

PANAMA CANAL AUTHORITY	VARIATION	PAGE 1 OF 9
1. REQUEST FOR PROPOSAL No.: 76161	2. CONTRACT No.: CMC-221427	3. DATE: April 30, 2015
		4. VARIATION No.: 145

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: 15. PANAMA CANAL AUTHORITY  (Employer's Representative/Contracting Officer's signature)
	16. DATE: 30/4/2015

This Variation Agreement Number 145, is dated as of 30th day of April 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) Pursuant to Variation Agreement No. 113 dated August 7, 2014, as amended by Variation Agreement No. 116 dated September 26, 2014, the Employer agreed to make a further advance payment of the Contract Price to the Contractor of USD 30,000,000.00 (being the Advance Payment for Lock Gates – Second) for payment to the Lock Gates Fabricator.
- (c) In accordance with sub-paragraph (e) of Sub-Clause 14.2K [*Advance Payment for Lock Gates – Second*] of the Contract, the Contractor applied for the amount of the Advance Payment for Lock Gates – Second by providing to the Employer the Lock Gates Extraordinary Application - Second dated August 6, 2014.
- (d) Consequently, on August 12, 2014 the Employer paid to the Contractor the amount of the Advance Payment for Lock Gates – Second.
- (e) In accordance with the terms of sub-paragraph (l) of Sub-Clause 14.2K [*Advance Payment for Lock Gates – Second*] of the Contract, the Contractor began repayment of the Advance Payment for Lock Gates – Second by way of instalment deductions in the amount of USD 2,000,000.00 in the following monthly Payment Certificates: (i) September 2014 issued in October 2014; (ii) October 2014 issued in November 2014; (iii) November 2014 issued in December 2014; (iv) December 2014 issued in January 2015; (v) January 2015 issued in February 2015; and (vi) February 2015 issued in March 2015. Consequently, as at the date of this Variation Agreement No. 145 the Contractor has repaid USD 12,000,000.00 of the Advance Payment for Lock Gates – Second.
- (f) The Contractor requested in RFV No. 0287 dated March 28, 2015 that the basis



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for repayment of the Advance Payment for Lock Gates – Second be varied so that future instalment deductions pursuant to sub-paragraph (l) of Sub-Clause 14.2K [*Advance Payment for Lock Gates – Second*] of the Contract are stopped and repayment of the outstanding amount of the Advance Payment for Lock Gates – Second due from the Contractor to the Employer is deferred until December 31, 2016.

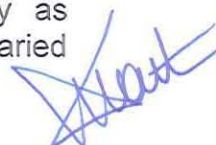
- (g) Accordingly, the Employer has responded through letter IAE-UPC-2488 indicating to the Contractor that the Employer will permit the deferral of the repayment of the outstanding balance of the Advance Payment for Lock Gates - Second as at the date of the Payment Certificate for February 2015 issued in March 2015, which for the avoidance of doubt is in the amount of USD 18,000,000.00, until December 31, 2016, at which time the Contractor shall be required to repay the Advance Payment for Lock Gates – Second in full by way of one lump sum payment, but subject always to the Parties agreeing a formal variation to reflect such revised arrangements.
- (h) As a condition to the Employer permitting deferral of the repayment of the Advance Payment for Lock Gates – Second until December 31, 2016, as referred to in sub-paragraphs (f) and (g) above the Contractor shall provide the VO No. 145 Bond Issuer Confirmation in the form set out in Appendix 1 to this Variation Agreement No. 145 no later than 5 Business Days after the date of this Variation Agreement No. 145.
- (i) In addition, the Contractor requested in RFV No. 0274 dated January 16, 2015 that the outstanding balance of the Advance Payment for Lock Gates, from and after the expiration of the Acceptable Zurich P&M Bond constituting the Plant and Material Security, be covered by amendments to the Advance Payment Guarantees.
- (j) Accordingly, the Employer responded through letter IAE-UPC-2433 that the outstanding balance of the Advance Payment for Lock Gates could be secured under a bond from a provider other than Zurich American Insurance Company subject to the bond and the provider being acceptable to the Employer. The Contractor and the Employer have agreed that the outstanding balance of the Advance Payment for Lock Gates would be covered by the Advance Payment for Lock Gates – Second Bond issued by Nacional de Seguros de Panama y Centro America, S.A., and this Variation Agreement No. 145 hereby memorializes this variation to such security.
- (k) Therefore, subject to the terms of this Variation Agreement No. 145, 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. 145, 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. 145 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. 145 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. 145 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. 145 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. For the avoidance of doubt, this Variation Agreement No. 145 and the further deferral of the Advance Payment for Lock Gates – Second under this Variation Agreement No. 145 is without prejudice to each Party's position in any current or future DAB and/or arbitration proceedings pursuant to Sub-Clause 20.4 [*Obtaining Dispute Adjudication Board's Decision*] and/or 20.6 [*Arbitration*], respectively (including but not limited to ICC References 20910/ASM and 20911/ASM).
4. Save in relation to breaches of, or failure by either Party to comply with, the terms of this Variation Agreement No. 145, 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. 145.
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. 145 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



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herein and the Contract shall have effect as though the provisions contained in this Variation Agreement No. 145 had been originally contained in the Contract.

6. This Variation Agreement No. 145 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):

"Variation Agreement No. 145" means Variation Agreement Number 145, dated 30th of April, 2015 between the Employer and the Contractor;

"VO No. 145 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. 145 and otherwise acceptable to the Employer, from the issuer of the Payment Bond, consenting to the modifications to the Contract made pursuant to the terms of Variation Agreement No. 145 and confirming the continuing validity of such bond notwithstanding such modifications.

"Advance Payment for Lock Gates – Second Bond Extension" means, in relation to the issued Advance Payment for Lock Gates – Second Bond (being at the date hereof the Advance Payment for Lock Gates-Second, dated February 27, 2015, issued by Nacional de Seguros de Panamá y Centroamérica, S.A.), an amendment to such Advance Payment for Lock Gates – Second Bond providing a January 31, 2017 maturity date and in a form acceptable to the Employer in its sole discretion.

8. The Parties hereby agree to amend Sub-Clause 14.2K [*Advance Payment for Lock Gates – Second*] as follows:
 - a. Amend sub-paragraph (m) of Sub-Clause 14.2K to delete such sub-paragraph in its entirety and replace it as follows:

"(m) The whole of the balance of (1) the Advance Payment for Lock Gates – Second and/or (2) the Advance Payment for Lock Gates 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 of such applicable advance payment(s) under the Advance Payment for Lock Gates – Second Bond if: (a) solely in the case of the Advance Payment for Lock Gates – Second, any or all such events set forth in (i) through (iv) below have occurred; (b) in the case of both the Advance Payment for Lock Gates – Second and the Advance Payment for

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Lock Gates, the event set forth in (v) below has occurred; and (c) solely in the case of the Advance Payment for Lock Gates, any or all such events set forth in (vi) through (viii) below have occurred:

(i) the Advance Payment for Lock Gates – Second has not been repaid in full on or prior to December 31, 2016; 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 Contractor fails to deliver to the Employer the Advance Payment for Lock Gates – Second Bond Extension by November 16, 2015; and/or

(iv) the Advance Payment for Lock Gates – Second has not been fully repaid 45 days prior to the specified expiry date of the Advance Payment for Lock Gates – Second Bond, and the Contractor fails to extend the validity of the Advance Payment for Lock Gates – Second Bond in accordance with sub-paragraph (o) of this Sub-Clause 14.2K; and/or

(v) 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; and/or

(vi) the relevant Plant and Materials have not been delivered to and/or are not properly stored on the Site, and/or are not protected against loss, damage or deterioration, and/or do not appear to be in accordance with the Contract by the date 45 days prior to the expiry date of the Advance Payment for Lock Gates – Second Bond, as the Plant and Material Security, and the Contractor fails to extend the validity of the Plant and Material Security in accordance with Sub-Clause 14.5.5 of the Contract, and/or

(vii) the Contractor fails to pay the Employer an amount due as stated in sub-paragraph (b) of Sub-Clause 14.5.6 of the Contract; and/or

(viii) the Contractor fails to remedy a default as stated in sub-paragraph (c) of Sub-Clause 14.5.6 of the Contract."

- b. Amend sub-paragraph (n) of Sub-Clause 14.2K to delete such sub-paragraph in its entirety and replace it as follows:

"(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 –



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Second remains secured by the Advance Payment for Lock Gates – Second Bond.

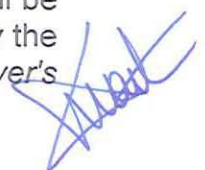
- c. Add new sub-paragraphs (o), (p), (q), (r) and (s) to Sub-Clause 14.2K [*Advance Payment for Lock Gates – Second*] of the Contract as follows:

"(o) If the Advance Payment for Lock Gates – Second has not been repaid in full by the date 45 days prior to the specified expiry date of the Advance Payment for Lock Gates – Second Bond, the Contractor shall, not later than 30 days prior to the specified expiry date of the Advance Payment for Lock Gates – Second Bond, extend the validity of the Advance Payment for Lock Gates – Second Bond for a period of not less than one year (or such lesser period as the Contractor in good faith believes, as agreed with the Employer's Representative, will maintain the Advance Payment for Lock Gates – Second Bond in effect until the Advance Payment for Lock Gates – Second has been repaid) and provide the Employer's Representative with reasonable evidence thereof.

(p) Subject to the terms of sub-paragraphs (q) to (s) below the Employer will, from and including the Payment Certificate of March 2015 issued in April 2015, grant a temporary deferral on the repayment of the Advance Payment for Lock Gates – Second as set out in sub-paragraphs (q) to (s) below. In such circumstances repayment of the Advance Payment for Lock Gates – Second will not be made as set out in sub-paragraph (l) above but shall instead be governed by the terms of sub-paragraphs (q) to (s) below.

(q) The Contractor shall provide at its sole cost to the Employer the Advance Payment for Lock Gates – Second Bond Extension by no later than November 16, 2015, as a condition to the Employer continuing to grant a deferral of the repayment of the Advance Payment for Lock Gates – Second pursuant to sub-paragraph (r) below after November 16, 2015.

(r) Subject to sub-paragraphs (q) and (s) of this Sub-Clause 14.2K [*Advance Payment for Lock Gates – Second*], from and including the Payment Certificate of March 2015 issued in April 2015, no further deductions shall be made from any monthly Payment Certificate in respect of the Advance Payment for Lock Gates – Second, and repayment of the outstanding balance of the Advance Payment for Lock Gates – Second (which the parties acknowledge and agree is the sum of USD 18,000,000.00) shall be temporarily deferred until December 31, 2016, at which time such outstanding balance of the Advance Payment for Lock Gates – Second shall be repaid in full by the Contractor to the Employer by way of one lump sum payment on December 31, 2016. Payment from the Contractor to the Employer pursuant to this sub-paragraph (r) shall be made by electronic transfer of funds to the bank account nominated by the Employer. For the avoidance of doubt, Sub-Clause 2.5 [*Employer's*



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Claims] and Sub-Clause 3.5 [*Determinations*] shall not apply to any payment from the Contractor to the Employer pursuant to this sub-paragraph (r) of Sub-Clause 14.2K.

(s) It shall be a condition of the Contractor's entitlement to any temporary deferral pursuant to sub-paragraph (r) of this Sub-Clause 14.2K [*Advance Payment for Lock Gates – Second*] that the Contractor shall have provided to the Employer the VO No. 145 Bond Issuer Confirmation duly executed by the Parties thereto no later than 5 Business Days after the date of this Variation Agreement No. 145, failing which the amendments set out in sub-paragraphs (m), (n), (o), (p), (q) and (r) of this Sub-Clause 14.2K [*Advance Payment for Lock Gates – Second*] shall be of no effect and void.

9. The Parties hereby agree to amend Sub-Clause 14.5 [*Plant and Materials Intended for the Works*] as follows:

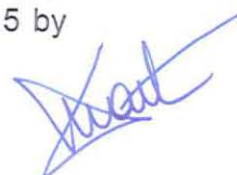
a) Amend Sub-Clause 14.5.3 to insert the following new sub-paragraph (h):

“(h)(1) From and after the expiration of the Acceptable Zurich P&M Bond constituting the Plant and Material Security, the Plant and Material Security shall instead be comprised of the Advance Payment for Lock Gates – Second Bond, and all references to Plant and Material Security, from and after the expiration of the Acceptable Zurich P&M Bond, shall mean the Advance Payment for Lock Gates – Second Bond.

(2) At all times until the Advance Payment for Lock Gates is repaid in full to the Employer in accordance with Sub-Clauses 14.2H [*Advance Payment for Lock Gates*] and 14.2J [*Repayment of Other Existing Advances*], the Contractor shall ensure that the Advance Payment for Lock Gates remains secured by the Advance Payment for Lock Gates – Second Bond as the Plant and Material Security.”

10. 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. 145.
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. 145 and secure the full benefit of the rights, powers and remedies conferred upon it in this Variation Agreement No. 145.

In Witness whereof the Parties hereto have caused this Variation Agreement No. 145 to the Contract to be executed on the 30th day of April of the year 2015 by



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their duly authorized representatives.

For ACP



Jorge de la Guardia
Employer's Representative

For GUPCSA



Giuseppe Quarta
Contractor's Representative

Appendix 1

VO No. 145 Bond Issuer Confirmation

[Letterhead of Zurich]

_____, 2015

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. 145

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. 145 dated April 30, 2015 ("Variation Agreement No. 145") to the Contract, executed by the Owner and the Contractor, which provides for certain modifications to the Contract relating to the repayment of the Advance Payment for Lock Gates - Second by the Contractor to the Employer (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. 145.

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.



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 a stylized name, located in the bottom right corner of the page.