

PANAMA CANAL AUTHORITY	VARIATION	PAGE 1 OF 6
1. REQUEST FOR PROPOSAL No.:  RFP-76161	2. CONTRACT No.:  CMC-221427	3. DATE: March 28, 2017
		4. VARIATION No.: 191

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:**

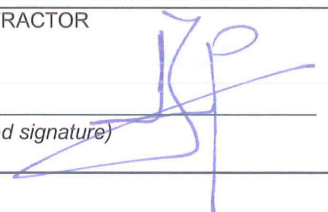
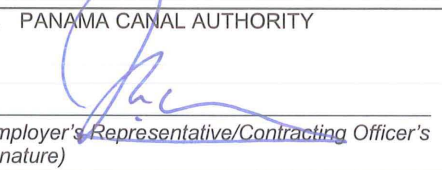
- ☒ The contract referred to in item No. 2 is hereby varied as set forth in item 10, entitled "DESCRIPTION OF VARIATION".
- ☒ YES. ☐ NO. The contractor shall send a copy, duly signed, of this Variation to the Employer's Representative/Contracting Officer.

	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) <b>Volume III, Conditions of Contract, Sub-Clause 1.16 [Entire Agreement].</b>
	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)  Jose Pelaez, 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:
	15. PANAMA CANAL AUTHORITY   (Employer's Representative/Contracting Officer's signature)
	16. DATE:  28/III/2017

**This Variation Agreement Number 191, is dated as of March 28, 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) The Employer requested, through letter IAE-UPC-2998 dated June 6, 2016, a proposal for certain additional works to be carried out by the Contractor. The Contractor responded through letter GUPC-IAE-4865 dated June 6, 2016, offering a fixed lump sum price which was subsequently agreed by the parties as set out in Variation Agreement No. 173. These agreed works were duly carried out by the Contractor together with further associated works (the "Further Additional Works"). The Further Additional Works were referred to in the Contractor's letters GUPC-IAE-4980 dated September 10, 2016, GUPC-IAE-5021 dated October 10, 2016 and GUPC-IAE-5065 dated December 1, 2016 and were agreed by the Parties to be outside the scope of the fixed lump sum price proposed by the Contractor in GUPC-IAE-4865.
- (d) By letter GUPC-IAE-4980 dated September 10, 2016 the Contractor requested payment in the sum of USD 405,000 in respect of the Further Additional Works. By letter IAE-UPC-3116 dated September 20, 2016 the Employer requested a full breakdown and substantiation of the figure of USD 405,000. By letter GUPC-IAE-5021 dated October 10, 2016 the Contractor provided additional information in support of its request for payment. By letter IAE-UPC-3164 dated November 9, 2016, the Employer stated that the information provided by the Contractor was insufficient and repeated its request for a full breakdown and substantiation of the figure of USD 405,000. By letter GUPC-IAE-5065 dated December 1, 2016 the Contractor increased the sum for the further additional works to USD 424,369.44 and, in the absence of an agreement between the



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parties, requested the Employer to determine the adjustment to the Contract Price

for the Further Additional Works, pursuant to Sub-Clause 3.5 [*Determinations*].

- (e) The Parties have not been able to reach agreement on the amount to be paid to the Contractor in respect of the Further Additional Works.
- (f) Paragraphs 101 C 3 and 103 A 3 c of Section 01 81 16.16 [Locks Appurtenances] of the Employer's Requirements provide for fixed ladders at the locks to be designed and specified by the Contractor, but to be purchased and installed by the Employer. At the Employer's request, the Contractor provided, by letter GUPC-IAE-4902 dated July 11, 2016, a proposal for the supply and delivery (but not the installation) of fixed ladders, 41 for Agua Clara Locks and 50 for Cocoli Locks, including hardware and fixings, for the sum of USD 210,010.31.
- (g) The Parties have not yet entered into an agreement to proceed with this purchase.
- (h) By letters IAE-UPC-2873 dated February 5, 2016, IAE-UPC-2912 dated March 8, 2016 and IAE-UPC-2954 dated April 7, 2016, the Employer informed the Contractor that the harness system installed by the Contractor at the Water Saving Basins (WSB) did not comply with the Contract and requested the Contractor to install handrails in accordance with the Contract.
- (i) By letters GUPC-IAE-4619 dated February 20, 2016, GUPC-IAE-4670 dated March 15, 2016 and GUPC-IAE-4960 dated August 24, 2016 the Contractor asserted that the harness system complied with the Contract.
- (j) The Parties have not been able to reach agreement on whether the harness system installed by the Contractor, instead of the handrails originally proposed, complies with the Contract.
- (k) By letter GUPC-IAE-5079 dated December 21, 2016 the Contractor proposed that, in return for the Employer agreeing that the Contractor would not be obliged to provide any further equipment for the facilitation of pedestrian access to the WSB, other than the harness system actually installed at the WSB walls, the Contractor would abandon its requests for payment in respect of the Further Additional Works referred to in recital (d) above and supply the fixed ladders (including hardware and fixings) referred to in recital (f) above at no additional cost to the Employer.
- (l) By letter IAE-UPC-3249 dated March 28, 2017 the Employer accepted the Contractor's proposal in letter GUPC-IAE-5079 but subject always to the Parties agreeing a formal variation to reflect such revised arrangements.
- (m) Therefore, subject to the terms of this Variation Agreement No. 191, 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. 191, 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. 191 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. 191 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. 191 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. 191 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. 191 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. 191, 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. 191; and



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- b) nothing in this Variation Agreement No. 191 is intended to or does increase the Contract Price or the Time for Completion.

5. Further, the Contractor's obligations to comply with the Contract remain in all respects unaffected and nothing within this Variation Agreement No. 191 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. 191 had been originally contained in the Contract.
6. The Parties hereby agree to amend Sub-Clause 1.1 [*Definitions*] of the Contract by adding the following definition to Sub-Clause 1.1.6 [*Other Definitions*] (which shall be added in proper alphabetical order but without any number):

"Variation Agreement No. 191" means Variation Agreement Number 191, dated March 28, 2017, between the Employer and the Contractor.

7. The Parties hereby agree that the Contractor shall not be entitled to any payment in respect of the Further Additional Works as referred to in the Contractor's letters GUPC-IAE-4980 dated September 10, 2016, GUPC-IAE-5021 dated October 10, 2016 and GUPC-IAE-5065 dated December 1, 2016.
8. The Parties hereby agree to amend **Volume II, Part 2, Paragraph 103 A 3 c (5) of Section 01 81 16.16 [Locks Appurtenances]** of the Employer's Requirements by deleting the words:

*"(5) The Contractor shall design and write specifications for the ladders that will be purchased and installed by the Employer. The Contractor shall perform all construction necessary for the installation of the ladders in a manner that will permit installation by the Employer without the need to demolish any part of the Works."*

and replacing them with the following:

*"(5) The Contractor shall design and write specifications for the ladders (including hardware and fixings) that will be supplied by the Contractor in the quantities established in letter GUPC-IAE-4902 dated July 11, 2016 but installed by the Employer. The Contractor shall perform all construction necessary for the installation of the ladders in a manner that will permit installation by the Employer without the need to demolish any part of the Works."*

9. The Parties hereby agree that the Contractor shall not be entitled to any payment in respect of any additional costs incurred in relation to the purchase and delivery of the fixed ladders as a result of the changes to Volume II, Part 2, Paragraph 103 A 3 c (5) of Section 01 81 16.16 [Locks Appurtenances] of the Employer's

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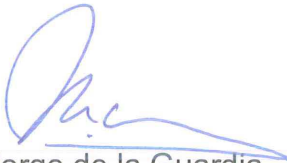
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Requirements set out in Paragraph 8 above regardless as to whether such Cost was incurred before or after the date hereof.

10. The Parties hereby agree that the Contractor shall not be obliged to provide any further equipment to facilitate pedestrian access at the WSB other than that actually installed at the WSB walls, the fall protection equipment to be worn by the persons using the safety line and the training to be given to those persons that will be using the safety line.
11. This Variation Agreement No. 191 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.
12. 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. 191 and secure the full benefit of the rights, powers and remedies conferred upon it in this Variation Agreement No. 191.

**In Witness** whereof the Parties hereto have caused this Variation Agreement No. 191 to the Contract to be executed on March 28, 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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