0054

Document Information Form

Mine Number: C/007/007

File Name: Outgoing

To: DOGM

From:

Person N/A

Company N/A

Date Sent: June 3, 1994

Explanation:

ESerow Agreement

cc:

File in:
C/ 007 , 002 , Outgoing
Refer to:
- ☐ **Confidential**
- ☐ **Shelf**
- ☐ **Expandable**

Date _____ For additional information

JUN - 3 1994

HAND DELIVERED March 22, 1994

Mr. David VanWagoner, CCTS
Second Vice President
Corporate Trust Administrator
ZIONS FIRST NATIONAL BANK
Trust Department
One South Main Street
P.O. Box 30880
Salt Lake City, Utah 84111

RE: Escrow Agreement -- WATER RIGHTS

Dear Mr. VanWagoner:

This letter is intended to serve as an escrow agreement (the "Agreement") to provide Zions First National Bank ("Zions" or "Escrow Agent") with necessary instructions from Sunnyside Coal Company ("SCC"), the Utah Division of Oil, Gas & Mining (the "Division") and the federal Office of Surface Mining ("OSM") as Escrow Agent in connection with the sale of certain property as described in Exhibit "A" to the Deed of Reconveyance (the "Property") and secured by the Deed of Trust and Security Agreement dated March 9, 1989 by and between SCC as successor in interest to Trustor, South Eastern Utah Title Company, Trustee, and the Division, as Beneficiary.

I. CONDITIONS FOR DISBURSEMENT OF FUNDS

1. SCC has accepted an offer of One Million Three Hundred Fifty Thousand Dollars ($1,350,000.00) for the purchase of the Property (the "Purchase Price"). At closing, the net proceeds of the Purchase Price less taxes and closing costs in the amount of One Million Eighty Thousand Dollars ($1,080,000.00) will be deposited with the Escrow Agent. At closing, SCC agrees to pay property taxes due on the Property.

File in:
☐ Confidential
☐ Shelf
☐ Expandable
Refer to Record No 0054 **Date** 6-3-94
In C/ 007 , 007 , **Outgoing**
For additional information

2. Prior to closing, the Division agrees to submit to Zions a deed of reconveyance releasing the Property from the Deed of Trust and deliver the executed Deed of Reconveyance into escrow with Zions.

3. Upon deposit of the net proceeds of the Purchase Price with Zions, Escrow Agent agrees that it will issue a letter of credit to the Division and OSM in the amount of the One Million Eighty Thousand Dollars ($1,080,000.00) to the Division in the form attached hereto.

4. Upon deposit of the net proceeds of the Purchase Price and issuance of the letters of credit to the Division, Escrow Agent agrees to release the Deed of Reconveyance to SCC.

II. TERMINATION OF ESCROW WITHOUT DISBURSEMENT OF FUNDS.

In the event that the above-stated conditions are not met within 180 days of the date of execution of this Agreement, SCC shall terminate this Agreement by written notice to Zions and Zions shall return the funds and documents to the respective parties who delivered them to Zions. Zions shall not issue to the Division and OSM the above-referenced letter of credit and shall return the Deed of Reconveyance to the Division.

III. INSTRUCTIONS

1. Zions Only a Depository. Zions acts hereunder as a depository only and is not responsible or liable for the sufficiency, correctness, genuineness or validity or any instrument deposited hereunder or with respect to the form or execution of the same or the identity, authority or rights of any person executing or depositing the same.

2. Notice of Default. Zions shall not be required to take or be bound by notice of any default by the undersigned or to take any action with respect to such default involving any expense or liability unless notice in writing of such default is given to an officer of Zions by the undersigned or any of them, and unless Zions is indemnified in a manner satisfactory to it against any such expense or liability.

3. Reliance Upon Depositor. Zions shall be protected in acting upon any notice, request, waiver, consent, receipt or other paper or document received from the undersigned and believed by Zions to be genuine.

4. Limitation of Liability. Zions shall not be liable for any error of judgment or any act done or step taken or omitted by it in good faith or for any mistake of fact or law or for anything which Zions may do or refrain from doing in connection herewith, except for its own willful misconduct.

5. Adverse Claims. In the event of an adverse claim or demand affecting the net proceeds of the Purchase Price, Zions may refuse to comply with such claim or demand and may refuse to deliver or dispose of the funds until the rights of the adverse claimants have been finally adjudicated in a court of competent jurisdiction or until all differences shall have been adjusted by agreement and Zions shall have been notified thereof in writing signed by all interested parties.

6. Authority for Agreement. Each party represents and warrants that it has full power and authority to enter into this Agreement and has taken all action necessary to carry out the transaction contemplated hereby so that when executed this Agreement constitutes a valid and binding obligation enforceable in accordance with its terms.

7. Compensation. The fees for the services of Zions under the terms of this Agreement are set forth below. Zions shall have a first lien on the Property and papers held by it hereunder for its compensation and any costs or expenses incurred.

a. In the event the fees due Zions remain unpaid for a period of one year, Zions shall have the right and is hereby authorized in its sole and absolute discretion to discontinue the escrow, terminate all ties hereunder, close all accounting or other records, obtain payment of its compensation, costs, liability or expense and destroy all documents, records and files or retain such items in a dormant account status subject to the escheat laws of the State of Utah.

b. Zions' fees shall be paid by SCC.

c. The fees of Zions shall be:

i. Set-up and acceptance, $500.00; and
ii. Additional reasonable compensation for such other and further duties as may be required of Zions in the performance of this Agreement.

d. In addition to the escrow fee paid or agreed upon, the parties agree to pay Zions' costs and expenses, including reasonable attorneys' fees, in the event of any dispute or litigation threatened or commenced which requires Zions to refer such matter to its attorneys. However, OSM will not be required to pay any such costs and expenses.

8. Integration. This instrument is the entire agreement of the parties hereto.

We appreciate Zions' continuing cooperation and assistance in this matter.

Very truly yours,

SUNNYSIDE COAL COMPANY
Operations Office
Highway 123
P.O. Box 99
Sunnyside, Utah 84539

Corporate Offices
The Registry
1113 Spruce Street
Boulder, Colorado 80302

BY:_____

Its:_____

STATE OF UTAH
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS & MINING

3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203

BY: _____

Its: Director

OFFICE OF SURFACE MINING,
RECLAMATION & ENFORCEMENT
505 Marquette, N.W., Suite 1200
Albuquerque, New Mexico 87102

BY: _____

Its: _____

The undersigned acknowledged receipt of the above-stated escrow instructions and agree to proceed in strict accordance therewith.

DATED this _____ day of _____, 1994.

ZIONS FIRST NATIONAL BANK

BY: _____

Its: _____

s:\dad\30939

Letter of Credit No. _____

Date: _____

UTAH DIVISION OF OIL, GAS AND MINING
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203

and

Office of Surface Mining
Reclamation and Enforcement
505 Marquette N.W., Suite 1200
Albuquerque, New Mexico 87102

Ladies and Gentlemen:

1. Zions First National Bank ("Surety"), of Salt Lake City, Utah, hereby establishes this irrevocable letter of credit the "Letter of Credit") in favor of the Utah Division of Oil, Gas and Mining ("Division") for itself and for the Office of Surface Mining, Reclamation and Enforcement ("OSM") (collectively, the "Beneficiaries") for an aggregate amount not to exceed $1,080,000.00 in United States dollars ("Face Amount") effective immediately.

2. This Letter of Credit will expire upon the first event set forth as follows: (a) 5:00 o'clock p.m. (Salt Lake City time) on _____, 1994 or (b) the date upon which sufficient documents are executed by the Division and OSM to release Sunnyside Coal Company ("Operator") from further liability for reclamation of the Sunnyside Coal Mine, ACT/007/007 with notice to Bank or Surety by the Division and OSM accompanied by the original Letter of Credit with directions for cancellation.

3. This Letter of Credit will be automatically extended for successive periods of one year from the current or any future expiration date unless the Surety gives

notice to the Division 90 days prior to the expiration date that the Surety elects not to renew the Letter of Credit. Upon receipt by you of such notice, you may draw on us at sight for the amount of this Letter of Credit beginning 30 days or less prior to the then applicable expiration date, accompanied by a statement signed by the Division Director and OSM, certifying that the amount of the drawing represents funds due the Division and OSM because the permittee has failed to replace this Letter of Credit with other suitable bond pursuant to R645-301-860.220 and R645-301-870.

4. Funds under the Letter of Credit are available against the Division's sight draft, in the form of Exhibit A, specifying Letter of Credit No. _____ delivered to the office of the Surety, _____ (address). At the Division's and OSM's sole election, the Division and OSM may present sight drafts for less than the Face Amount so long as the aggregate amount of all sight drafts does not exceed the Face Amount. Each draft must be accompanied by a certificate in the form of Exhibit B, signed by a duly authorized representative of the Division and OSM.

5. If the Surety receives the Division's and OSM's sight draft(s) and certificates) as provided in Paragraph No. 4 above on or before the expiration or termination of this Letter of Credit, the Surety will make such amount as the Division and OSM may specify, within the limits of the second sentence of Paragraph No. 4 of this Letter of Credit, available to the Division and OSM no later than the close of business, Salt Lake City time, on the second business day following the Surety's receipt of the sight draft and certificate and in such a manner as the Division and OSM may specify.

6. The Surety will give prompt notice to the Operator, the Division Director and OSM of any notice received or action filed alleging the insolvency or

bankruptcy of the Surety, or alleging any violations of regulatory requirements which could result in suspension or revocation of the Surety's charter or license to do business.

7. The Letter of Credit will be governed by the laws of the State of Utah and shall be subject to the Uniform Customs and Practice for Documentary Credit, 1983 revision, international Chamber of Commerce Publication no. 400, as the same may be amended and in effect from time to time ("UCP"). In the event of a conflict between Utah law and the UCP, Utah law shall govern.

8. All communications regarding this Letter of Credit will be addressed to the Surety _____ (Address), referencing Letter of Credit No._____/.

Very truly yours,

Zions First National Bank
The Surety

By:_____

(Name typed or printed)

_____
(Authorized Signature)

Title: _____

s:\dad\30949

EXHIBIT A - SIGHT DRAFT

to
Letter of Credit Number _____

_____	Salt Lake City Salt Lake County	_____
Date	City, County	Letter of Credit No.

_____

PAY TO THE ORDER OF: Utah Division of Oil, Gas and Mining, and the Office of Surface Mining, Reclamation and Enforcement, jointly

One Million Eighty Thousand Dollars - - - - - - - - - - - - - - - - - $1,080,000.00

TO: Zions First National Bank
Trust Department
One South Main Street
Salt Lake City, Utah 84130-0880

Utah Division of Oil, Gas and Mining
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203

By: _____
Authorized Signature

U.S. Department of the Interior, Office of Surface Mining Reclamation & Enforcement
505 Marquette, N.W., Suite 1200
Albuquerque, New Mexico 87102

By: _____
Authorized Signature

s:\dad\30949

EXHIBIT B
to
Letter of Credit Number _____

I, _____ a duly authorized representative of the Utah Division of Oil, Gas and Mining and federal Office of Surface Mining Reclamation & Enforcement hereby certify that (1) the drawing in the amount of $_____, by sight draft accompanying this certificate, under Letter of Credit No. _____ dated _____ issued by you is permitted under the provision of the Letter of Credit, (2) the Letter of Credit has neither expired nor terminated pursuant to its terms, (3) the amount of the sight draft, together with any amounts previously drawn under the Letter of Credit, does not exceed the Face Amount, and (4) the Utah Division of Oil, Gas and Mining, has entered a notice of forfeiture, ordering forfeiture of the Reclamation Contract number _____, in accordance with R.645-301-880.900. Proceeds of this drawing will be utilized in full to pay the expenses relating to the reclamation liability for the _____ (mine), _____ (mine permit #).

Utah Division of Oil, Gas and Mining

By:_____
Authorized Signature

Date:_____

U.S. Department of the Interior, Office of Surface Mining Reclamation & Enforcement

By:_____
Authorized Signature

Date:_____

s:\dad\30949

REQUEST FOR PARTIAL RECONVEYANCE

TO: South Eastern Utah Title Company, Trustee
175 East 100 South
Price, Utah 84501

The undersigned, Robert H. Hagen, as Director of the Albuquerque Field Office, Office of Surface Mining, Reclamation & Enforcement, United States Department of the Interior, is the cobeneficiary legal owner and holder of the reclamation obligation in the original sum of $3,583,830.00, and of all other indebtedness secured by the Deed of Trust and Security Agreement, dated March 9, 1989, made by Sunnyside Reclamation & Salvage, Inc., a Colorado corporation, Trustor, to South Eastern Utah Title Company, Trustee, and recorded March 10, 1989, in Book 287, at Pages 96-155, in the office of the Recorder of Carbon County, Utah and in Book 176, at Pages 580-639 in the Office of the Recorder of Emery County, Utah. ("Trust Deed").

In accordance with the terms of said Trust Deed, you are requested to reconvey, without warranty, to the person or persons legally entitled thereto, the estate now held by you under such Trust Deed in and to that portion of the property described in said Trust Deed, situated in Carbon County and Emery County, Utah, described at Exhibit "A" hereto.

Dated: _____

OFFICE OF SURFACE MINING,
RECLAMATION & ENFORCEMENT
505 Marquette, N.W., Suite 1200
Albuquerque, New Mexico 87102

By: _____
Robert H. Hagen

Its: _____

STATE OF NEW MEXICO)
: ss.
COUNTY OF _____)

On the _____ day of _____, 1994, personally appeared before me Robert H. Hagen, the signer of the foregoing instrument, who acknowledged to me that he executed the same.

_____
Notary Public

s:\dad\30947