

PANAMA CANAL AUTHORITY	VARIATION	PAGE 1 OF 8
1. REQUEST FOR PROPOSAL No.:	2. CONTRACT No.:	3. DATE:
76161	CMC-221427	June 9, 2016
		4. VARIATION No.:
		175

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], 4th 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:
	9/11/2016
(Authorized signature)	15. PANAMA CANAL AUTHORITY
	16. DATE:
	9/11/2016
	(Employer's Representative/Contracting Officer's signature)

This Variation Agreement Number 175, is dated as of 9th day of June 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, in its letter GUPC-IAE-4861 dated June 2, 2016, stated that as part of an agreement between the Contractor and the Employer, the Parties have agreed that:
 - (i) Following the Contractor's letter GUPC-IAE-4835, dated May 26, 2016 entitled Notice of Application for Taking-Over Certificate under Sub-Clause 10.1 [*Taking Over of the Works*], the Employer will issue the Taking-Over Certificate under Sub-Clause 10.1 [*Taking Over of the Works*] of the Conditions of Contract by June 24, 2016 at the latest, together with the Schedule of Outstanding Minor Work and Defects, in accordance with the Contract;
 - (ii) In the meantime, the Contractor will allow the Employer to use a vessel for pilot training in the Atlantic Locks during the period June 7-25, 2016 and the Parties agree that such use of the Atlantic Locks will not be considered as a Taking-Over of Part of the Works under Sub-Clause 10.2 [*Taking Over of Parts of the Works*] of the Conditions of Contract;
 - (iii) Pursuant to Sub-Clauses 10.1 [*Taking Over of the Works*], 11.1 [*Completion of Outstanding Work and remedying of Defects*], 11.2 [*Cost of Remedying Work Defects and completing work*] and 14.9.2 [*Payment of Retention Money or Provision of Retention Security*] of the Conditions of Contract, the Employer will promptly certify and pay (i) all sums corresponding to works done until the issuance of the Taking-Over Certificate (without any retention or withholding, except the Retention Money, and (ii) the Retention Money which shall be released in accordance with Sub-Clause 14.9.2 [*Payment of Retention Money or Provision of Retention Security*]);



June 9, 2016

Design and Construction of the Third Set of Locks

- (iv) In consideration of the current schedule of the foreseen vessel passages, the Contractor will be provided a guaranteed window of 5 continuous hours per day, during daytime, for a period of 3 months after the issuance of the Taking-Over Certificate for performing any necessary fine tuning of the systems; and
 - (v) The lane availability foreseen in the Contract will be achieved gradually. In this regard, the minimum lane availability would be set at 80% for the first 3 months after the issuance of the Taking-Over Certificate and the foreseen lane availability of 99.6% would be reached at the end of this time period, without financial penalty to the Contractor.
- (c) The Employer responded through letter IAE-UPC-3000 dated June 7, 2016, indicating to the Contractor that the Employer does not consider that the Contractor's letter GUPC-IAE-4861, dated June 2, 2016, accurately reflects the discussions held between the Contractor and the Employer in relation to all of the matters set out therein. Notwithstanding this, the Employer stated that it wished, for the benefit of the Project, to come to an agreement with the Contractor on these matters but subject always to the Parties agreeing a formal variation to reflect such revised arrangements.
- (d) In addition:
- (i) the Contractor has requested through RFV No. 324, dated May 23, 2016, that Paragraph 1.03, A.2 of Section 01 77 00 [Taking-Over Procedures] of the Employer's Requirements be amended to provide that the final as-built drawings be submitted in accordance with Section 01 33 00 [Submittal Procedures] no later than ninety days after the issuance of the Taking-Over Certificate under Sub-Clause 10.1 [*Taking Over of the Works*];
 - (ii) the Employer has accepted the Contractor's proposal in RFV No. 324, dated May 23, 2016, so that the final as-built drawings may be submitted no later than ninety days from the date of issuance of the Taking-Over Certificate under Sub-Clause 10.1 [*Taking Over of the Works*]; and
 - (iii) the Parties agreed to amend the percentages of the Retention Money stated in Sub-Clause 14.9.2 to reflect that:
 - (A) the first 25% of the Retention Money will be certified by the Employer's Representative for payment to the Contractor in the next Interim Payment Certificate following the issuance of the Taking-Over Certificate; and
 - (B) the remaining 75% of the Retention Money will be certified by the Employer's Representative for payment to the Contractor within 84 days after the Contractor completes, to the satisfaction of the Employer's Representative, all outstanding work listed in the Schedule of Outstanding Minor Work and Defects appended to the Taking-Over Certificate,



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

- (e) Therefore, subject to the terms of this Variation Agreement No. 175, 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.175, 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. 175 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 Conditions of Contract.
3. The Parties acknowledge and agree that this Variation Agreement No. 175 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. 175 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. 175 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.175 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 Cases 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. 175, the Parties agree that they shall have no claims



June 9, 2016

Design and Construction of the Third Set of Locks

for additional time or money or any other relief or entitlement of any kind as a direct consequence of this Variation Agreement No. 175.

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. 175 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. 175 had been originally contained in the Contract.
6. This Variation Agreement No. 175 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 Conditions of Contract, as follows:

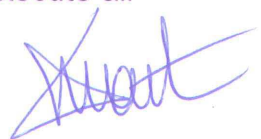
The Parties agree to add the following definitions to Sub-Clause 1.1 [*Definitions*] under the Sub-Clause 1.1.6 [*Other Definitions*] (which shall be added in alphabetical order but without any number):

"Variation Agreement No. 175" means Variation Agreement Number 175, dated 9th of June, 2016 between the Employer and the Contractor.

8. The Parties hereby agree to amend Sub-Clause 10.1 [*Taking Over of the Works*] of the Conditions of Contract as follows:

The following paragraph shall be inserted at the end of Sub-Clause 10.1 [*Taking Over of the Works*]:

"For the avoidance of doubt and notwithstanding anything to the contrary in the Contract, the Employer shall certify and pay to the Contractor one hundred percent (100%) of the Contract Price (except the Provisional Sums related to the Maintenance Services) no later than the sums payable under the next Payment Certificate issued after the issuance of the Taking-Over Certificate under Sub-Clause 10.1 [*Taking Over of the Works*] (Payment Certificate of June 2016) without any retention or withholding except the Retention Money which shall be released in accordance with the provisions of Sub-Clause 14.9.2 [*Payment of Retention Money or Provision of Retention Security*] as amended by Variation Agreement No. 175. Nothing in this sub-paragraph of Sub-Clause 10.1 [*Taking Over of the Works*] shall prejudice the Contractor's obligations under the Contract including but not limited to (i) the Contractor's obligation to complete any work which is outstanding as set out in any Schedule of Outstanding Minor Work and Defects, within such reasonable time as is instructed by the Employer's Representative (the Contractor will use its best efforts to complete no later than December 31, 2016) and/or (ii) to execute all



June 9, 2016

Design and Construction of the Third Set of Locks

work required to remedy defects or damage, as may be notified by (or on behalf of) the Employer on or before the expiry of the Defects Notification Period for the Works."

9. The Parties hereby agree to insert new Sub-Clause 10.5 [*Passing of Vessels Prior to Taking Over of the Works*] in the Conditions of Contract as follows:

"10.5 Passing of Vessels Prior to Taking Over the Works

In consideration of the Employer issuance of the Taking-Over Certificate under Sub-Clause 10.1 [*Taking Over of the Works*] by June 24, 2016 at the latest, the Contractor shall allow the Employer to pass (i) such vessel or vessels as the Employer elects for the purposes of training of personnel, and (ii) Employer's Equipment, in both instances through the Atlantic Locks and the Pacific Locks during the period June 9-25, 2016 (inclusive), in coordination with the Contractor so that such passage(s) do(es) not materially adversely affect the Contractor's work and schedule. The Parties shall coordinate their schedules to this effect on a weekly basis or more often as may be required. The Parties agree that the passing of such vessel or vessels or Employer's Equipment through the Atlantic Locks and/or the Pacific Locks pursuant to this Sub-Clause 10.5 [*Passing of Vessels Prior to Taking Over of the Works*] shall not constitute taking over of the Works or any part by the Employer pursuant to Sub-Clause 10.1 [*Taking Over of the Works*] or Sub-Clause 10.2 [*Taking Over of Parts of the Works*]. The Employer shall be responsible for any damage to the Works or to the Contractor's or any subcontractor's property, which may result directly from the passing of such vessel or vessels or Employer's Equipment."

10. The Parties hereby agree to amend Sub-Clause 14.9.2 [*Payment of Retention Money or Provision of Retention Security*] of the Conditions of Contract as follows:

- a) in sub-paragraph (a), delete the words "first half" and replace with "first twenty-five percent (25%)"; and
- b) in sub-paragraph (b), delete the words "second half" and replace with "remaining seventy-five percent (75%)".

11. The Parties hereby agree to amend Paragraph 1.02.K [*Required Lane Availability*] of Section 01 10 00 [*General Project Requirements*] of the Employer's Requirements by inserting the following at the end of the first sentence after the words "during each month":

", save in respect of the first three months following the issuance of the Taking-Over Certificate pursuant to Sub-Clause 10.1 [*Taking Over of the Works*] during which each lock complex shall be operational at least 80% of the time during each month of that three month period. During such three month period after the issuance of the Taking-Over Certificate pursuant to Sub-Clause 10.1 [*Taking Over of the Works*], the Contractor shall be provided a guaranteed



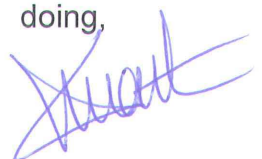
June 9, 2016

Design and Construction of the Third Set of Locks

window of 5 continuous hours per day, preferably during daytime, for performing any necessary fine tuning of the systems."

12. The Parties hereby agree to amend sub-paragraph (a) of Sub-Clause 11.1 [*Completion of Outstanding Work and Remedying Defects*] by inserting "and the Contractor will use its best efforts to complete no later than December 31, 2016" after the words "within such reasonable time as is instructed by the Employer's Representative".
13. The Parties hereby agree to amend Sub-Clause 5.6 [*As-Built Documents*] as follows:
 - a) in the first paragraph, delete the words "Section 01 77 00 [*Taking-Over Procedures*]" and insert "Section 01 33 00 [*Submittal Procedures*]"; and
 - b) delete the final paragraph in full and replace with the following:

"No later than 90 days after the issue of any Taking-Over Certificate, the Contractor shall supply to the Employer's Representative the specified numbers and types of copies of the relevant as-built drawings, in accordance with the Contract, together with a certification that the Employer's Representative has accepted the final relevant as-built drawings submitted in accordance with Section 01 33 00 [*Submittal Procedures*] of the Employer's Requirements."
14. The Parties hereby agree to amend the first paragraph of Sub-Clause 9.1 [*Contractor's Obligations*] by deleting the words "Sub-Clause 5.6 [*As-Built Documents*] and".
15. The Parties hereby agree to amend Section 01 33 00 [*Submittal Procedures*] of the Employer's Requirements as follows:
 - a) in paragraph 1.03.F [*Updated As-Built Drawings*], delete the words "until taking-over"; and
 - b) in paragraph 1.07.B [*Electronic Record Sets*], delete the words "before taking-over" and insert "no later than 90 days after the issue of any Taking-Over Certificate".
16. The Parties hereby agree to delete Paragraph 1.03.A.2 [*As-Built Drawings*] of Section 01 77 00 [*Taking-Over Procedures*] of the Employer's Requirements in its entirety.
17. Nothing in this Variation Agreement No. 175 is intended to or does increase the Contract Price or the Time for Completion.
18. 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,



June 9, 2016

Design and Construction of the Third Set of Locks

performance, signing, execution or delivery of them) to give full effect to this Variation Agreement No. 175 and secure the full benefit of the rights, powers and remedies conferred upon it in this Variation Agreement No. 175.

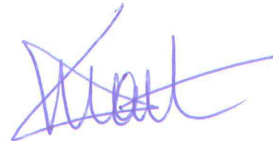
In Witness whereof the Parties hereto have caused this Variation Agreement No. 175 to the Contract to be executed on the 9th day of June of the year 2016 by their duly authorized representatives.

For ACP



Jorge de la Guardia
Employer's Representative

For GUPCSA



Giuseppe Quarta
Contractor's Representative