



Surety Bonds for the Energy Industry

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main 713 355 3100



HCC Surety Group
601 S. Figueroa Street, Suite 1600, Los Angeles, California 90017
main 310 649 0990 facsimile 310 649 0416

No. _____

COLLATERAL SECURITY AGREEMENT AND RECEIPT

Principal(s): _____
(Name(s) as it appear(s) on the General Indemnity Agreement)

Address: _____
(Street) (City) (State) (Zip)

Owner of Collateral Security: _____
(Name)

Address: _____
(Street) (City) (State) (Zip)

Social Security # or Tax I.D. #: _____

Owner of Collateral Security: _____
(Name)

Address: _____
(Street) (City) (State) (Zip)

Social Security # or Tax I.D. #: _____

American Contractors Indemnity Company, U. S. Specialty Insurance Company, United States Surety Company and/or Texas Bonding Company (hereinafter, collectively, the "Surety") accepts the collateral transfer of the following security from the party or parties designated above as Owner(s) (hereinafter, collectively, the "Owner") and/or the Principal(s) (hereinafter, collectively, the "Principal"). The collateral identified below (hereinafter, the "Collateral") is deposited for the benefit of the Surety and its co-sureties, reinsurers, successors and assigns, in conjunction with an application for bonding credit, for good consideration, and under the agreements and upon the conditions hereinafter stated:

DESCRIPTION OF COLLATERAL:

1. Letter of Credit for: \$ _____
No.: _____
Issue Date/Expiration Date: _____
Bank (Name, Address & Ph): _____

2. Deed/Mortgage: \$ _____
Date: _____
Street Address: _____

Deed of Trust/Mortgage is incorporated herein for all purposes and violation of this Collateral Security Agreement and Receipt shall be a condition of default under the Deed of Trust/Mortgage. Should terms of Deed of Trust/Mortgage conflict with the terms of this Agreement, Deed of Trust/Mortgage shall be controlling.

3. Other: (cash, cash equivalents, stocks, bonds, etc.) _____

AGREEMENTS AND CONDITIONS

A. Purpose and Use of Collateral

1. For valuable consideration, receipt of which is hereby acknowledged, the Owner hereby grants a security interest in the Collateral together with any proceeds, product, increase in value and income including rents thereon, and any additional or replacement collateral. The Collateral is hereby pledged, whether held by a third party or deposited with the Surety, as security to unconditionally and fully protect the Surety in connection with any and all bonding obligations as may exist or be created in the future between the Owner, the Principal, any current or hereafter created or acquired subsidiary, affiliate, joint venture, or other legal entity in which the Owner or Principal has a substantial, material, or beneficial interest, or any other third party at the request of the Owner, Principal or Indemnitors. The Surety may enforce the terms of the Collateral Security Agreement and Receipt (hereinafter, the "Agreement") to protect and/or reimburse the Surety:
 - i. For the enforcement and fulfillment of the provisions of the General Indemnity Agreement, Agreement of Indemnity, and/or other indemnity agreement (hereinafter, the "Indemnity Agreement");
 - ii. Against any and all demands, liabilities, losses, costs, damages, attorneys' fees and expenses, investigative fees and expenses, accountants' fees and expenses, engineering and other professional or consultants' fees and expenses of any kind, in-house attorneys' fees and expenses, interest, court costs and any and all other types of losses, costs or expenses of whatsoever kind or nature, which the Surety may sustain and/or incur and which arise by reason of or in any manner in consequence of, no matter how remotely, the execution or procurement by the Surety of any bonds issued or procured by the Surety on behalf of the Principal, recognizance, undertaking or other obligation, regardless of when issued or incurred (all of which, together with any continuations and modifications thereof, are hereinafter referred to as the "Bonds"), heretofore or hereafter executed, assumed or procured by the Surety at the instance or request or on behalf of either the Owner or the Principal;
 - iii. For the payment of all premiums on such Bonds and all other items of indebtedness due to the Surety and/or its agent from the Principal or Owner;
 - iv. For the performance of every agreement (including continuations or modifications thereof, with or without consent of the Owner) made by the Owner or by any Principal concerning said Bonds;
 - v. To secure and indemnify the Surety from any and all losses, costs, interests, expenses, and/or legal fees which Surety may incur or become liable for under the terms and provisions of all the agreements provided by the Owner and/or the Principal to the Surety, including but not limited to any Indemnity Agreement.
2. To accomplish the purposes of such Collateral deposit, the Surety is authorized, and hereby appointed as attorney-in-fact for the Owner to act at any time and without notice or legal process, to sell, cash, surrender and use said Collateral, and to apply the Collateral or any proceeds to payment of or reimbursement in accordance with the terms of the Indemnity Agreement, as it may elect; and, at its option and in its sole discretion, to sell any of said Collateral security at public or private sale to itself or to any person, or to deposit, liquidate, convert, cash, exchange, renew or dispose of said Collateral or the proceeds thereof, in any manner, in such form and on such terms as it deems proper.
3. Owner represents him/her/itself to be the sole owner(s) of the Collateral, and agrees to save the Surety harmless from any loss, costs, expenses, damages or attorneys' fees arising from claims to any part of the Collateral by any person(s) and/or entity claiming adversely to the Owner or Surety. The Undersigned hereby appoints the Surety or the Surety's lawfully designated representative to execute any form(s) or document(s) which may be necessary to perfect the Surety's lien(s) on such Collateral including but not limited to forms proscribed by the Uniform Commercial Code such as form UCC-1, UCC-2 and UCC-3.
4. If the Collateral, any substitutions thereof, or additions thereto, shall for any reason be of a value insufficient for the Surety's protection, in the Surety's opinion, the Owner and/or the Principal shall, upon demand, deposit additional collateral satisfactory to the Surety, of a value at least equal to the amount of the Bonds. If the Owner and/or the Principal do not deposit additional collateral within five (5) days after demand, the Surety may sell, deposit, invest, convert, cash, liquidate, exchange, renew, or dispose of the Collateral, at its discretion, including a public or private sale and the Surety may be the purchaser at such sale.
5. The Surety shall not be liable for any loss or depreciation of the Collateral or the proceeds thereof, or damage thereto, and the Surety assumes no responsibility for the earning of any income thereon. In connection with any certificate of deposit or any other instrument evidencing the deposit of money with any person, firm or corporation included in the Collateral, it is understood

that the Owner has selected the depository, or appointed the Surety to select the depository and the Owner assumes full responsibility for the safety of the deposited funds.

B. Types of Collateral

1. **Cash.** If the Collateral pledged herein is in the form of cash, the Collateral is being delivered to the Surety to be held in the Surety's name. Ownership and control of the Collateral is vested in the Surety until all Bonds are exonerated in accordance with Section D of this Agreement. The Surety will pay simple interest at a rate of one half of one percent (0.5%) per annum. The Surety is entitled to retain any amount of accrued interest earned in excess of the stated rate. If paid, interest will be paid in accordance with Section D of this Agreement as long as the Owner delivers to the Surety an executed IRS Form W-9 or W-8. When IRS Form W-8 is applicable, the Surety will withhold U.S. tax as required by IRS Pub. 515. In the event the Owner fails to deliver to Surety an executed IRS Form W-9 or W-8 within thirty (30) days subsequent to the release of Collateral to the Owner, the Owner shall forfeit all rights to interest. Notwithstanding anything to the contrary in this Agreement, any interest paid to the Owner upon the release of the Collateral may be greater than or less than the interest received by the Surety on such Collateral. Interest shall not be paid on Collateral deposited with the Surety for ninety (90) days or less.
2. **Irrevocable Letter of Credit.** If the Collateral pledged herein is in the form of an Irrevocable Letter of Credit (hereinafter "ILOC"), it is the responsibility of the Owner and/or Principal to provide the Surety with a notice of renewal of that ILOC at least forty-five (45) days prior to its expiration date. This responsibility of renewal by the Owner and/or Principal shall continue for every renewal period unless the Owner and/or Principal receive written notification from the Surety that no renewal will be required. Should the Owner and/or Principal fail to provide a notice of renewal to the Surety within the time allowed under this paragraph then the Surety may require the Owner and/or Principal to pay a nonrefundable processing fee of \$300.00 to the Surety and any other actual expenses incurred by the Surety in obtaining such a renewal. In addition to this fee, the Surety may exercise its right to draw on the ILOC and such proceeds shall be considered substitute Collateral under this Agreement.

The Surety reserves the right, in its sole and absolute discretion, to accept or reject the issuing bank of the ILOC. At any time following receipt of an ILOC by the Surety, the Surety may, in its sole and absolute discretion, demand a replacement ILOC from a different issuing bank. The Owner and/or Principal shall, upon demand by the Surety, provide a replacement conforming ILOC within ten (10) calendar days. Should the Owner and/or Principal fail to provide a replacement ILOC to the Surety within the time allowed under this paragraph, the Surety may exercise its right to draw on the ILOC and such proceeds shall be considered substitute Collateral under this Agreement and/or require the Owner and/or Principal to pay a nonrefundable processing fee of \$300.00 to the Surety in addition to any other actual expenses incurred by the Surety in obtaining such a renewal.

The Surety, in its sole and absolute discretion, may draw up to the full amount of the ILOC to satisfy any claims made or may be made on/against the Surety and/or all items of indebtedness due to the Surety under or for said Bonds whether known or unknown to the Surety at the time of the draw.

3. **Real Property.** If the Collateral is a security interest in real property, the Surety may require the Owner and/or Principal to pay a file initiation and processing fee of \$350.00 in addition to any actual expenses incurred by the Surety, whichever is greater. Upon the Surety's approved release of such Collateral, the Surety may require the Owner and/or Principal to pay a nonrefundable reconveyance fee which will not exceed the maximum allowed by law at the time the reconveyance is executed.
4. **Securities.** In the event non-interest bearing securities or instruments are deposited with the Surety as Collateral, there shall be no duty on the part of the Surety to deposit or place such Collateral in an interest-bearing account or arrangement, or segregate funds, securities or other instruments from others held by the Surety.
5. **Miscellaneous.** All other types of property deposited with and/or assigned to the Surety as Collateral shall be subject to the terms of this Agreement.

C. Substitution of Collateral

1. Any substitution of the Collateral shall be at the discretion of Surety as to the value, form, and source and the Owner agrees that any substitution shall be subject to the terms of this Agreement and of any Indemnity Agreement.
2. Should the Owner and/or Principal:
 - i. Request the Surety to substitute the Collateral;
 - ii. Request the Surety to subordinate its previously secured interest in real property; or

- iii. Request a change or alteration, in any manner, of the Collateral

the Owner and/or Principal acknowledge that the Surety may require the Owner and/or Principal to pay, in advance to the Surety, a nonrefundable file initiation and processing fee of \$300.00 and any expenses incurred in acting upon the Owner and/or Principal's request. The Owner and/or Principal agree that the Surety is under no obligation to comply with any requests and all prepaid fees are nonrefundable.

D. Release of Collateral

- 1. In General. The Surety may consider release of the Collateral upon its receipt of written evidence and/or information satisfactory to the Surety (in the Surety's sole discretion) of the following:

- i. Discharge and exoneration from all liability under the Bonds;
- ii. Proof of ownership of the collateral by the applicant requesting its release; and
- iii. Payment of all amounts due to the Surety from the Owner and/or Principal as provided herein and/or in any Indemnity Agreement.

The Owner and Principal recognize that differences of opinion with regard to proof of ownership and of termination of the Surety's liability require the giving of considerable latitude to the Surety in the determination of what evidence is satisfactory. In the event the Surety determines the evidence is satisfactory to support a release of the Collateral, the Surety shall, within a reasonable period of time, return the Collateral or the proceeds thereof, less any deductions pursuant to the terms of this Agreement and/or any Indemnity Agreement.

- 2. Bond Specific Collateral Release. Release of the Collateral by the Surety will further be determined in accordance with the specific types of said Bonds as detailed hereinbelow:

- i. Contract and Subdivision Bonds. The Surety will retain the Collateral for a minimum of ninety (90) days after project or contract completion and acceptance by the Owner/Obligee. Upon expiration of ninety (90) days from acceptance by the Owner/Obligee, the Surety will consider releasing the Collateral if the following conditions are met:
 - a. There are no circumstances which may cause a claim, in the sole judgment of the Surety;
 - b. No claim has been made against any Bonds for which the Collateral was posted;
 - c. The Principal has fulfilled all obligations under the terms of the bonded contract(s).
- ii. Court Bonds. There are various means of exonerating a court bond, i.e. final judgment, stipulation, dismissal, etc. The Owner agrees to submit documents to be considered for exoneration to the Surety (prior to execution or filing of said documents with any court) for the Surety's pre-approval.
- iii. Lost Note Bonds. The Surety will consider releasing the Collateral upon receipt by the Surety of evidence which demonstrates one or more of the following events has/have occurred:
 - a. Final judgment confirming quiet of title in favor of the Principal;
 - b. Recorded substitution of trustee and deed of full reconveyance executed by deed of trust beneficiary; or
 - c. Expiration of all applicable statute of limitations.
- iv. Lien Release Bonds. The Surety will consider a release of the lien release bond in the form approved by the Surety and executed by the Obligee, or a final judgment fully exonerating the Surety from the lien release bond.
- v. All Other Bonds or Classes of Business. The Surety will consider releasing the Collateral based on its review of underwriting and other criteria which may be in force at the time of the request for release of the Collateral.

- 3. Until the requirements of Section D(2) of this Agreement are satisfied, the Surety will not consider release of the Collateral and will have no obligation to the Owner of the Collateral to release the Collateral. Upon exoneration of said Bonds, the Collateral held by the Surety may be subject to state unclaimed property laws.

E. Additional Collateral Provisions

- 1. This Agreement may not be modified, amended, assigned, negotiated, transferred or changed without the express written consent of a duly authorized officer of the Surety.

2. By exercising or failing to exercise any of its rights, options or elections hereunder, the Surety shall not be deemed to have waived any breach or default on the part of any of the Owner and/or Principal or to have released any undersigned from any Owner and/or Principal of his/her/its/their obligations hereunder, unless such waiver or release is in writing and is signed by a duly authorized officer of the Surety. In addition, the waiver by the Surety of any breach or default hereunder shall not be deemed to constitute a waiver of any succeeding breach or default.
3. The Surety, the Owner, and the Principal agree that the place of performance of this Agreement, including the promise to pay the Surety, shall be in Los Angeles County, California, and venue for any suit, arbitration, mediation or any other form of dispute resolution shall be, at Surety's option, the location of the collateral or Los Angeles County, California.
4. All provisions of the Indemnity Agreement are incorporated herein by reference. The Owner understands that he/she/it is entitled to receive a copy of the Indemnity Agreement and the Surety agrees to provide said copy to the Owner, upon request.
5. It is understood and agreed by the Owner and Principal that the rights, powers and remedies given to the Surety under this Agreement shall be and are in addition to, and not in lieu of, any and all other rights, powers and remedies which the Surety may have or acquire against the undersigned or others whether by the terms of any other agreement, including the Indemnity Agreement, or by operation of law or otherwise.
6. The Surety shall be under no obligation to proceed against any or all of the Collateral before proceeding against any Principal or indemnitor of any Indemnity Agreement.
7. If any part of this Agreement is found by a court of competent jurisdiction to be contrary to law, only that part of the Agreement is null and void and the balance of the Agreement continues in force until terminated or amended.

Dated at _____ this _____ of _____, 20____.

SURETY

OWNER - Collateral

By: _____
Signature, Attorney-in-Fact

By: _____
Signature, as Officer and/or Individually

Print Name of Authorized Attorney-in-Fact

Print Name of Owner

PRINCIPAL

OWNER - Collateral

By: _____
Signature, as Officer and/or Individually

By: _____
Signature, as Officer and/or Individually

Print Name of Authorized Agent of Principal

Print Name of Owner

PRINCIPAL

OWNER - Collateral

By: _____
Signature, as Officer and/or Individually

By: _____
Signature, as Officer and/or Individually

Print Name of Authorized Agent of Principal

Print Name of Owner

CERTIFICATE OF ACKNOWLEDGEMENT OF NOTARY PUBLIC

STATE OF _____)
COUNTY OF _____)

On _____ before me, _____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Signature of Notary Public)

CERTIFICATE OF ACKNOWLEDGEMENT OF NOTARY PUBLIC

STATE OF _____)
COUNTY OF _____)

On _____ before me, _____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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(Signature of Notary Public)

DRAFT