

PANAMA CANAL AUTHORITY		VARIATION	PAGE 1 OF 6
1. REQUEST FOR PROPOSAL No.:	2. CONTRACT No.:	3. DATE:	4. VARIATION No.:
RFP-76161	CMC-221427	January 12, 2017	190

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:

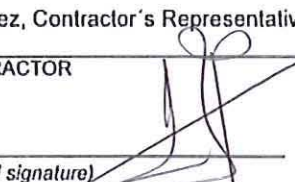
- ☒ The contract referred to in item No. 2 is hereby varied as set forth in item 10, entitled "DESCRIPTION OF VARIATION".
- ☒ YES. ☐ NO. The contractor shall send a copy, duly signed, of this Variation to the Employer's Representative/Contracting Officer.

	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].]
	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 attached**

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)
José Pelaez, Contractor's Representative	Jorge de la Guardia, Employer's Representative
13. CONTRACTOR	14. DATE:
	15. PANAMA CANAL AUTHORITY
(Authorized signature)	(Employer's Representative/Contracting Officer's signature)
	16. DATE:
	12/1/2017

**This Variation Agreement Number 190, is dated as of January 12, 2017 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 took over the whole of the Works pursuant to Sub-Clause 10.1 [Taking Over of the Works] on June 24, 2016.
- (c) By Request for Variation (RFV) No. 0324 dated May 23, 2016, the Contractor requested a deferral of its obligation to provide the final as-built drawings. The Employer accepted the Contractor's proposal and, by Variation Agreement No 175, the Contract was amended accordingly.
- (d) By Request for Variation (RFV) No. 0336 dated September 13, 2016, the Contractor requested a further deferral of its obligation to provide the final as-built drawings. The Employer granted an extension by Variation Agreement No 183.
- (e) By Request for Variation (RFV) No. 0342 dated December 7, 2016, the Contractor requested a further deferral of its obligation to provide the final as-built drawings until 30 days upon the completion of all works set out in the Schedule of Outstanding Minor Work.
- (f) By letter IAE-UPC-3193 dated December 16 2016, the Employer indicated that it would be willing to modify the previous extension given in Variation Agreement No. 183 as now set out in this Variation Agreement No. 190, but subject always to the Parties agreeing a formal variation to reflect such revised arrangements.
- (g) Therefore, subject to the terms of this Variation Agreement No. 190, 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. 190, 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. 190 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. 190 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. 190 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. 190 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. 190 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 where expressly stated in, and/or in relation to breaches of, or failure by either Party to comply with, the terms of this Variation Agreement No. 190, the Parties agree that:
  - a) 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. 190; and

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- b) nothing in this Variation Agreement No. 190 is intended to or does increase the Contract Price or the Time for Completion.

- 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. 190 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. 190 had been originally contained in the Contract.
- 6. The Parties hereby agree to add the following definition to Sub-Clause 1.1 [Definitions] of the Contract under Sub-Clause 1.1.6 [Other Definitions] (which shall be added in proper alphabetical order but without any number):

**"Variation Agreement No. 190"** means Variation Agreement Number 190, dated January 12, 2017, between the Employer and the Contractor.

- 7. **Volume III [Conditions of Contract]** the last paragraph of Sub-Clause 5.6 [As-Built Documents] which currently reads:

*"No later than one month after the earlier of:*

- (a) the completion of all work set out in the Schedule of Outstanding Minor Work and Defects or*
- (b) December 31, 2016*

*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."*

shall be deleted and replaced with the following:

*"No later than one month after the earlier of*

- (a) the completion of all work set out in the Schedule of Outstanding Minor Work and Defects or*
- (b) April 30, 2017*

*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*



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*accepted the final relevant as-built drawings submitted in accordance with Section 01 33 00 [Submittal Procedures] of the Employer's Requirements."*

8. **Volume II [Employer's Requirements] Paragraph 1.07.B [Electronic Record Sets] of Section 01 33 00 [Submittal Procedures] (first paragraph) which currently reads:**

*B. Electronic Record Sets: "The Contractor shall furnish two complete as-built drawing sets per Paragraph 1.04 no later than 90 days after the issue of any Taking-Over Certificate, per the requirements of Sub-Clause 5.6 (As- Built Documents) of the Conditions of Contract. Each set shall contain the final project drawing list and all as-built and shop drawings. Each set shall contain CADD and Microstation drawing files (if applicable), including all background and reference files, as well as document image files to be approved by the Employer's Representative. Additionally, the Contractor shall furnish electronic files for all other Contractor's Documents including, but not limited to, operation and maintenance manuals. No X-ref for AutoCAD electronic drawing submittals will be required for Auto CAD drawings generated via the Revit Models."*

shall be deleted and replaced with the following:

*"B. Electronic Record Sets: The Contractor shall furnish two complete as-built drawing sets per Paragraph 1.04 no later than one month after the earlier of*

*(a) the completion of all work set out in the Schedule of Outstanding Minor Work and Defects or*

*(b) April 30, 2017*

*per the requirements of Sub-Clause 5.6 (As- Built Documents) of the Conditions of Contract. Each set shall contain the final project drawing list and all as-built and shop drawings. Each set shall contain CADD and Microstation drawing files (if applicable), including all background and reference files, as well as document image files to be approved by the Employer's Representative. Additionally, the Contractor shall furnish electronic files for all other Contractor's Documents including, but not limited to, operation and maintenance manuals. No X-ref for AutoCAD electronic drawing submittals will be required for Auto CAD drawings generated via the Revit Models."*

9. This Variation Agreement No. 190 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.
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,

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performance, signing, execution or delivery of them) to give full effect to this Variation Agreement No. 190 and secure the full benefit of the rights, powers and remedies conferred upon it in this Variation Agreement No. 190.

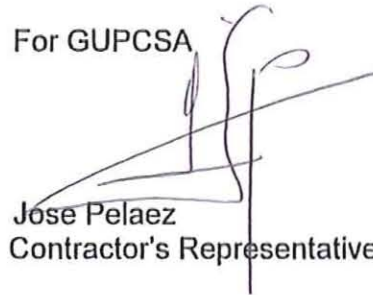
**In Witness** whereof the Parties hereto have caused this Variation Agreement No. 190 to the Contract to be executed on January 12, 2017 by their duly authorized representatives.

For ACP



Jorge de la Guardia  
Employer's Representative

For GUPCSA



Jose Pelaez  
Contractor's Representative

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