

# Attachment C

## AGREEMENT FOR SERVICES

This Agreement for Services (hereinafter referred to as the "Agreement") is made and entered into as of the \_\_\_\_ day of August, 2016, by and between Flushing Meadows Water Treatment, Inc., an Arkansas Corporation, (hereinafter referred to as "FMI"), and Conway Corporation, an Arkansas Nonprofit Corporation (hereinafter referred to as "Conway Corp").

### WITNESSTH:

**WHEREAS**, FMI is in the business of operating and maintaining private sewer systems; and

**WHEREAS**, FMI operates and maintains sewer facilities serving the residents of the Flushing Meadows Subdivision located generally at 77 Brewer Road, Conway, Arkansas (hereinafter referred to as the "Subdivision"); and

**WHEREAS**, FMI has had compliance issues with its discharge permit; and

**WHEREAS**, FMI has requested that Conway Corp convey and treat the wastewater from the Subdivision in lieu of FMI re-constructing and operating its existing treatment facility which discharges into the Lake Conway watershed; and

**WHEREAS**, FMI has secured access to right-of-way and has constructed or will construct a Force Main connecting the Private Facilities serving the Subdivision to Conway Corp's collection main; and

**WHEREAS**, the Arkansas Department of Environmental Quality has encouraged FMI to evaluate the possibility of connecting with Conway Corp's wastewater facilities; and

**WHEREAS**, Conway Corp operates wastewater facilities within the city of Conway, Arkansas; and

**WHEREAS**, Conway Corp has determined that it has sufficient infrastructure capacity and will incur no capital expense to provide the requested service; and

**WHEREAS**, Lake Conway is a community treasure in need of protection; and

**WHEREAS**, the Subdivision is within Conway Corp's Water Plan; and

**WHEREAS**, Conway Corp and Vilonia Waterworks Association (hereinafter referred to as "VWA") are parties to an agreement dated February 22, 1994 concerning annexation of areas served by VWA; and

**WHEREAS**, FMI and VWA are parties to an Agreement between Vilonia Waterworks Association and Flushing Meadows Water Treatment, Inc. dated \_\_\_\_\_, 201\_ (hereinafter referred to as the "Billing Service Agreement") whereby VWA provides billing and collection services for the sewer services provided by FMI to the customers or landowners in the Subdivision.

**NOW, THEREFORE**, based on the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties hereto, FMI and Conway Corp agree as follows:

**Article I. FMI DUTIES.** During the term of this Agreement, FMI will maintain and operate the Collection System, Lift Station and Force Main. Pursuant to the Billing Service Agreement, VWA will collect the fees (hereinafter collectively referred to as the "Fees") due and owing by customers or landowners within the Subdivision who or which contract for sewer services from FMI in the Subdivision.

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**Article II. CONWAY CORP DUTIES.** During the term of this Agreement, Conway Corp will:

Section 2.01 Provide conveyance from the point of interconnection of the Force Main and its outfall line to its treatment facility; and

Section 2.02 Provide treatment of the wastewater from the Subdivision.

**Article III. MONTHLY PAYMENTS.**

Section 3.01 FMI shall pay Conway Corp the sum of Twenty-eight and No/100 Dollars (\$28.00) per customer each month within fifteen (15) days of FMI's receipt of the monthly payment due and owing to FMI from VWA pursuant to the Billing Service Agreement. The monthly payments required to be paid to Conway Corp pursuant this Section shall be hereinafter individually and collectively referred to as the "Monthly Payment". Interest shall accrue at the highest rate allowed by Arkansas law on any Monthly Payment that is not paid on the due date until such time as the Monthly Payment together with accrued interest is paid-in-full.

Section 3.02 The Monthly Payment may be increased at the sole discretion of Conway Corp by the CPIU for the immediately preceding calendar year or three percent (3%), whichever is less, upon sixty (60) day's written notice by Conway Corp to FMI.

Section 3.03 Upon sixty (60) days prior written notice to FMI, the Monthly Payment in Section 3.01 may be increased at the sole discretion of Conway Corp as indicated in Article IV when levels of I&I are unacceptable to Conway Corp in its sole, absolute and unfettered discretion.

**Article IV. INFLOW AND INFILTRATION.** FMI agrees to maintain the Private Facilities to minimize I&I. FMI and Conway Corp agree that the rates established in Article III of this Agreement are based on a daily average of approximately three hundred (300) gallons per residence per day.

Section 4.01 In the event that Conway Corp observes daily metered volumes in excess of two hundred (200) gallons per residence for consecutive days, it may provide written notice of such exceedance to FMI. Upon such notice, FMI agrees to effect repairs to the Private Facilities to reduce I&I to a level acceptable to Conway Corp in its sole, absolute and unfettered discretion.

Section 4.02 If the metered flow exceeds a daily average of two hundred (200) gallons per residence for two (2) consecutive months, Conway Corp, in its sole discretion, may increase the rate established in Section 3.01, and as further adjusted in Section 3.02, proportionately.

**Article V. REPRESENTATIONS AND WARRANTIES.** FMI represents and warrants to Conway Corp as follows:

- A. FMI is an Arkansas Corporation duly organized and validly existing under the laws of the State of Arkansas;
- B. The execution, delivery and performance by FMI of this Agreement, by and through its duly authorized officer, and the transactions contemplated by this Agreement, and the execution, delivery and performance of this Agreement by FMI have been duly authorized by all requisite corporate action, do not require any governmental registrations or

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approvals, and will not conflict with or result in a breach of any of the terms, conditions or provisions of the Articles of Incorporation or Bylaws of FMI or of any law or regulation, or of any rule, order, writ, judgment, injunction, decree, determination or award of any court or governmental instrumentality or of any indenture, agreement or other instrument to which FMI is a party or by which any FMI or any of its properties or assets are bound, or constitute (with due notice and/or lapse of time) a default thereunder or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon the properties or assets of FMI pursuant to the terms of any such indenture, agreement or other instrument.

- C. This Agreement and any other documents executed in connection herewith, will, following execution and delivery to Conway Corp, constitute legal, valid and binding obligations of FMI, enforceable against FMI in accordance with their respective terms.

**ARTICLE VI. INDEMNIFICATION.** AS A MATERIAL INDUCEMENT TO CONWAY CORP TO ENTER INTO THIS AGREEMENT, FMI (HEREINAFTER REFERRED TO AS THE "INDEMNITOR"), AGREES TO AND SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS CONWAY CORP, AND ITS DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, SUCCESSORS AND ASSIGNS (HEREINAFTER COLLECTIVELY REFERRED TO AS THE "INDEMNITEES") AGAINST ANY LOSSES, CLAIMS, DAMAGES, LIABILITIES AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COSTS, ARISING FROM OR RELATED TO (I) THE OPERATION OF THE PRIVATE FACILITIES; (II) THE NEGLIGENCE, RECKLESSNESS OR MISCONDUCT OF FMI RELATED TO THE PRIVATE FACILITIES OR THE PROVISION OF SERVICES TO LANDOWNERS OR CUSTOMERS IN THE SUBDIVISION; (IV) ANY CLAIM, INVESTIGATION OR COMPLAINT THREATENED OR BROUGHT BY ANY INDIVIDUAL, ENTITY, GOVERNMENTAL AGENCY OR COMMISSION AS A RESULT OF THIS AGREEMENT OR AS A RESULT OF THE PRIVATE FACILITIES OR PROVISION OF SEWER OR OTHER SERVICES TO THE LANDOWNERS OR CUSTOMERS IN THE SUBDIVISION; AND (V) ANY LIABILITIES, PENALTIES, FINES (WHETHER CRIMINAL OR CIVIL) OR JUDGMENTS ENTERED AGAINST ANY OF THE INDEMNITEES ARISING FROM THIS AGREEMENT OR THE ACTIONS OF CONWAY CORP OR ANY OF THE OTHER INDEMNITEES RELATED TO THE SERVICES PROVIDED BY CONWAY CORP PURSUANT TO THIS AGREEMENT.

IN THE EVENT THAT A CLAIM AND/OR ACTION IS THREATENED OR IS COMMENCED AGAINST CONWAY CORP OR ANY OF THE OTHER INDEMNITEES, IT SHALL NOTIFY THE INDEMNITOR OF THE CLAIM OR ACTION; PROVIDED, HOWEVER, THAT THE FAILURE TO GIVE SUCH NOTICE SHALL NOT AFFECT CONWAY CORP OR THE OTHER INDEMNITEES RIGHT TO INDEMNIFICATION HEREUNDER. CONWAY CORP AND THE OTHER INDEMNITEES SHALL HAVE ALL OF THEIR COSTS, INCLUDING ATTORNEYS' FEES, INCURRED AS A RESULT OF A THREATENED OR COMMENCED CLAIM OR ACTION PAID BY THE INDEMNITOR AS SUCH COSTS ARE INCURRED. CONWAY CORP AND THE OTHER INDEMNITEES SHALL BE ENTITLED TO SELECT THEIR OWN LEGAL COUNSEL TO BE PAID FOR BY THE INDEMNITOR.

**Article VII. BREACH AND TERMINATION OF AGREEMENT.** Any one of more of the following events shall constitute and event of default (hereinafter referred to as the "Event of Default"):

- A. Any term or condition of this Agreement is breached;
- B. The failure to pay to Conway Corp the Monthly Payment when due as set forth in Article III of this Agreement;

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- C. The Billing Service Agreement is breached or terminated;
- D. FMI ceases to be the operator of the Private Facilities;
- E. FMI fails to pay to Conway Corp any sum due and owing to Conway Corp when due; and
- F. Conway Corp in its sole, absolute and unfettered discretion, deems itself insecure with regard to FMI's intent or ability to comply with or fulfill any term or condition of this Agreement.

Upon the occurrence of an Event of Default, in addition to any other remedy provided to Conway Corp pursuant to this Agreement, Conway Corp may terminate this Agreement by giving FMI written notice of the termination which notice shall contain the effective date of the termination of this Agreement.

This Agreement shall remain in full force and effect unless terminated by (i) mutual written agreement of the parties hereto or (ii) Conway Corp upon the occurrence of an Event of Default.

**Article VIII. DEFINITIONS.** For purposes of this Agreement, the following terms shall have the definitions assigned to them as set forth below:

- Section 8.01 Collection System. The sewer mains installed to convey wastewater to the Lift Station. The Collection System does not include the customer-owned Service Lines.
- Section 8.02 CPI-U. A measure that examines the changes in the price of a basket of goods and services purchased by urban consumers.
- Section 8.03 Force Main. The principal conduit from the Lift Station through which the wastewater is pumped to Conway Corp's outfall line.
- Section 8.04 I&I. Inflow and/or infiltration of storm water or groundwater into the Private Facilities.
- Section 8.05 Lift Station. A pumping station designed to collect the wastewater from the Subdivision's Collection System and transfer it via the Force Main to Conway Corp's outfall line.
- Section 8.06 Private Facilities. The Collection System, Force Main and Lift Station operated and maintained by FMI.
- Section 8.07 Service Lines. The sewer lines which connect a customer's residence to FMI's Collection System.
- Section 8.08 Water Plan. Planning areas for water distribution systems filed with the Arkansas Natural Resources Commission.

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**Article IX. PAYMENT OF FEES.** FMI hereby sells, assigns, transfers and sets over and deliver to Conway Corp, the Fees arising from the Billing Service Agreement. This assignment is intended to be an absolute, immediate, unconditional, irrevocable and present assignment from FMI to Conway Corp and not merely the passing of a security interest or additional security only. The Fees are hereby assigned absolutely and immediately by FMI to Conway Corp. Unless and until an Event of Default occurs, FMI shall have a revocable license to collect the Fees directly from VWA as and when, but not before, they become due and payable. FMI hereby agrees with Conway Corp that upon the occurrence of an Event of Default, the license granted to FMI to collect the Fees shall be automatically revoked without any action required to be taken by Conway Corp. Notwithstanding anything herein to the contrary, Conway Corp may at any time while this Agreement is in effect, revoke FMI's right or license to collect the Fees due or to become due and owing under the Billing Service Agreement. Upon revocation of FMI's license to collect the Fees directly from VWA, FMI agrees that Conway Corp may immediately collect the Fees directly from the VWA which Fees shall be applied in the order decided by Conway Corp to all sums due and owing to Conway Corp pursuant to this Agreement.

FMI, as a condition precedent to Conway Corp entering into this Agreement, shall cause the VWA to execute a written consent to assignment recognizing and agreeing to the assignment contained in this Article IX. Further, FMI agrees to Conway Corp filing one or more UCC Financing Statements with the Arkansas Secretary of State related to the assignment contained in this Article IX.

Notwithstanding anything contained in this Agreement to the contrary, the assignment contained in this Article IX shall survive the termination of this Agreement and shall remain in effect until such time as all sums due and owing to Conway Corp subsequent to the termination date of this Agreement have been paid-in-full.

**Article X. MISCELLANEOUS.**

Section 10.01. Survival of Representations, Warranties, Covenants and Agreements. The representations, warranties, covenants and agreements of FMI contained in this Agreement, and any other document, instrument and agreement contemplated by this Agreement, shall survive execution and delivery and shall remain operative and in full force and effect regardless of any investigation made by or on behalf of Conway Corp, or any other person or entity, or issuance, acceptance or any disposition of this Agreement, but shall terminate only when this Agreement and all other obligations hereunder have been paid and performed in full.

Section 10.02. Conflicts. In the event of any conflict or inconsistency between a provision of this Agreement and a provision of the documents and instruments delivered hereunder or referred to herein, the provisions of this Agreement shall control. This Agreement represents the entire agreement between the parties as to the subject matter contained herein, and this Agreement supersedes any and all other prior oral or written agreement with respect to the subject matter contained herein.

Section 10.03. Time of Essence. Time is of the essence with respect to each and every term and condition of this Agreement.

Section 10.04. Parties in Interest. All the terms and provisions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto and, in particular, shall inure to the benefit of and be enforceable by the holder or holders at any time of the Note.

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Section 10.05. Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any of the parties hereto may execute this Agreement by signing any such counterpart.

Section 10.06. Notices. All notices provided herein shall be in writing and shall be deemed to have been given (unless otherwise required by the specific provisions hereto in respect of any matter) when delivered personally or upon deposit in the United States mail, certified, registered or express mail, postage prepaid, addressed as follows:

If to FMI:                      Flushing Meadows Water Treatment, Inc.  
   360 Shenandoah Drive  
   Conway, Arkansas 72032  
   Attn: President

If to Conway Corp:        Conway Corporation  
   P.O. Box 99  
   Conway, Arkansas 72033  
   Attn: Chief Executive Officer

Section 10.07. Modifications. No provision of this Agreement may be modified, waived, or terminated except by instrument in writing executed by the party against whom a modification, waiver, or termination is sought to be enforced.

Section 10.08. Severability. In case any of the provisions of this Agreement shall for any reason be held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

Section 10.09. Election of Remedies. Conway Corp shall have all of the rights and remedies granted in this Agreement and available at law or in equity, and these same rights and remedies shall be cumulative and may be pursued separately, successively, or concurrently against FMI, or any property covered under this Agreement at the sole discretion of Conway Corp. The exercise or failure to exercise any of the same shall not constitute a waiver or release thereof or of any other right or remedy, and the same shall be non-exclusive.

Section 10.10. Form and Substance. All documents, certificates, insurance policies, and other items required under this Agreement to be executed or delivered to Lender shall be in form and substance satisfactory to Lender.

Section 10.11. No Third Party Beneficiary. This Agreement is for the sole benefit of the parties of this Agreement and is not for the benefit of any other third party.

Section 10.12. Number and Gender. Whenever used herein, the singular number shall include the plural and the singular, and the use of any gender shall be applicable to all genders.

Section 10.13. Captions. The captions, headings, and arrangements used in this Agreement are for convenience only and do not in any way affect, limit, amplify, or modify the terms and provisions thereof.

Section 10.14. Applicable Law. Notwithstanding anything herein to the contrary, this Agreement shall be governed by and construed in accordance with the laws of the State of Arkansas and applicable federal law.

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Section 10.17 Waiver of Jury Trial. JURISDICTION AND VENUE; WAIVER OF JURY TRIAL. ALL ACTIONS OR PROCEEDINGS WITH RESPECT TO THIS AGREEMENT MAY BE INSTITUTED IN ANY STATE COURT SITTING IN FAULKNER COUNTY, ARKANSAS, AND BY EXECUTION AND DELIVERY OF THIS AGREEMENT, THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY (I) SUBMIT TO THE EXCLUSIVE JURISDICTION (BOTH AS TO SUBJECT MATTER AND PERSON) OF SUCH COURT, AND (II) WAIVE (A) ANY OBJECTION THAT ANY OF THE PARTIES HERETO MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE IN SUCH COURT, AND (B) ANY CLAIM THAT ANY ACTION OR PROCEEDING BROUGHT IN SUCH COURTS HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. THE PARTIES HERETO FULLY, VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO A TRIAL BY JURY OR TO HAVE A JURY PARTICIPATE IN ANY DISPUTE, ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (WHETHER BASED ON CONTRACT, TORT, OR OTHERWISE) UNDER THIS AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED (OR WHICH MAY IN THE FUTURE BE DELIVERED) IN CONNECTION HERewith. THE PARTIES HERETO AGREE THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. THIS PROVISION IS A MATERIAL INDUCEMENT TO THE PARTIES TO ENTER INTO THIS AGREEMENT.

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**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the day and year first above written.

**FMI:**

FLUSHING MEADOWS WATER TREATMENT, INC.

By: \_\_\_\_\_

Nathan Miller, President

**CONWAY CORP:**

Conway Corporation

By: \_\_\_\_\_

Richie Arnold, Chief Executive Officer