

**ORIGINAL**

**NEW APPLICATION**



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AZ CORP COMMISSION  
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**BEFORE THE ARIZONA CORPORATION COMMISSION**

**COMMISSIONERS**

10 BOB STUMP, CHAIRMAN  
11 GARY PIERCE  
12 BRENDA BURNS  
13 SUSAN BITTER SMITH  
14 BOB BURNS

Arizona Corporation Commission

**DOCKETED**

FEB 25 2014

DOCKETED BY *NR*

15 IN THE MATTER OF THE  
16 APPLICATION OF LIVCO SEWER  
17 COMPANY FOR APPROVAL OF THE  
18 SALE OF ASSETS AND FOR  
19 CANCELLATION OF THE CERTIFICATE  
20 OF CONVENIENCE AND NECESSITY

Docket Nos. SW-02563A-14-0058  
**APPLICATION FOR APPROVAL OF  
THE SALE OF ASSETS AND/OR FOR  
CANCELLATION OF THE  
CERTIFICATE OF CONVENIENCE  
AND NECESSITY**

21 Pursuant to Arizona Corporation rules and procedures, Livco Sewer  
22 Company (Company or Applicant) submits this Application for Approval of the Sale of  
23 Assets and for Cancellation of the Certificate of Convenience and Necessity (CC&N).  
24

**PRELIMINARY STATEMENT**

26 The Company is an Arizona corporation engaged in the business of providing  
27 wastewater utility service to approximately 28 connections in Concho, Arizona.  
28 Recently, the residents and customers within the Company's service area petitioned to

1 form the Concho Wastewater Improvement District (District or Purchaser). The Apache  
2 County Board of Supervisors granted the petition and established the District. *See*  
3 Exhibit 1. The Company now seeks Commission approval to transfer the Company's  
4 property and assets to the District with the understanding that that the District assumes all  
5 of the Company's debt and obligations and will continue to provide wastewater service to  
6 all Company customers.  
7  
8

9 **APPLICATION**

10 A. The name, address and telephone number of the Applicant is:

11  
12 **Livco Sewer Company**  
13 **P.O. Box 659**  
14 **#1 County Road 5100**  
15 **Concho, AZ 85924**  
16 **(928) 337-2266**

17 B. If doing business under a name other than the Applicant name specify:

18 **Not Applicable.**

19 C. The Applicant is a:

20 **For-Profit Corporation**

21 D. List the name, address and telephone number of the attorney for the Applicant:

22 **Steve Wene**  
23 **Moyes Sellers & Hendricks**  
24 **1850 N. Central Avenue, Ste. 1100**  
25 **Phoenix, Arizona 85004**  
26 **(602) 604-2189**

27 E. List the name, address and telephone number of the management contact:

28 **Jenni Wicks**  
**P.O. Box 659**  
**#1 County Road 5100**

1 **Concho, AZ 85924**  
2 **(928) 337-2266**

3  
4 F. The name, address and telephone number of the Purchaser is:

5 **Concho Wastewater Improvement District**  
6 **P.O. Box 659**  
7 **#1 County Road 5100**  
8 **Concho, AZ 85924**  
9 **(928) 337-2266**

10 G. List the name and telephone number of the purchaser's representative.

11 **Jenni Wicks**  
12 **P.O. Box 659**  
13 **#1 County Road 5100**  
14 **Concho, AZ 85924**  
15 **(928) 337-2266**

16 H. The Purchaser is an:

17 **Improvement district, a political subdivision of the State of Arizona.**

18 I. The purpose for the sale is due to:

19 **Enable the community to benefit from the wastewater provider being a**  
20 **municipal corporation. Those benefits include opportunities to receive grants and**  
21 **subsidized loans, tax benefits, and lower market costs for professional services.**

22 J. Provide a copy of the following documents:

23 1. Sales or purchase agreement

24 **See Exhibit 2.**

25 2. Court order (if condemnation)

26 **Not Applicable.**

27 3. Corporate Resolution authorizing the liquidation of the assets, if required  
28 by the Articles of Incorporation



# **EXHIBIT 1**

## TRANSFER AGREEMENT

This TRANSFER AGREEMENT ("Agreement") is entered into as of the 1 day of FEBRUARY, 2014, between Livco Sewer Company, an Arizona Corporation ("Company"), and the Concho Wastewater Improvement District ("District"), a political subdivision of the State of Arizona. The Company and District are collectively referred to as "Parties".

### RECITALS

- A. Currently, Company provides sewer service to approximately 30 customers in the Concho community within its certificate of convenience and necessity ("CC&N").
- B. Landowners and customers in the Concho community petitioned the Apache County Board of Supervisors to form the District with the intent that the District would assume sewer service currently provided by the Company.
- C. Company desires to sell, and District desires to transfer, the assets of the Company under the terms set forth in this Agreement.

### AGREEMENT

Company and District ("Parties") agree as follows:

#### 1.0 Transfer and Sale of Assets

1.1 Assets To Be Acquired. Subject to the terms herein, Company agrees to convey to District, and District agrees to accept from Company, all of Company's right, title and interest in and to all of the assets owned or controlled by Company ("Assets"), including those set forth in Exhibit 1.

1.2 Excluded Assets. Company shall not transfer Company's charter documents and original corporate records unless requested by District.

1.3 Assumed Liabilities. District shall assume, perform, and in due course discharge the Company's obligations, liabilities, meter advance credits, main extension agreements, customer deposits, mortgages, pledges, assignments, monetary encumbrances, judgments, claims, charges, liens or security interests ("Assumed Liabilities") unless excluded in Exhibit 2.

1.4 **Excluded Liabilities.** District will not become liable for those Company obligations, liabilities or indebtedness expressly noted in Exhibit 2.

1.5 **Governmental Approvals; Conditions to Closing.** Promptly after the execution of this Agreement, Company shall commence a proceeding before the Arizona Corporation Commission ("ACC") requesting termination or relinquishment of its CC&N. Company shall diligently pursue the proceeding until it obtains a final, non-appealable order of the ACC terminating or relinquishing its CC&N. District shall reasonably cooperate with Company in the proceeding. Company shall cooperate with District to obtain any necessary approvals from any other governmental authority whose approval may be necessary to transfer the Assets to the District. Termination of Company's CC&N and the securing of any other necessary approvals by District shall be conditions to District's obligation to close this transaction.

## 2.0 **Closing and Payment**

2.1 **Closing.** The closing ("Closing") will take place no later than ten (10) days after all regulatory approvals are satisfied, or such other date agreed to in writing by District and Company ("Closing Date").

2.2 **Payment.** District will pay to Company a Transfer price of \$1.00, payable in cash or cash equivalent at Closing.

2.3 **Transfer of Title.** At the Closing, title to, possession of, and risk of loss of all of the Assets shall pass to District. Company has all risk of loss prior to Closing.

## 3.0 **Representations and Warranties of Company.**

3.1 **Company Authorization.** Company represents:

3.1.1 Company has the authority to enter into and perform this Agreement and to consummate the transactions contemplated hereby;

3.1.2 Company has properly authorized the execution and performance of this Agreement;

3.1.3 This Agreement is a valid and binding Company obligation; and

3.1.4 Except as stated herein, no third party approval is necessary or required to transfer the Assets to District.

3.1.5 Company is not obligated to pay any fee to any broker or other intermediary in connection with the transactions contemplated by this Agreement.

3.2 **Title and Condition of Assets.** At Closing, Company will convey good and marketable title to each of the Assets to District.

3.3 **Condition of Assets.** The Assets are being transferred as is.

3.4 **Litigation; Disputes.** To the best of Company's knowledge, there are no claims, disputes, actions, suits, investigations or proceedings pending or threatened against or affecting Company or the Assets, and there is no basis for any such claim, dispute, action, suit, investigation or proceeding.

3.5 **Compliance with Applicable Law.** To the best of Company's knowledge, Company is in full compliance with applicable federal, state and local laws (including common law), permits, judgments, orders, or decrees, including without limitation any of the foregoing relating in any manner to safe drinking water, the protection of human health or the environment, public health and safety, or employee health and safety.

#### **4.0 Representations and Warranties of District.**

4.1 **District Authorization.** District represents:

4.1.1 District has the authority to enter into and perform this Agreement and to consummate the transactions contemplated hereby;

4.1.2 District has properly authorized the execution and performance of this Agreement;

4.1.3 This Agreement is a valid and binding District obligation; and

4.1.4 District is not obligated to pay any fee or commission to any broker or other intermediary in connection with the transactions contemplated by this Agreement.

#### **5.0 Covenants.**

5.1 **Administration of Receivables.** The Parties agree that the Company shall receive and be responsible for all income and expenses on or before December 31, 2013 and the District shall receive and be responsible for all income and expenses thereafter provided the Arizona Corporation Commission approves the transfer.

5.2 **Tax and Other Matters.** Company shall pay all taxes and costs relating to the Assets accruing on or before December 31, 2013 and District shall pay any applicable taxes and costs relating to the Assets for the period thereafter.

5.3 **Employees of Company.** Company shall retain and perform any and all monetary and other obligations to employees incurred prior to the Closing. Company and District agree that District may hire Company employees and contractors after this Agreement becomes final.

5.4 **Further Assurances.** From time to time after the Closing, Company will, at its own expense, execute and deliver such documents to District as District may reasonably request, and District will, at its own expense, execute and deliver such documents to Company as Company may reasonably request, in order to more effectively consummate the transactions contemplated by this Agreement.

**6.0 Closing Costs and Buyer Investigation**

6.1 District's Investigation Contingency. District shall have the right to investigate and inspect the Assets. Company has provided investigative report to District and District acknowledges receipt of report and that inspection has occurred.

6.2 Closing Costs. All Closing costs payable shall be paid by the Company.

6.3 Certification as to "Non-Foreign" Status. At the Closing, Company certify that Company is not a nonresident alien, foreign corporation, foreign partnership, foreign trust, foreign estate, or other foreign person within the meaning of Sections 1445 and 7701 of the Internal Revenue Code of 1986 and the Treasury Regulations hereunder.

**7.0 Closing Requirements.**

7.1 Company Deliveries. At Closing, Company shall deliver to District the Company's fully executed:

7.1.1 Quit claim deeds with respect to the Real Property ("Deed")

7.1.2 Non-Foreign Affidavit required by this Agreement;

7.1.3 Bill of sale with respect to the non-realty Assets in substantially the form attached hereto as Exhibit 3;

7.1.4 All other documents contemplated by this Agreement to be executed and delivered by Company;

7.1.5 All customer deposits and meter advance credits; and

7.1.6 A current list of all customers' names and addresses.

7.2 District Deliveries. At Closing, District shall deliver to Company cash or cash equivalent in an amount equal to \$1.00.

**8.0 Indemnification.**

8.1 Survival of Representations and Warranties, Covenants and Indemnities. All representations and warranties and each covenant and indemnification provision contained herein, or in any Exhibit hereto, shall survive Closing and remain in full force and effect in accordance with its terms. Each indemnification provision contained herein shall survive any cancellation or termination of this Agreement.

**8.2 Indemnification by Company.** Company shall indemnify, defend and hold District harmless for, from and against all losses, damages, injuries, liabilities, claims, penalties, costs and expenses of any nature whatsoever (including costs of investigations, suits, other proceedings, and reasonable attorneys' and others fees in connection therewith) ("Losses") resulting from:

8.2.1 Any inaccuracy, misrepresentation, breach, nonfulfillment of any Company representation contained in this Agreement;

8.2.2 Any liability excluded in Exhibit 2; and

8.2.3 The use, ownership, or operation of the Assets prior to the Closing.

**8.3 Indemnification By District.** After the Closing Date, District shall indemnify, defend and hold Company harmless for, from and against any and all Losses resulting from, any and all Assumed Liabilities and the use, ownership, or operation of the Assets after the Closing.

**9.0 Miscellaneous.**

9.1 Expenses. Except as otherwise provided in this Agreement, each of the respective Parties to this Agreement shall pay their own costs and expenses relating to this Agreement, the negotiations leading up to this Agreement, and the transactions contemplated by this Agreement.

9.2 Amendment. This Agreement shall not be amended or modified except by a writing duly executed by Company and District.

9.3 Entire Agreement. This Agreement contains all of the agreements of the Parties with respect to the subject matter herein and supersedes all prior agreements and negotiations.

9.4 Notices. All notices regarding this Agreement shall be in writing and shall be given by either (a) personal delivery, (b) prepaid certified mail, (c) facsimile transmission, or (d) email as set forth below:

If to District:

Concho Wastewater Improvement District  
P.O. Box 659  
#1 Country Road 5100  
Concho Arizona 85924

If to Company:

Livco Sewer Company  
P.O. Box 659  
#1 Country Road 5100  
Concho Arizona 85924

Such addresses may be changed, from time to time, by means of a notice given in the manner provided herein.

9.5 **Severability.** If any provision of this Agreement is held to be invalid or unenforceable, then the remainder of this Agreement shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

9.6 **Limits on Remedies.** Company's sole remedy in the event of any breach of this Agreement by District shall be to cancel this Agreement by written notice to District, in which event neither Party has any further liability or obligation to the other party related to this Agreement. District's sole remedy in the event of any breach of this Agreement by Company shall be to cancel this Agreement by written notice to Company.

9.7 **Waiver.** Waiver of any provision of this Agreement by either of the Parties shall only be effective if in writing and shall not be construed as a waiver of any other provision.

9.8 **Assignment.** No party to this Agreement may assign its rights or obligations under this Agreement without the prior written consent of the other Party, which it may withhold in its absolute discretion. Except as limited in the proceeding sentence, this Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, personal representatives, successors and assigns.

9.9 **Counterparts.** This Agreement may be signed in any number of counterparts, and all such counterparts together shall be deemed an original of this Agreement.

9.10 **Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

9.11 **Construction.** The headings used herein are for the purposes of convenience only and shall not be read or interpreted as having any meaning or effect. Exhibits referred to herein are hereby incorporated into and made part of this Agreement. In interpreting any provision of this Agreement no presumption shall be drawn against the Party drafting the provision.

9.12 **Attorneys' Fees.** In the event of any action arising out of this Agreement, the prevailing Party shall be entitled to recover its costs, expenses and reasonable attorney's fees incurred in connection with the dispute from the other party.

9.13 **Cancellation.** All parties hereby acknowledge that this Agreement is subject to cancellation by the District pursuant to the provisions of A.R.S. § 38-511.





## **EXHIBIT 1**

### **Company Assets Being Conveyed to District**

1. All Company sewer system pipelines, pumps, valves, treatment facilities, equipment, replacement parts and sewer system inventories.
2. All Company operational, maintenance and technical data and information, and intangible assets related to the Assets.
3. All Company specifications, plans, drawings, and influent and effluent data.
4. All Company customer lists, financial, and other books and records related to the Assets, and all customer deposits, account receivables, other deposits, prepaid items and refunds.
5. All Company rights permits, warranties, representations, guarantees and service contacts made by suppliers, manufacturers and contractors in connection with the Assets.
6. All Company real property together with all improvements thereon.
7. All Company cash and cash equivalents held by or for Company as of the Closing Date.
8. Copies of Company records that District requests.

## **EXHIBIT 2**

### **Assumed Liabilities**

1. All Company accounts payable disclosed by Company (approximate \$ 0 liability)
2. Company long-term debt incurred from loan (approximate \$ 0 liability)

### **Excluded Liabilities**

1. None.

**EXHIBIT 3**

**Bill of Sale**

## BILL OF SALE

THIS BILL OF SALE is made as of <sup>February</sup> ~~January~~ 1, 2014, by Livco Sewer Company, an Arizona Corporation ("Company"), in favor of the Concho Wastewater Improvement District ("District"), a political subdivision of the State of Arizona.

### RECITALS

A. Pursuant to a Transfer Agreement dated as of February 1, 2014 ("Agreement") by and between Company and District, Company has agreed to sell and assign to District certain Assets (as that capitalized term is defined in the Agreement) of Company and District has agreed to accept such Assets from Company and to assume certain utility obligations of Company related thereto.

B. All capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed thereto in the Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Company does hereby sell, convey, assign, transfer and deliver unto District, its successors and assigns, all of Company's right, title and interest in and to all of the Assets set forth in Attachment 1,

TO HAVE AND TO HOLD unto District, its successors and assigns, for its use and benefit forever.

This Bill of Sale is subject to the terms and conditions (including the representations and warranties) contained in the Agreement, and shall be governed by, and construed and enforced in accordance with, the laws of the State of Arizona, without regard to its conflicts of laws principles.

IN WITNESS WHEREOF, Wastewater Company has executed and delivered this Bill of Sale on the date first above written.

By: *Rick Kautz*

Name: *LIVCO SEWER Co.*

Its: *President*