

OPERATION AND MAINTENANCE CONTRACT

Between

Water District of the Town of Davenport

and

Charlotte Valley Central School District

THIS AGREEMENT is made and dated July 8, 2008, by and between Charlotte Valley Central School District (hereinafter "Plant Operator") with an address of 15611 State Highway 23, Davenport, New York 13750 and the Water District of the Town of Davenport (hereinafter "Owner"), with an address of P.O. Box 88, Davenport Center, New York 13751.

RECITALS

- A. WHEREAS, the Owner will be installing a well and associated equipment on Plant Operator's property located at State Route 23, in the Town of Davenport, Delaware County (a copy of the site plan demonstrating the location of the well is attached hereto as Appendix "C") in order to provide an adequate water supply to the residents of Owner's Water District (hereinafter referred to as the "Water Supply Well");
- B. WHEREAS, the Owner is desirous of entering into an agreement for the purchase of services for operator(s) to complete the agreed upon tasks as they relate to the operation of the Water Supply Well;
- C. WHEREAS, the Plant Operator now desires to enter into an agreement for the maximum period allowed by law commencing upon start-up of the Water Supply Well;
- D. WHEREAS, the Plant Operator has agreed to perform the agreed upon tasks at a cost equal to the cost of the Plant Operator receiving eight and one-half (8.5) Equivalent Dwelling Units ("EDUs") per year of water service; and
- E. WHEREAS, the Owner desires to enter into a contract with the Plant Operator for Operation and Maintenance Services of the Water Supply Well ("Services") as hereinafter defined and the Plant Operator is willing and able to provide such services.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants hereinafter set forth, the Owner and the Plant Operator agree as follows:

GENERAL TERMS AND CONDITIONS

1. **Incorporation of Recitals.** The Recitals are incorporated into this Agreement as though fully set forth at length.
2. **Services of the Plant Operator.**
 - (a) The Services shall be performed in accordance with Appendix A.
 - (b) Said Services may be amended from time to time in writing, only upon the consent of the Owner and the Plant Operator in accordance with this Agreement.
 - (c) To provide the competent, administrative, supervisory, and technical personnel.
 - (d) To comply with all municipal, state, federal, and local laws and regulations governing the operation and maintenance of the Water Supply Well.
3. **Capacity of Perform Work.** The Plant Operator represents that is has the capability to perform the Services required by this Agreement, and will maintain that capability during the life of this Agreement and provide qualified staff, in conformance with its obligations hereunder.
4. **Duration of Agreement.** This Agreement shall be **effective on commencement of Startup (as identified in a letter from the Owner) and shall continue thereafter for the maximum period allowed by law** unless sooner terminated pursuant to this Agreement. Expiration or termination of this Agreement shall not affect the rights and obligations of the party's accrued prior to such expiration or termination, except as otherwise provided for herein.
5. **Payment for Services.**
 - (a) Plant Operator's payment for the Services shall be an amount equal to the cost of Plant Operator receiving eight and one-half (8.5) Equivalent Dwelling Units ("EDUs") per year of water service.
6. **Performance of Work.** The Plant Operator shall perform all work in accordance with the terms of the Agreement.
7. **Reports and Communications.** The Owner will advise the Plant Operator as to the form in which reports are to be submitted to the Owner. **The Owner**

will require monthly reports on the results of the tests for the Water Supply Well. Plant Operator shall provide reasonable supporting documentation as requested.

8. **Records.** The Plant Operator shall establish and maintain complete and accurate books, records, documents, accounts, and other evidence directly pertinent to performance under this Agreement (hereinafter, collectively, "the Records"). The Records must be kept for the balance of calendar year in which they were made and for seven (7) additional years thereafter.
9. **Plant Operator Personnel.** The Parties acknowledge and agree that Plant Operator will provide certified operators as set forth in Appendix A to conduct the Work contemplated in this Agreement, provided however, that Owner agrees that said certified operators will be employees of the Owner while conducting the Work and shall report to the Owner. The Parties will insure that said arrangement complies with the law and shall enter into an additional agreement, if necessary.
10. **Suspension or Termination of Performance.**
 - (a) In the event there is a breach by Plant Operator with respect to any of the provisions of this Agreement or its obligations under it, Owner shall give Plant Operator written notice of such breach. After receipt of such written notice, Plant Operator shall have ten (10) days in which to cure said breach, provided Plant Operator shall have such extended period as may be required beyond the ten (10) days if the nature of the cure is such that it reasonably requires more than ten (10) days and Plant Operator commences the cure within the ten (10) day period and thereafter continuously and diligently pursues the cure to completion.
 - (b) In the event that Plant Operator receives three (3) notices of default in any one (1) year of this Agreement, then Owner has the option to terminate this Agreement.
 - (c) The Owner shall provide not less than thirty (30) calendar days written notice (delivered by certified mail, return receipt requested) of its intent to terminate.
 - (d) Upon Notice of Termination by either the Owner or the Plant Operator, the Plant Operator shall be obligated to continue to operate the Plant for a period not to exceed two (2) months from the date of the Notice if so desired by the Owner. During this period, the Plant Operator will shall work with the Owner's designated representative, contractor, and/or employee in a trainee position. The Plant Operator will remain responsible for the efficient operation of the processes.

The Plant Operator will not be responsible for any authorized changes in the treatment processes by the Owner's designated representative, contractor, and/or employee.

(e) It is the intent of this Agreement to secure the personal services of the Plant Operator. Failure of the Plant Operator for any reason to make such personal services available to the Owner to the extent necessary to perform the Services required skillfully and promptly, shall be cause for termination of this Agreement.

(f) In the event this Agreement is terminated, Plant Operator shall be required to pay Owner for water as set forth in the Town of Davenport Water Use Law.

11. **Intentionally Deleted.**

12. **Authority.** Plant Operator represents that it has the legal ability to enter into this Agreement and that Plant Operator or its employees are not subject to any restrictive obligations imposed by any third party that would impair Plant Operator's or its employees' ability to consult with and give testimony on behalf of the Owner.

13. **Insurance.** Plant Operator and Owner each agree that at its own cost and expense, each will maintain commercial general liability insurance with limits not less than \$1,000,000 for injury to or death of one or more persons in any one occurrence and \$500,000 for damage or destruction to property in any one occurrence. Plant Operator and Owner each agree that it will include the other Party as an additional insured.

14. **Intentionally Deleted.**

15. **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of New York.

16. **Notices.** Any notice, approval, acceptance, request, bill, demand, or statement hereunder from either party to the other shall be in writing and shall be deemed to have been given when delivered by hand, or by certified mail, return receipt requested, or by overnight mail, addressed to the other party at the address shown at the beginning of this Agreement, either party may at any time change its address by delivering or mailing as aforesaid to the other party a notice stating the changed address.

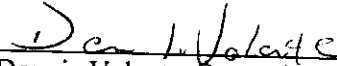
17. **Survival.** All representations, indemnifications, warranties and guarantees made in, required by or given by the Plant Operators in accordance with the Agreement as well as all continuing obligations indicated in the contract,

will survive final payment to the Plant Operator, completion of the work and termination or completion of the Agreement.

18. **Severability.** This Agreement is intended to be in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations, and is intended, and shall for all purposes be deemed to be, a single, integrated, document setting for the all the Agreements and understanding of the Parties hereto, and superseding all prior negotiations, understanding and Agreements of such Parties. If any term or provision of this Agreement or the application thereof to any person or circumstance shall for any reason and to any extent be held to be invalid or unenforceable, then such term or provision shall be ignored, and to the maximum extent possible, this Agreement shall continue in full force and effect, but without giving effect to such term or provision.
19. **Amendments.** No amendment to this Agreement shall be binding on the Plant Operator, the Owner unless executed by the Party against whom enforcement of such amendment is sought.
20. **Non-assignment Clause.** The Agreement or any part thereof may not be assigned by the Plant Operator or its right, title, or interest therein assigned, transferred, conveyed, sublet, or otherwise disposed of without the previous Consent, in writing, of the Owner. Any attempts to assign the Agreement without the Owner's written Consent are null and void. Notwithstanding anything to the contrary, Owner agrees that, in the event of an emergency, Plant Operator may retain a subcontractor that possesses the Grade C Certification from the New York State Department of Health ("NYSDOH") to conduct the work contemplated in this Agreement.
21. **Compliance with Applicable Laws.** The Plant Operator agrees that he and all persons employed to perform the Services hereunder, including subcontractors, agents, officers, and employees, shall comply with all applicable laws and all applicable requirements of governmental agencies and departments in the jurisdiction in which the Services are performed.
22. **Captions or Headnotes.** The captions or head notes on Articles or Sections of this Contract are intended for convenience and for reference purposes only and in no way define, limit, or describe the scope or intent thereof in any way affect this Agreement.
23. **Complete Agreement.** This Agreement supersedes any prior written or oral understanding related to the duties, responsibilities, and obligations related to the subject matter of this Agreement.

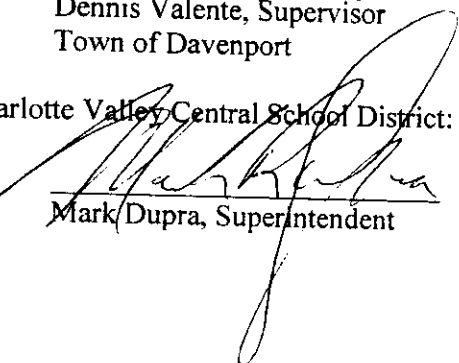
IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first written above.

Water District of the Town of Davenport:

By: 
Dennis Valente, Supervisor
Town of Davenport

Date July - 2nd 08

Charlotte Valley Central School District:

By: 
Mark Dupra, Superintendent

Date July 2, 2008

APPENDIX A
Scope of Services

Plant Operator agrees to provide enough operators possessing Grade C Certification from the NYSDOH to perform the daily inspections, monitoring and reporting required by the NYSDOH at the Davenport Water Supply Well

Plant Operator shall conduct the following Services:

- Daily checks of the water treatment and pumping equipment.
- Daily chlorine residual testing and other tests specific to the installed water system.
- Daily recording of test results and water use and related operation information.
- Completion of operation report forms and submission to the Department of Health and the Town of Davenport each month.
- Collection of monthly samples and submission to a certified laboratory for bacteria testing.
- Collection of special chemical monitoring samples as required by the NYSDOH.
- Detection of leaks and other mechanical failures to be reported to the Owner as soon as possible.
- Assisting Owner with preparation of its Annual Water Quality Report.
- Provide clear year round access, including snow removal, to the testing location. In the event that the Owner and/or the Plant Operator need access to the Water Supply Well during the winter months, the Parties will work together to insure access.
- Handle deliveries of supplies.

Owner shall:

- Provide Plant Operator with all chemicals required for the proper operation of the Water Supply Well.
- Perform all repairs and mechanical maintenance for the Water Supply Well, including the testing location and associated equipment, except that any custodial work needed in the testing location shall be performed by Plant Operator.
- Pay any utility costs associated with the operation of the Water Supply Well.