

# SOUND INDEMNIFICATION AGREEMENT

## BETWEEN

THE CHAMPLAIN VALLEY EXPOSITION, INC.

AND THE VILLAGE OF ESSEX JUNCTION

FOR CHAMPLAIN VALLEY EXPOSITION EVENTS

2020-2023

THIS AGREEMENT made this 12th day of January, 2021 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" or "CVE") and THE VILLAGE OF ESSEX JUNCTION, a Vermont municipality located in Chittenden County, Vermont, (hereinafter referred to as "Indemnitee" or "the Village").

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, 2020 to December 31, 2023**; and

WHEREAS, the Essex Junction Land Development Code regulates sound 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 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 sound 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 Sound 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.
4. The following schedule shall determine the amount of the violation of the Noise Performance Standards. For the purpose of this Agreement Intermittent shall mean the average A-weighted decibels (dBA) reading measured over a continuous five (5) minute period:

A. Each violation of intermittent sound levels for first five violations	\$100
B. Each violation of intermittent sound levels for second five violations	\$150

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| C. Each violation of intermittent sound levels for third five violations   | \$300   |
| D. Each violation of intermittent sound levels for violations over fifteen | \$500   |
| E. Violation of hourly average sound 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 sound level fines during the same hour. By way of example, if the event had 10 intermittent sound violations, but did not violate the hourly average limits, the fine would be \$1,000. However, if the event had 12 intermittent sound 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 or the Village ordinance that addresses noise and sound, then this Agreement shall be modified to conform to the Essex Junction Land Development Code and/or the Village ordinance section; 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 part of this agreement.
7. Forfeiture and Appeal Procedure.
  - a) Within five (5) working days of receiving a written report on an event from the sound monitoring consultant, 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 Unified Manager 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.
  - b) If the decision of the Zoning Administrator is appealed, the Unified Manager shall conduct a review within ten (10) working days of the filing of the notice of appeal and shall determine to either uphold the decision of the Zoning Administrator or to recommend a review by the Board of Trustees. If the Unified Manager determines to uphold the decision of the Zoning Administrator, the Unified Manager shall give the Indemnitor written notice thereof by certified mail, return receipt requested. The decision of the Unified Manager shall be final and not otherwise subject to challenge or appeal by the Indemnitor.
  - c) If the Unified Manager recommends a review by the Board of Trustees, the Unified Manager shall give the Indemnitor written notice thereof by certified mail, return receipt requested. The Board of Trustees of the Village will conduct an appeal hearing within forty-five (45) days of the date of the Unified Manager's decision 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 fourteen (14) days of the hearing. The decision of the Trustees shall be final and not otherwise subject to challenge or appeal by the Indemnitor.
  - d) If the Zoning Administrator issues a notice that there were violations of the Noise Performance Standards and, pursuant to this Agreement, the Indemnitor shall deposit with the Indemnitee, within fifteen (15) 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 as a result of the violation(s).
8. This Agreement and the fines contained herein shall apply to all events held on the CVE Property

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

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 sound monitoring and provide notice by first class mail to abutting property owners residing 250 feet from CVE property lines. The Village will receive a notice of these meetings.
14. CVE agrees that fireworks will not take place during any event Sunday through Thursday during the school season. All requests for fireworks shall be made to the Unified Manager a minimum of sixty (60) days in advance of the event. Any fireworks permitted by the Village for CVE events shall include notice on the CVE electronic sign and a notice paid for by CVE in the Essex Reporter that details the time and day of the fireworks display.
15. 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.
16. This Agreement will run to December 31, 2023 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 September 30, 2023.

Dated at Essex Junction, Vermont, this 12 day of Feb January, 2021.

**CHAMPLAIN VALLEY EXPOSITION, INC.**

By: 

A duly authorized agent

Dated at Essex Junction, Vermont, this 16th of February, 2021.

**VILLAGE OF ESSEX JUNCTION**

By: 

Evan Teich  
Unified Manager  
Its duly authorized agent

**APPENDIX A**

**VILLAGE OF ESSEX JUNCTION**  
**ADMINISTRATIVE PROCEDURES**  
**REGARDING CVE GRANDSTAND EVENT SOUND MONITORING**

**1) PURPOSE**

- a) To establish procedures to ensure compliance with the Essex Junction Land Development Code Noise Performance Standards.
- b) To acknowledge historical baseline noise levels for CVE 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 twenty (20) event cap.
- c) To establish a verifiable objective record of the noise levels at CVE waived events.

**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 CVE and the Village at least sixty (60) days prior to the first event taking place. Complete reports on monitored events shall be provided to the Village Zoning Administrator and the Essex Police Department. A representative sample of sound 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) 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) 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) The professional monitoring will be in effect for the duration of the Sound Indemnification Agreement.

**3) SOUND WAIVER CATEGORIES**

- a) Category A. This is for the annual Fair. No Sound Waiver Application is required for a maximum of ten (10) Fair days, unless CVE anticipates exceeding 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 (1) hour average – 72 dBA.

Maximum five (5) minute average – 75 dBA.

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

One (1) hour average – 78 dBA.

Maximum five (5) minute average – 83 dBA.

- c) Category C. CVE requested events, to a maximum of the twenty (20) waiver limit, that have regional and/or community worth. This sound waiver category requires Unified 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.

#### **4. SOUND MONITORING FOR WAIVED EVENTS**

- a) 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.
- b) 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 Unified Manger to make an informed decision regarding fine generating dba levels that were not a direct result of CVE sound activity.

#### **5. RECORDS**

- a) All reports on sound readings shall be provided to the Village Zoning Administrator and the Essex Police Department and kept on file in the Community Development Office for three years, along with any notes that record efforts to obtain compliance. These records will be available for public inspection.

#### **6. FINES**

- a) Fines shall be imposed in accordance with the Sound Indemnification Agreement between The Champlain Valley Exposition, Inc., and the Village of Essex Junction for Champlain Valley Exposition events.
- 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 sound level violation and brings the sound into compliance within ten (10) 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-minute compliance notification. Any sounds above permitted levels after the ten-minute compliance period has elapsed shall receive an intermittent sound level fine. The hourly average shall be based on a continuous reading and not subject to a warning period to reduce the sound level. For purposes of establishing the fine, it shall be based on a stationary machine that is recording the hourly average.

**7. COMMUNICATION**

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

**8. CALIBRATION**

- a) The sound 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.