

PANAMA CANAL AUTHORITY	VARIATION	PAGE 1 OF 13
1. REQUEST FOR PROPOSAL No.:	2. CONTRACT No.:	3. DATE:
76161	CMC-221427	May 6, 2015
		4. VARIATION No.:
		140

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)	7. CONTRACTOR'S TELEPHONE NUMBER:
Grupo Unidos por el Canal, S.A. Building 22B, Brujas Road Cocoli, Republic of Panama	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 <sup>th</sup> 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)	12. NAME AND TITLE OF THE EMPLOYER'S REPRESENTATIVE/CONTRACTING OFFICER (Type or print)
Giuseppe Quarta Contractor's Representative	Jorge de la Guardia, Employer's Representative
13. CONTRACTOR	14. DATE:
	5/4/2015
(Authorized signature)	15. PANAMA CANAL AUTHORITY
	
	(Employer's Representative/Contracting Officer's signature)
	16. DATE:
	5/4/2015

This Variation Agreement Number 140, is dated as of 6<sup>th</sup> day of May 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 Contract provides for the Employer to retain Retention Money by either the Contractor providing the Employer with the Fixed Retention Security pursuant to Sub-Clause 14.9A of the Contract [*Fixed Retention Security*], the Escalating Retention Security pursuant to Sub-Clause 14.9B of the Contract [*Escalating Retention Security*], or by the Employer deducting retention monies pursuant to subparagraph (c) of Sub-Clause 14.3.3 of the Contract [*Application for Interim Payment Certificates*].
- (c) Sub-Clause 14.9 of the Contract sets out the basis of payment by the Employer of the Retention Money.
- (d) The Contractor requested in RFV No. 0277 dated February 24, 2015 that the basis of payment of Retention Money be varied so as to permit the early payment by the Employer to the Contractor of the Retention Money which has accrued to date in the sum of USD 90,000,000 (Ninety Million Dollars).
- (e) Accordingly the Employer has responded through IAE-GUPC-2502 dated April 29, 2015, indicating to the Contractor that the Employer will permit the early payment of USD 80,000,000 (Eighty Million Dollars) of the Retention Money accrued to date as follows:
  - i. USD 40,000,000 (Forty Million Dollars) to be applied for payments to approved specified subcontractors and suppliers;





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- ii. USD 20,000,000 (Twenty Million Dollars) to be applied for payments to approved specified subcontractors and suppliers after the Pacific Locks chamber is flooded in accordance with the Contract; and
- iii. USD 20,000,000 (Twenty Million Dollars) to be applied for payments to approved specified subcontractors and suppliers after the Atlantic Locks chamber is flooded in accordance with the Contract,

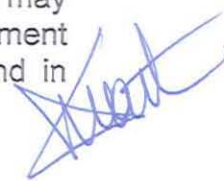
but subject always to the parties agreeing a formal variation to reflect such revised arrangements.

- (f) As a condition to the Employer permitting the early payment of Retention Money as referred to in sub-paragraph (e) above the Contractor shall provide the VO No. 140 Bond Issuer Confirmation in the form set out in Appendix 1 to this Variation Agreement No. 140 no later than 10 Business Days after the date of this Variation Agreement No. 140.
- (g) Therefore, subject to the terms of this Variation Agreement No. 140, 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. 140, 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. 140 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. 140 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. 140 or in the future concerning their respective performance under and in





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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. 140 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. 140, 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. 140.
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. 140 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. 140 had been originally contained in the Contract.
6. This Variation Agreement No. 140 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:

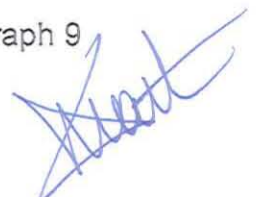
The Parties agree to add the following definitions to Sub-Clause 1.1 [*Definitions*] of the Contract under the Sub-Clause 1.1.6 [*Other Definitions*] (which shall be added in proper alphabetical order but without any number):

**"First Stage of Flooding of the Atlantic Locks"** means, for the purposes of payment of the Retention Money under sub-paragraph (c) of Sub-Clause 14.9.2 only, achieving a water surface elevation of -2.41 PLD with water to be provided/furnished by the Employer in the Atlantic Locks.

**"First Stage of Flooding of the Pacific Locks"** means, for the purposes of payment of the Retention Money under sub-paragraph (c) of Sub-Clause 14.9.2 only, achieving a water surface elevation of -3.77 PLD with water to be provided/furnished by the Employer in the Pacific Locks.

**"Variation Agreement No. 140"** means Variation Agreement Number 140, dated 6<sup>th</sup> of May, 2015 between the Employer and the Contractor.

**"VO No. 140 Bond Issuer Confirmation"** has the meaning set out in paragraph 9 of Variation Agreement No. 140.





**"VO No. 140 Atlantic Flooding Early Retention Payment"** means an amount of the VO No. 140 Specified Expenditures Early Retention Payment up to a maximum aggregate amount of USD 20,000,000 (Twenty Million Dollars) which the Employer has agreed to pay to the Contractor early pursuant to Variation Agreement No. 140 and in accordance with the terms of sub-paragraphs (c) and (d) of Sub-Clause 14.9.2 [*Payment of Retention Money or Provision of Retention Security*].

**"VO No. 140 First Early Retention Payment"** means an amount of the VO No. 140 Specified Expenditures Early Retention Payment up to a maximum aggregate amount of USD 40,000,000 (Forty Million Dollars) which the Employer has agreed to pay to the Contractor early pursuant to Variation Agreement No. 140 and in accordance with the terms of sub-paragraphs (c) and (d) of Sub-Clause 14.9.2 [*Payment of Retention Money or Provision of Retention Security*].

**"VO No. 140 Pacific Flooding Early Retention Payment"** means an amount of the VO No. 140 Specified Expenditures Early Retention Payment up to a maximum aggregate amount of USD 20,000,000 (Twenty Million Dollars) which the Employer has agreed to pay to the Contractor early pursuant to Variation Agreement No. 140 and in accordance with the terms of sub-paragraphs (c) and (d) of Sub-Clause 14.9.2 [*Payment of Retention Money or Provision of Retention Security*].

**"VO No. 140 Specified Expenditures"** means payments to be made to Subcontractors and suppliers which contribute directly to the progress of the Works (but not to external consultants and Shareholders (unless in respect of payments due in their capacity as a Subcontractor)) after the date of Variation Agreement No. 140, as approved by the Employer's Representative in its sole and absolute discretion in accordance with sub-paragraph (d)(i) of Sub-Clause 14.9.2 [*Payment of Retention Money or Provision of Retention Security*] until the total amount of the VO No. 140 Specified Expenditures Early Retention Payment paid as a result of the VO No. 140 Specified Expenditures Applications taken together has reached a maximum amount of USD 80,000,000 (Eighty Million Dollars).

**"VO No. 140 Atlantic Flooding Early Retention Payment Cut-Off Date"** shall mean the date that is three calendar months after the date on which the First Stage of Flooding of the Atlantic Locks is achieved or the date when the total amount of the VO No. 140 Atlantic Flooding Early Retention Payment certified as a result of VO No. 140 Specified Expenditures Applications taken together has reached the maximum amount of USD 20,000,000 (Twenty Million Dollars), whichever occurs first.

**"VO No. 140 First Early Retention Payment Cut-Off Date"** shall mean the date that is three calendar months after the date of Variation Agreement No. 140 or the date when the total amount of the VO No. 140 First Early Retention Payment certified as a result of VO No. 140 Specified Expenditures Applications taken together has reached the maximum amount of USD 40,000,000 (Forty Million





Dollars), whichever occurs first.

**"VO No. 140 Pacific Flooding Early Retention Payment Cut-Off Date"** shall mean the date that is three calendar months after the date on which the First Stage of Flooding of the Pacific Locks is achieved or the date when the total amount of the VO No. 140 Pacific Flooding Early Retention Payment certified as a result of VO No. 140 Specified Expenditures Applications taken together has reached the maximum amount of USD 20,000,000 (Twenty Million Dollars), whichever occurs first.

**"VO No. 140 Specified Expenditures Early Retention Payment"** means an amount of the Retention Money up to a maximum aggregate amount of USD 80,000,000 (Eighty Million Dollars) which the Employer has agreed to pay to the Contractor early pursuant to Variation Agreement No. 140 and in accordance with the terms of sub-paragraphs (c) and (d) of Sub-Clause 14.9.2 [*Payment of Retention Money or Provision of Retention Security*].

**"VO No. 140 Specified Expenditures Application"** has the meaning provided in sub-paragraph (d) of Sub-Clause 14.9.2 [*Payment of Retention Money or Provision of Retention Security*].

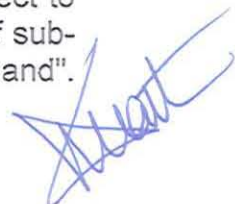
**"VO No. 140 Specified Expenditures Payment Certification"** has the meaning provided in sub-paragraph (d) of Sub-Clause 14.9.2 [*Payment of Retention Money or Provision of Retention Security*].

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

**"CPA"** shall be amended to read as follows:

**"CPA"** means a Certified Public Accountant, who shall be an employee of the Autoridad del Canal de Panama, who may be appointed to 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 Variation Agreement No. 058, Variation Agreement No. 070, Variation Agreement No. 090 and Variation Agreement No. 140.

8. Subject to paragraph 9 of this Variation Agreement No. 140, the Parties hereby agree to:
- (a) in sub-paragraph (a) of Sub-Clause 14.9.2 insert at the beginning "subject to sub-paragraphs (c) and (d) of this Sub-Clause 14.9.2" and at the end of sub-paragraph (a) of Sub-Clause 14.9.2 delete the word "and".
  - (b) in sub-paragraph (b) of Sub-Clause 14.9.2 insert at the beginning "subject to sub-paragraphs (c) and (d) of this Sub-Clause 14.9.2" and at the end of sub-paragraph (b) of Sub-Clause 14.9.2 delete the full stop and replace with "; and".



- (c) add new sub-paragraph (c) to Sub-Clause 14.9.2 [*Payment of Retention Money or Provision of Retention Security*] to the Contract as follows:

"(c) the Employer shall pay to the Contractor the VO No. 140 Specified Expenditures Early Retention Payment as follows:

- i. USD 40,000,000 (Forty Million Dollars) as the VO No. 140 First Early Retention Payment in accordance with the provisions of sub-paragraph (d) of Sub-Clause 14.9.2 below;
- ii. USD 20,000,000 (Twenty Million Dollars) as the VO No. 140 Pacific Flooding Early Retention Payment after the date on which the First Stage of Flooding of the Pacific Locks is achieved in accordance with the provisions of sub-paragraph (d) of Sub-Clause 14.9.2 below; and
- iii. USD 20,000,000 (Twenty Million Dollars) as the VO No. 140 Atlantic Flooding Early Retention Payment after the date on which the First Stage of Flooding of the Atlantic Locks is achieved in accordance with the provisions of sub-paragraph (d) of Sub-Clause 14.9.2 below.

In assessing and certifying payments in respect of the VO No. 140 Specified Expenditures Early Retention Payment, the Employer and the Contractor shall comply with the payment provisions set out in the Contract, in particular Sub-Clauses 14.6 [*Issue of Interim Payment Certificates*] and 14.7 [*Payment*], save that for the avoidance of any doubt the Employer shall not be entitled to deduct retention from the VO No. 140 Specified Expenditures Early Retention Payment pursuant to sub-paragraph (c) of Sub-Clause 14.3.3 [*Application for Interim Payment Certificates*]."

Solely for the purposes of this Sub-Clause 14.9.2 (c), in the event that the Employer is unable to provide water to enable the Contractor to achieve the First Stage of Flooding of the Atlantic Locks and/or the First Stage of Flooding of the Pacific Locks, respectively, then First Stage of Flooding of the Atlantic Locks and/or the First Stage of Flooding of the Pacific Locks shall be deemed achieved, 4 days after the Contractor has notified the Employer that is ready to proceed in accordance with this Sub-Clause 14.9.2 (c).

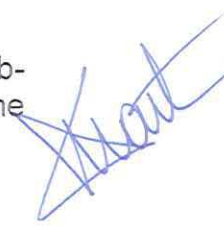
- (d) add new sub-paragraph (d) to Sub-Clause 14.9.2 [*Payment of Retention Money or Provision of Retention Security*] to the Contract as follows:

"(d) the Employer shall pay to the Contractor the VO No. 140 Specified Expenditures Early Retention Payment as follows:





- i. As a precondition to the Contractor's entitlement to apply for payment of any amount of the VO No. 140 Specified Expenditures Early Retention Payment, the Contractor shall provide to the Employer Appendix 2 to Variation Agreement No. 140 duly completed and signed by the Contractor's Representative, together with the pre-audit documentation required to be provided as set out in part (a) of Appendix 3 to Variation Agreement No. 140, which Appendix 2 to Variation Agreement No. 140 and documentation listed in Items a, c and d of Appendix 3 shall be sent through the DTCS and documents listed in Item b, shall be available at the Contractor's Main Offices in Cocoli. Following receipt of all such pre-audit documentation and completed appendices, the Employer's Representative shall validate such documentation and completed appendices and notify the Contractor whether the proposed recipients and the proposed amounts requested to be paid are, in the Employer's Representative's sole and absolute discretion, approved. Once approved by the Employer's Representative, the amounts to be paid to such recipients shall be VO No. 140 Specified Expenditures. The Contractor shall not:
  - a. include or refer to in any pre-audit documentation required to be provided as set out in part (a) of Appendix 3 to Variation Agreement No. 140, and/or
  - b. include in any VO No. 140 Specified Expenditures Application pursuant to this Variation Agreement No. 140; and/or
  - c. be entitled to any VO No. 140 Specified Expenditures Early Retention Payment in respect of,  
  
any
  - d. invoice of an amount less than USD 10,000.00 (Ten Thousand Dollars); and/or
  - e. any invoice dated prior to January 16, 2015; and/or
  - f. amounts which have already been paid or should have been paid by the Contractor pursuant to this Variation Agreement No. 140 and/or any Variation Agreements entered into prior to the date of Variation Agreement No. 140.
- ii. Subject to the Contractor's compliance with the terms of this subparagraph (d) of this Sub-Clause 14.9.2 and subject to the



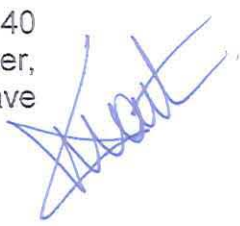


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Employer's Representative's validation of such documentation and completed appendices and approval in accordance with sub-paragraph (d)(i) above, the Contractor shall be entitled to apply for payment of any amount of the VO No. 140 Specified Expenditures Early Retention Payment to make payment of any of the VO No. 140 Specified Expenditures by submitting to the Employer either an application for an Interim Payment Certificate or an extraordinary payment application in either case in accordance with the requirements of this sub-paragraph (d) of Sub-Clause 14.9.2 identifying the VO No. 140 Specified Expenditure(s) in relation to which the VO No. 140 Specified Expenditures Early Retention Payment is being applied for (the "VO No. 140 Specified Expenditures Application").

- iii. The Contractor may, subject to the terms of this sub-paragraph (d) of Sub-Clause 14.9.2:
  - a. in relation to the VO No. 140 First Early Retention Payment, continue to submit a VO No. 140 Specified Expenditures Application for an amount of the VO No. 140 First Early Retention Payment until the total amount certified as a result of all VO No. 140 Specified Expenditures Applications in respect of the VO No. 140 First Early Retention Payment, taken together, amounts to USD 40,000,000 (Forty Million Dollars) save that no further amount of the VO No. 140 First Early Retention Payment shall be paid after the VO No. 140 First Early Retention Payment Cut-Off Date, even if by that time the maximum amount of the VO No. 140 First Early Retention Payment has not been certified or paid. For the avoidance of doubt, under no circumstances whatsoever shall the Contractor be entitled to payment of the VO No. 140 First Early Retention Payment in excess of the sum of USD 40,000,000 (Forty Million Dollars);
  - b. in relation to the VO No. 140 Atlantic Flooding Early Retention Payment, only submit the first VO No. 140 Specified Expenditures Application for an amount of the VO No. 140 Atlantic Flooding Early Retention Payment after the date on which the First Stage of Flooding of the Atlantic Locks is achieved and may continue to submit a VO No. 140 Specified Expenditures Application for an amount of the VO No. 140 Atlantic Flooding Early Retention Payment until the total amount certified as a result of all VO No. 140 Specified Expenditures Applications in respect of the VO No. 140 Atlantic Flooding Early Retention Payment, taken together, amounts to USD 20,000,000 (Twenty Million Dollars) save



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that no further amount of the VO No. 140 Atlantic Flooding Early Retention Payment shall be paid after the VO No. 140 Atlantic Flooding Early Retention Payment Cut-Off Date, even if by that time the maximum amount of the VO No. 140 Atlantic Flooding Early Retention Payment has not been certified or paid. For the avoidance of doubt, under no circumstances whatsoever shall the Contractor be entitled to payment of the VO No. 140 Atlantic Flooding Early Retention Payment in excess of the sum of USD 20,000,000 (Twenty Million Dollars); and

- c. in relation to the VO No. 140 Pacific Flooding Early Retention Payment, only submit the first VO No. 140 Specified Expenditures Application for an amount of the VO No. 140 Pacific Flooding Early Retention Payment after the date on which the First Stage of Flooding of the Pacific Locks is achieved and may continue to submit a VO No. 140 Specified Expenditures Application for an amount of the VO No. 140 Pacific Flooding Early Retention Payment until the total amount certified as a result of all VO No. 140 Specified Expenditures Applications in respect of the VO No. 140 Pacific Flooding Early Retention Payment, taken together, amounts to USD 20,000,000 (Twenty Million Dollars) save that no further amount of the VO No. 140 Pacific Flooding Early Retention Payment shall be paid after the VO No. 140 Pacific Flooding Early Retention Payment Cut-Off Date, even if by that time the maximum amount of the VO No. 140 Pacific Flooding Early Retention Payment has not been certified or paid. For the avoidance of doubt, under no circumstances whatsoever shall the Contractor be entitled to payment of the VO No. 140 Pacific Flooding Early Retention Payment in excess of the sum of USD 20,000,000 (Twenty Million Dollars).
- iv. The Contractor shall make payment of the VO No. 140 Specified Expenditures to the approved recipients in the approved amounts in full without deduction or set-off no earlier than the date of receipt by the Contractor of the associated VO No. 140 Specified Expenditures Early Retention Payment from the Employer and no later than 10 Business Days after receipt by the Contractor of the associated VO No. 140 Specified Expenditures Early Retention Payment from the Employer. In no event shall the Contractor use or apply all or any portion of the VO No. 140 Specified Expenditures Early Retention Payment for any purpose other than the payment of the VO No. 140 Specified Expenditures, including without limitation for its own corporate or cash flow purposes (other than in respect of such payments for VO No. 140





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Specified Expenditures) or to make payment to any other supplier, subcontractor or person, including any third party who has assigned to it the right to receive payment in respect of such amounts, for any part of the Works, Plant and/or Materials, or otherwise.

- v. Within 10 Business Days of receipt by the Contractor of the associated VO No. 140 Specified Expenditures Early Retention Payment from the Employer, the Contractor shall provide to the Employer certification in the form set out in Appendix 4 to Variation Agreement No. 140, duly completed in accordance with the requirements set out therein (the "**VO No. 140 Specified Expenditures Payment Certification**").
- vi. The Contractor shall provide to the Employer the post-audit documentation required to be provided as set out in part (b) of Appendix 3 to Variation Agreement No. 140 within 15 Business Days of the Contractor making payment of any VO No. 140 Specified Expenditures, which documentation listed in items a, b, d and e of such Appendix and such VO No. 140 Specified Expenditures Payment Certification shall be sent through DTCS and hard copies of item c shall be made available to the Employer for review at the Contractor's main office in Cocoli.
- vii. Without prejudice to the foregoing and notwithstanding any other provision of this Contract, within 5 Business Days of receipt by the Employer of all the post-audit documentation in accordance with sub-paragraph (d)(vi) above the Employer's Representative shall start a review, investigation and/or audit and make copies and take extracts of the Contractor's books and records (including any electronic data and records) relating to any payments made, or to be made (including for the avoidance of doubt the pre-audit documentation referred to in sub-paragraph (d)(i) above and the post-audit documentation referred to in sub-paragraph (d)(v) above), by the Contractor to any identified recipients in respect of the VO No. 140 Specified Expenditures in order to verify that such payments have been made, or will be made, in accordance with the Contract. For the avoidance of any doubt, the Employer shall be entitled to conduct the pre-audit referred to in sub-paragraph (d)(i) above and the post-audit referred to in sub-paragraph (d)(v) above in relation to any and all payments of the VO No. 140 Specified Expenditures.
- viii. In the event that any payments have been made, or are to be made, by the Contractor to any recipients in respect of the VO No. 140 Specified Expenditures otherwise than in accordance with the provisions of this sub-paragraph (d) of Sub-Clause 14.9.2, or





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where such payments have been made but the aforementioned audit rights have not been afforded to the Employer's Representative, or where the Contractor fails to provide to the Employer the VO No. 140 Specified Expenditures Payment Certification together with all the documentation required to be provided as set out in part (b) of Appendix 3 to Variation Agreement No. 140, or where the Contractor is otherwise in breach of any of its obligations under this sub-paragraph (d) of Sub-Clause 14.9.2, the Employer's Representative shall promptly notify the Contractor of such deficiency. In the event that such deficiency is not corrected within 5 Business Days of such notification to the Contractor, 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 and absolute discretion of the Employer's Representative, the value of all such non-compliant payments made to any such identified recipients in respect of the VO No. 140 Specified Expenditures from any subsequent Interim Payment Certificate and/or recover such amount as a debt due from the Contractor to the Employer. Further the Employer's Representative may request that a CPA undertakes a review of any information, certifications and documentation that may be provided by the Contractor pursuant to this sub-paragraph (d) of Sub-Clause 14.9.2."

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. 140 is subject to the Contractor delivering to the Employer no later than 10 Business Days after the date of this Variation Agreement No. 140 written confirmation (or rider, amendment or modification, as applicable), in the form set out in Appendix 1 to Variation Agreement No. 140 and otherwise acceptable to the Employer from the issuer of the Payment Bond, consenting to the modifications to the Contract so as to permit the early payment of Retention Money of such Variation Agreement and as to the continuing validity of such bond notwithstanding the modifications to the Contract made pursuant to the terms of Variation Agreement No. 140 (the "**VO No. 140 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:





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- (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 deduction and payment of the Retention Money 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. 140 is intended to or does give the Contractor any greater entitlement in respect of the amount of payment of any Retention Money than was included within the original Contract Price and thus nothing in this Variation Agreement No. 140 is intended to or does increase the Contract Price or the sum due to the Contractor in respect of the Retention Money.
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. 140.
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. 140 and secure the full benefit of the rights, powers and remedies conferred upon it in this Variation Agreement No. 140.

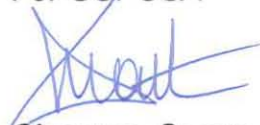
**In Witness** whereof the Parties hereto have caused this Variation Agreement No. 140 to the Contract to be executed on the 6<sup>th</sup> day of May of the year 2015 by their duly authorized representatives.

For ACP



Jorge de la Guardia  
Employer's Representative

For GUPCSA



Giuseppe Quarta  
Contractor's Representative

\*\*\*\*\*

Appendix 1

VO No. 140 Bond Issuer Confirmation

[Letterhead of Zurich]

\_\_\_\_\_, 2015

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

Reference: Contract No. CMC-221427, Design and Construction of the Third Set of  
Locks, Panama Canal  
Confirmation regarding Variation Agreement No. 140

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"); and (ii) the payment bond, Bond No. 08960194, dated August 7, 2009, in an amount of USD 50,000,000 (Fifty Million Dollars), issued in the Owner's favor in respect of the Contract (as amended, supplemented or otherwise modified from time to time, the "Payment Bond"). 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. 140, dated May 6, 2015 ("Variation Agreement No. 140") to the Contract, executed by the Owner and the Contractor, which provides for certain modifications to the Contract so as to permit the early payment of certain Retention Money by the Employer to the Contractor (as defined therein).

The undersigned, as Surety under and as defined in the Payment Bond, hereby consents to the aforementioned modifications to the Contract and confirms to you, as Owner and beneficiary under the Payment Bond, the continued validity of the Payment Bond in the respective amounts originally stated therein, notwithstanding the modifications set forth in Variation Agreement No. 140.

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





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ZURICH AMERICAN INSURANCE  
COMPANY, as Surety under the Payment Bond

By: \_\_\_\_\_  
Name:  
Title:

ACCEPTED:

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

By: \_\_\_\_\_  
Name:  
Title:

A handwritten signature in blue ink, appearing to be "M. A. S.", is located in the bottom right corner of the page.

APPENDIX 2-VARIATION AGREEMENT NO. 140  
SUBCONTRACTOR LIST ( TO BE APPROVED BY THE EMPLOYER'S REPRESENTATIVE)

	A	B	C	D	E=B-C	F=C-D	G
No.	Supplier/Sub-Contractor	Subcontract Price	Subcontract Price Invoiced to Date	Subcontract Price Paid to Date	Remaining Subcontract Price	Balance to Pay*	Verified by ACP (for ACP use only)
1							
2							
3							
4							
5							
6							
7							
8							
	TOTALS						

\* [such amount being the amount which the Contractor requests the Employer to approve as the amount to be paid to the Suppliers]

Signed for and on behalf of the Contractor

\_\_\_\_\_

Date: April, 2015





### Appendix 3 – VO-140

**a. Pre-audit to validate the invoiced amounts to be paid to proposed recipients of the VO No. 140-Specified Expenditures Early Retention Payment**

Where the Contractor provides to the Employer Appendix 2 to Variation Agreement No. 140 duly completed in accordance with sub-paragraph (d) of Sub-Clause 14.9.2 of the Contract, the Contractor shall also provide to the Employer the following documentation:

- a) Spreadsheets detailing the payments to be made by the Contractor to the proposed recipients of the VO No. 140 Specified Expenditures Early Retention Payment, including the name of the proposed recipient of the VO No. 140 Specified Expenditures Early Retention Payment; the relevant subcontract or purchase order number; subcontract or purchase order amount; invoice number; invoice dates (it being agreed that no such invoices shall be dated earlier than January 16, 2015); invoice amount (it being agreed that no such invoices shall be for an amount less than USD 10,000.00);
- b) Copies of the signed contracts between the Contractor and any proposed recipient of the VO No. 140 Specified Expenditures Early Retention Payment as may be requested by the Employer. Such copies shall contain the Conditions, prices, and details of the goods or services rendered, and any variations and modifications thereto, so as to enable the Employer to validate the price and details of the goods and services as required (to be made available at the Contractor's main offices in Cocoli);
- c) Electronic funds transfer form completed and signed by the Contractor detailing the payment method and the bank account details such as bank name, bank account number, type of account of the relevant proposed recipient of the VO No. 140 Specified Expenditures Early Retention Payment; and
- d) Such other evidence or substantiation that may reasonably be required by the Employer's Representative in order to validate the invoices and payment of the VO No. 140 Specified Expenditures.

After the pre-audit validations set out above and the Employer Representative's approval of Appendix 2 to Variation Agreement No. 140 duly completed in accordance with sub-paragraph (d) of Sub-Clause 14.9.2 of the Contract, the Contractor may submit:

An application for Interim Payment Certificate/extraordinary payment application (as applicable) as required under sub-paragraph (d) of Sub-Clause 14.9.2 of the Contract, uploaded in the DTCS.

After the payment to the Contractor as a result of an application for Interim Payment Certificate/an extraordinary payment application (as applicable) as referred to above, the Contractor should make payment to the approved recipient of the VO No. 140 Specified Expenditures Early Retention Payment within 10 business days after receipt by the Contractor of the associated VO No. 140 Specified Expenditures Early Retention



Payment, as well as shall provide to the Employer the VO No. 140 Specified Expenditures Payment Certification within the same timeframe.

**b. Post-audit to validate the paid amounts to the approved recipients of the VO No. 140 Specified Expenditures Early Retention Payment**

Where, subject to the terms of sub-paragraph (d) of Sub-Clause 14.9.2 of the Contract, the Contractor has included an amount of the VO No. 140 Specified Expenditures Early Retention Payment in a VO No. 140 Specified Expenditures Application, the Contractor shall provide the following documentation through DTCS, within 10 business days of the Contractor making payment of any VO No. 140 Specified Expenditures:

- a) Spreadsheets detailing the payments made by the Contractor to each approved recipient of the VO No. 140 Specified Expenditures Early Retention Payment, including the name of such approved recipient of the VO No. 140 Specified Expenditures Early Retention Payment; the relevant subcontract or purchase order number; subcontract or purchase order amount; invoice number; invoice dates; invoice amount; payment reference such as check or wire transfer number;
- b) Proof of payment by the Contractor to the relevant approved recipient of the VO No. 140 Specified Expenditures Early Retention Payment such as the bank wire transfer or bank debit note referring to the invoices submitted. For approved recipients of the VO No. 140 Specified Expenditures Early Retention Payment in Panama, if payment was made by check, the Contractor shall send a copy of said check to the Employer;
- c) Invoices according to the Panamanian Fiscal Law evidencing the receipt of the relevant material or service on Site. The Employer and the Contractor agree that such invoices shall only be provided for review at the Contractor's main office (Cocoli);
- d) Confirmation of receipt of payment from the approved recipient such as: receipt, certification from the relevant approved recipient of the VO No. 140 Specified Expenditures Early Retention Payment and/or proof of the transfer being credited to the accounts of the approved recipient of the VO No. 140 Specified Expenditures Early Retention Payment. Such confirmation must include the payment method and the bank account details such as bank name, bank account number and account type where the funds were transferred; and
- e) 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 VO No. 140 Specified Expenditures Early Retention Payment.



Appendix 4-Variation Agreement No.140

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

Dear Sirs

**VO No. 140 Specified Expenditures Payment Certification**

We hereby provide the VO No. 140 Specified Expenditures Payment Certification in respect of *[insert name of Subcontractor]* (the "**Subcontractor**") in accordance with Variation Agreement No. 140 of *[insert date of VO]* entered into a relation to contract CMC-221427 for the Design and Construction of the Third Set of Locks dated August 11, 2009.

We enclose with this VO No. 140 Specified Expenditures Payment Certification (i) a payment receipt from the Subcontractor for the amount of \$*[insert sum]* which we confirm is the amount paid to the Subcontractor as certified by the Employer's Representative in respect of the application for Interim Payment Certificate/extraordinary application *[insert details]*; and (ii) a copy of the check or electronic bank transfer in respect of such payment noted at (i).

We hereby certify that the contents of this VO No. 140 Specified Expenditures Payment Certification are true and accurate in all respects.

[GUPCSA]

