

NOISE INDEMNIFICATION AGREEMENT
BETWEEN
THE CHAMPLAIN VALLEY EXPOSITION, INC.
AND THE VILLAGE OF ESSEX JUNCTION
FOR CHAMPLAIN VALLEY EXPOSITION EVENTS

COPY

THIS AGREEMENT made this 15 day of January, 2015 by and between CHAMPLAIN VALLEY EXPOSITION, INC., a Vermont corporation with its principal place of business in Essex Junction, Vermont, (hereinafter referred to as "Indemnitor") and THE VILLAGE OF ESSEX JUNCTION, a Vermont municipality located in Chittenden County, Vermont, (hereinafter referred to as "Indemnitee").

WHEREAS, Indemnitor desires to host one or more concerts and other events, including the Champlain Valley Fair, on its property located within Indemnitee's municipal corporate boundaries ("Indemnitor's premises") from October 1, 2014-September 30, 2019; and

WHEREAS, the Essex Junction Land Development Code regulates noise performance standards to help protect the public health, safety and general welfare; and

WHEREAS, the Essex Junction Land Development Code also regulates uses within the Planned Exposition District, which governs the events and concerts scheduled, or to be scheduled, to be held at the CVE Property ("Events"); and

WHEREAS, as an inducement to encourage Indemnitee to approve the Events under its Land Development Code, Indemnitor is willing to provide Indemnitee protection from any and all violations of the Noise Performance Standards with respect to the Events on CVE Property; and

WHEREAS, CVE and the Village, in the spirit of cooperation and trust, feel that this agreement will satisfy the intentions of the Village and the regulatory conditions of the ordinance by providing for among other things, professional third party monitoring, and for continued discussions after each season.

NOW THEREFORE, in consideration of the above and other good and valuable consideration, the parties hereto agree as follows:

1. Indemnitor hereby delivers to Indemnitee and Indemnitee agrees to accept and hereby acknowledges receipt of Two Thousand Dollars (\$2,000) as security for Indemnitor's faithful compliance with the aforesaid Noise Performance Standards at all times ("Security Fund"). The Indemnitee agrees to keep the money in a separate interest bearing account; and on or before April 15th of each year, pay the Indemnitor any accrued interest.
2. Indemnitor further agrees to (a) provide Indemnitee access at no charge to Indemnitor's premises throughout the duration of each Event with such communications equipment as the Indemnitee deems reasonably necessary to permit Indemnitee to communicate with CVE personnel on site at the Event capable of and authorized to adjust or moderate the broadcast noise levels at the Event if Indemnitee, its agents, employees or contractors, determine that one or more violations of the Noise Performance Standards is occurring, and (b) to cause any such violations to be abated as soon as possible after being notified by Indemnitee of a violation.
3. The Village of Essex Junction Administrative Procedures Regarding CVE Grandstand Event Noise Monitoring ("Administrative Procedures") shall be part of this Agreement attached as Appendix A and hereby incorporated by reference. Any change to the Administrative Procedures shall nullify the Agreement, unless otherwise agreed to in writing by both parties.

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4. The following schedule shall determine the amount of the Security Fund forfeited for various violations of the Noise Performance Standards. For the purpose of this Agreement Intermittent shall mean the average dba reading measured over a continuous five (5) minute period:
- | | |
|---|---------|
| A. Each violation of intermittent noise levels for first five violations | \$50 |
| B. Each violation of intermittent noise levels for second five violations | \$150 |
| C. Each violation of intermittent noise levels for third five violations | \$300 |
| D. Each violation of intermittent noise levels for violation over fifteen | \$500 |
| E. Violation of hourly average noise levels for each hour | \$5,000 |

These forfeiture provisions are cumulative. However, if the intermittent violation fines exceed the hourly average fine level, the average hourly fine will be billed and not the intermittent noise level fines during the same hour. By way of example, if the event had 10 intermittent noise violations, but did not violate the hourly average limits, the fine would be \$1,000. However, if the event had 12 intermittent noise violations during the first hour, the fee would be \$5,000 to reflect a violation of the hourly average.

5. If the Village of Essex Junction Trustees amends any portions of the Essex Junction Land Development Code, then this Agreement shall be modified to conform to the Essex Junction Land Development Code, unless otherwise agreed to in writing by both parties.
6. It is agreed that CVE may request the Village to approve events that have performance dates beyond the end of this agreement. If these events are approved by the Village they will be considered to be "grandfathered" as far as Section #5 above.
7. Forfeiture and Appeal Procedure.

Within five (5) working days following an Event, the Village Zoning Administrator will provide the Indemnitor written notice, by certified mail, return receipt requested, of any violations of the Noise Performance Standards and the amount of required forfeitures under this Agreement. The Indemnitor may appeal the Village Zoning Administrator's determination to the Board of Trustees by filing a written notice of appeal with the Village Clerk within ten (10) working days of the Zoning Administrator's notice. If no appeal is taken, the decision of the Zoning Administrator shall become final.

If the decision of the Zoning Administrator is appealed, the Board of Trustees of the Village will conduct an appeal hearing within thirty (30) days of the filing of the notice of appeal and shall give the Indemnitor written notice thereof by certified mail, return receipt requested, and post a notice of the meeting in a public place within the Village offices. The Board of Trustees shall make its decision, and notify the Indemnitor in writing of its decision, with respect to the appeal within ten (10) days of the hearing. The decision of the Trustees shall be final and not otherwise subject to challenge or appeal by the Indemnitor.

If the Zoning Administrator issues a notice that there were violations of the Noise Performance Standards and, pursuant to this Agreement, the Indemnitor forfeits some or all of the Security Fund, the Indemnitor shall deposit with the Indemnitee, within fifteen days of a determination of the finality of the notice of the violation or on or before the date of the next Event, whichever first occurs, an amount equal to the amount determined to have been forfeited as a result of the violation(s). Indemnitor shall cause the Security Fund to be fully funded on or prior to the date of each event regardless of the pendency of any appeal(s) from prior determinations of violations by the Zoning Administrator.

8. This Agreement and the fines contained herein shall apply to all events held on the CVE Property that may violate the noise standards contained herein. However, all noise emanating from the Indemnitor's property during events shall be included in the noise reading during an event and subject to both intermittent and average hourly fines as stipulated in this Agreement.

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9. CVE agrees that all proposed concerts shall be compatible with, and appropriate for, a Village location which has a broad mix of families and individuals of all ages.
10. This Agreement shall be governed by the laws of the State of Vermont.
11. This is the whole agreement between the Parties on this subject, and any and all prior agreements, negotiations, and discussions between the Parties on this subject are hereby superseded. No modification, amendment or alteration shall be made to this Agreement unless in writing and signed by both parties.
12. Each and every one of the terms, provisions and conditions of this Agreement shall apply to, bind and inure to the benefit of the parties hereto and their respective successors and assigns and all persons claiming under or through any of them.
13. The CVE shall hold a public information meeting in June of each year. CVE will review the required noise monitoring and provide notice by first class mail to abutting property owners. The Village will receive a notice of these meetings.
14. In November of each year the Parties to this Agreement shall meet to make appropriate modifications to this Agreement, by mutual consent, based on data and experience gathered from Events and the Annual Fair in the calendar year of said meeting.
15. This Agreement will run to September 30, 2019 with the understanding that the CVE may request approvals to extend it for specific events beyond that date (see Section #6). The Parties agree that they will start discussions for the renewal of this Agreement no later than April 1, 2019.

Dated at Essex Junction, Vermont, this 15 day of January, 2015.

CHAMPLAIN VALLEY EXPOSITION, INC.

By: Timothy P. Shea
A duly authorized agent

Dated at Essex Junction, Vermont, this 14th of January, 2015.

VILLAGE OF ESSEX JUNCTION

By: Patrick C. Scheidel
Patrick C. Scheidel
Municipal Manager
Its duly authorized agent

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APPENDIX A

VILLAGE OF ESSEX JUNCTION ADMINISTRATIVE PROCEDURES

REGARDING CVE GRANDSTAND EVENT NOISE MONITORING

1) **PURPOSE:**

a) To establish procedures to ensure compliance with the Essex Junction Land Development Code Noise Performance Standards.

2) **MONITORING AND RECORDING PROCEDURES:**

- a) Coverage: Any music concert or other outdoor event that may exceed the Noise Performance Standards shall be monitored by an employee of a private contractor that works for the Village of Essex Junction, but is paid for by the Champlain Valley Exposition.
- b) A third party will be hired on an event basis to provide professional sound monitoring during the event(s) (See paragraph #2 c on page 4 of 6). The services of the third party will include a project manager for coordination, a scientist for field measurements and two monitors (one stationary and one mobile) that are factory calibrated prior to each event. The third party will maintain readings per event in a database that can be retrieved later on.
- c) The events selected to be monitored will be mutually agreed upon by the Exposition and Village Staffs'. Complete reports shall be provided to the Village when requested. Any event that exceeds the sound levels contained in the Noise Indemnification Agreement shall require a report. A representative sample of noise monitor readings shall be taken from the grandstand seating during events held in the grandstand with the roving noise monitor.
- d) CVE will also perform, with its own equipment, roving monitoring throughout the event and will provide communications with sound board personnel during concerts, which will be a proactive approach toward this overall project.
- e) E) This new agreement will be effective on October 1, 2014, or sooner if approved by the Village Trustees. F) CVE will pay for all costs directly associated with sound monitoring, or preparation thereof, for CVE events including staff meetings, monitoring, data analysis and reporting. The Village will contract with the third party, pay for services and bill CVE following each event.
- f) G) The Village may at its own choice and cost retain the third party to monitor additional events. The Village of Essex Junction shall pay for the costs of any additional meetings to be attended by a representative(s) of the third party such as, but not limited to, public meetings.
- g) H) The professional monitoring will begin October 1, 2014 and conclude September 30, 2019.

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SOUND WAIVER CATEGORIES

1) PURPOSE:

a) To acknowledge historical baseline noise levels for the Fair and develop a monitoring protocol that will define reasonable sound levels for events at CVE, and provide sound waivers from the Village Land Development Code for no more than twenty (20) event days for each year of this Agreement. An "event day" is defined as a 24 hour period that begins at the start of the event. Municipal or government events not sponsored by CVE will not be part of the 20 event cap.

2) CATEGORIES:

a) Category A. This is for the annual Fair. No Sound Waiver Application is required for a maximum of twelve (12) Fair days, unless CVE feel they are going to exceed the limits outlined in Categories B and C. The Annual Fair, excluding grandstand events, with an Agreement waiver will adhere to the following levels:

One Hour Average – 72dba.

Maximum Five Minute Average – 75dba.

b) Category B. For CVE events including the Annual Fair grandstand events. This sound waiver category requires Village Manager or Designee Approval. These waivers, with limits, will adhere to all other aspects of the Village Land Development Code. Village Manager or Designee shall not unreasonably withhold approval of this category of sounds waivers:

One Hour Average – 78dba.

Maximum Five Minute Average – 83dba.

c) Category C. CVE requested events, to a maximum of the twenty waiver limit, that have regional and/or community worth. This sound waiver category requires Village Manager and/or designee approval at which time specific dba limits will be established. Time will be provided for Public Comment on this Category of sound waivers.

SOUND MONITORING FOR WAIVED EVENTS.

1) PURPOSE:

a) To establish a verifiable objective record of the noise levels at CVE waived events.

b) CVE will pay the fee for third party sound monitoring activities at waived events. The cost of other professional sound consulting services will be shared equally by CVE and the Village.

c) A third party sound monitoring professional will have the capacity to record abnormalities in the sound recording that are the result of sounds outside of CVE's control that skew the sound testing results. Skewed sound noise level recordings can be caused by; rain, thunder, wind, or nonevent source noise. Such abnormalities will be noted by the sound engineer in any report, and enable the Village Manger to make an informed decision regarding fine generating dba levels that were not a direct result of CVE noise activity.

RECORDS:

h) A printout of the noise readings shall be provided to the Village upon request of same and kept on file in the Development Office for three years, along with any notes that record efforts to obtain compliance. These records will be available for public inspection.

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3) FINES:

- a) Fines shall be imposed in accordance with the Noise Indemnification Agreement between The Champlain Valley Exposition, Inc., and the Village of Essex Junction for Champlain Valley Exposition events, executed this ____ day of _____, 2015.
- b) As with any zoning violation, the Village of Essex Junction's goal is to obtain compliance. If the CVE is notified of an intermittent noise level violation and brings the sound into compliance within ten minutes for each act, they shall not be fined for an intermittent noise violation. If the noise violation is not corrected within the ten minute compliance period then the appropriate fine schedule for intermittent noise level violations, as outlined on page 2 of 6 of this document under paragraph number four (4), will be imposed for the period that triggered the ten (10) minute compliance notification. Any sounds above permitted levels after the ten minute compliance period has elapsed shall receive an intermittent noise level fine. The hourly average shall be based on a continuous reading and not subject to a warning period to reduce the noise level. For purposes of establishing the fine, it shall be based on a stationary machine that is recording the hourly average.

4) COMMUNICATION:

- a) Municipal officials shall have contact with the Essex Police Department and the Champlain Valley Exposition officials at all times during an Event.

5) CALIBRATION:

- a) The noise monitors shall be calibrated on an annual basis by the manufacturer or the State of Vermont and a copy of the current certificate of calibration shall be kept on file in the Village Office and at the Vermont Air Quality Testing Services Office. Also, the machines shall be calibrated with the calibrator before recording sound at a concert or other event.