

**ANNEX B-1**

**FORM OF BID SECURITY LOC**

**IRREVOCABLE LETTER OF CREDIT**

Date: \_\_\_\_\_, 20\_\_<sup>1</sup>

Letter of Credit No. \_\_\_\_\_

Beneficiary: Autoridad del Canal de Panamá  
Altos de Balboa  
Balboa  
República de Panamá

Applicant: \_\_\_\_\_  
[ADDRESS]

Maximum Stated Amount: \$50,000,000.00 (Fifty Million U.S. Dollars)

Expiration Date: \_\_\_\_\_, 20\_\_<sup>2</sup>

At the request and for the account of [insert names of each Member in Tenderer Consortium], (the “Applicant”) the undersigned [insert name of issuing bank] (the “Bank”) hereby establishes this clean, Irrevocable Letter of Credit (this “Letter of Credit”) in your favor as Beneficiary (“Beneficiary”) for drawing up to the Maximum Stated Amount set forth above, effective \_\_\_\_\_, 20\_\_.<sup>3</sup> As used in this Letter of Credit, “Dollars” and “\$” means the lawful currency of the United States of America.

This Letter of Credit is issued, presentable and payable at the Bank’s office at [address] Panama, Attention: \_\_\_\_\_ and expires with the Bank’s close of business on \_\_\_\_\_, 20\_\_.<sup>4</sup> This Letter of Credit cannot be modified or revoked without your written consent.

This Letter of Credit is issued in connection with the Applicant’s tender dated \_\_\_\_\_ (the “Tender”) with respect to a certain contract for the Design and Construction of the Third Set of Locks (as amended, supplemented or otherwise modified, the “Contract”) in response to your Request For Proposal for Design and Construction of the Third Set of Locks, number 76161 (as amended, supplemented or otherwise modified, the “RFP”) and the conditions of your invitation (the “Conditions of Invitation”) contained in that certain Instructions to Tenderers in Volume 1, Part 1 of the RFP (the “Instructions to Tenderers”).

This Letter of Credit is valid and effective immediately and, on and after the date hereof, drawings hereunder may be made by you from time to time by presentation of your sight draft drawn on the Bank at our office specified above on or before the expiry date hereof in the form of Annex I hereto (each, a “Notice of Claim”), in each case appropriately completed and purported signed by one of your authorized officers. We shall not be obligated to check the

<sup>1</sup> Insert date no later than date of Tender.

<sup>2</sup> Date which is sixty (60) calendar days beyond Tender Validity Period.

<sup>3</sup> Insert same date as under note 1.

<sup>4</sup> Insert same date as under note 2.

authenticity of such signature. Our only obligation with regard to a drawing under this Letter of Credit shall be to examine the certificate presented and to pay in accordance therewith, and we shall not be obligated to make any inquiry in connection with the presentation of such certificate. Multiple and partial draws are allowed.

Drawings hereunder may be made by you from time to time prior to the expiration hereof at any time during our business hours at the aforementioned address in Panama, on any Business Day (as defined below). If a drawing hereunder is presented by you (a) at or prior to 11:00 AM Panama City time on any Business Day; we hereby agree to honor each such drawing on or before 3:00 PM, Panama City time on the same day and (b) after 11:00 AM Panama City time on any Business Day, we hereby agree to honor each such drawing on or before 10:00 AM Panama City time on the next Business Day; *provided* that, in the case of clauses (a) and (b) above, such drawing is made in accordance with the foregoing sentence and the documents presented in connection therewith conform to the terms and conditions of this Letter of Credit. “Business Day” means a day on which we are open at the aforesaid address for the purpose of conducting commercial banking business.

If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you notice promptly (but in any case no later than one (1) Business Day after such demand) that the demand for payment was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefore and that we will upon your instructions hold any documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effected in conformity with this Letter of Credit, you may attempt to correct any such non-conforming demand prior to 11:00 AM Panama City time on the Expiration Date stated above.

All amounts paid by the Bank under this Letter of Credit shall be paid in immediately available funds, by wire transfer to the account specified by you in the sight certificate in the form of Annex I hereto, free and clear of, and without deduction for, any taxes, duties, fees, liens, set-offs or other deductions of any kind and regardless of any objection of any third party.

This Letter of Credit sets forth in full the terms of our undertaking, and this undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to or to which this Letter of Credit relates, except for the Annexes attached hereto. The obligation of the Bank under this Letter of Credit is the individual obligation of the Bank and is not contingent or conditioned upon reimbursement by the Applicant or any other party with respect thereto, or upon the Bank’s ability to obtain, perfect or realize upon any lien or security interest in any collateral, or any other reimbursement.

This Letter of Credit is subject to and governed by the laws of the Republic of Panama and the International Standby Practices ISP98 of the International Chamber of Commerce (Publication No. 590) and in the event of any conflict the laws of the Republic of Panama will control.

Very truly yours,

[ISSUING BANK]

By:

Name:

Title:

ANNEX I

NOTICE OF CLAIM

\_\_\_\_\_, 20\_\_

[NAME OF ISSUING BANK]

[ADDRESS]

All terms used herein which are defined in the Letter of Credit No. \_\_\_\_\_, dated as of \_\_\_\_\_, 20\_\_ issued by you have the same meanings when used herein. All capitalized terms used in this Notice of Claim which are defined in the Contract shall have the meanings given them therein.

The undersigned hereby certifies and states that: [choose applicable paragraph(s)]

- (a) The Applicant was awarded the Contract and the Applicant has failed to comply with sub-clause 1.6 (*Contract Agreement*) of the Contract, or
- (b) The Applicant was awarded the Contract and the Applicant has failed to provide any or all of the following instruments or agreement:
  - (i) a validly issued and enforceable Performance Bond, fulfilling the terms of and otherwise in accordance with Sub-Clause 4.2A (*Performance Bond*) of the Contract ; and/or
  - (ii) a validly issued and enforceable Payment Bond, fulfilling the terms of and otherwise in accordance with Sub-Clause 4.2C (*Payment Bond*) of the Contract ; and/or
  - (iii) a validly issued and enforceable Parent Company Guarantee, fulfilling the terms of and otherwise in accordance with Sub-Clause 1.7A.4 (*Joint and Several Liability*) of the Contract.

The Beneficiary is making a drawing under the Letter of Credit in the amount of Fifty Million U.S. Dollars (\$50,000,000.00). You are hereby directed to make payment of the requested drawing to Autoridad del Canal de Panamá; [account details].

AUTORIDAD DEL CANAL DE PANAMÁ

By:

Name:

Title: