

PANAMA CANAL AUTHORITY	VARIATION	PAGE 1 OF 6
1. REQUEST FOR PROPOSAL No.:	2. CONTRACT No.:	3. DATE:
76161	CMC-221427	December 29, 2015
		4. VARIATION No.:
		159

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:

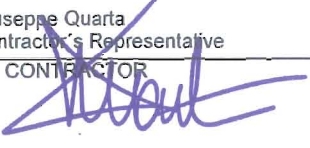
The contract referred to in item No. 2 is hereby varied as set forth in item 10, entitled "DESCRIPTION OF VARIATION".
YES. NO. The contractor shall send a copy, duly signed, of this Variation to the Employer's Representative/Contracting Officer.

	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 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)	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:
	29/12/15
(Authorized signature)	15. PANAMA CANAL AUTHORITY
	16. DATE:
	29/xii/2015
	(Employer's Representative/Contracting Officer's signature)

This Variation Agreement Number 159, is dated as of 29th day of December 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 Employer reviewed and approved through its letter IAE-UPC-2803, dated December 23rd, 2015, the budget movement shown in Table Budget Movement Siteworks attached to Contractor's letter GUPC-IAE-4453 dated December 21st, 2015.
- (c) The Contractor requested in RFV No. 308 dated December 23rd, 2015, the Employer's issuance of an extraordinary Payment Certificate for payment of the amount calculated upon the progress of the activities, subject to the revised budget allocation approved by the Employer in the Employer's letter IAE-UPC-2803 dated December 23rd, 2015, referred to above.
- (d) Accordingly, the Employer has responded through letter IAE-UPC-2808 dated December 29, 2015, indicating to the Contractor that the Employer will permit the Contractor to submit an extraordinary payment application in December 2015 in the amount of USD 11,867,071.96, such amount having been calculated based on the progress of the Works as certified in the Interim Payment Certificate of October 2015 issued in December 2015, but subject to the Contractor submitting to the Employer an update to the Current Programme to reflect the revised budget allocation and subject always to the parties agreeing a formal variation to reflect such revised arrangements.
- (e) As a condition to the Employer permitting the request referred to in sub-paragraph (c) above the Contractor shall provide the update to the Current Programme to reflect the revised budget allocation no later than 5 Business Days after the date of this Variation Agreement No. 159.

- (f) Therefore, subject to the terms of this Variation Agreement No. 159, 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. 159, 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. 159 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. 159 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. 159 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. 159 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. 159 is without prejudice to each Party's position in any current or future DAB and/or arbitration proceedings pursuant to Sub-Clauses 20.4 [*Obtaining Dispute Adjudication Board's Decision*] and/or 20.6 [*Arbitration*] respectively (including but not limited to ICC References 2091 0/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. 159, 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. 159.

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. 159 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. 159 had been originally contained in the Contract.
6. This Variation Agreement No. 159 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):

"VO No. 159 Extraordinary Application" has the meaning provided in Sub-Clause 14.3A [*VO No. 159 Extraordinary Application*].

"Variation Agreement No. 159" means Variation Agreement Number 159, dated 29th of December, 2015 between the Employer and the Contractor.

8. The Parties hereby agree to insert new Sub-Clause 14.3A [*VO No. 159 Extraordinary Application*] as follows:

"14.3A VO No. 159 Extraordinary Application"

The Parties have agreed that this Sub-Clause 14.3A [*VO No. 159 Extraordinary Application*] shall only apply in respect of the VO No. 159 Extraordinary Application.

14.3A.1 The Employer and the Contractor acknowledge the revised budget allocation for progress payments as shown in Appendix 1 to Variation Agreement No. 159, although both the Employer and the Contractor agree that, notwithstanding such revised budget allocation, the Contractor shall be paid according to its actual progress against the revised Current Programme to be provided by the Contractor pursuant to Sub-Clause 14.3A.4 and in all respects subject to the other terms and provisions of the Contract.

14.3A.2 After the date of Variation Agreement No. 159 the Contractor may submit to the Employer one extraordinary application for payment of the Contract Price in a form acceptable to the Employer in the amount of USD 11,867,071.96 in accordance with the revised budget allocation for

Design and Construction of the Third Set of Locks

progress payments shown in Appendix 1 to Variation Agreement No. 159 such amount having been calculated based on the progress of the Works as certified in the Interim Payment Certificate of October 2015 issued in December 2015 (the "**VO No. 159 Extraordinary Application**").

14.3A.3 Subject to the Contractor's compliance with the terms of Sub-Clause 14.3A.4, the Employer shall make payment of the amount which the Employer considers is due within ten (10) Business Days of receipt of the VO No. 159 Extraordinary Application.

14.3A.4 The Parties agree that the Contractor's entitlement to payment of the amount set out in Sub-Clause 14.3A.2, or any other amount in relation to the VO No. 159 Extraordinary Application, is subject to the Contractor delivering to the Employer an update to the Current Programme to reflect the revised budget allocation for progress payments as shown in Appendix 1 to Variation Agreement No. 159 in a form acceptable to the Employer no later than five (5) Business Days after the date of Variation Agreement No. 159

14.3A.5 If the Contractor fails to comply with Sub-Clause 14.3A.4 within the time period specified therein, then any amount paid by the Employer to the Contractor pursuant this Sub-Clause 14.3A 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 amount paid by the Employer to the Contractor pursuant to this Sub-Clause 14.3A in the next and/or any subsequent Interim Payment Certificate; and/or
- (b) require payment of the full amount of any such amount paid by the Employer to the Contractor pursuant to this Sub-Clause 14.3A (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 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 (b) shall be made by electronic transfer of funds to the bank account nominated by the Employer."

9. 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. 159.

10. 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. 159 and secure the full benefit of the rights, powers and remedies conferred upon it in this Variation Agreement No. 159.

In Witness whereof the Parties hereto have caused this Variation Agreement No. 159 to the Contract to be executed on the 29th day of December 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

VARIATION No. 159

Appendix 1. Budget Movement Siteworks

Activity ID	Activity Name	Actual	Proposal	GUPC Balance Oct 15 Certification		ACP Balance as of Oct 15 Certification	
		Budgeted	Budgeted	%	\$	%	\$
		339,950,404.11	339,950,404.11		11,629,281.63		11,867,071.96
A-40180	A_Site: Install Landscaping (Site Work)	26,143,211.04	19,335,549.00	51.51%	-2,159,380.73	43.01%	-1,803,047.28
A-40190	A_Site: Transition Wall on Lock Heads	808,947.12	808,947.12	75.49%	0.00	73.54%	0.00
A-40760	A_Entrance/Ocean WW: Install Concrete Wing Walls WS	14,475,096.02	15,049,132.10	100.00%	574,036.08	99.99%	573,978.68
A-41400	A_LLC: Install Duct Bank (LH4 Machinery Room Building to LH3 Machinery Room Building) WS	3,237,437.38	3,357,299.70	83.39%	83,490.90	82.16%	82,259.41
A-41940	A_LMC: Install Duct Bank (LH3 Machinery Room Building to LH2 Machinery Room Building) WS	2,163,289.31	2,245,752.68	90.97%	68,242.90	90.28%	67,725.28
A-42440	A_LUC: Install Concrete WS	62,971,308.85	65,505,295.29	100.00%	2,533,986.44	99.997%	2,533,910.42
A-42480	A_LUC: Install Duct Bank (LH2 Machinery Room Building to LH1 Machinery Room Building) WS	2,859,698.22	2,965,192.79	72.99%	56,356.66	72.33%	55,847.06
A-42880	A_Gatun WW: Perform Excavation Wing Walls and Channel WS	8,945,114.95	9,440,296.09	96.62%	475,190.60	96.62%	475,190.60
A-42900	A_Gatun WW: Install Concrete Wing Walls WS	13,910,013.82	14,464,796.76	100.00%	554,782.94	99.98%	554,671.98
A-43080	A_WSB-LC: Install Concrete Walls, Conduits, Trifurcation, Valve Structure, etc. WS	19,809,082.67	20,606,979.03	100.00%	797,896.36	99.91%	797,178.26
A-43260	A_WSB-MC: Install Concrete Walls, Conduits, Trifurcation, Valve Structure, etc. WS	16,421,338.51	17,089,439.86	100.00%	668,101.35	99.62%	665,562.56
A-43460	A_WSB-UC: Install Concrete Walls, Conduits, Trifurcation, Valve Structure, etc. WS	16,530,395.19	17,206,964.88	100.00%	676,569.69	99.93%	676,096.09
A-N0500	A_ZC: Perform Slope Support & Excavation Finishing WS	3,600,000.00	3,799,287.78	4.84%	145.65	1.22%	36.71
P-40180	P_Site: Install Landscaping (Site Work)	26,465,987.03	18,236,946.00	22.23%	-587,210.38	8.91%	-235,359.63
P-40190	P_Site: Transition Wall on Lock Heads	808,947.12	808,947.12	76.44%	0.00	75.17%	0.00
P-40940	P_Entrance/Ocean WW: Install Concrete - Wing Walls WS	20,430,705.96	21,678,605.68	100.00%	1,247,899.72	99.94%	1,247,150.98
P-40960	P_Entrance/Ocean WW: Backfill Wing Walls WS	3,095,887.73	3,349,899.40	97.35%	240,727.43	95.88%	237,092.41
P-41180	P_LH4: Backfill LH4 WS	853,104.12	923,099.68	100.00%	69,995.56	95.52%	66,859.76
P-41560	P_LLC: Install Duct Bank WS	2,904,018.42	3,075,962.24	69.21%	82,968.42	63.45%	76,063.37
P-42140	P_LMC: Install Duct Bank WS	1,969,391.58	2,091,731.69	81.19%	81,429.04	77.30%	77,527.59
P-42720	P_LUC: Install Duct Bank WS	2,562,344.09	2,716,154.14	72.80%	83,039.71	64.48%	73,549.45
P-43400	P_WSB-LC: Install Concrete Walls, Conduits, Trifurcation, Valve Structure, etc. WS	17,152,054.01	18,271,387.32	98.95%	1,107,580.31	98.43%	1,101,759.78
P-43400-80	P_WSB-LC: Install Lining WS	3,863,614.00	4,119,322.01	81.15%	207,507.05	50.02%	127,905.14
P-43420	P_WSB-LC: Fill for Final Lining & Drainage Works WS	7,255,619.30	7,832,069.59	95.40%	549,933.58	74.55%	429,743.69
P-43600	P_WSB-MC: Install Concrete Walls, Conduits, Trifurcation, Valve Structure, etc. WS	16,580,648.00	17,655,562.67	98.80%	1,062,015.70	98.71%	1,061,048.27
P-43600-80	P_WSB-MC: Install lining WS	3,863,614.00	4,119,588.60	99.08%	253,619.63	77.73%	198,969.06
P-43620	P_WSB-MC: Fill for Final Lining & Drainage Works WS	8,188,680.38	8,841,686.55	100.00%	653,006.17	97.03%	633,611.88
P-43800	P_WSB-UC: Install Concrete Walls, Conduits, Trifurcation, Valve Structure, etc. WS	16,279,115.26	17,336,018.19	98.28%	1,038,724.20	98.24%	1,038,301.44
P-43800-80	P_WSB-UC: Install Lining WS	3,863,614.00	4,119,723.11	99.26%	247,985.66	79.44%	198,468.48
P-43820	P_WSB-UC: Fill for Final Lining & Drainage Works WS	11,938,126.03	12,898,767.04	100.00%	960,641.01	89.00%	854,970.50