of the Company.
3. OzarksTraffic cannot guarantee uninterrupted access to the CCTV.

Exhibit 2

As a partner in this program, Company agrees to provide the following service for OzarksTraffic at no charge:

1. Company will use verbal tag line for the duration of this contract, provided by OzarksTraffic each time an OzarksTraffic CCTV is broadcast. See Exhibit 3 for specific tag lines.
2. OzarksTraffic will provide a brand logo the Company must incorporate it as part of the CCTV feed. The logo will appear in a prominent position of the OzarksTraffic feed. The logo cannot be altered, masked or covered in any way. This agreement does not obligate the Company to broadcast the CCTV and does not prohibit other sponsorship logos from being displayed during the traffic reports.
3. Company will broadcast a minimum of one (1), thirty (:30) second Public Service Announcement (PSAs) per week for the total duration of the contract. OzarksTraffic will provide Company a copy of the pre-recorded announcements for broadcast. PSAs will consist of highway and traffic safety related messages. Company shall broadcast all PSAs during the hours of 5:30 AM - 7:30 PM, Monday through Friday. Proof of performance of all PSAs will be required at the end of each month and shall include date and air time. Company shall provide OzarksTraffic with one copy of an air-check in DVD or digital format quarterly and grant OzarksTraffic copyright for re-broadcast. Company shall offer OzarksTraffic, discounted advertising rates on all future OzarksTraffic initiatives to be negotiated at the time of OzarksTraffic advertising solicitations. This agreement will not replace any other established obligation for PSAs.
4. Company agrees to provide technical assistance from Company's engineering staff for addressing OzarksTraffic technical issues regarding Company's connectivity to the OzarksTraffic system.
5. Company shall provide a hypertext link using the OzarksTraffic logo on Company web site to the OzarksTraffic homepage, whenever an OzarksTraffic snapshot is displayed.
6. Company shall provide a written annual report to OzarksTraffic for each of its broadcast stations utilizing OzarksTraffic images. The report should include a description of population reach and other demographic information relevant to traffic reports, sponsorships, and traffic reports for OzarksTraffic monitoring of traveler information services.
7. If Company broadcasts radio traffic reports, Company will use verbal tag line provided by OzarksTraffic each time OzarksTraffic is used to gain broadcast information. In addition, Company shall broadcast a minimum of one (1), thirty (30) second Public Service Announcements (PSAs) per radio station, per week, to run Best Time Available for contract duration. Content will be determined by OzarksTraffic or its designated agent. In addition, Company shall provide one (1) OzarksTraffic traffic report sponsorship per day per radio station for contract duration. Proof of performance of all PSAs and sponsorships will be required at the end of each month.

Exhibit 3

1. Company will use verbal tag lines provided by OzarksTraffic, each time an OzarksTraffic CCTV image is broadcast for the duration of the contract. The Company and its spokespersons shall **not** take ownership of OzarksTraffic CCTVs referring to them as “our” OzarksTraffic cameras. It must be clearly stated the CCTV feeds are provided by OzarksTraffic, MHTC and City in one of the following ways:
 - a. OzarksTraffic cameras brought to you by MoDOT and City of Springfield or
 - b. OzarksTraffic cameras courtesy of MoDOT and City of Springfield or
 - c. OzarksTraffic cameras