



Suzanne Steab unknown < suzannesteab@utah.gov >

Re: Letter of Credit Language

1 message

Daron Haddock < daronhaddock@utah.gov >

Wed, Oct 9, 2013 at 11:26 AM

To: Tim Stanley < tpstanley@g1hi.com >

Cc: Steve Christensen < stevechristensen@utah.gov >, "Jennings, Michael" < Michael.Jennings@cbi.com >, Suzanne Steab < suzannesteab@utah.gov >

Tim,

Sorry, I am slow getting back to you on this. I was out of the office on vacation (actually I was helping my son wire a house) last week. As for your proposed Irrevocable Letter of Credit, I have looked through it and for the most part it looks okay, although there are some changes that would need to be made. I have attached a corrected redline/strikeout version of the ILOC, which I think would work for us. I have also attached a copy of a generic ILOC form that the Division has previously used, which may be useful to you in producing a final version. It sounds like we are getting pretty close to having everything ready for the transfer to occur. Please let me know if you have any questions or concerns. Thanks,
Daron

On Thu, Oct 3, 2013 at 12:43 PM, Tim Stanley < tpstanley@g1hi.com > wrote:

Steve - That's fine. I just wanted to get something to the Division so that we could keep things moving. I appreciate your efforts to expedite all of these matters. Thanks.

Timothy P. Stanley
Global One Transport, Inc
Florida Office: 239-985-9309
Ohio Office: 614-493-4038
Mobile: 614-832-3578

From: Steve Christensen < stevechristensen@utah.gov >

Date: Thursday, October 3, 2013 2:31 PM

To: Tim Stanley < tpstanley@g1hi.com >

Cc: "Jennings, Michael" < Michael.Jennings@cbi.com >, Daron Haddock < daronhaddock@utah.gov >

Subject: Re: Letter of Credit Language

Good afternoon,

I'm afraid I can't sign off on the letter of credit. I apologize. I am not well versed enough on the bonding side of the spectrum as it's not something I deal with routinely. That said, I've forwarded the e-mail on to Daron who we will be back on Monday.

Again, I'm sorry I can't give you an answer today. I wouldn't want to head you down the wrong path and create inadvertent confusion/issues later on.

Regards,
Steve

On Thu, Oct 3, 2013 at 11:00 AM, Tim Stanley <tpstanley@g1hi.com> wrote:

Steve – The other day when Michael Jennings and I spoke with you and Daron about the bond for Price River Terminal, LLC, we briefly discussed the Letter of Credit. In an effort to ensure that we have met all of your requirements, we had our bank prepare the attached draft LC for your review. Please let me know if this language is acceptable or advise of any proposed changes. Thanks.

Timothy P. Stanley
Global One Transport, Inc
Florida Office: [239-985-9309](tel:239-985-9309)
Ohio Office: [614-493-4038](tel:614-493-4038)
Mobile: [614-832-3578](tel:614-832-3578)

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Steve Christensen
Utah Division of Oil, Gas and Mining
1594 W North Temple, Suite 1210
Salt Lake City, Utah 84116
[\(801\) 538-5350](tel:801-538-5350)
stevechristensen@utah.gov

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Daron R. Haddock

Coal Program Manager
Utah Division of Oil, Gas & Mining
[\(801\) 538-5325](tel:801-538-5325)

2 attachments

 **Amegy_Draft_LC[1].docx**
25K

 **LOC form.pdf**
129K

IRREVOCABLE DOCUMENTARY LETTER OF CREDIT NO. SC 8427

TO BENEFICIARY:

STATE OF UTAH
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING
1594 WEST NORTH TEMPLE, SUITE 1210
BOX 145801
SALT LAKE CITY, UTAH 84114-5801

GENTLEMEN:

WE HEREBY ESTABLISH OUR IRREVOCABLE DOCUMENTARY LETTER OF CREDIT IN FAVOR OF THE DIRECTOR OF THE DIVISION OF OIL, GAS AND MINING OF THE STATE OF UTAH (BENEFICIARY) FOR THE ACCOUNT OF PRICE RIVER TERMINAL, LLC FOR THE AGGREGATE AMOUNT OF: FOUR MILLION ONE HUNDRED FORTY TWO THOUSAND AND 0044/100 U.S.DOLLARS (\$4,142,000.44) AVAILABLE BY YOUR DRAFTS AT SIGHT DRAWN ON AMEGY BANK N.A., 4400 POST OAK PARKWAY, 2ND FLOOR, HOUSTON, TEXAS 77002 DRAWN IN ACCORDANCE WITH THE TERMS HEREOF AND ACCOMPANIED BY THE DOCUMENTS LISTED BELOW:

1. DRAFTS DRAWN UNDER THIS LETTER OF CREDIT MUST BE ACCOMPANIED BY AN AFFIDAVIT FROM THE DIRECTOR OF THE DIVISION OF OIL, GAS AND MINING STATING THAT:

A. ANY FACILITY SUBJECT TO THE LETTER OF CREDIT IS DEEMED NECESSARY FOR SITE REHABILITATION AND THE OPERATOR HAS NOT FULFILLED SUCH OBLIGATION UNDER THE OIL AND GAS CONSERVATION COAL MINING RECLAMATION ACT AND R645 ADMINISTRATIVE GENERAL RULES OF THE STATE OF UTAH.

B. THE DRAFT IS IN THE ESTIMATED COST OF REHABILITATING THE FACILITY SUBJECT TO THE LETTER OF CREDIT UP TO THE AGGREGATE AMOUNT OF THE LETTER OF CREDIT.

ADDITIONAL CONDITIONS:

A. IT IS A CONDITION OF THIS LETTER OF CREDIT THAT ITS VALIDITY MAY BE EXTENDED FOR AN ADDITIONAL PERIOD OF ONE (1) YEAR FROM THE CURRENT EXPIRY DATE UPON RECEIPT BY US OF APPLICANT'S WRITTEN REQUEST FOR EXTENSION IF SUBMITTED TO US NOT LATER THAN THIRTY-NINETY (3090) DAYS PRIOR TO THE THEN CURRENT EXPIRATION DATE. ANY SUCH EXTENSION OF THIS CREDIT SHALL BE EFFECTED ONLY BY MEANS OF OUR AMENDMENT.

IF OUR AMENDMENT EXTENDING THIS LETTER OF CREDIT IS NOT RECEIVED BY YOU AT LEAST FIFTEEN-THIRTY (1530) DAYS PRIOR TO THE THEN CURRENT EXPIRATION DATE, YOU MAY DRAW ON US SOLELY BY MEANS OF YOUR ONE SIGHT DRAFT ON US FOR UP TO THE AMOUNT THEN CURRENTLY AVAILABLE HEREUNDER AND ACCOMPANIED BY THE ORIGINAL OF THIS LETTER OF CREDIT, TOGETHER WITH YOUR STATEMENT READING AS FOLLOWS:

"THE AMOUNT CLAIMED UNDER AMEGY BANK N.A., LETTER OF CREDIT NUMBER SC 8427, DATED OCTOBER XX, 2013, IS DUE AND PAYABLE BECAUSE WE HAVE NOT

RECEIVED NOTIFICATION OF AMENDMENT EXTENDING THIS LETTER OF CREDIT. WE HEREBY EXPRESSLY AGREE THAT WE RETRACT OUR DEMAND FOR PAYMENT UPON THE ISSUANCE OF THE AMENDMENT EXTENDING THE TERM AS ABOVE PROVIDED THAT THE AMENDMENT IS ISSUED PRIOR TO THE CURRENT EXPIRATION DATE."

IN THE EVENT OF A RETRACTION DUE TO ADDITIONAL CONDITION A, AMEGY BANK N.A. SHALL RETURN THE ORIGINAL LETTER OF CREDIT WITH ALL AMENDMENTS TO THE BENEFICIARY.

THIS LETTER OF CREDIT IS ISSUED BECAUSE THE OPERATOR IS OR WILL BE ENGAGED IN THE CONSTRUCTION AND/OR OPERATION OF A FACILITY IN THE STATE OF UTAH, FOR THE FOLLOWING DESCRIBED FACILITY AND LAND:

FACILITY: WELLINGTON PREPERATION PLANT

SECTION: 8: E1/2 SE1/4 (portions south of Ridge Road), W1/2 SE1/4 (portions south of Ridge Road) except portion N of the railroad tracks;
Section 9: S1/2, portions of S1/2 N1/2;
Section 10: W1/2 SW1/4;
Section 15: W1/2 NW1/4;
Section 16: All; and
Section 17: E1/2 SE1/4, NE1/4.

TOWNSHIP: 15 South

RANGE: 11, East SLB & M

COUNTY: CARBON, UTAH

THIS LETTER OF CREDIT IS SPECIFICALLY ISSUED AT THE REQUEST OF THE OPERATOR AS GUARANTY THAT THESE FUNDS WILL BE AVAILABLE DURING THE TIME THAT THE FACILITY REFERENCED ABOVE IS ACTIVE AND FOR A PERIOD WHICH IS COINCIDENT WITH THE OPERATOR'S PERIOD OF EXTENDED LIABILITY OR UNTIL THE ACHIEVEMENT OF THE RECLAMATION REQUIREMENTS OF THE STATE PROGRAM AND PERMIT. WE ARE NOT A PARTY TO, NOR BOUND BY, THE TERMS OF ANY AGREEMENT BETWEEN YOU AND THE OPERATOR OUT OF WHICH THIS LETTER OF CREDIT MAY ARISE.

WE WILL BE ENTITLED TO RELY UPON THE STATEMENTS CONTAINED IN THE AFFIDAVIT AND WILL HAVE NO OBLIGATION TO INDEPENDENTLY VERIFY ANY STATEMENTS CONTAINED THEREIN.

EACH DRAFT HEREUNDER MUST BE LISTED AND ENDORSED ON THE REVERSE SIDE OF THIS LETTER OF CREDIT, AND THIS LETTER OF CREDIT MUST BE ATTACHED TO THE LAST DRAFT WHEN THE CREDIT HAS BEEN EXHAUSTED. DRAFTS MAY BE PRESENTED AT THE OFFICE OF THIS BANK NO LATER THAN 2:00 P.M. CENTRAL TIME ON OCTOBER XX, 2014, AND BEAR THE CLAUSE "DRAWN UNDER AMEGY BANK N.A. LETTER OF CREDIT NO. SC 8427, DATED OCTOBER XX, 2013".

WE HEREBY ENGAGE WITH YOU THAT DRAFT(S) AND/OR DOCUMENTS PRESENTED UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT THAT SUCH DRAFT AND/OR DOCUMENTS WILL BE DULY HONORED UPON PRESENTATION TO US. OUR OBLIGATIONS HEREUNDER SHALL NOT BE SUBJECT TO ANY CLAIM OR DEFENSE BY

REASON OF THE INVALIDITY, ILLEGALITY, OR UNENFORCEABILITY OF ANY OF THE AGREEMENTS UPON WHICH THIS LETTER OF CREDIT IS BASED.

SHOULD YOU HAVE ANY QUESTIONS REGARDING THIS LETTER OF CREDIT, PLEASE CONTACT OUR INTERNATIONAL DEPARTMENT AT 713-235-8800.

EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, THIS LETTER OF CREDIT IS SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES 1998 (ISP98), INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590.

AUTHORIZED SIGNATURE

AUTHORIZED SIGNATURE

LETTER OF CREDIT NUMBER SC 8427

PAGE x OF x

Letter of Credit No. _____

Date: _____

STATE OF UTAH
UTAH DIVISION OF OIL, GAS AND MINING
1594 West North Temple Suite 1210
Box 145801
Salt Lake City, Utah 84114-5801 [this address required if using United States Postal Service for delivery]

STATE OF UTAH
UTAH DIVISION OF OIL, GAS AND MINING
1594 West North Temple Suite 1210
Salt Lake City, Utah 84116 [this address required if using any other delivery service]

Re: [name of mine operator, mine name, DOGM issued permit number]

Gentlemen and Ladies:

I. _____ [Name of Bank] ("Bank"), of _____ [city/state], hereby establishes this irrevocable letter of credit (the "Letter of Credit") in favor of the Utah Division of Oil, Gas and Mining ("Division") for an aggregate amount not to exceed \$ [reclamation cost estimate] in United States dollars ("Face Amount") effective immediately, on behalf of _____ ("Operator") for _____ mining operation under Mine Permit No. _____.

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 _____ [expiration date] or (b) the date upon which sufficient documents are executed by the Division to release _____ [Operator] from further liability for reclamation of the _____ [mine name], _____ [mine permit #] with notice to Bank or Bank by the Division 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 90 days prior to the expiration date the Bank gives notice to the Division by any courier service or by registered United States mail 'return receipt requested' that the Bank elects NOT to renew the Letter of Credit.

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 Bank, _____ -

_____ [address]. At the Division's sole election, the Division 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.

5. If the Bank receives the Division's sight draft(s) and certificate(s) as provided in Paragraph No. 4 above on or before the expiration or termination of this Letter of Credit, the Bank will make such amount as the Division may specify, within the limits of the second sentence of Paragraph No. 4 of this Letter of Credit, available to the Division no later than the close of business, Salt Lake City time, on the second business day following the Bank's receipt of the sight draft and certificate and in such a manner as the Division may specify. "Business Day" means any day that is not a Saturday, Sunday or other day on which commercial banks in the State of _____ [State of issuing Bank Charter] are authorized or required by law to close.

6. The Bank will give prompt notice to the Operator and to the Division Director of any notice received or action filed alleging the insolvency or bankruptcy of the Bank, or alleging any violations of regulatory requirements, which could result in suspension or revocation of the Bank'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, 1993 revision, International Chamber of Commerce Publication No. 500, 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 Bank _____ [address and telephone number], referencing Letter of Credit No. _____.

9. In the event the Bank gives notice to the Division that the expiration date of the Letter of Credit will not be extended, the Division may, until the current expiration date of the Letter of Credit, draw under the Letter of Credit against its sight draft(s) in accordance with the provisions of Paragraph 4.

Very truly yours,

Name of Bank

By: _____
(Name typed or printed)

(Authorized Signature)

Title: _____

EXHIBIT A - SIGHT DRAFT
to
Letter of Credit Number _____

Date	City, County	Letter of Credit No.
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PAY TO THE ORDER OF: _____ Utah Division of Oil, Gas and Mining,
_____ DOLLARS

TO: (Name of Bank or Bank)
and
(Address)

Utah Division of Oil, Gas and Mining
1594 West North Temple Suite 1210
Box 145801
Salt Lake City, Utah 84114-5801

By: _____
Authorized Signature

EXHIBIT B

to
Letter of Credit Number _____

I, _____ a duly authorized representative of the Utah Division of Oil, Gas and Mining, 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 amount to be drawn is necessary to assure or complete reclamation of the _____ (name of mining project), number _____ (permit number) in accordance with applicable law.

The Utah Division of Oil, Gas and Mining

By: _____
Authorized Signature
The Utah Division of Oil, Gas and Mining

Date _____