

THE AMERICAN INSTITUTE OF ARCHITECTS



AIA Document A312

Bond No.  
08960194

## Payment Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

**CONTRACTOR (Name and Address):**

**GRUPO UNIDOS POR EL CANAL** consortium  
composed by the following Members: **SACYR**  
**VALLEHERMOSO, S.A., IMPREGILO S.p.A., JAN DE**  
**NUL N.V., CONSTRUCTORA URBANA S.A.**

**SURETY (Name and Principal Place of Business):**

**ZURICH AMERICAN INSURANCE COMPANY**  
3910 Keswick Road  
Baltimore, MD 21211  
USA

**OWNER (Name and Address):**

**AUTORIDAD DEL CANAL DE PANAMA**  
Centro de Capacitacion Ascanio Arosemena  
Edificio 705, Ala Gerencial, Balboa  
Panama, Republica of Panama

**CONSTRUCTION CONTRACT**

Date: **15 JUL 2009**

Amount: **Total Base Price of US\$3,118,880,001.00 and Total of the Provisional Sum Prices of US\$102,751,383.00**

**Description (Name and Location):**

**Design and construction of the Third Set of Locks, Panama Canal**

**BOND**

☐ Date (Not earlier than Construction Contract Date):

☐ Amount: **US\$50,000,000.00**

☐ Modifications to this Bond:

☐ None

☒ See Page 3

**CONTRACTOR AS PRINCIPAL**

Company as Lead Member of the

Contractor: **SACYR VALLEHERMOSO**  
**S.A.**

**SURETY**

Company: **ZURICH AMERICAN** (Corporate Seal)  
**INSURANCE COMPANY**

Signature: \_\_\_\_\_

Name and Title: \_\_\_\_\_

**Luis del Rivero**

**P.O.A.**

Signature: \_\_\_\_\_

Name and Title: **Tracey D. Watson,**  
**Attorney-in-Fact**

(Any additional signatures appear on page 6)

(FOR INFORMATION ONLY-Name, Address and Telephone)

**AGENT or BROKER:**

**Marsh USA Inc.**  
1166 Avenue of the Americas  
New York NY 10036  
USA

**OWNER'S REPRESENTATIVE (Architect, Engineer or other party):**

STATE OF NEW YORK  
COUNTY OF NEW YORK  
SWORN TO BEFORE ME

THIS ..... DAY OF ..... 2009

**By: Tracey D. Watson.**

**STANLEY TISCHLER**

**COMMISSIONER OF DEEDS**

CITY OF NEW YORK-NO. 4-3961  
CERTIFICATE FILED IN NEW YORK COUNTY  
COMMISSION EXPIRES MAY 1, 2010



1. The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.

2. With respect to the Owner, this obligation shall be null and void if the Contractor:

2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and

2.2 Defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity whose claim, demand, lien or suit is for the payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Section 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.

3. With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.

4. The Surety shall have no obligation to Claimants under this Bond until:

4.1 Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Section 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

4.2 Claimants who do not have a direct contract with the Contractor:

.1 Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and

.2 Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and

.3 Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Section 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.

5. If a notice required by Section 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.

6. When the Claimant has satisfied the conditions of Section 4, the Surety shall promptly and at the Surety's expense take the following actions:

6.1 Send an answer to the Claimant, with a copy to the Owner, within 60 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

6.2 Pay or arrange for payment of any undisputed amounts.

7. The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

8. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

9. The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Section 4.1 or Section 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this



Bond shall be construed as a statutory bond and not as a common law bond.

14. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

#### 15. DEFINITIONS

15.1 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the

Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

15.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof. □

#### 16. MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

The following shall be added at the end of Section 7 of the Bond:

Claims for and in respect of labor shall take precedence over all other claims under the Bond.

The following shall be added at the end of Section 10 of the Bond:

Further, the Surety authorizes the Contractor and the Owner to make any addendum, variation or amendment to the Construction Contract or the Works without reference to the Surety, and agrees that this Bond shall apply to such addendum, variation or amendment. The obligations and liabilities of the Surety shall not in any way be discharged or reduced by any allowance of time or other indulgence whatsoever by the Owner to the Contractor, or by any variation or suspension of the Works to be executed under the Construction Contract, or by amendments to the Construction Contract or to the constitution of the Owner or Contractor, or by any other matters, whether with or without the knowledge or consent of the Surety. The Surety's rights are subject to the rights of the Owner set forth in any collateral warranty required to be provided under Sub-Clause 4.1.8 of the Construction Contract.

Notwithstanding any rights the Surety may otherwise possess, the Surety expressly acknowledges that Sub-Clauses 14.2A and 14.2B of the Construction Contract provide for specific pre-payments to the Contractor therein and consents to and agrees to those payments, and the Surety waives any objections, defenses, or claims the Surety may have, if any, against Owner in regards to the Surety's obligations hereunder as a result of those payments.

Section 11 of the Bond shall be deleted and replaced with the following wording:

No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after one hundred and eighty days after the date of the third and final publication in a Panamanian National Newspaper of the Notice of Completion of the Works (as such notice is defined in the Construction Contract)

Section 13 of the Bond shall be deleted and replaced with "Not Used".

Add new Section 17 as follows:

A) Upon seven (7) days written notice to the Surety, the Owner may pay to any Subcontractor (as defined in the Construction Contract) the sums owed to them by the Contractor prior to the date of termination. Upon payment, the rights of the Subcontractors under the Payment Bond in respect of such sums are assigned to the Owner. The Surety reserves the right to contest the reasonableness of the amounts paid by the Owner.

B) The Surety acknowledges that pursuant to the terms of any collateral warranty required to be provided under Sub-Clause 4.1.8 of the Construction Contract, the Owner may accept assignment by the subcontractor of its rights under this Bond to the extent the Owner pays the subcontractor for work which the subcontract performs for the Contractor. The Surety reserves the right to contest the reasonableness of the amounts paid by the Owner to the subcontractor.

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company: **For and on behalf of SACYR VALLEHERMOSO, SA, and on behalf of the Lead Member and on behalf of the Contractor**

Signature:

Name and Title:

Address: Paseo de la Castellana 83-85, Madrid, Spain

*LUIS DEL RIVERO KENSID  
(PRESIDENTE) POA*





CONTRACTOR AS PRINCIPAL

Company:

**For and on behalf of IMPREGILO S.P.A and for and on behalf of the Contractor**

(Corporate Seal)

**IMPREGILO S.p.A.**

*(Ing. Alberto Rubegni)*

Amministratore Delegato

Signature: \_\_\_\_\_

Name and Title: \_\_\_\_\_

Address: Viale Italia nr. 1, Sesto San Giovanni (MI), Italy



CONTRACTOR AS PRINCIPAL

Company:

For and on behalf of JAN DE NUL N.V and for and on behalf of the Contractor

(Corporate Seal)

Signature:

Name and Title:

Address: Trigel 60, 9308 Hofstade-Aalst, Belgium

Jan DE NUL N.V.  
The Managing Director



**JAN DE NUL N.V.**

Trigel 60

9308 HOFSTADE-AALST

(Belgium)

ir J.P.J. DE NUL

*Seen for legalisation of the signature  
of Mr J.P.J. DE NUL  
by me, D. Breckpot, notary residing at  
Aalst, Belgium, on this 4 day of August 2009*



*Im...*

## APOSTILLE

(Convention de La Haye du 5 octobre 1961)

1. Pays: Belgique
2. Le présent acte public a été signé par: Breckpot, Daniele
3. Agissant en qualité de: Notaire
4. Est revêtu du sceau / timbre de: Notaire  
Aalst

### Attesté

5. A Bruxelles
6. Le: 05/08/2009
7. Par le Service public fédéral Affaires étrangères, Commerce extérieur et Coopération au Développement
8. Sous le n°: **9805090805745050**
9. Sceau/timbre:
10. Signature:

*Lacroix Nathalie*

Lacroix Nathalie



CONTRACTOR AS PRINCIPAL

Company:


(Corporate Seal)

For and on behalf of CONSTRUCTORA URBANA, S.A. and for and on behalf of the Contractor

Signature

Name and Title:

Address: Via Espana Final Y Calle 19, Rio Abajo, Panama City, Panama

 Rogelio E. Aleman President

Yo, **DIOMEDES EDGARDO CERRUD**, Notario Público Quinto del Circuito de Panamá, con Cédula Número 8-171-301

CERTIFICO:

Que dada la certeza de la identidad de (los) sujetos(s) que firmó (firmaron) el presente documento, su(s) firma(s) es (son) auténtica(s).

Panamá

03 AGO 2009

  
**LCDO. Diomedes Edgardo Cerrud**  
Notario Público Quinto



Esta Autorización no implica responsabilidad cuanto al contenido del documento

APOSTILLE

Convention de la haye du 5 octobre 1961

1 Pais PANAMA

El presente documento público

2 ha sido firmado por Diomedes E. Cerrud

3 quien actua en calidad Notario

4 y esta revestido del sello/timbre de ☒

CERTIFICANDO

05 AGO 2009

5 EN Panamá 6 el día

7 por DIRECCION ADMINISTRATIVA

8 Bajo el número 6447

9 Sello/timbre 10 Firma Diomedes E. Cerrud

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