

# CITY OF ELKINS

## Application to Use City-Owned Downtown Sound System

401 Davis Avenue

Elkins, West Virginia 26241

Applicant's (or Organization's) Name \_\_\_\_\_

Event Name or Purpose \_\_\_\_\_

Date(s) for Sound System Use \_\_\_\_\_

Intended Usage Hours (See General Conditions on Page 2 for limitations): From \_\_\_\_\_ AM/PM To \_\_\_\_\_ AM/PM

Applicant's Address \_\_\_\_\_

City/State/Zip \_\_\_\_\_

Contact \_\_\_\_\_ Telephone (\_\_\_\_) \_\_\_\_-\_\_\_\_ Email \_\_\_\_\_

2<sup>nd</sup> Contact \_\_\_\_\_ Telephone (\_\_\_\_) \_\_\_\_-\_\_\_\_ Email \_\_\_\_\_

Does Applicant have liability insurance that names the City of Elkins, WV as an additional insured?\* Yes \_\_\_ No \_\_\_

Does Applicant intend to use system to broadcast only public service announcements? Yes \_\_\_ No \_\_\_

Does Applicant intend to use system to broadcast copyrighted music during the event hours? Yes \_\_\_ No \_\_\_

If Applicant intends to broadcast copyrighted music, does Applicant hold a current Performance Rights Organization (such as ASCAP, BMI, SESAC) covering the intended music?\* Yes \_\_\_ No \_\_\_

Permit Fee\* \$ \_\_\_\_\_ System Interface Security Deposit\* \$ \_\_\_\_\_ (*Refundable with return of equipment*)

(\* A Certificate of Insurance; PRO license; Indemnity, Defense, and Save Harmless Agreement; \$40/per day Permit Fee; and \$50 Equipment Security Deposit must be provided to the City prior to the event and release of system equipment to the Applicant.)

*The undersigned Applicant has reviewed this application and its General Conditions and understands the requirements outlined herein and further understands that the City may assign additional Special Conditions as warranted prior to the approval of this Application.*

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date

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\_\_\_\_\_/\_\_\_\_\_  
City Clerk Approval

\_\_\_\_\_  
Initials Date

Received from Applicant: \_\_\_\_\_

Certificate of Insurance \_\_\_ PRO License (if music to be broadcast) \_\_\_ Permit Fee \_\_\_ System Interface Security Deposit \_\_\_  
Indemnity, Defense, and Save Harmless Agreement \_\_\_

Returned to Applicant:

Application \_\_\_ Approved \_\_\_ Approved with Special Conditions Attached \_\_\_ Disapproved \_\_\_

\_\_\_\_\_  
Signature of Mayor

\_\_\_\_\_  
Date

Please file this application **IN PERSON** at the Mayor's Office at least two (2) months prior to the requested Sound System use date to assure full consideration. Approval is subject to any Special Conditions assigned by the City; **the City may deny approval if necessary for public safety reasons.**

**CITY OF ELKINS**

**Application to Use City-Owned Downtown Sound System**

**Applicant:** \_\_\_\_\_ **Event/Date(s)** \_\_\_\_\_

**GENERAL CONDITIONS**

1. By submitting this application for consideration by the City of Elkins, the Applicant understands that he/she must abide by the General Conditions outlined herein, as well as any attached Special Conditions, in consideration for the approval to use the City-Owned Downtown Sound System (the System).
2. The Applicant must also execute the *City of Elkins Indemnity, Defense, and Save Harmless Agreement* (attached to this application).
3. The System is intended only for the broadcast of general public service announcements (such as, but not limited to, “lost children”, “please move your car”, the beginning of a scheduled event, or schedule changes) and/or copyrighted music during the event when appropriate.
4. While the City recognizes the need to protect Constitutional “First Amendment” rights, the System is not intended for the broadcast of overtly political, religious, or discriminatory content; nor is intended for the broadcast of “off-color” or controversial content during events planned for the general public’s attendance, including children.
5. For events with intended broadcasting of copyrighted music, the Applicant must demonstrate that they are currently licensed by appropriate Performance Rights Organizations (such as ASCAP, BMI, SESAC, etc.) prior to the release of System interface equipment to the Applicant.
6. The System may only be used between the hours of 9:00 AM to 8:00 PM on Monday – Thursday; 9:00 AM to 9:00 PM on Friday, Saturday, or nationally recognized holidays; and 11:00 AM to 6:00 PM on Sunday; ***unless specifically altered as a Special Conditions below.***
7. Prior to final approval of this application, the Applicant must provide the required Certificate of Insurance; a copy of a current PRO license (if copyrighted music will be broadcast); an executed City of Elkins Indemnity, Defense, and Save Harmless Agreement; the Permit Fee; and the refundable System Security Deposit.
8. The City reserves the right to deny approval of an Applicant if the conditions outlined herein are not met or there is a viable public safety concern. Further, the City reserves the right to cancel any approved application if the prescribed conditions are not being met and corrected immediately by the Applicant upon notification.
9. The Applicant must return all System equipment provided by the City within 24 hours of the closing of the event, unless otherwise authorized in the Special Conditions. The System Interface Security Deposit will be returned to the Applicant within 14 days of the return of the equipment.

**SPECIAL CONDITIONS**

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**Approved Application with any Special Conditions returned to Applicant:** \_\_\_\_/\_\_\_\_/\_\_\_\_

***Security Deposit Refunded on*** \_\_\_\_/\_\_\_\_/\_\_\_\_

**CITY OF ELKINS**  
**INDEMNITY, DEFENSE AND**  
**SAVE HARMLESS AGREEMENT**

(Private Sponsored Event Street Closing and/or Property)

THIS INDEMNITY, DEFENSE AND SAVE HARMLESS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_ (the "Private Sponsor"), in favor of THE CITY OF ELKINS, WEST VIRGINIA (the "City"), a municipal corporation;

WHEREAS, during the \_\_\_\_\_ sponsored by Private Sponsor scheduled to take place on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (the "Event"), Private Sponsor desires the use of certain portions of the City's public thoroughfares and/or property for the Event, which portions are generally outlined in the Application dated \_\_\_\_\_, \_\_\_\_\_; attached hereto.

WHEREAS, the City requires that an Indemnity, Defense, and Save Harmless Agreement be granted by any Private Sponsor in favor of the City as a condition precedent to permitting the Private Sponsor the use of the City's public thoroughfares and/or property for any purpose such as the Event.

WHEREAS, in exchange for the City permitting any Private Sponsor the use of the City's public thoroughfares and/or property for any purpose such as the Event, the City is authorized under West Virginia law to accept an Indemnity, Defense and Save Harmless Agreement in favor of the City from such Private Sponsor(s) in order to protect the City and its officers, agents, and employees;

NOW, THEREFORE: in consideration of the City's permitting Private Sponsor to use portions of the City's public thoroughfares and/or property for the Event, and other good and valuable consideration, receipt of which is hereby acknowledged, Private Sponsor herein agrees as follows:

1. Private Sponsor agrees that it shall indemnify, defend, and save harmless the City, its officers, agents, and employees, from and against all liability, claims, suits, damages, losses, costs, attorneys' fees and expenses of any or all types arising out of, or related in any way to, the Event or Private Sponsor's use of the City's public thoroughfares and/or property for the Event;

2. Private Sponsor hereby agrees to obtain and provide proof of appropriate liability insurance coverage with a limit of not less than \$1,000,000.00 each occurrence. Private Sponsor shall name the City of Elkins, its agents, officers, directors, and employees, as an additional insured under said insurance policy. Private Sponsor's insurance policy shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to, or maintained by the City of Elkins, with respect to Private Sponsor's operations and the Event. If any applicable insurance coverage is subject to a deductible, the Private Sponsor shall be responsible for such deductible(s).

3. Private Sponsor acknowledges that this Agreement does not exempt it from any applicable permit and licensing requirements or any other laws of the City of Elkins, the State of West Virginia, and the United States of America.

4. Private Sponsor acknowledges that the permission granted by the City for Private Sponsor to use certain portions of the City's public thoroughfares and/or property for the Event is limited to the specified date(s) of the Event only and shall not extend in duration beyond the actual dates of the Event as set forth above. Notwithstanding the City's conditional grant of permission, Private Sponsor herein acknowledges and accepts the City's undisputed, inherent right, upon notice to Private Sponsor, to revoke its permission, with or without cause, for any reason, at any time. Further, if the Event and/or the use of the City's public thoroughfares and/or property continues beyond the term of the Event or beyond any revocation of permission as outlined herein, Private Sponsor understands and agrees that all other terms of this Agreement remain in full force and effect and are still binding upon Private Sponsor.

IN WITNESS WHEREOF, \_\_\_\_\_ (private sponsor),  
has caused its name to be signed hereto by \_\_\_\_\_ (authorized  
representative) its \_\_\_\_\_ (office with or relationship to private  
sponsor) thereto duly authorized.

By: \_\_\_\_\_ (Signature)  
(authorized representative)

STATE OF WEST VIRGINIA,  
COUNTY OF RANDOLPH, to-wit:

I, \_\_\_\_\_, a Notary Public in and for said County and State,  
do hereby CERTIFY that \_\_\_\_\_, whose name is signed to the  
foregoing and hereto annexed writing, bearing date of the \_\_\_\_ day of \_\_\_\_\_  
, \_\_\_\_\_, for, \_\_\_\_\_ as its \_\_\_\_\_, has this  
day ACKNOWLEDGED the same before me in my said County to be the act and deed of said  
corporation.

Given under my hand this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

My commission expires \_\_\_\_\_.

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