

PANAMA CANAL AUTHORITY	VARIATION	PAGE 1 OF 5
1. REQUEST FOR PROPOSAL No.: 76161	2. CONTRACT No.: CMC-221427	3. DATE: July 12, 2016
		4. VARIATION No.: 174

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: <i>(Specify the legal authority)</i> . 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: <i>(Specify the legal authority)</i> Volume III, Conditions of Contract, Sub-Clause 1.16 [Entire Agreement], 4th Paragraph
	9 D. OTHER. <i>(Specify manner and the legal authority)</i> .
	9 E. ACCOUNT NUMBER <i>(If required)</i> :

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 <i>(Type or print)</i> Giuseppe Quarta Contractor's Representative	12. NAME AND TITLE OF THE EMPLOYER'S REPRESENTATIVE/CONTRACTING OFFICER <i>(Type or print)</i> Jorge de la Guardia, Employer's Representative
13. CONTRACTOR  <i>(Authorized signature)</i>	14. DATE: 10/8/2016
15. PANAMA CANAL AUTHORITY  <i>(Employer's Representative/Contracting Officer's signature)</i>	16. DATE: 12/VII/2016

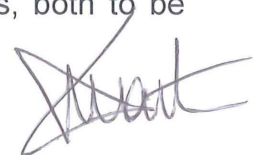
This Variation Agreement Number 174, is dated as of the 12th day of July 2016 and made

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. 058, dated February 22, 2011, RFV No. 079 dated July 21, 2011 and RFV No. 100 dated October 22, 2012 modifications to certain requirements relating to access to the Wastewater Treatment Plants as referred to in the Employer's Requirements including in Sections 01 81 36 [O&M Buildings and Facilities] and 01 89 19 [Sanitary Sewer/Wastewater]. The Employer responded to these RFVs by letters IAE-UPC-0565 dated March 28, 2011, IAE-UPC-0754 dated August 25, 2011 and IAE-UPC-1289 dated October 22, 2012 respectively, stating that it was unable to accept the Contractor's proposals for a variation to the Contract. Further to the foregoing, the Contractor issued a notice of claim pursuant to Sub-Clause 20.1 of the Contract for extension of the Time for Completion and/or any Milestone Date and/or any additional payment by letter GUPC-IAE-2046 dated July 23, 2013 following the Employer's letter IAE-UPC-1614 dated July 16, 2013 stipulating that it was unable to accept the access solutions shown on the Contractor's drawings 5806-P-C-C-0005 and 5806-A-C-C-0005.
- (c) Subsequently, the Contractor has requested through RFV No. 327, dated May 26, 2016, a modification to Paragraph 1.03.h (which the Parties acknowledge should be a reference to Paragraph 1.03.A.9.h [Safety Features in Plant Design]) of Section 01 89 19 [Sanitary Sewer/Wastewater] of the Employer's Requirements, which requires that the main access to the waste water treatment plant shall be from an entrance located at the exterior of the lock complex. The Contractor states that in contrast, Paragraph 1.03F.1 [Building – 6: Wastewater Treatment Plant Buildings [WWTP-1] and [WWTP-2]] of Section 01 81 36.13 [O&M Buildings and Facilities Space Programming] of the Employer's Requirements requires that the Contractor provides two waste water treatment plant buildings in accordance with Section 01 89 19 [Sanitary Sewer/Wastewater] of the Employer's Requirements, both to be



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located at the lower level, one at each lock wall. Consequently, the Contractor has stated that it appears that different requirements need to be met, specifically in relation to the island side where no access from "an entrance located at the exterior of the locks complex" is rationally possible. The Contractor has also stated that the aim is to minimize interference between the traffic related to maintenance of the plant and the normal operation of the lock, which can be achieved by utilizing the existing entrance and limiting the traffic routes to the waste water treatment plant whilst still maintaining the full functionality of the Employer's Requirements. As such, the Contractor requested a modification to the requirement that the main access to the waste water treatment plant shall be from an entrance located at the exterior of the lock complex.

- (d) Accordingly, the Employer has responded through letter IAE-UPC-3050 dated July 4, 2016, indicating to the Contractor that the Employer will accept the Contractor's proposal in RFV No. 327, dated May 26, 2016, to modify Paragraph 1.03.A.9.h [Safety Features in Plant Design]) of Section 01 89 19 [Sanitary Sewer/Wastewater] of the Employer's Requirements to minimize the interference between the traffic related to the maintenance of the plant and the normal operation of the lock by utilizing the existing entrance and limiting the traffic routes to the waste water treatment plant, maintaining the full functionality requirements of the Employer's Requirements, but subject always to the Parties agreeing a formal variation to reflect such revised arrangements.
- (e) Further, the Contractor has agreed that as the Parties have agreed the amendment referred to in recital (d) above, the Contractor's notice of claim pursuant to Sub-Clause 20.1 of the Contract by letter GUPC-IAE-2046 dated July 23, 2013 referred to in recital (b) above shall no longer be applicable and is therefore irrevocably withdrawn and of no further effect.
- (f) Therefore, subject to the terms of this Variation Agreement No. 174, 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. 174, 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. 174 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.

A handwritten signature in black ink, appearing to be 'K. K. K.', is located in the bottom right corner of the page.

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3. The Parties acknowledge and agree that this Variation Agreement No. 174 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. 174 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. 174 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. 174 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 20910/ASM, 20911/ASM and 19962/ASM).
4. Save in relation to breaches of, or failure by either Party to comply with, the terms of this Variation Agreement No. 174, 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. 174.
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. 174 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. 174 had been originally contained in the Contract.
6. This Variation Agreement No. 174 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 Paragraph 1.03.A.9.h [Safety Features in Plant Design] of Section 01 89 19 [Sanitary Sewer/Wastewater] of the Employer's Requirements as follows:
 - a) Delete the wording of Paragraph 1.03.A.9.h [Safety Features in Plant Design] in full and replace with:



"The plant shall be enclosed by a fence to protect the facility. The main access to the plant shall be from a road access that shall be provided to at least one side of the facility. The fence shall also permit access by means of a pedestrian gate that shall be secured to restrict access."

8. The Contractor agrees that, notwithstanding paragraph 3 of this Variation Agreement No. 174 above and as the Parties have agreed to the amendment set out in paragraph 7 of this Variation Agreement No. 174 above, the Contractor's notice of claim pursuant to Sub-Clause 20.1 of the Contract by letter GUPC-IAE-2046 dated July 23, 2013 is no longer applicable and is therefore irrevocably withdrawn and of no further effect.
9. Nothing in this Variation Agreement No. 174 is intended to or does increase the Contract Price or the Time for Completion.
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. 174 and secure the full benefit of the rights, powers and remedies conferred upon it in this Variation Agreement No. 174.

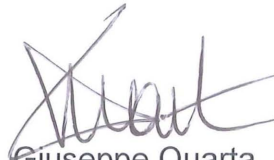
In Witness whereof the Parties hereto have caused this Variation Agreement No. 174 to the Contract to be executed on the 12th day of July of the year 2016 by their duly authorized representatives.

For ACP



Jorge de la Guardia
Employer's Representative

For GUPCSA



Giuseppe Quarta
Contractor's Representative