

PANAMA CANAL AUTHORITY	VARIATION	PAGE 1 OF 7
1. REQUEST FOR PROPOSAL No.: RFP-76161	2. CONTRACT No.: CMC-221427	3. DATE: February 5, 2015
		4. VARIATION No.: 136

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:


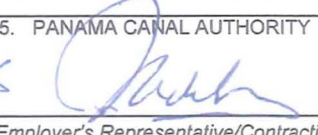
The contract referred to in item No. 2 is hereby varied as set forth in item 10, entitled "DESCRIPTION OF VARIATION".
YES. NO. The contractor shall send a copy, duly signed, of this Variation to the Employer's Representative/Contracting Officer.

	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 Quarta 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  (Authorized signature)	14. DATE: 5/II/2015
	15. PANAMA CANAL AUTHORITY  (Employer's Representative/Contracting Officer's signature)
	16. DATE: 5/II/2015

This Variation Agreement Number 136, is dated as of the 5th day of February 2015 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 organized 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 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 Contractor originally cost loaded the Accepted Baseline Programme in such a manner that payments in respect of the flexible membrane lining for the water saving basins would be made only upon installation in the Works.
- (c) The Contractor requested in RFV No. 0273 dated January 7, 2015 that the payment schedule be varied so as to permit interim payments for the delivery and installation of the flexible membrane lining for the water saving basins in accordance with Appendix 1 of this Variation Agreement No. 136.
- (d) Accordingly the Employer has responded through letter IAE-UPC-2392 dated January 20, 2015, indicating to the Contractor that the Employer will permit interim payments for delivery and installation of the flexible membrane lining for the water saving basins and that it confirms the price breakdown of flexible membrane lining referred to in sub-paragraph (c) above but subject always to the parties agreeing a formal variation to reflect such revised arrangements.
- (e) For the avoidance of doubt, RFV No. 0273 and this Variation Agreement No. 136 supersede the Contractor's RFV No. 0272, RFV No. 0267 and RFV No. 0263.
- (f) As a condition to the Employer permitting the requests as referred to in sub-paragraph (c) above the Contractor shall provide the VO No. 136 Bond Issuer Confirmation in the form set out in Appendix 2 to this Variation Agreement No. 136 no later than 5 Business Days after the date of this Variation Agreement No. 136.
- (g) Therefore, subject to the terms of this Variation Agreement No. 136, the Parties have agreed to a variation to the Contract as hereinafter stated, but not further or

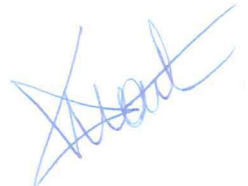


otherwise.

THE PARTIES HEREBY AGREE AS FOLLOWS:

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

1. In this Variation Agreement No. 136, 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. 136 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. 136 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. 136 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. 136 will have the effect of changing or extending the Time for Completion or any Milestone Dates under the Contract or entitle the Contractor to Excusable Delay.
4. Save in relation to breaches of, or failure by either Party to comply with, the terms of this Variation Agreement No. 136, 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. 136.
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. 136 is intended to be a waiver or relaxation of the Contractor's obligations under the Contract, save only as expressly stated herein and 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. 136 had been originally contained in the Contract.

6. This Variation Agreement No. 136 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 hereby 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 [*Definitions*] of the Contract under the Sub-Clause 1.1.6 [*Other Definitions*] (which shall be added in proper alphabetical order but without any number):

"Flexible Membrane Lining" means a manufactured hydraulic barrier consisting of one or more functionally continuous sheets of synthetic, or partially synthetic, flexible material, used to provide an essentially impermeable hydraulic barrier for the water saving basins meeting the requirements of G00/CICTSP-B0308;

"Water Saving Basins" means structures consisting of water impoundment basins and surrounding retaining wall or dikes for the purpose of reducing water consumption in the locks as specified in Section 01 81 16 – Lock Structures 1.01 A.4.;

"Variation Agreement No. 136" means Variation Agreement Number 136, dated 5 of February 2015 between the Employer and the Contractor.;

"VO No. 136 Bond Issuer Confirmation" has the meaning set out in paragraph 9 of Variation Agreement No. 136.

8. Subject to paragraph 9 of this Variation Agreement No. 136, the Parties hereby agree to add new Sub-Clauses 14.5.1.15 and 14.5.1.16 [*Plant and Materials Intended for the Works*] to the Contract as follows:

"14.5.1.15 The Contractor shall be paid progress payments in respect of Flexible Membrane Lining, as set out in Appendix 1 of Variation Agreement No. 136 and as stated herein, once such materials are delivered to Site, stocked on Site and verified in accordance with the material receipt inspection report quality assurance document, Quality procedure G00UPCMGP0016 – Material Receiving, Inspection, Handling and Storage and in all respects subject to the other terms and provisions of the Contract and once the Contractor has submitted to the Employer's Representative through DTCS:

.1 confirmation of the references in the punch list where quality documentation can be found in PCM;



- .2 details of the precise storage location of such Flexible Membrane Lining following delivery to the Site for inspection by the Employer's Representative;
- .3 confirmation that the Flexible Membrane Lining for which the Contractor has applied for progress payments has achieved final design status; and
- .4 packing list and the material receipt inspection report referenced to commercial invoices.

For the avoidance of any doubt, in the event the Employer identifies a deficiency in the delivery to, stocking on Site and/or verification of the Flexible Membrane Lining, and/or in the Contractor's compliance with this Sub-Clause 14.5.1.15, the Contractor shall not be entitled to be paid progress payments in respect of such Flexible Membrane Lining until such time as such deficiency has been rectified in full, unless otherwise notified to the Contractor in writing by the Employer's Representative in its sole and absolute discretion.

The Employer and the Contractor acknowledge the revised Flexible Membrane Lining price breakdown pursuant to this Sub-Clause 14.5.1.15 as shown in Appendix 1 to Variation Agreement No. 136 although both the Employer and the Contractor agree that, notwithstanding such revised Flexible Membrane Lining price breakdown, the Contractor shall be paid for Flexible Membrane Lining according to its actual progress against the Current Programme which shall include the new activities in respect of delivery to Site, stocking on Site and verification of Flexible Membrane Lining in accordance with this Sub-Clause 14.5.1.15, along with installation, and in all respects subject to the other terms and provisions of the Contract. Notwithstanding the foregoing and for the further avoidance of doubt, the acceptance by the Employer of the revised Flexible Membrane Lining price breakdown does not imply that the same breakdown will be applied to the rest of the Water Saving Basins.

- 14.5.1.16 In assessing and certifying payments in respect of Flexible Membrane Lining delivered to Site as aforesaid, the Contractor shall, in addition to establishing that the required properties of the Flexible Membrane Lining are in all respects in accordance with the terms and provisions of the Contract, provide verification that the Contractor has delivered the Flexible Membrane Lining in accordance with Sub-Clause 14.5.1.15 and in all respects subject to the other terms and provisions of the Contract, and has claimed in a



Statement amounts owed to the Contractor in relation to such materials. Certification and payment in respect of Flexible Membrane Lining in accordance with the terms and provisions of the Contract, shall not be due under the Contract unless such matters are first established to the satisfaction of the Employer's Representative and in accordance with the terms and provisions of the Contract.

9. The Parties further agree that the amendment of the Contract and the Employer's agreement to the Contractor's request as set out in and in accordance with paragraph 8 of this Variation Agreement No. 136 is subject to the Contractor delivering to the Employer no later than 5 Business Days after the date of this Variation Agreement No. 136 written confirmation (or rider, amendment or modification, as applicable), in the form set out in Appendix 2 to Variation Agreement No. 136 and otherwise acceptable to the Employer, from each of (i) the issuer of the Payment Bond and (ii) the issuer of the Plant and Material Security, in each case consenting to the modifications to the Contract so as to permit interim payments for the delivery and installation for the Flexible Membrane Lining of such Variation Agreement and as to the continuing validity of such bonds notwithstanding the modifications to the Contract made pursuant to the terms of Variation Agreement No. 136 (the **"VO No. 136 Bond Issuer Confirmation"**), failing which the amendments set out in paragraph 8 above shall be of no effect and void.
10. If the Contractor fails to comply with paragraph 9 above within the time period specified therein, then any amounts paid by the Employer to the Contractor in accordance with paragraph 8 above shall become immediately due and payable by the Contractor to the Employer and the Employer shall be entitled, at its sole and absolute discretion, to:
 - (a) deduct the full amount of any such amounts paid by the Employer to the Contractor in accordance with paragraph 8 above in the next Interim Payment Certificate; and/or
 - (b) require payment of the full amount of any such amounts paid by the Employer to the Contractor in accordance with paragraph 8 above (or any part thereof not deducted in accordance with sub-paragraph (a) above) from the Contractor, in which case the Contractor shall within 21 days of written request from the Employer make payment of such amount(s) to the Employer and/or the Employer may recover such amount(s) as a debt due from the Contractor to the Employer. Payment of any amount(s) due from the Contractor to the Employer pursuant to this sub-paragraph (b) shall be made by electronic transfer of funds to the bank account nominated by the Employer,



and the payments in respect of the Flexible Membrane Lining shall continue in accordance with the Contract as if the respective amendments set out in paragraph 8 above had never been made.

11. Nothing in this Variation Agreement No. 136 is intended to or does give the Contractor any greater entitlement in respect of payment for Flexible Membrane Lining than was included within the original Contract Price and thus nothing in this Variation Agreement No. 136 is intended to or does increase the Contract Price or the sum due to the Contractor in respect of Flexible Membrane Lining.
12. The Parties acknowledge and agree that the Employer's rights in relation to the processing of Interim Payments including but not limited to under Sub-Clause 14.6 [*Issue of Interim Payment Certificates*] and Sub-Clause 14.7 [*Payment*] remain unaffected by this Variation Agreement No. 136.
13. 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. 136 and secure the full benefit of the rights, powers and remedies conferred upon it in this Variation Agreement No. 136.

In Witness whereof the Parties hereto have caused this Variation Agreement No. 136 to the Contract to be executed on the 5th day of February of the year 2015 by their duly authorized representatives.

For ACP



Jorge de la Guardia
Employer's Representative

For GUPCSA



Giuseppe Quarta
Contractor's Representative

Appendix 1

Flexible Membrane Lining price breakdown

RFV 273 - PROPOSED ACTIVITIES FOR THE SUPPLY AND INSTALLATION OF FLEXIBLE MEMBRANE LINING IN THE WSBs

Activity Id	Current Budget	Activity Name	Quantity (m2)	UP (\$)	Rate (%)	Proposal Budget
A-43080-330	\$3,863,613.66	A_WSB-LC: Install Lining				
		Concrete WSB Slab	12,852.41	50.00		\$642,620.50
		Supply Materials for flexible lining	90,000.00	21.47	60%	\$1,932,595.90
		Installation of flexible lining	90,000.00	14.32	40%	\$1,288,397.26
A-43260-340	\$3,863,613.95	A_WSB-MC: Install Lining				
		Concrete WSB Slab	13,211.82	50.00		\$660,591.00
		Supply Materials for flexible lining	90,000.00	21.35	60%	\$1,921,813.77
		Installation of flexible lining	90,000.00	14.24	40%	\$1,281,209.18
A-43460-330	\$3,863,613.95	A_WSB-UC: Install Lining				
		Concrete WSB Slab	12,996.98	50.00		\$649,849.00
		Supply Materials for flexible lining	90,000.00	21.43	60%	\$1,928,258.97
		Installation of flexible lining	90,000.00	14.28	40%	\$1,285,505.98
P-43400-80	\$3,863,614.00	P_WSB-LC: Install Lining				
		Concrete WSB Slab	12,852.41	50.00		\$642,620.50
		Supply Materials for flexible lining	90,000.00	21.47	60%	\$1,932,596.10
		Installation of flexible lining	90,000.00	14.32	40%	\$1,288,397.40
P-43600-80	\$3,863,614.00	P_WSB-MC: Install lining				
		Concrete WSB Slab	13,211.82	50.00		\$660,591.00
		Supply Materials for flexible lining	90,000.00	21.35	60%	\$1,921,813.80
		Installation of flexible lining	90,000.00	14.24	40%	\$1,281,209.20
P-43800-80	\$3,863,614.00	P_WSB-UC: Install Lining				
		Concrete WSB Slab	12,996.98	50.00		\$649,849.00
		Supply Materials for flexible lining	90,000.00	21.43	60%	\$1,928,259.00
		Installation of flexible lining	90,000.00	14.28	40%	\$1,285,506.00

Variation Agreement No. 136

Appendix 2

VO No. 136 Bond Issuer Confirmation

[Letterhead of Zurich]

_____, 2014

Autoridad del Canal de Panama
Building 740, Corozal West
Panama, Republica of Panama

Reference: Contract No. CMC-221427, Design and Construction of the Third Set of Locks, Panama Canal
Confirmation regarding Variation Agreement No. 136

Dear Sirs:

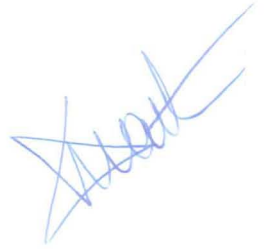
We refer to (i) the Design and Build Contract for the Third Set of Locks on the Panama Canal (as amended, modified, varied or supplemented, the "Contract") tendered under RFP #76161 between you, as owner and Employer thereunder (the "Owner") and Grupo Unidos por el Canal, S.A., as contractor (the "Contractor"); (ii) the 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 (iii) 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 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. 136, dated February 5, 2015 ("Variation Agreement No. 136") to the Contract, executed by the Owner and the Contractor, which provides for certain modifications to the Contract so as to permit interim payments for the delivery and installation of Flexible Membrane Lining (as defined therein).

The undersigned, as Surety under and as defined in the Bonds, hereby consents to the aforementioned modifications to the Contract 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 the modifications set forth in Variation Agreement No. 136.

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.

Variation Agreement No. 136



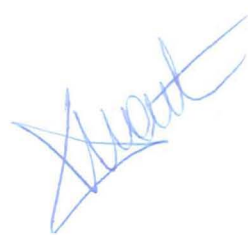
ZURICH AMERICAN INSURANCE
COMPANY, as Surety under the Bonds

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:

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