

USE AGREEMENT

Coleman Parking Lot

THIS AGREEMENT is made and entered into this ____ day of August, 2018, by and between the Sedgwick County, Kansas, hereinafter referred to as "County," and "Pixius Communications" hereinafter referred to as "Licensee."

WITNESSETH:

WHEREAS, County owns and controls property at 250 N. St. Francis, Wichita, KS, hereinafter referred to as "Parking Lot" or "Licensed Premises";

WHEREAS, Licensee has requested use of Parking Lot for the purpose of hosting "Back to School Summer Bash" to be held on August 3, 2018;

WHEREAS, County finds that such request serves the public purpose of supporting a community event open to all citizens; and

WHEREAS, the parties hereto desire to document the understanding that has been reached between them for the use of the Parking Lot.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter contained, the parties hereto agree to be bound by this Agreement as follows:

SECTION 1. USE GRANTED. County does hereby grant to Licensee exclusive use of the Parking Lot as indicated on *Exhibit A* (attached and incorporated herein) for the purpose of hosting **Back to School Summer Bash held on August 3, 2018.**

Licensee agrees to coordinate with County's designee, the Project Services Manager, concerning any conditions the County designee may have for the use of the Parking Lot. The County's designee has final authority as representative of County to interpret compliance with this Agreement.

SECTION 2. FEES AND DEPOSIT. Fees and deposit for the event are as follows. Usage and Attendance Fees are not refundable 30 days prior to the event. Usage and Attendance Fees are to be paid no later than 30 days prior to the event.

Damage Deposit – A damage deposit of \$250.00 is to be paid at the time the date of the event is reserved with the Project Services Manager. Damage Deposit will not be applied toward Usage Fees. Damage Deposit may be refunded after the conclusion of the event provided Licensee restores the Parking Lot and surrounding areas to the condition at the time Licensee first occupied Parking Lot.

Usage Fees:

Single Day Event - \$50.00

Attendance Fee:
250 or less - \$ 25.00

SECTION 3. INDEMNIFICATION. To the degree such indemnification is allowed by law, Licensee agrees to indemnify and hold harmless County, its agents, servants, employees or invitees, from and against any and all claims of every kind or character for injuries and/or damages to persons and/or property arising out of or in connection with the use and occupancy of said County owned land, and not caused by County negligence.

SECTION 4. NOTICE OF CLAIM. County shall give to Licensee notice of any claim made or litigation instituted which directly, indirectly, contingently or otherwise in any way affects or might affect it. Licensee shall have the right to compromise and participate in the defense of the same to the extent of its own interests.

SECTION 5. INCORPORATION. Licensee agrees to comply with the terms of the Environmental Use Control Agreement (EUCA), Attachment 4 to Real Estate Purchase Contract, dated August 25, 2010 (*County Agreement #4147-10*). EUCA prohibits changes from being made to the Parking Lot surface, tampering with or creating water wells, etc. The EUCA is attached as *Exhibit B* (attached and incorporated herein).

SECTION 6. RIGHT OF ENTRY. County retains the right to enter the Licensed Premises at any time, and to enforce all necessary and proper rules and regulations for the operations of the Licensed Premises.

SECTION 7. SUPERVISION. Licensee or a representative of Licensee's organization must be on the Licensed Premises through the duration of the event. Certified law enforcement officers must be present during the event in sufficient numbers to meet the requirements of the Sedgwick County Sheriff's Office.

SECTION 8. INSURANCE. Licensee shall carry and maintain general liability insurance against damage caused by Licensee members, agents, servants, employees, guests, invitees and participants in the event throughout the term of this Agreement in the amount of not less than \$500,000 combined single limit per occurrence for bodily injury, personal injury and property damage. **Licensee shall provide a Certificate of Insurance naming "Board of County Commissioners of Sedgwick County, Kansas, and their officers, employees and agents" as additional insureds and shall submit such certificate to the County's designee no later than thirty (30) days prior to the first date of each use authorized by this Agreement.**

It is an affirmative obligation on Licensee to advise County via fax (316/383-7674) or email (riskmanagement@sedgwick.gov) within ten (10) calendar days of the cancellation or substantive change of any insurance policy required herein.

Failure to give such notice shall be a material breach of this Agreement. Further, failure to maintain insurance coverage in the minimum amount specified above and/or failure to provide a certificate evidencing such coverage shall each be considered a material breach of this Agreement which may result in cancellation of Licensee's event(s).

SECTION 9. DEFACEMENT OF PREMISES. Licensee shall not injure, nor mar,

nor in any manner deface the Licensed Premises or any equipment contained thereon, and shall not cause or permit anything to be done whereby the Licensed Premises or equipment therein shall be in any manner injured, marred or defaced. Licensee shall not attach signs or posters to any portion of the Licensed Premises, including but not limited to railings, sculptures, light poles, trash receptacles, trees, landscaping, etc. Licensee will not drive or permit to be driven nails, hooks, or screws into any part of said Licensed Premises or equipment contained therein and will not make nor allow to be made any alterations of any kind.

SECTION 10. PREPARATION, CARE AND RESTORATION OF PREMISES.

Licensee is responsible for preparation of the use area of Parking Lot for the above-described event(s). Licensee shall be responsible for the removal of all equipment, trash, debris, or other material of any kind or nature whatsoever that is brought in or left by any of its members, agents, servants, employees, guests, invitees, and participants. Licensee shall exercise care to assure that any and all occupants of the Licensed Premises do not tamper with well caps, excavate or make structural changes to the Licensed Premises. Should restoration of structural damage be required, Licensee shall coordinate with County to secure a qualified vendor; however, all costs and expenses shall be paid by Licensee.

SECTION 11. DISCRIMINATION PROHIBITED. Licensee will not on the grounds of race, color, sex, religion, disability, national origin or ancestry discriminate or permit discrimination against any person or group of persons in any manner prohibited by law.

SECTION 12. ADA COMPLIANCE. Notwithstanding the provisions of section 15, Licensee agrees to comply with the Americans with Disabilities Act ("ADA"), including the 2008 ADA Amendments Act, and 2010 ADA Standards for Accessible Design. Licensee shall assure that event parking complies with the ADA provisions on accessible parking. Compliance may include leaving designated accessible spaces available for parking and/or designating temporary accessible parking elsewhere on the shortest accessible route to the event entrance. Licensee agrees that it has the obligation to consider any accommodation request(s) from qualified individuals with disabilities. Licensee will ensure, to the full extent required by the ADA, that qualified individuals with disabilities receive equitable access to the programs and activities provided at the event.

SECTION 13. ADDITIONAL EVENTS. Licensee shall not hold, provide or sponsor any events in addition to the use granted at Section 1 hereof which require the exclusive use of a designated area of Parking Lot without first having entered into a written agreement with County for such use.

SECTION 14. NOTICE. For purposes of this Agreement, written notice shall be accomplished by mailing, first class, postage prepaid, such notice to:

Licensee:	Pixius Communications
	Brandy Herrman
	301 N. St. Francis
	Wichita, KS 67202

County: Sedgwick County Counselor
Sedgwick County Courthouse
525 N. Main, Suite 359
Wichita, KS 67203

and:

Sedgwick County
Tania Cole, Facilities Maintenance and Project Services Dir
525 N. Main, Suite 135
Wichita, KS 67203

SECTION 15. COMPLIANCE WITH LAWS AND REGULATIONS. Licensee agrees to comply with all laws, ordinances and regulations adopted or established by federal, state or local governmental agencies or bodies. Licensee agrees to abide by any and all resolutions of the Board of County Commissioners governing said Parking Lot, any and all Parking Lot rules and regulations, including but not limited to the handout entitled Parking Lot Rental Rules and Regulations. County's designee has final authority as representative of County to interpret compliance with such laws, ordinances, regulations and Parking Lot rules and regulations. Licensee is responsible for any and all fines or penalties incurred by Licensee or Licensee's guests, employees, agents or others individuals associated with Licensee.

If alcoholic liquor or cereal malt beverages are to be sold, consumed or served on the Licensed Premises, Licensee shall take responsible measures for assuring that such activities are conducted in compliance with all applicable City and State regulations. Such measures shall include, but are not limited to, prohibiting minors from possession or consuming alcoholic liquor or cereal malt beverages and clearly marking the area to control off-premise consumption.

SECTION 16. UNAVOIDABLE HAPPENING. If, for any reason, an unforeseen event occurs, including, but not limited to fire, casualty, labor strike, or other unforeseen occurrence, which renders impossible the fulfillment of any term of this Agreement, the Licensee shall have no right to nor claim for damages against County.

SECTION 17. TERMINATION. This Agreement may be terminated at any time by mutual Agreement, or by either party upon giving thirty (30) days written notice to the other party. Also, this Agreement may be immediately terminated upon breach of any material term upon giving written notice to the other party. Should Licensor exercise said right to terminate this Agreement, Licensee agrees to forego any and all claims for damages against Licensor and further agrees to waive any and all rights which might arise by reason of the terms of this license; and Licensee shall have no recourse of any kind against Licensor.

SECTION 18. MODIFICATION. This Agreement may be modified, changed, or amended only as may be mutually agreed in writing between County and Licensee.

SECTION 19. ENTIRE AGREEMENT. This Agreement supersedes and cancels any and all prior existing arrangements between the parties hereto and their predecessors concerning the uses provided for herein. Any matters not expressly provided for in this Agreement will be at

the sole discretion of County.

SECTION 20. ASSIGNMENT. Licensee shall not sell, assign or transfer any of its rights or privileges granted hereunder without the prior written consent of County.

SECTION 21. PUBLIC SAFETY. Licensee agrees that at all times, activities conducted will be with full regard to public safety, and Licensee will observe and abide by all applicable regulations and requests by duly authorized governmental agencies responsible for public safety and with County to assure such safety.

Licensee agrees not to bring onto the Licensed Premises or surrounding area any material, substances, equipment, or object which is likely to endanger the life of, or to cause bodily injury to, any person on the premises or which is likely to constitute a hazard to property thereon without the prior approval of the County. County shall have the right to refuse to allow any such material, substances, equipment or object to be brought onto the Licensed Premises and the further right to require its immediate removal if found.

SECTION 22. PUBLIC FORUM. Licensee acknowledges and agrees that County will make no efforts to exclude or prohibit activities allowed by the First Amendment which are conducted outside of the Parking Lot.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by signature of their duly authorized officers the day and year first above written.

Licensee – Pixius Communications

By Brandy Herrman

Brandy Herrman

BOARD OF COUNTY COMMISSIONERS
OF SEDGWICK COUNTY, KANSAS

ATTEST:

KELLY B. ARNOLD, County Clerk

David T. Dennis, Chairman
Commissioner, Third District

APPROVED AS TO FORM:

Karen L. Powell

Karen L. Powell
Deputy County Counselor



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

7/6/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER TRUSS 9200 Ward Parkway Suite 500 Kansas City MO 64114		CONTACT NAME: PHONE (A/C, No, Ext): (816)708-4600 E-MAIL ADDRESS: Certificates@TrussAdvantage.com FAX (A/C, No): 816-708-9193	
		INSURER(S) AFFORDING COVERAGE	
INSURED Pixius Communications, LLC 301 N. St. Francis Street Wichita KS 67202		INSURER A : Hartford Casualty Insurance Co INSURER B : INSURER C : INSURER D : INSURER E : INSURER F :	
PIXIU01		NAIC # 29424	

COVERAGES**CERTIFICATE NUMBER:** 1735435064**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PROJECT ☐ LOC OTHER:			30SBQT05992	4/6/2018	4/6/2019	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ HIRED AUTOS ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB EXCESS LIAB DED ☐ RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	☐ Y ☒ N	N/A				PER STATUTE ☐ OTH-ER ☐ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Board of County Commissioners of Sedgwick County, Kansas and their officers, employees and agents are additional insureds as respects general liability.

CERTIFICATE HOLDER**CANCELLATION**Board of County Commissioners
of Sedgwick County, Kansas,
525 N. Main
Suite 320
Wichita KS 67203

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

© 1988-2014 ACORD CORPORATION. All rights reserved.