

PANAMA CANAL AUTHORITY	VARIATION	PAGE 1 OF 5
1. REQUEST FOR PROPOSAL No.: 76161	2. CONTRACT No.: CMC-221427	3. DATE: December 31, 2015
		4. VARIATION No.: 160

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:

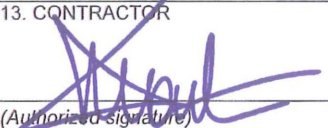
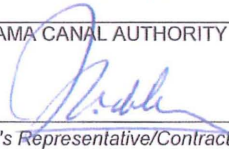
The contract referred to in item No. 2 is hereby varied as set forth in item 10, entitled "DESCRIPTION OF VARIATION".
YES. NO. The contractor shall send a copy, duly signed, of this Variation to the Employer's Representative/Contracting Officer.

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

This Variation Agreement Number 160, is dated as of 31st 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 Contractor requested through RFV No. 289 dated April 17, 2015 that the Employer makes a further advance payment of the Contract Price to the Contractor of USD 120,000,000 (One Hundred and Twenty Million Dollars), as set out in RFV No.289.
- (c) In response to RFV No. 289, the Employer and the Contractor formalized Variation Agreement No. 149, dated June 5, 2015. Pursuant to Variation Agreement No. 149, the Employer agreed to make a further advance payment of the Contract Price to the Contractor of up to a maximum of USD 120,000,000 (One Hundred and Twenty Million Dollars) to be applied for payments to approved specified subcontractors and suppliers subject to the Contractor providing to the Employer certain documents. Furthermore, if the Contractor failed to comply with any or all of the conditions of Variation Agreement No. 149, then pursuant to sub-paragraph (c) of Sub-Clause 14.2L [*Advance Payment for VO No. 149 Suppliers*] the whole of the balance of the Advance Payment for VO No. 149 Suppliers should immediately become due and payable by the Contractor to the Employer.
- (d) The Contractor requested through RFV No. 293 dated June 18, 2015, and RFV No. 295 dated July 3, 2015, and subsequently through RFV No. 295, extensions to the period within which it was to provide the VO No. 149 Guarantee Security pursuant to sub-paragraphs (b)(ii) and (b)(iv) of Sub-Clause 14.2L [*Advance Payment for VO No. 149 Suppliers*].
- (e) In response to the RFV's listed at paragraph (d) above, the Employer and the Contractor formalized the position in Variation Agreement No. 152, dated July 8, 2015 and subsequently in Variation Agreement No. 155, dated August 11, 2015.

- (f) The Contractor has requested through letter GUPC-IAE-4458 dated December 22, 2015 that the Employer make payment of approximately USD 34,500,000 (Thirty Four Million Five Hundred Thousand Dollars) subject to the condition that the Contractor deliver to the Employer the amendments to the VO 149 Joint and Several Guarantee notarized and apostilled by no later than January 15, 2016. The Employer has responded through letter IAE-UPC-2807 dated December 28, 2015 indicating that the Employer in its sole discretion will agree to such extension of time to no later than January 15, 2016 for the Contractor to: (i) provide the amendments to the VO 149 Joint and Several Guarantee with the execution formalities associated with such amendments completed; and (ii) submit such complying amendments to the satisfaction of the Employer in its sole discretion, provided that if the Contractor fails to comply with the conditions set out in this paragraph (f), then pursuant to sub-paragraph (c) of Sub-Clause 14.2L [*Advance Payment for VO No. 149 Suppliers*] the whole of the balance of the Advance Payment for VO No. 149 Suppliers should immediately become due and payable by the Contractor to the Employer but subject always to the parties agreeing a formal variation to reflect such revised arrangements. Accordingly, the Contractor confirmed its request made through Contractor's letter GUPC-IAE-4458 mentioned above, through RFV No. 310 dated 30 December, 2015.
- (g) Therefore, subject to the terms of this Variation Agreement No. 160, 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.160, 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. 160 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.160 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. 160 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. 160 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. 160 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. 160, 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. 160.
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. 160 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. 160 had been originally contained in the Contract.
6. This Variation Agreement No. 160 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. 160" means Variation Agreement Number 160, dated 31st of December, 2015 between the Employer and the Contractor.

"VO No. 149 Joint and Several Guarantee Amendments" means the amendments to VO No. 149 Joint and Several Guarantee dated December 23, 2015 and signed by each of the parties thereto, amending Paragraph 9.3(a) of the

VO No. 149 Joint and Several Guarantee ".

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

"VO No. 149 Guarantee Security" shall be amended as follows:

After, "such guarantee", at the end of this definition insert the following:

"; and

(d) VO No. 149 Joint and Several Guarantee Amendments."

8. The Parties hereby agree to amend Sub-Clause 14.2L [Advance payment for VO No. 149 Suppliers] as follows:

In sub-paragraph (b)(ii) of Sub-Clause 14.2L insert at the end, "save in respect of the VO No. 149 Joint and Several Guarantee Amendments with respect to which the Contractor shall complete all remaining execution formalities including completion of details in the signature blocks as well as notarization and apostille requirements related to each such amendment in a form satisfactory to the Employer no later than January 15, 2016".

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. 160.
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. 160 and secure the full benefit of the rights, powers and remedies conferred upon it in this Variation Agreement No. 160.

In Witness whereof the Parties hereto have caused this Variation Agreement No. 160 to the Contract to be executed on the 31st 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