

| | | |
|---|------------------------------------|----------------------------|
| PANAMA CANAL AUTHORITY | VARIATION | PAGE 1 OF 12 |
| 1. REQUEST FOR PROPOSAL No.: 76161 | 2. CONTRACT No.: CMC-221427 | 3. DATE: August 7, 2014 |
| | | 4. VARIATION No.: 113 |

5. ISSUED BY:

PANAMA CANAL AUTHORITY
Employer's Representative
Locks Project Management Division
Building 740, Corozal
Panama, Republic of Panama

| | |
|---|---|
| 6. NAME AND ADDRESS OF CONTRACTOR (INCLUDE PHYSICAL & POSTAL ADDRESS) Grupo Unidos por el Canal, S.A. Building 22B, Brujas Road Cocoli, Republic of Panama | 7. CONTRACTOR'S TELEPHONE NUMBER: 507-316-9900 |
| | 8. CONTRACTOR'S FACSIMILE NUMBER: |

9. VARIATION:

The contract referred to in item No. 2 is hereby varied as set forth in item 10, entitled "DESCRIPTION OF VARIATION".
YES. NO. The contractor shall send a copy, duly signed, of this Variation to the Employer's Representative/Contracting Officer.

| | |
|---|---|
| | 9 A. THIS VARIATION IS EXECUTED ON THE BASIS OF: (Specify the legal authority). THE VARIATION DESCRIBED IN ITEM 10 IS HEREBY INCORPORATED AND MADE A PART OF THE CONTRACT. |
| | 9 B. THE CONTRACT REFERRED TO IN ITEM NO. 2, IS VARIED TO INCORPORATE ADMINISTRATIVE CHANGES (such as the paying office, account numbers, etc.). |
| X | 9 C. THIS BILATERAL AGREEMENT IS SIGNED AND INCORPORATED INTO THE CONTRACT REFERRED TO IN ITEM NO. 2 OF THIS FORM, ON THE BASIS OF: (Specify the legal authority) Volume III, Conditions of Contract, Sub-Clause 1.16 [Entire Agreement], 4 th Paragraph |
| | 9 D. OTHER. (Specify manner and the legal authority). |
| | 9 E. ACCOUNT NUMBER (If required): |

10. DESCRIPTION OF THE VARIATION (List in accordance with the order of the Contract. If additional space is required, use blank sheets).

See Variation Agreement Enclosed

Except for the variation(s) herein specified, all other terms and conditions of the Contract remain unchanged.

| | |
|---|---|
| 11. NAME AND TITLE OF THE PERSON AUTHORIZED TO SIGN (Type or print) Giuseppe Quarla Contractor's Representative | 12. NAME AND TITLE OF THE EMPLOYER'S REPRESENTATIVE/CONTRACTING OFFICER (Type or print) Jorge de la Guardia, Employer's Representative |
| 13. CONTRACTOR  | 14. DATE: 7/8/14 |
| | 15. PANAMA CANAL AUTHORITY  |
| (Authorized signature) | (Employer's Representative/Contracting Officer's signature) |
| | 16. DATE: 7/11/2014 |

This Variation Agreement Number 113, is dated as of the 7th day of August 2014 and made

Between:

Autoridad del Canal de Panama, Building 740, Corozal, Panama, Republic of Panama (hereinafter called the "**Employer**") on the one part,
and
Grupo Unidos por el Canal S.A., of Building 22B, Brujas Road, Cocoli, Panama, Republic of Panama, a corporation organised under the laws of the Republic of Panama, registered under microjacket number 682266, document number 1683284 of the Mercantile Section of the Public Registry Office of the Republic of Panama (hereinafter called the "**Contractor**" and together with the Employer, the "**Parties**") on the other part.

Whereas:

- a) The Employer and the Contractor are party to Contract CMC-221427 for the Design and Construction of the Third Set of Locks, dated August 11, 2009 (as the same has been or may be varied, amended, supplemented or otherwise modified (the "**Contract**")).
- b) The Parties have executed Variation Agreement No. 108 on 1 August 2014, which provides that the amendments to the Contract set out therein will come into effect when the conditions set out in paragraph 9 of Variation Agreement No. 108 have been satisfied (save for the amendment to the Contract set out in paragraph 21 of Variation Agreement No. 108 which came into effect on the date of signature of Variation Agreement No. 108).
- c) The Contractor has requested through RFV No. 259, dated July 29, 2014, that the Employer makes a further advance payment of the Contract Price to the Contractor of USD 30,000,000.00 so that the Contractor could make payment to Cimolai S.p.A, the Lock Gates Fabricator, as set out in RFV No. 259.
- d) Accordingly, the Employer has responded through letter IAE-UPC-2189 dated August 6, 2014 indicating to the Contractor that the Employer has agreed to make a further advance payment of the Contract Price to the Contractor of USD 30,000,000.00 for payment to the Lock Gates Fabricator as set out in RFV No 259, dated July 29, 2014, and that Sub-Clause 14.2 of the Contract be amended to insert provisions relating to this new advance payment, subject to the parties agreeing a formal variation to reflect such revised arrangements.
- e) As a condition to the Employer agreeing to make the further advance payment referred to in sub-paragraph (d) above and the effectiveness of the amendments specified in this Variation Agreement No. 113, the Contractor has agreed to provide the following documents at the following times to the Employer:



- (i) the VO No. 113 Bond Issuer Confirmation no later than 10 Business Days after the date of this Variation Agreement No. 113;
 - (ii) the VO No. 113 Plant and Material Security Modification no later than 10 Business Days after the date of this Variation Agreement No. 113;
 - (iii) the Second Amendment to Advance Payment Joint and Several Guarantee no later than 30 days after the date of this Variation Agreement No. 113; and
 - (iv) the Second Amendment to Advance Payment Parent Company Guarantee no later than 30 days after the date of this Variation Agreement No. 113.
- f) Therefore, subject to the terms of this Variation Agreement No. 113, the Parties have agreed to a variation to the Contract as hereinafter stated, but not further or otherwise.
- g) The Employer wishes to appoint a CPA, who shall be an employee of the Autoridad del Canal de Panama, and who may assist in the Employer's review of the various information, certifications and documentation required to be provided by the Contractor in relation to the matters set out in this Variation Agreement No. 113.

THE PARTIES HEREBY AGREE AS FOLLOWS:

The Employer and the Contractor agree to vary the Contract as follows:

1. In this Variation Agreement No. 113, the words and expressions shall have the same meanings as are respectively assigned to them in the Contract, save as amended below or as expressly stated.
2. It is agreed that this Variation Agreement No. 113 and the modifications contained herein are approved and dated in writing by the authorized representatives of the Contractor and the Employer and in doing so the Parties acknowledge and identify that this is done in accordance with Sub-Clause 1.16 [*Entire Agreement*] of the Contract.
3. The Parties acknowledge and agree that this Variation Agreement No. 113 shall not be deemed to settle any outstanding issues, claims, demands, actions, disputes or proceedings between the Parties including but not limited to those in relation to any delay to the Works (both as to time and costs) and all such issues, claims, demands, actions, disputes or proceedings remain in contention between the Parties and all respective rights, remedies, claims and defenses of the Parties including but not limited to those concerning and arising out of any delay and/or responsibility for delay and the consequences thereof remain fully reserved. The Parties expressly agree that no Party is waiving, making an admission with respect



to, or intending to prejudice any claims, defenses, arguments or remedies that any of them has or may have arising out of events up to and including the date of this Variation Agreement No. 113 or in the future concerning their respective performance under and in relation to the Contract. For the avoidance of doubt, all delay-related issues between the Contractor and the Employer, and their respective rights and remedies regarding responsibility for delay and the consequences thereof, remain fully reserved. Nothing in this Variation Agreement No. 113 will have the effect of changing or extending the Time for Completion or any Milestone Dates under the Contract which, as at the date of this Variation Agreement No. 113, remain as originally stated in the Contract, it being acknowledged that the Contractor has raised among its claims, delay claims which could affect the Time for Completion, and which claims the Employer denies and is currently contesting.

4. Save in relation to breaches of, or failure by either Party to comply with, the terms of this Variation Agreement No. 113, the Parties agree that they shall have no claims for additional time or money or any other relief or entitlement of any kind as a direct consequence of this Variation Agreement No. 113.
5. Further, the Contractor's obligations as to the progress of the Works and to complete the Works and comply with the Contract remain in all respects unaffected and nothing within this Variation Agreement No. 113 is intended to be a waiver or relaxation of the Contractor's obligations under the Contract, save only as expressly stated herein. The Contract shall remain fully effective as varied herein and the Contract shall have effect as though the provisions contained in this Variation Agreement No. 113 had been originally contained in the Contract.
6. This Variation Agreement No. 113 shall be governed by the Laws of the Republic of Panama and is deemed to be incorporated into and form an integral part of the Contract.
7. The Parties agree to amend Sub-Clause 1.1 [*Definitions*] of the Contract as follows:

The Parties agree to add the following definitions to Sub-Clause 1.1.6 [*Other Definitions*] of the Contract (which shall be added in proper alphabetical order but without any number):

"Advance Payment for Lock Gates - Second" has the meaning provided in Sub-Clause 14.2K [*Advance Payment for Lock Gates - Second*].

"Lock Gates Extraordinary Application - Second" has the meaning provided in Sub-Clause 14.2K [*Advance Payment for Lock Gates - Second*].

"Lock Gates Payment Certification No.1 - Second" has the meaning provided in Sub-Clause 14.2K [*Advance Payment for Lock Gates - Second*].



"Lock Gates Payment Certification No.2 - Second" has the meaning provided in Sub-Clause 14.2K [*Advance Payment for Lock Gates - Second*].

"Variation Agreement No. 113" means Variation Agreement Number 113 dated 7th day of August, 2014 between the Employer and the Contractor.

"Second Amendment to Advance Payment Joint and Several Guarantee" means the amendment to the Advance Payment Joint and Several Guarantee in the form set out in Appendix 6 to Variation Agreement No. 113 with any modifications to such form to be acceptable to the Employer.

"Second Amendment to Advance Payment Parent Guarantee" means the amendment to the Advance Payment Parent Guarantee in the form set out in Appendix 7 to Variation Agreement No. 113 with any modifications to such form to be acceptable to the Employer.

"VO No. 113 Bond Issuer Confirmation" means a written confirmation (or rider, amendment or modification, as applicable), in the form set out in Appendix 1 to Variation Agreement No. 113 and otherwise acceptable to the Employer, from each of (i) the issuer of the Performance Bond, (ii) the issuer of the Payment Bond and (iii) the issuer of the Plant and Material Security, in each case consenting to the modifications to the Contract made pursuant to the terms of Variation Agreement No. 113 and confirming the continuing validity of such bonds notwithstanding such modifications.

"VO No. 113 Plant and Material Security Modification" means in relation to the Plant and Material Security a modification to such Plant and Material Security required to be provided pursuant to Variation Agreement No. 113 or an amendment or re-issuance of the Plant and Material Security providing for the same effect, in either such case, in a form acceptable to the Employer in its sole and absolute discretion.

The Parties agree to amend the following definitions in Sub-Clause 1.1 [*Definitions*] of the Contract as follows:

"Payment Certificate Deductions" shall be amended to read as follows:

"Payment Certificate Deductions" means the deductions to be made from the amount of any Payment Certificates in respect of any of (i) the Advance Payment for Plant (including the Deferred Repayment for Plant), (ii) the Advance Payment for Mobilisation (including the Late Repayment and Deferred Repayment), (iii) the Advance Payment for Key Suppliers (including the Deferred Repayment for Key Suppliers), (iv) the Advance Payment for Specified Suppliers, (v) the Advance Payment for Lock Gates, (vi) the Advance Payment for Specified Expenditures, (vii) the Advance Payment for Lock Gates - Second and (viii) the retention



pursuant to sub-paragraph (c) of Sub-Clause 14.3.3 [*Application for Interim Payment Certificates*] of the Contract.

8. The Parties agree to amend the Contract by adding the following new Sub-Clause 14.2K [*Advance Payment for Lock Gates - Second*]:

14.2K [*Advance Payment for Lock Gates - Second*]

- (a) Subject to sub-paragraphs (b) and (c) of this Sub-Clause 14.2K [*Advance Payment for Lock Gates - Second*], the Employer shall make a further advance payment of part of the Contract Price up to a maximum of USD 30,000,000.00 to be made and repaid in accordance with this Sub-Clause 14.2K in respect of payments which have been made on or after August 1, 2014 or are to be made on or after the date of this Variation Agreement No. 113 to the Lock Gates Fabricator as set out in Appendix 2 to Variation Agreement No. 113 or such other sums as may be certified for payment by the Employer's Representative pursuant to the terms of this Sub-Clause 14.2K (the "**Advance Payment for Lock Gates - Second**").
- (b) At the same time as the Contractor applies for payment by the Employer of any amount of the Advance Payment for Lock Gates – Second pursuant to sub-paragraph (e) of this Sub-Clause 14.2K [*Advance Payment for Lock Gates - Second*], the Contractor shall furnish to the Employer Appendix 2 to Variation Agreement No. 113 duly completed, and signed by the Contractor's Representative.
- (c) The Contractor shall obtain, at its own cost, and furnish to the Employer:
 - (i) the VO 113 Plant and Material Security Modification no later than 10 Business Days after the date of Variation Agreement No. 113;
 - (ii) the VO No. 113 Bond Issuer Confirmation no later than 10 Business Days after the date of Variation Agreement No. 113;
 - (iii) the Second Amendment to Advance Payment Joint and Several Guarantee no later than 30 days after the date of this Variation Agreement No. 113; and
 - (iv) the Second Amendment to Advance Payment Parent Guarantee no later than 30 days after the date of this Variation Agreement No. 113.
- (d) If the Contractor fails to comply with any or all of sub-paragraphs (c)(i), (c)(ii), (c)(iii) and/or (c)(iv) above within the time periods specified therein, then the whole of the balance of the Advance Payment for Lock Gates - Second shall immediately become due and payable by the Contractor to the Employer and the Employer shall be entitled, at its sole and absolute discretion, to:



- (i) deduct the full amount of the Advance Payment for Lock Gates - Second paid by the Employer to the Contractor in any subsequent Interim Payment Certificate; and/or
- (ii) require payment of the full amount of the Advance Payment for Lock Gates - Second paid by the Employer to the Contractor (or any part thereof not deducted in accordance with sub-paragraph (d)(i) above) from the Contractor, in which case the Contractor shall within 21 days of written request from the Employer make payment of such amount to the Employer and/or the Employer may recover such amount as a debt due from the Contractor to the Employer. Payment of any amount due from the Contractor to the Employer pursuant to this sub-paragraph (d)(ii) shall be made by electronic transfer of funds to the bank account nominated by the Employer.

For the avoidance of any doubt, Sub-Clause 2.5 [*Employer's Claims*] and Sub-Clause 3.5 [*Determinations*] shall not apply to any deduction and/or payment from the Contractor to the Employer pursuant to this Sub-Clause 14.2K.

- (e) Subject to the terms of this Sub-Clause 14.2K [*Advance Payment for Lock Gates - Second*] and subject to satisfaction of the requirement set out in sub-paragraph (b), the Contractor may apply for the amount of the Advance Payment for Lock Gates - Second by providing to the Employer an extraordinary application for payment in a form acceptable to the Employer (the "**Lock Gates Extraordinary Application - Second**").

Provided that the Lock Gates Extraordinary Application - Second is duly completed, and both it and the documentation required to be provided as set out in Appendix 2 to Variation Agreement No. 113 are in accordance with the terms of this Sub-Clause 14.2K and are to the Employer's Representative's satisfaction, then the Employer may pay to the Contractor the amount of the Advance Payment for Lock Gates - Second, or such other sum as the Employer's Representative may decide in its sole and absolute discretion. For the avoidance of doubt, and notwithstanding any other provision of the Contract, the Employer's Representative shall have the sole and absolute discretion as to whether the amount of the Advance Payment for Lock Gates - Second included in a Lock Gates Extraordinary Application - Second is certified for payment by the Employer's Representative and therefore paid by the Employer to the Contractor.

- (f) For the avoidance of doubt, under no circumstances whatsoever shall the Contractor be entitled to payment of the Advance Payment for Lock Gates - Second in excess of the sum of USD 30,000,000.00.



- (g) The Contractor shall use the Advance Payment for Lock Gates - Second solely for the purposes of making payment to the Lock Gates Fabricator in accordance with the terms of this Sub-Clause 14.2K and shall have made or shall make such payments to the Lock Gates Fabricator so that the amount of the Advance Payment for Lock Gates - Second that the Contractor has paid or will pay to the Lock Gates Fabricator shall be as per the amounts, and in respect of the Works, goods, services and/or materials, set out in Appendix 2 to Variation Agreement No. 113 or as otherwise certified by the Employer's Representative. Save as in respect of such payments set out in Appendix 2 to Variation Agreement No. 113 already paid to the Lock Gates Fabricator on or after August 1, 2014 and prior to the date of Variation Agreement No. 113, payments to the Lock Gates Fabricator shall be made within 5 Business Days of receipt by the Contractor of the Advance Payment for Lock Gates - Second made by the Employer. In no event shall the Contractor use or apply (or have used or applied) any portion of the Advance Payment for Lock Gates - Second for any other purpose than such payment as aforesaid, including without limitation for its own corporate or cash flow purposes (other than in respect of such payments) or to make payment to any other supplier, subcontractor or person for any part of the Works, Plant and/or Materials, or otherwise. In respect of such payments set out in Appendix 2 to Variation Agreement No. 113 and made by Contractor to the Lock Gates Fabricator, under no circumstances whatsoever shall the Advance Payment for Lock Gates - Second be used in respect of any such payment made by the Contractor to the Lock Gates Fabricator prior to August 1, 2014.
- (h) For the avoidance of doubt, the Advance Payment for Lock Gates - Second shall have been paid or shall be paid by the Contractor to the Lock Gates Fabricator only, and under no circumstances whatsoever shall such amounts have been paid or be paid to any third party who has been assigned the right to receive payment in respect of such amounts.
- (i) Within 10 days of the Contractor receiving any payment of the Advance Payment for Lock Gates - Second in accordance with this Sub-Clause 14.2K, the Contractor shall provide to the Employer:
- (i) certification in the form set out in Appendix 3 to Variation Agreement No. 113, duly completed in accordance with the requirements set out therein (the "**Lock Gates Payment Certification No.1 - Second**"); and
 - (ii) certification in the form set out in Appendix 5 to Variation Agreement No. 113, duly completed in accordance with the requirements set out therein (the "**Lock Gates Payment Certification No.2 - Second**"), together with the documentation required to be provided as set out in Appendix 4 to Variation Agreement No. 113,



all of which documentation shall be sent through DTCS.

- (j) Without prejudice to the foregoing, the Employer's Representative shall at any time be entitled to audit the Contractor's books and records (including any electronic data and records) to verify that any payment by the Contractor to the Lock Gates Fabricator has been made, or is to be made, in accordance with the terms of this Sub-Clause 14.2K, and to make copies and take extracts thereof in relation thereto, and to conduct a review or investigation of the payments made, or to be made, by the Contractor to the Lock Gates Fabricator.
- (k) In the event that any payments have been made, or are to be made, by the Contractor to the Lock Gates Fabricator otherwise than in accordance with the requirements of this Sub-Clause 14.2K, or where any payments have been made but the audit rights set out in sub-paragraph (j) above have not been afforded to the Employer's Representative, or where the Contractor fails to provide to the Employer the Lock Gates Payment Certification No.1 – Second and/or the Lock Gates Payment Certification No.2 - Second, together with all the documentation required to be provided as set out in Appendix 4 to Variation Agreement No. 113, or where the Contractor uses or applies (or has used or applied) any portion of the Advance Payment for Lock Gates - Second for any other purpose than payment to the Lock Gates Fabricator in accordance with the terms of Sub-Clause 14.2K, the Employer's Representative may, in any subsequent Interim Payment Certificate, make any correction, modification or adjustment as it deems necessary including deducting the value of any such payment, or, at the sole discretion of the Employer's Representative, the value of all such payments made to the Lock Gates Fabricator from any subsequent Interim Payment Certificate. Further, the Employer's Representative may request that the CPA undertakes a review of any information, certifications and documentation that may be provided by the Contractor pursuant to this Sub-Clause 14.2K.
- (l) The Advance Payment for Lock Gates - Second shall be repaid in full by the Contractor by way of instalment deductions in the amount of USD 2,000,000.00 (or in the case of the final such deduction, such amount as is then necessary to make such repayment in full) in each monthly Payment Certificate commencing with the Payment Certificate of September 2014 issued in October 2014 up to and including the Payment Certificate of November 2015 issued in December 2015. The Parties acknowledge and agree that the Advance Payment for Lock Gates - Second will be repaid in accordance with the terms of this Sub-Clause 14.2K so that the same is repaid in full by the Contractor by the Payment Certificate of November 2015 issued in December 2015.
- (m) The whole of the balance of the Advance Payment for Lock Gates - Second outstanding shall immediately become due and payable by the Contractor to



the Employer and the Employer shall be entitled to make a claim for the entire outstanding balance under the Plant and Material Security (until the expiry date thereof) and the Advance Payment Joint and Several Guarantee and the Advance Payment Parent Guarantee (until the expiry dates thereof) (and for the avoidance of doubt, a claim under the Plant and Material Security (as applicable) and the Advance Payment Joint and Several Guarantee and the Advance Payment Parent Guarantee (as applicable) shall be made in the first instance under the Plant and Material Security (until the expiry date thereof) and in the second instance under the Advance Payment Joint and Several Guarantee and the Advance Payment Parent Guarantee), if, in any and all such events:

- (i) the Advance Payment for Lock Gates - Second has not been repaid in full prior to December 2015; and/or
 - (ii) the Advance Payment for Lock Gates – Second has not been repaid in full prior to a termination under Clause 15 [*Termination by Employer*], Clause 16 [*Suspension and Termination by Contractor*] or Clause 19 [*Force Majeure*] (as the case may be); and/or
 - (iii) the Employer is entitled to terminate the Contractor's right to complete the Contract under Sub-Clause 15.2 [*Termination by Employer*], irrespective of whether notice of termination has been given.
- (n) At all times until the Advance Payment for Lock Gates – Second is repaid in full to the Employer in accordance with Sub-Clause 14.2K, the Contractor shall ensure that the Advance Payment for Lock Gates – Second remains secured by (a) the Plant and Material Security until its expiration date, and (b) the Advance Payment Joint and Several Guarantee and the Advance Payment Parent Guarantee."

9. The Parties agree to amend Sub-Clause 14.2 [*General Provisions*] as follows:

- (a) in sub-paragraph (a) of Sub-Clause 14.2, in the fifth line delete "and Sub-Clause 14.2J [*Repayment of Other Existing Advances*]" and insert ", Sub-Clause 14.2J [*Repayment of Other Existing Advances*] and Sub-Clause 14.2K [*Advance Payment for Lock Gates - Second*]";
- (b) in sub-paragraph (b) of Sub-Clause 14.2, in the penultimate line delete "and Sub-Clause 14.2J [*Repayment of Other Existing Advances*]" and insert ", Sub-Clause 14.2J [*Repayment of Other Existing Advances*] and Sub-Clause 14.2K [*Advance Payment for Lock Gates - Second*]";
- (c) in sub-paragraph (d) of Sub-Clause 14.2:



- (i) in the seventh line delete "and Sub-Clause 14.2J [*Repayment of Other Existing Advances*]" and insert ", Sub-Clause 14.2J [*Repayment of Other Existing Advances*] and Sub-Clause 14.2K [*Advance Payment for Lock Gates - Second*]";
 - (ii) in the eleventh line delete "and/or Advance Payment for Specified Expenditures" and insert ", Advance Payment for Specified Expenditures and/or Advance Payment for Lock Gates - Second"; and
 - (iii) in the penultimate line of the last paragraph delete "and/or Sub-Clause 14.2J [*Repayment of Other Existing Advances*]" and insert ", Sub-Clause 14.2J [*Repayment of Other Existing Advances*] and Sub-Clause 14.2K [*Advance Payment for Lock Gates - Second*]".
- 10. It is a precondition to the coming into effect of the amendments to the Contract and the amendments to Variation Agreement No. 108 set out in this paragraph 10 that (i) in the Employer's Representative's sole opinion the documents listed in Appendix A to Variation Agreement No. 108 have been executed in full by all the parties thereto and each such document or instrument, as the case may be, has been delivered to the Employer and (ii) the Surety Deposit has been deposited in the Surety Deposit Account. Unless such preconditions are satisfied prior to August 31, 2014 (as such date may be extended by the agreement of the Parties), the amendments set out in this paragraph 10 shall be of no effect.
 - (a) The Parties agree to amend the Contract as follows:
 - (i) In Sub-Clause 1.1.6 [*Other Definitions*] in the definition of Contract Advances Security in the fourth line after "Advance Payment for Lock Gates" insert "and/or the Advance Payment for Lock Gates – Second".
 - (ii) Add the following definitions to Sub-Clause 1.1.6 [*Other Definitions*] of the Contract (which shall be added in proper alphabetical order but without any number):
 - (A) **"Third Amendment to Advance Payment Joint and Several Guarantee"** means the amendment to the Advance Payment Joint and Several Guarantee in the form set out in Appendix 8 to Variation Agreement No. 113 with any modifications to such form to be acceptable to the Employer.
 - (B) **"Third Amendment to Advance Payment Parent Guarantee"** means the amendment to the Advance Payment Parent Guarantee in the form set out in Appendix 9 to Variation Agreement No. 113 with any modifications to such form to be acceptable to the Employer.



(b) The Parties agree to amend Variation Agreement No. 108 as follows:

- (i) In paragraph 6 in the seventh line after "Existing Advances" insert ", the Advance Payment for Specified Expenditures and/or the Advance Payment for Lock Gates - Second".
- (ii) In the table of contents, at Appendix II-1 delete the reference to "Form of Second Amendment to Advance Payment Joint and Several Guarantee" and insert "Form of Third Amendment to Advance Payment Joint and Several Guarantee".
- (iii) In the table of contents, at Appendix II-2 delete the reference to "Form of Second Amendment to Advance Payment Parent Guarantee" and insert "Form of Third Amendment to Advance Payment Parent Guarantee".
- (iv) Delete Appendix II-1 in full and replace with Appendix 8 to Variation Agreement No. 113.
- (v) Delete Appendix II-2 in full and replace with Appendix 9 to Variation Agreement No. 113.

11. Each Party shall from time to time (at its own cost) do, perform, sign, execute and deliver all such acts, deeds, documents and things (or procure the doing, performance, signing, execution or delivery of them) to give full effect to this Variation Agreement No. 113 and secure the full benefit of the rights, powers and remedies conferred upon it in this Variation Agreement No. 113.

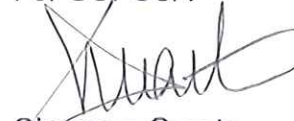
In Witness whereof the Parties hereto have caused this Variation Agreement No. 113 to the Contract to be executed on the 7th day of August of the year 2014 by their duly authorized representatives.

For ACP



Jorge de la Guardia
Employer's Representative

For GUPCSA



Giuseppe Quarta
Contractor's Representative



APPENDIX 1

VO NO. 113 BOND ISSUER CONFIRMATION

[Letterhead of Zurich]

_____, 2014

Autoridad del Canal de Panama
Edificio 740, Corozal
Panama, Republica de Panama

Reference: Contract No. CMC-221427, Design and Construction of the Third Set of Locks, Panama Canal

Confirmation regarding certain amendments to the Contract (as defined below)

Dear Sirs:

We refer to (i) the Design and Build Contract for the Third Set of Locks on the Panama Canal (as amended, modified, varied or supplemented, the "Contract") tendered under RFP #76161 between you, as owner and Employer thereunder (the "Owner") and Grupo Unidos por el Canal, S.A., as contractor (the "Contractor"); (ii) the performance bond, Bond no. 08960193, dated August 7, 2009, in an amount of USD 400,000,000.00, issued in the Owner's favor in respect of the Contract (as amended, supplemented or otherwise modified from time to time, the "Performance Bond"); (iii) the payment bond, Bond no. 08960194, dated August 7, 2009, in an amount of USD 50,000,000.00, issued in the Owner's favor in respect of the Contract (as amended, supplemented or otherwise modified from time to time, the "Payment Bond"); and (iv) the advance payment bond in respect of Plant and Material Security, Bond no. 09098907, dated December 20, 2012, in an amount of USD 150,000,000.00, issued in the Owner's favor in respect of the Contract (as amended, supplemented or otherwise modified from time to time, the "P&M Bond" and, together with the Performance Bond and the Payment Bond, the "Bonds"). Unless otherwise specified, capitalized terms used herein have the respective meanings specified in the Contract.

We have been provided with a copy of Variation Agreement No. 113, dated August 7, 2014, 2014 ("Variation Agreement No. 113") to the Contract, executed by the Owner and the Contractor, which provides for certain amendments to the Contract relating to the further advance payment to the Contractor of USD 30,000,000.00 for payment to Cimolai S.p.A., the Lock Gates Fabricator.

The undersigned, as Surety under and as defined in the Bonds, hereby consents to the amendments to the Contract relating to the further advance payment to the Contractor of USD 30,000,000.00 for payment to Cimolai S.p.A., the Lock Gates Fabricator,

Variation Agreement No. 113

A handwritten signature in black ink, appearing to be a stylized name, located at the bottom right of the page.

pursuant to the aforementioned Variation Agreement No. 113 and confirms to you, as Owner and beneficiary under the Bonds, the continued validity of the Bonds in the respective amounts originally stated therein, notwithstanding such amendments to the Contract and the terms of Variation Agreement No. 113..

Nothing in this confirmation letter is intended to or shall waive, alter, amend or otherwise affect any of the terms or conditions of the Bonds, other than as stated herein.

ZURICH AMERICAN INSURANCE
COMPANY, as Surety under the Bonds

By: _____
Name:
Title:

ACCEPTED:

AUTORIDAD DEL CANAL DE PANAMA,
as Owner under the Contract and beneficiary under the Bonds referred to above

By: _____
Name:
Title:

A handwritten signature in black ink, located in the bottom right corner of the page. The signature is stylized and appears to be a cursive or semi-cursive script.

APPENDIX 2

LOCK GATES FABRICATOR LIST

| No. | A Amount paid or to be paid to Lock Gates Fabricator | B Subcontract Price | C Subcontract Price Invoices to Date | D Subcontract Price Paid to Date | E = B - C Remaining Subcontract Price | F = C - D Balance paid or to Pay | G Verified by ACP (for ACP use only) |
|-----|---|---------------------------|---|---|---|---|--|
| 1 | | | | | | | |
| 2 | | | | | | | |
| 3 | | | | | | | |
| 4 | | | | | | | |
| 5 | | | | | | | |
| 6 | | | | | | | |
| 7 | | | | | | | |
| 8 | | | | | | | |
| | | | | | | | |
| | TOTALS | | | | | | |

Signed for and on behalf of the Contractor



LOCK GATES PAYMENT CERTIFICATION NO.1 - SECOND

Signed for and on behalf of the Contractor

Variation Agreement No. 113

~~Kunt~~

APPENDIX 4

Post-Audit to validate - the paid amounts to the Lock Gates Fabricator

Where, subject to the terms of Sub-Clause 14.2K of the Contract, the Contractor has included an amount of the Advance Payment for Lock Gates - Second in an application for an Interim Payment Certificate pursuant to Sub-Clause 14.3 [*Application for Interim Payment Certificates*] or has made a Lock Gates Extraordinary Application - Second, the Contractor shall provide to the Employer with the **Lock Gates Payment Certification No.2 - Second** the following:

- a) Proof of payment by the Contractor to the Lock Gates Fabricator (including the date of such payment) such as the bank wire transfer or bank debit note referring to the invoices submitted, which shall be sent to the Employer directly by the bank institute that received the wire transfer;
- b) Original paid invoices according to the Panamanian Fiscal Law;
- c) Confirmation of the payment from the Lock Gates Fabricator (including the date of such payment) such as: receipt, certification from the Lock Gates Fabricator, bank certification of the transfer being credited to the Lock Gates Fabricator's account; and
- d) Such other evidence or substantiation that may be reasonably required by the Employer's Representative in order to validate the invoices and payment of the same.

A handwritten signature in black ink, appearing to be 'K. K. K.', is located in the bottom right corner of the page.

APPENDIX 5

LOCK GATES PAYMENT CERTIFICATION NO.2 - SECOND

[TO BE PROVIDED ON GUPCSA HEADED NOTEPAPER]

Grupo Unidos Por El Canal, S.A.
Building 22B
Brujas Road, Cocoli
Panama
Republic of Panama

Autoridad de Canal de Panama
Building 740, Corozal
Panama
Republic of Panama

[insert date]

Dear Sirs

Lock Gates Payment Certification No. 2 – Second

We hereby provide Lock Gates Payment Certificate No. 2 – Second in respect of Cimolai S.p.A. the Lock Gates Fabricator and in accordance with Variation Agreement No. 113 of August 7, 2014, entered into in relation to Contract CMC-221427 for the Design and Construction of the Third Set of Locks dated August 11, 2009.

We enclose with this Lock Gates Payment Certificate No. 2 – Second a payment receipt from the Lock Gates Fabricator for the amount of \$[insert sum] which we confirm is the amount that has been paid or is payable to the Lock Gates Fabricator as certified/informed by the Employer's Representative in respect of the application for Interim Payment Certificate/Lock Gates Extraordinary Application – Second [insert details].

We hereby certify that the contents of this Lock Gates Payment Certificate No. 2 – Second are true and accurate in all respects.

[GUPCSA]



APPENDIX 6

SECOND AMENDMENT TO ADVANCE PAYMENT JOINT AND SEVERAL GUARANTEE

Dated _____¹

- (1) THE GUARANTORS NAMED HEREIN
- (2) AUTORIDAD DEL CANAL DE PANAMÁ

SECOND AMENDMENT TO ADVANCE PAYMENT
JOINT AND SEVERAL GUARANTEE IN RESPECT
OF THE THIRD SET OF LOCKS CONTRACT
relating to the realization of the Panamá Canal
Expansion Program

¹ Per VO 113, to be provided no later than September 4, 2014.

A handwritten signature in black ink, appearing to be 'J. M. D. H.', is located in the bottom right corner of the page.

THIS SECOND AMENDMENT TO ADVANCE PAYMENT JOINT AND SEVERAL GUARANTEE, dated _____² (this "Amendment") to the ADVANCE PAYMENT JOINT AND SEVERAL GUARANTEE, dated December 24, 2012, as amended by AMENDMENT TO ADVANCE PAYMENT JOINT AND SEVERAL GUARANTEE, dated March 18, 2014 (as amended, modified or supplemented, the "Guarantee") and made between:

- (1) **SACYR, S.A. (formerly Sacyr Vallehermoso, S.A.)**, a company incorporated in Spain, having its registered office at Paseo de la Castellana N° 83-85, Madrid, 28046, Spain,
 - (2) **ONDERNEMINGEN JAN DE NUL N.V.**, a company incorporated in Belgium, having its registered office at Tragel 60, 9308 Hofstade-Aalst, Belgium,
 - (3) **SALINI IMPREGILO S.p.A. (formerly Impregilo S.p.A.)**, a company incorporated in Italy, having its registered office at via dei Missaglia 97, 20142 Milan, Italy, and
 - (4) **CONSTRUCTORA URBANA, S.A.**, a company incorporated in Panamá, having its registered office at Calle 19, Río Abajo, Panamá, Panamá
- (each, a "Guarantor" and, collectively, the "Guarantors"); and
- (5) **AUTORIDAD DEL CANAL DE PANAMÁ** an autonomous entity of the Panamanian Government established under Title XIV of the Panamanian National Constitution whose principal place of business is at Edificio de la Administración, Altos de Balboa, Balboa, Republic of Panamá (which term shall include permitted assigns) ("Employer").

BACKGROUND:

- (A) The Guarantors (including Sacyr, S.A., as Lead Member of the consortium) and the Employer entered into a contract, on a joint and several basis, for the design and construction of a third set of locks dated August 11th, 2009 in relation to the Panamá Canal expansion project (as amended, modified or supplemented, "Contract"). In this Amendment, the words and expressions shall have the same meanings as are respectively assigned to them in the Contract, save as amended or as expressly stated herein.
- (B) Pursuant to Sub-Clause 1.7 of the Contract, the Guarantors requested, and the Employer consented, to the assignment of the whole of the Contract to Grupo Unidos por el Canal SA, who, pursuant to an Assignment and Acceptance Agreement, dated as of May 31, 2010, became the Contractor pursuant to the terms of the Contract (the "Contractor").
- (C) The Guarantors are the Shareholders in and collectively own directly one hundred percent (100%) of the Share Capital of the Contractor.
- (D) The Guarantors provided the Advance Payment Joint and Several Guarantee, dated December 24, 2012, and the Amendment to Advance Payment Joint and Several Guarantee, dated March 18, 2014.

² See FN 1.

- (E) Pursuant to Variation Agreement Number 113, dated August 7, 2014 ("**Variation Agreement No. 113**"), the Employer and the Contractor agreed, for the reasons and on the terms specified therein, to include the Advance Payment for Lock Gates – Second in the Guarantee by execution of this Amendment from and after the date of this Amendment.
- (F) Therefore, each of the Guarantors, for purposes of facilitating the completion of the Works under the Contract, has, jointly and severally, agreed to guarantee the obligations of the Contractor under the Contract in respect of the Advance Payment for Lock Gates – Second on the terms set out in the Guarantee.

1. AMENDMENT

- 1.1 Paragraph 1.1(a) of the Guarantee is hereby amended by replacing each instance of "and Advance Payment for Specified Expenditures" with ", Advance Payment for Specified Expenditures and Advance Payment for Lock Gates - Second" in such Clause.
- 1.2 Each of the Guarantors expressly confirms that the terms of paragraphs 1.1(b) and 1.2 of the Guarantee apply to the Guarantee as so amended by the terms of paragraph 1.1 above.

2. PROTECTIVE AND OTHER CLAUSES

- 2.1 Each of the Guarantors expressly confirms and agrees that the Guarantee, as amended by this Amendment is valid, binding and enforceable in accordance with its terms and remains in full force and effect notwithstanding this Amendment.
- 2.2 Paragraphs 2.1, 2.2, 2.3 and 2.4 inclusive of the Guarantee are hereby incorporated into and shall apply to this Amendment as if fully set forth herein.
- 2.3 Paragraphs 3.1, 3.2 and 3.3 of the Guarantee are hereby incorporated into and shall apply to this Amendment as if fully set forth herein.

3. REPRESENTATIONS AND WARRANTIES

- 3.1 Each of the Guarantors warrants and undertakes that it is duly incorporated and validly existing under the laws of its respective jurisdiction of incorporation or formation, as the case may be, and that this Amendment is its legally binding obligation, enforceable in accordance with its terms, and that all necessary corporate, governmental and other consents and authorizations for the giving, validity, enforceability and implementation of this Amendment and the transactions contemplated by it have been obtained and are in full force and effect.
- 3.2 Until all obligations, warranties, duties and undertakings now or hereafter to be carried out or performed by the Contractor under the Contract shall have been satisfied or performed in full, if (notwithstanding the provisions of sub-paragraphs 4.1(a) and 4.1(b) of the Guarantee) any of the Guarantors has any rights of subrogation against the Contractor or any rights to prove in a Dissolution (as defined in paragraph 8.4 of the

A handwritten signature in black ink, appearing to be 'K. M. M.', is located in the bottom right corner of the page.

Guarantee) of the Contractor, such Guarantor agrees to exercise such rights in accordance with the directions of the Employer.

3.3 Each of the Guarantors warrants and undertakes to the Employer that it shall take all necessary action directly or indirectly to perform the obligations expressed to be assumed by it or contemplated by this Amendment and to implement the provisions of this Amendment.

3.4 Paragraphs 4.1(a), 4.1(b) and 5(c) of the Guarantee are hereby incorporated into and shall apply to this Amendment as if fully set forth herein.

4. **ASSIGNMENT**

4.1 No party hereto shall assign any or all of its right, title and interest in and to this Amendment without, in the case of any assignment by the Employer, the Lead Member's, or, in the case of any assignment by any of the Guarantors, the Employer's, prior written consent.

5. **NOTICES**

5.1 All documents and notices arising out of or in connection with this Amendment shall be served upon each of the Guarantors under and pursuant to the terms of the Guarantee.

6. **MISCELLANEOUS**

6.1 The Employer's rights under this Amendment are cumulative and are in addition to and not in substitution for any rights provided by law or the Contract or any other guarantee, surety, bond, insurance or security that the Employer may have or hold in relation to the Contract, and the Employer may exercise its rights under this Amendment from time to time without first having recourse to any such right, guarantee, surety, bond, insurance or security.

6.2 Any waiver by the Employer of the terms of this Amendment or any consent or approval given by the Employer shall only be effective if given in writing and then only for the purpose and upon the terms and conditions if any on which it is given.

6.3 If at any time any one or more of the provisions of this Amendment is or becomes illegal, invalid or otherwise unenforceable in any respect, such provision or provisions will be ineffective to the extent only of such illegality, invalidity or unenforceability and such illegality, invalidity or unenforceability will not invalidate any other provision of this Amendment.

6.4 Where applicable, words and expressions used in this Amendment shall have the meaning assigned to them in the Contract, as the case may be. The singular will include the plural and vice versa unless the context otherwise clearly requires. All references to the Contract shall be deemed to include any amendment, variation or supplemental agreement thereto. Headings are inserted for convenience only and are to be ignored for the purposes of construction. For the avoidance of doubt, all references to the Contractor

A handwritten signature in black ink, appearing to be 'K. Smith', is located in the bottom right corner of the page.

shall be deemed to mean the Contractor from and after the date of assignment of the Contract.

6.5 This Amendment constitutes the entire agreement between the Employer and each of the Guarantors as to the matters addressed in this Amendment. This Amendment may not be modified except by written agreement of the Employer and each of the Guarantors.

6.6 Paragraphs 8.4 and 8.7 of the Guarantee are hereby incorporated into and shall apply to this Amendment as if fully set forth herein.

7. **DISPUTE RESOLUTION**

7.1 This Amendment shall be governed by and construed in accordance with the laws of the Republic of Panamá.

7.2 Any dispute arising out of, under or in connection with this Amendment shall be finally settled under and pursuant to the terms of the Guarantee *mutatis mutandis*.

8. **EXECUTION**

In Witness whereof the parties hereto have caused this Amendment to be executed the day and year before written by their duly authorised representatives.

A handwritten signature in black ink, appearing to be a stylized name, located in the bottom right corner of the page.

SIGNED by:

Name: Jorge de la Guardia

Position: Employer's Representative

Date:

for and on behalf of the Employer in the presence of

Witness:

Name:

Address: Building ____, Corozal

Date:

SIGNED by:

Name:

Position:

Date:

for and on behalf of the Guarantors and for and on behalf of SACYR, S.A. (formerly Sacyr Vallehermoso, S.A.) as Guarantor in the presence of

Witness:

Name:

Address:

Date:

SIGNED by:

Name:

Position:

Date:

for and on behalf of the Guarantors and for and on behalf of ONDERNEMINGEN JAN DE NUL N.V., as Guarantor in the presence of

Witness:

A handwritten signature in black ink, appearing to be 'J. de Nul', written over a faint rectangular stamp.

Name:

Address:

Date:

SIGNED by:

Name:

Position:

Date:

for and on behalf of the Guarantors and for
and on behalf of SALINI IMPREGILO
S.p.A. (formerly Impregilo S.p.A.), as
Guarantor in the presence of

Witness:

Name:

Address:

Date:

SIGNED by:

Name:

A handwritten signature in black ink, appearing to be 'Luigi', is written over a faint, large, stylized 'X' mark.

Position:

Date:

for and on behalf of the Guarantors and for
and on behalf of CONSTRUCTORA
URBANA, S.A., as Guarantor in the
presence of

Witness:

Name:

Address:

Date:

A handwritten signature in black ink, appearing to be 'Kunal', is located in the bottom right corner of the page.

APPENDIX 7

SECOND AMENDMENT TO PARENT COMPANY GUARANTEE IN RESPECT OF ADVANCE PAYMENT JOINT AND SEVERAL GUARANTEE OBLIGATIONS OF A MEMBER

Dated _____¹

- (1) SOFIDRA S.A.
- (2) AUTORIDAD DEL CANAL DE PANAMÁ

SECOND AMENDMENT TO GUARANTEE IN
RESPECT OF THE THIRD SET OF LOCKS
CONTRACT
relating to the realization of the Panamá Canal
Expansion Program

¹ Per VO 113, to be provided no later than September 4, 2014.

A handwritten signature in black ink, appearing to be 'M. A. L.', is located in the bottom right corner of the page.

THIS SECOND AMENDMENT TO ADVANCE PAYMENT PARENT COMPANY GUARANTEE, dated _____² (this "Amendment") to the **ADVANCE PAYMENT PARENT COMPANY GUARANTEE**, dated December 26, 2012, as amended by **AMENDMENT TO ADVANCE PAYMENT PARENT COMPANY GUARANTEE**, March 18, 2014 (as amended, modified or supplemented, the "Parent Guarantee") and made between:

- (1) **SOFIDRA S.A.**, a company incorporated in Grand Duchy of Luxembourg, having its registered office at 5, Rue Guillaume Kroll, L-1882 Luxembourg, Grand Duchy of Luxembourg, operating under its commercial name "Jan De Nul Group" ("**Guarantor**"); and
- (2) **AUTORIDAD DEL CANAL DE PANAMÁ** an autonomous entity of the Panamanian Government established under Title XIV of the Panamanian National Constitution whose principal place of business is at Edificio de la Administración, Altos de Balboa, Balboa, Republic of Panamá (which term shall include permitted assigns) ("**Employer**").

BACKGROUND:

- (A) Ondernemingen Jan De Nul N.V. ("**Relevant Member**"), Salini Impregilo S.p.A. (formerly Impregilo S.p.A.), Constructora Urbana, S.A., Sacyr, S.A. (formerly Sacyr Vallehermoso, S.A.) and the Employer have entered into the Advance Payment Joint and Several Guarantee, dated December 26, 2012, (as amended from time to time, the "**Advance Payment JS Guarantee**"), in respect of the obligations of the Contractor under a contract for the design and construction of a third set of locks dated 11 August 2009 in relation to the Panamá Canal expansion project (as amended, modified or supplemented, "**Contract**"). In this Amendment, the words and expressions shall have the same meanings as are respectively assigned to them in the Contract, save as amended or as expressly stated herein.
- (B) The Relevant Member is a wholly and directly owned subsidiary of the Guarantor.
- (C) The Guarantor provided the Advance Payment Parent Company Guarantee, dated December 24, 2012, and the Amendment to Advance Payment Parent Company Guarantee, dated March 18, 2014.
- (D) Pursuant to Variation Agreement Number 113, dated August 7, 2014 ("**Variation Agreement No. 113**"), the Employer and the Contractor agreed, for the reasons and on the terms specified therein, to include the Advance Payment for Lock Gates - Second in the Advance Payment JS Guarantee by execution of the Second Amendment to Advance Payment Joint and Several Guarantee ("**JS Guarantee Second Amendment**").
- (E) Therefore, the Guarantor, for purposes of facilitating the completion of the Works under the Contract, has agreed to guarantee the obligations of the Relevant Member under the JS Guarantee Second Amendment in respect of the Advance Payment for Lock Gates – Second on the terms set out in this Amendment.

² See FN 1.



1. **AMENDMENT**

- 1.1 Paragraphs 1.1 and 1.2 of the Parent Guarantee are hereby amended by inserting "and the JS Guarantee Second Amendment" immediately after each instance of "JS Guarantee Amendment" in such paragraphs.

2. **PROTECTIVE AND OTHER CLAUSES**

- 2.1 The Guarantor expressly confirms and agrees that the Parent Guarantee, as amended by this Amendment is valid, binding and enforceable in accordance with its terms and remains in full force and effect notwithstanding this Amendment.
- 2.2 Paragraphs 2.1, 2.2, 2.3, 2.4 and 2.5 of the Parent Guarantee are hereby incorporated into and shall apply to this Amendment as if fully set forth herein.
- 2.3 Paragraphs 3.1, 3.2 and 3.3 of the Parent Guarantee are hereby incorporated into and shall apply to this Amendment as if fully set forth herein.

3. **REPRESENTATIONS AND WARRANTIES**

- 3.1 The Guarantor warrants and undertakes that it is duly incorporated and validly existing under the laws of Grand Duchy of Luxembourg and that this Amendment is its legally binding obligation, enforceable in accordance with its terms, and that all necessary corporate, governmental and other consents and authorizations for the giving, validity, enforceability and implementation of this Amendment and the transactions contemplated by it have been obtained and are in full force and effect.
- 3.2 Until all obligations, warranties, duties and undertakings now or hereafter to be carried out or performed by the Contractor under the Contract and by the Members (including without limitation the Relevant Member) under the Advance Payment JS Guarantee, as amended by the JS Guarantee Amendment, shall have been satisfied or performed in full, if (notwithstanding the provisions of sub-paragraphs 4.1(a) and 4.1(b) of the Parent Guarantee) the Guarantor has any rights of subrogation against any Member (including without limitation the Relevant Member) or the Contractor or any rights to prove in a Dissolution (as defined in paragraph 8.4 of the Parent Guarantee) of the Relevant Member or the Contractor, the Guarantor agrees to exercise such rights in accordance with the directions of the Employer.
- 3.3 The Guarantor warrants and undertakes to the Employer that it shall take all necessary action directly or indirectly to perform the obligations expressed to be assumed by it or contemplated by this Amendment and to implement the provisions of this Amendment.
- 3.4 Paragraphs 4.1(a), 4.1(b) and 5(c) of the Parent Guarantee are hereby incorporated into and shall apply to this Amendment as if fully set forth herein.

A handwritten signature in black ink, appearing to be 'J. Had', is located in the bottom right corner of the page.

4. **ASSIGNMENT**

- 4.1 Neither party shall assign any or all of its right, title and interest in and to this Amendment without the other party's prior written consent.

5. **NOTICES**

- 5.1 All documents and notices arising out of or in connection with this Amendment shall be served upon the Guarantor under and pursuant to the terms of the Parent Guarantee.

6. **MISCELLANEOUS**

- 6.1 The Employer's rights under this Amendment are cumulative and are in addition to and not in substitution for any rights provided by law or the Contract or any other guarantee, surety, bond, insurance or security that the Employer may have or hold in relation to the Contract, including any and all such rights as the Employer may hold under or in relation to the Advance Payment JS Guarantee, as amended by the JS Guarantee Amendment, and the Employer may exercise its rights under this Amendment from time to time without first having recourse to any such right, guarantee, surety, bond, insurance or security.
- 6.2 Any waiver by the Employer of the terms of this Amendment or any consent or approval given by the Employer shall only be effective if given in writing and then only for the purpose and upon the terms and conditions if any on which it is given.
- 6.3 If at any time any one or more of the provisions of this Amendment is or becomes illegal, invalid or otherwise unenforceable in any respect, such provision or provisions will be ineffective to the extent only of such illegality, invalidity or unenforceability and such illegality, invalidity or unenforceability will not invalidate any other provision of this Amendment.
- 6.4 Where applicable, words and expressions used in this Amendment shall have the meaning assigned to them in the Contract, as the case may be. The singular will include the plural and vice versa unless the context otherwise clearly requires. All references to the Contract and the Advance Payment JS Guarantee shall be deemed to include any amendment, variation or supplemental agreement thereto. Headings are inserted for convenience only and are to be ignored for the purposes of construction.
- 6.5 This Amendment constitutes the entire agreement between the Employer and the Guarantor as to the matters addressed in this Amendment. This Amendment may not be modified except by written agreement of the Employer and the Guarantor.
- 6.6 Paragraphs 8.4 and 8.7 of the Parent Guarantee are hereby incorporated into and shall apply to this Amendment as if fully set forth herein.

7. **DISPUTE RESOLUTION**

- 7.1 This Amendment shall be governed by and construed in accordance with the laws of the Republic of Panamá.

A handwritten signature in black ink, appearing to be 'K. M. M.', is located in the bottom right corner of the page.

7.2 Any dispute arising out of, under or in connection with this Amendment shall be finally settled under and pursuant to the terms of the Parent Guarantee *mutatis mutandis*.

8. **EXECUTION**

In Witness whereof the parties hereto have caused this Amendment to be executed the day and year before written by their duly authorised representatives.

A handwritten signature in black ink, appearing to be 'K. Hunt', is located in the bottom right corner of the page.

SIGNED by:

SIGNED by:

Name: Jorge de la Guardia

Name:

Position: Employer's Representative

Position:

Date:

Date:

for and on behalf of the Guarantor in the presence
of
of

for and on behalf of the Employer in the
presence of

Witness:

Witness:

Name:

Name:

Address:

Address: Building ____, Corozal

Date:

Date:

A handwritten signature in black ink, appearing to be 'Jorge de la Guardia', is located in the bottom right corner of the page.

APPENDIX 8

Appendix II-1

THIRD AMENDMENT TO ADVANCE PAYMENT JOINT AND SEVERAL GUARANTEE

Dated _____¹

- (1) THE GUARANTORS NAMED HEREIN
- (2) AUTORIDAD DEL CANAL DE PANAMÁ

THIRD AMENDMENT TO ADVANCE PAYMENT
JOINT AND SEVERAL GUARANTEE IN RESPECT
OF THE THIRD SET OF LOCKS CONTRACT
relating to the realization of the Panamá Canal
Expansion Program

¹ Per VO 108, to be provided no later than January 14, 2015.

A handwritten signature in black ink, appearing to be 'H. V. V.', is located in the bottom right corner of the page.

THIS THIRD AMENDMENT TO ADVANCE PAYMENT JOINT AND SEVERAL GUARANTEE, dated _____² (this "Amendment") to the **ADVANCE PAYMENT JOINT AND SEVERAL GUARANTEE**, dated December 24, 2012, as amended by **AMENDMENT TO ADVANCE PAYMENT JOINT AND SEVERAL GUARANTEE**, dated March 18, 2014 and **SECOND AMENDMENT TO ADVANCE PAYMENT JOINT AND SEVERAL GUARANTEE**, dated _____, 2014³ (as amended, modified or supplemented, the "Guarantee") and made between:

- (1) **SACYR, S.A. (formerly Sacyr Vallehermoso, S.A.)**, a company incorporated in Spain, having its registered office at Paseo de la Castellana N° 83-85, Madrid, 28046, Spain,
- (2) **ONDERNEMINGEN JAN DE NUL N.V.**, a company incorporated in Belgium, having its registered office at Tragel 60, 9308 Hofstade-Aalst, Belgium,
- (3) **SALINI IMPREGILO S.p.A. (formerly Impregilo S.p.A.)**, a company incorporated in Italy, having its registered office at via dei Missaglia 97, 20142 Milan, Italy, and
- (4) **CONSTRUCTORA URBANA, S.A.**, a company incorporated in Panamá, having its registered office at Calle 19, Río Abajo, Panamá, Panamá

(each, a "Guarantor" and, collectively, the "Guarantors"); and

- (5) **AUTORIDAD DEL CANAL DE PANAMÁ** an autonomous entity of the Panamanian Government established under Title XIV of the Panamanian National Constitution whose principal place of business is at Edificio de la Administración, Altos de Balboa, Balboa, Republic of Panamá (which term shall include permitted assigns) ("**Employer**").

BACKGROUND:

- (A) The Guarantors (including Sacyr, S.A., as Lead Member of the consortium) and the Employer entered into a contract, on a joint and several basis, for the design and construction of a third set of locks dated August 11th, 2009 in relation to the Panamá Canal expansion project (as amended, modified or supplemented, "**Contract**"). In this Amendment, the words and expressions shall have the same meanings as are respectively assigned to them in the Contract, save as amended or as expressly stated herein.
- (B) Pursuant to Sub-Clause 1.7 of the Contract, the Guarantors requested, and the Employer consented, to the assignment of the whole of the Contract to Grupo Unidos por el Canal SA, who, pursuant to an Assignment and Acceptance Agreement, dated as of May 31, 2010, became the Contractor pursuant to the terms of the Contract (the "**Contractor**").
- (C) The Guarantors are the Shareholders in and collectively own directly one hundred percent (100%) of the Share Capital of the Contractor.
- (D) The Guarantors provided the Advance Payment Joint and Several Guarantee, dated December 24, 2012, the Amendment to Advance Payment Joint and Several Guarantee,

² Per VO 108, to be provided no later than January 14, 2015.

³ Insert date of Second Amendment to Advance Payment Joint and Several Guarantee.



dated March 18, 2014 and the Second Amendment to Advance Payment Joint and Several Guarantee, dated _____, 2014⁴.

- (E) Pursuant to Variation Agreement Number 108, dated July 31, 2014 ("**Variation Agreement No. 108**"), the Employer and the Contractor agreed, for the reasons and on the terms specified therein, to include the Advance Payment for Lock Gates in the Guarantee by execution of this Amendment from and after the expiration date of the Plant and Material Security.
- (F) Therefore, each of the Guarantors, for purposes of facilitating the completion of the Works under the Contract, has, jointly and severally, agreed to guarantee the obligations of the Contractor under the Contract in respect of the Advance Payment for Lock Gates on the terms set out in the Guarantee.

1. AMENDMENT

- 1.1 Paragraph 1.1(a) of the Guarantee is hereby amended by replacing each instance of "and Advance Payment for Lock Gates - Second" with ", Advance Payment for Lock Gates - Second and Advance Payment for Lock Gates" in such Clause.
- 1.2 Each of the Guarantors expressly confirms that the terms of paragraphs 1.1(b) and 1.2 of the Guarantee apply to the Guarantee as so amended by the terms of paragraph 1.1 above.

2. PROTECTIVE AND OTHER CLAUSES

- 2.1 Each of the Guarantors expressly confirms and agrees that the Guarantee, as amended by this Amendment is valid, binding and enforceable in accordance with its terms and remains in full force and effect notwithstanding this Amendment.
- 2.2 Paragraphs 2.1, 2.2, 2.3 and 2.4 inclusive of the Guarantee are hereby incorporated into and shall apply to this Amendment as if fully set forth herein.
- 2.3 Paragraphs 3.1, 3.2 and 3.3 of the Guarantee are hereby incorporated into and shall apply to this Amendment as if fully set forth herein.

3. REPRESENTATIONS AND WARRANTIES

- 3.1 Each of the Guarantors warrants and undertakes that it is duly incorporated and validly existing under the laws of its respective jurisdiction of incorporation or formation, as the case may be, and that this Amendment is its legally binding obligation, enforceable in accordance with its terms, and that all necessary corporate, governmental and other consents and authorizations for the giving, validity, enforceability and implementation of this Amendment and the transactions contemplated by it have been obtained and are in full force and effect.

⁴ Insert date of Second Amendment to Advance Payment Joint and Several Guarantee.

A handwritten signature in black ink, appearing to be 'H. H. H.', is located in the bottom right corner of the page.

3.2 Until all obligations, warranties, duties and undertakings now or hereafter to be carried out or performed by the Contractor under the Contract shall have been satisfied or performed in full, if (notwithstanding the provisions of sub-paragraphs 4.1(a) and 4.1(b) of the Guarantee) any of the Guarantors has any rights of subrogation against the Contractor or any rights to prove in a Dissolution (as defined in paragraph 8.4 of the Guarantee) of the Contractor, such Guarantor agrees to exercise such rights in accordance with the directions of the Employer.

3.3 Each of the Guarantors warrants and undertakes to the Employer that it shall take all necessary action directly or indirectly to perform the obligations expressed to be assumed by it or contemplated by this Amendment and to implement the provisions of this Amendment.

3.4 Paragraphs 4.1(a), 4.1(b) and 5(c) of the Guarantee are hereby incorporated into and shall apply to this Amendment as if fully set forth herein.

4. ASSIGNMENT

4.1 No party hereto shall assign any or all of its right, title and interest in and to this Amendment without, in the case of any assignment by the Employer, the Lead Member's, or, in the case of any assignment by any of the Guarantors, the Employer's, prior written consent.

5. NOTICES

5.1 All documents and notices arising out of or in connection with this Amendment shall be served upon each of the Guarantors under and pursuant to the terms of the Guarantee.

6. MISCELLANEOUS

6.1 The Employer's rights under this Amendment are cumulative and are in addition to and not in substitution for any rights provided by law or the Contract or any other guarantee, surety, bond, insurance or security that the Employer may have or hold in relation to the Contract, and the Employer may exercise its rights under this Amendment from time to time without first having recourse to any such right, guarantee, surety, bond, insurance or security.

6.2 Any waiver by the Employer of the terms of this Amendment or any consent or approval given by the Employer shall only be effective if given in writing and then only for the purpose and upon the terms and conditions if any on which it is given.

6.3 If at any time any one or more of the provisions of this Amendment is or becomes illegal, invalid or otherwise unenforceable in any respect, such provision or provisions will be ineffective to the extent only of such illegality, invalidity or unenforceability and such illegality, invalidity or unenforceability will not invalidate any other provision of this Amendment.

A handwritten signature in black ink, appearing to be 'R. Hart', is located in the bottom right corner of the page.

- 6.4 Where applicable, words and expressions used in this Amendment shall have the meaning assigned to them in the Contract, as the case may be. The singular will include the plural and vice versa unless the context otherwise clearly requires. All references to the Contract shall be deemed to include any amendment, variation or supplemental agreement thereto. Headings are inserted for convenience only and are to be ignored for the purposes of construction. For the avoidance of doubt, all references to the Contractor shall be deemed to mean the Contractor from and after the date of assignment of the Contract.
- 6.5 This Amendment constitutes the entire agreement between the Employer and each of the Guarantors as to the matters addressed in this Amendment. This Amendment may not be modified except by written agreement of the Employer and each of the Guarantors.
- 6.6 Paragraphs 8.4 and 8.7 of the Guarantee are hereby incorporated into and shall apply to this Amendment as if fully set forth herein.
7. **DISPUTE RESOLUTION**
- 7.1 This Amendment shall be governed by and construed in accordance with the laws of the Republic of Panamá.
- 7.2 Any dispute arising out of, under or in connection with this Amendment shall be finally settled under and pursuant to the terms of the Guarantee *mutatis mutandis*.
8. **EXECUTION**
- In Witness** whereof the parties hereto have caused this Amendment to be executed the day and year before written by their duly authorised representatives.

A handwritten signature in black ink, appearing to be 'J. Sant', is written over a horizontal line.

SIGNED by:

Name: Jorge de la Guardia

Position: Employer's Representative

Date:

for and on behalf of the Employer in the presence of

Witness:

Name:

Address: Building ____, Corozal

Date:

SIGNED by:

Name:

Position:

Date:

for and on behalf of the Guarantors and for and on behalf of SACYR, S.A. (formerly Sacyr Vallehermoso, S.A.) as Guarantor in the presence of

Witness:

Name:

Address:

Date:

SIGNED by:

Name:

Position:

Date:

for and on behalf of the Guarantors and for and on behalf of ONDERNEMINGEN JAN DE NUL N.V., as Guarantor in the presence of

Witness:

A handwritten signature in black ink, appearing to be 'Wout', written over a horizontal line.

Name:

Address:

Date:

SIGNED by:

Name:

Position:

Date:

for and on behalf of the Guarantors and for
and on behalf of SALINI IMPREGILO
S.p.A. (formerly Impregilo S.p.A.), as
Guarantor in the presence of

Witness:

Name:

Address:

Date:

SIGNED by:

Name:

A handwritten signature in black ink, appearing to read "Luca", is written over a horizontal line.

Position:

Date:

for and on behalf of the Guarantors and for
and on behalf of CONSTRUCTORA
URBANA, S.A., as Guarantor in the
presence of

Witness:

Name:

Address:

Date:

A handwritten signature in black ink, appearing to be 'Hual', is located in the bottom right corner of the page.

APPENDIX 9

Appendix II-2

THIRD AMENDMENT TO PARENT COMPANY GUARANTEE
IN RESPECT OF ADVANCE PAYMENT JOINT AND SEVERAL GUARANTEE
OBLIGATIONS OF A MEMBER

Dated _____¹

- (1) SOFIDRA S.A.
- (2) AUTORIDAD DEL CANAL DE PANAMÁ

THIRD AMENDMENT TO GUARANTEE IN
RESPECT OF THE THIRD SET OF LOCKS
CONTRACT
relating to the realization of the Panamá Canal
Expansion Program

¹ Per VO 108, to be provided no later than January 14, 2015.

A handwritten signature in black ink, appearing to be 'Huat', is located in the bottom right corner of the page.

THIS THIRD AMENDMENT TO ADVANCE PAYMENT PARENT COMPANY GUARANTEE, dated _____² (this "Amendment") to the ADVANCE PAYMENT PARENT COMPANY GUARANTEE, dated December 26, 2012, as amended by AMENDMENT TO ADVANCE PAYMENT PARENT COMPANY GUARANTEE, dated March 18, 2014, as amended by SECOND AMENDMENT TO ADVANCE PAYMENT PARENT COMPANY GUARANTEE, dated _____, 2014³ (as amended, modified or supplemented, the "Parent Guarantee") and made between:

- (1) **SOFIDRA S.A.**, a company incorporated in Grand Duchy of Luxembourg, having its registered office at 5, Rue Guillaume Kroll, L-1882 Luxembourg, Grand Duchy of Luxembourg, operating under its commercial name "Jan De Nul Group" ("**Guarantor**"); and
- (2) **AUTORIDAD DEL CANAL DE PANAMÁ** an autonomous entity of the Panamanian Government established under Title XIV of the Panamanian National Constitution whose principal place of business is at Edificio de la Administración, Altos de Balboa, Balboa, Republic of Panamá (which term shall include permitted assigns) ("**Employer**").

BACKGROUND:

- (A) Ondernemingen Jan De Nul N.V. ("**Relevant Member**"), Salini Impregilo S.p.A. (formerly Impregilo S.p.A.), Constructora Urbana, S.A., Sacyr, S.A. (formerly Sacyr Vallehermoso, S.A.) and the Employer have entered into the Advance Payment Joint and Several Guarantee, dated December 26, 2012, (as amended from time to time, the "**Advance Payment JS Guarantee**"), in respect of the obligations of the Contractor under a contract for the design and construction of a third set of locks dated 11 August 2009 in relation to the Panamá Canal expansion project (as amended, modified or supplemented, "**Contract**"). In this Amendment, the words and expressions shall have the same meanings as are respectively assigned to them in the Contract, save as amended or as expressly stated herein.
- (B) The Relevant Member is a wholly and directly owned subsidiary of the Guarantor.
- (C) The Guarantor provided the Advance Payment Parent Company Guarantee, dated December 24, 2012, the Amendment to Advance Payment Parent Company Guarantee, dated March 18, 2014 and the Second Amendment to Advance Payment Parent Company Guarantee, dated _____, 2014⁴.
- (D) Pursuant to Variation Agreement Number 108, dated July 31, 2014 ("**Variation Agreement No. 108**"), the Employer and the Contractor agreed, for the reasons and on the terms specified therein, to include the Advance Payment for Lock Gates in the Advance Payment JS Guarantee by execution of the Third Amendment to Advance Payment Joint and Several Guarantee ("**JS Guarantee Third Amendment**").
- (E) Therefore, the Guarantor, for purposes of facilitating the completion of the Works under the Contract, has agreed to guarantee the obligations of the Relevant Member under the JS

² Per VO 108, to be provided no later than January 14, 2015.

³ Insert date of Second Amendment to Advance Payment Parent Company Guarantee.

⁴ Insert date of Second Amendment to Advance Payment Parent Company Guarantee.



Guarantee Third Amendment in respect of the Advance Payment for Lock Gates on the terms set out in this Amendment.

1. AMENDMENT

- 1.1 Paragraphs 1.1 and 1.2 of the Parent Guarantee are hereby amended by replacing each instance of "and the JS Guarantee Second Amendment" with ", the JS Guarantee Second Amendment and the JS Guarantee Third Amendment" in such paragraphs.

2. PROTECTIVE AND OTHER CLAUSES

- 2.1 The Guarantor expressly confirms and agrees that the Parent Guarantee, as amended by this Amendment is valid, binding and enforceable in accordance with its terms and remains in full force and effect notwithstanding this Amendment.
- 2.2 Paragraphs 2.1, 2.2, 2.3, 2.4 and 2.5 of the Parent Guarantee are hereby incorporated into and shall apply to this Amendment as if fully set forth herein.
- 2.3 Paragraphs 3.1, 3.2 and 3.3 of the Parent Guarantee are hereby incorporated into and shall apply to this Amendment as if fully set forth herein.

3. REPRESENTATIONS AND WARRANTIES

- 3.1 The Guarantor warrants and undertakes that it is duly incorporated and validly existing under the laws of Grand Duchy of Luxembourg and that this Amendment is its legally binding obligation, enforceable in accordance with its terms, and that all necessary corporate, governmental and other consents and authorizations for the giving, validity, enforceability and implementation of this Amendment and the transactions contemplated by it have been obtained and are in full force and effect.
- 3.2 Until all obligations, warranties, duties and undertakings now or hereafter to be carried out or performed by the Contractor under the Contract and by the Members (including without limitation the Relevant Member) under the Advance Payment JS Guarantee, as amended by the JS Guarantee Amendment, shall have been satisfied or performed in full, if (notwithstanding the provisions of sub-paragraphs 4.1(a) and 4.1(b) of the Parent Guarantee) the Guarantor has any rights of subrogation against any Member (including without limitation the Relevant Member) or the Contractor or any rights to prove in a Dissolution (as defined in paragraph 8.4 of the Parent Guarantee) of the Relevant Member or the Contractor, the Guarantor agrees to exercise such rights in accordance with the directions of the Employer.
- 3.3 The Guarantor warrants and undertakes to the Employer that it shall take all necessary action directly or indirectly to perform the obligations expressed to be assumed by it or contemplated by this Amendment and to implement the provisions of this Amendment.
- 3.4 Paragraphs 4.1(a), 4.1(b) and 5(c) of the Parent Guarantee are hereby incorporated into and shall apply to this Amendment as if fully set forth herein.

A handwritten signature in black ink, appearing to be 'Mant', is located in the bottom right corner of the page.

4. **ASSIGNMENT**

- 4.1 Neither party shall assign any or all of its right, title and interest in and to this Amendment without the other party's prior written consent.

5. **NOTICES**

- 5.1 All documents and notices arising out of or in connection with this Amendment shall be served upon the Guarantor under and pursuant to the terms of the Parent Guarantee.

6. **MISCELLANEOUS**

- 6.1 The Employer's rights under this Amendment are cumulative and are in addition to and not in substitution for any rights provided by law or the Contract or any other guarantee, surety, bond, insurance or security that the Employer may have or hold in relation to the Contract, including any and all such rights as the Employer may hold under or in relation to the Advance Payment JS Guarantee, as amended by the JS Guarantee Amendment, and the Employer may exercise its rights under this Amendment from time to time without first having recourse to any such right, guarantee, surety, bond, insurance or security.
- 6.2 Any waiver by the Employer of the terms of this Amendment or any consent or approval given by the Employer shall only be effective if given in writing and then only for the purpose and upon the terms and conditions if any on which it is given.
- 6.3 If at any time any one or more of the provisions of this Amendment is or becomes illegal, invalid or otherwise unenforceable in any respect, such provision or provisions will be ineffective to the extent only of such illegality, invalidity or unenforceability and such illegality, invalidity or unenforceability will not invalidate any other provision of this Amendment.
- 6.4 Where applicable, words and expressions used in this Amendment shall have the meaning assigned to them in the Contract, as the case may be. The singular will include the plural and vice versa unless the context otherwise clearly requires. All references to the Contract and the Advance Payment JS Guarantee shall be deemed to include any amendment, variation or supplemental agreement thereto. Headings are inserted for convenience only and are to be ignored for the purposes of construction.
- 6.5 This Amendment constitutes the entire agreement between the Employer and the Guarantor as to the matters addressed in this Amendment. This Amendment may not be modified except by written agreement of the Employer and the Guarantor.
- 6.6 Paragraphs 8.4 and 8.7 of the Parent Guarantee are hereby incorporated into and shall apply to this Amendment as if fully set forth herein.

7. **DISPUTE RESOLUTION**

- 7.1 This Amendment shall be governed by and construed in accordance with the laws of the Republic of Panamá.

A handwritten signature in black ink, appearing to be 'X. X. X.', is located in the bottom right corner of the page.

7.2 Any dispute arising out of, under or in connection with this Amendment shall be finally settled under and pursuant to the terms of the Parent Guarantee *mutatis mutandis*.

8. **EXECUTION**

In Witness whereof the parties hereto have caused this Amendment to be executed the day and year before written by their duly authorised representatives.

A handwritten signature in black ink, appearing to be 'M. H. H. H.', is located in the bottom right corner of the page.

SIGNED by:

SIGNED by:

Name: Jorge de la Guardia

Name:

Position: Employer's Representative

Position:

Date:

Date:

for and on behalf of the Guarantor in the presence
of
of

for and on behalf of the Employer in the
presence of

Witness:

Witness:

Name:

Name:

Address:

Address: Building ____, Corozal

Date:

Date:

A handwritten signature in black ink, appearing to be 'Jorge de la Guardia', is written over a large, faint, stylized 'X' mark.

