

PANAMA CANAL AUTHORITY	VARIATION	PAGE 1 OF 5
1. REQUEST FOR PROPOSAL No.:  RFP-76161	2. CONTRACT No.:  CMC-221427	3. DATE: August 10, 2012
		4. VARIATION No.: 045

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].
	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 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)  Bernardo Gonzalez Contractor's Representative	12. NAME AND TITLE OF THE EMPLOYER'S REPRESENTATIVE/CONTRACTING OFFICER (Type or print)  Cheryl George, Employer's Representative Delegee
13. CONTRACTOR   (Authorized signature)	14. DATE: 10/08/2012
	15. PANAMA CANAL AUTHORITY   (Employer's Representative/Contracting Officer's signature)
	16. DATE: 10/10/2012

**This Variation Agreement Number 045, is dated as of 10th day of August 2012 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 Corozal Oeste, 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 Contract are party to Contract CMC-221427 for the Design and Construction of the Third Set of Locks, dated August 11, 2009 (at the same has or may be varied, amended, modified or supplemented, the "**Contract**").
- (b) Pursuant to Sub-Clause 14.2A [*Advance Payment for Mobilisation*] the Contractor has provided to the Employer the Advance Payment for Mobilisation Security and the Employer has made the Advance Payment for Mobilisation to the Contractor.
- (c) The Advance Payment for Mobilisation has been partially repaid by the Contractor by way of deductions from Interim Payment Certificates 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 31 and the balance is due to be repaid to the Employer in accordance with Sub-Clause 14.2A (*Advance Payment for Mobilisation*) by way of deduction from future Interim Payment Certificates, or as otherwise provided therein, although such deductions were commenced late by reference to the proper application of Sub-Clause 14.2A (*Advance Payment for Mobilisation*) such that the Contractor has repaid 37,672,566.00 million less of the Advance Payment for Mobilisation than it should by this date have done in accordance with Sub-Clause 14.2A (*Advance Payment for Mobilisation*) (the "Late Repayment").
- (d) By letter dated June 19, 2012 (Reference GUPC-IAE-1284), the Contractor informed the Employer of very serious financial problems which it contends that it is facing as a consequence of the global financial and liquidity crisis and therein requested financial assistance from the Employer, including the rescheduling of the advance repayment.
- (e) Further to its request as mentioned in (d), the Contractor has requested via RFV number 133 dated July 20, 2012 specifically that the Employer agree to a moratorium on the repayment of the Advance Payment for Mobilisation, instead of repaying in accordance with Sub-Clause 14.2 A [*Advance Payment for Mobilisation*].
- (f) In reliance on the Contractor's representations and assertions regarding its financial condition and cash flow difficulties, which the Parties agree that the Employer is not able to independently verify, the Employer considers that unless it grants the Contractor's request for the advance repayment moratorium provided in this Variation Agreement No. 045, (in conjunction with various other





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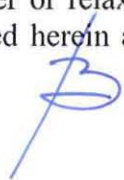
measures such as but not limited to Variation Numbers 42 and 43) there could be serious risk to the completion of the Project and therefore the Employer's agreement to the terms hereof is in the best interests of the Project.

- (g) Accordingly, the Employer has discussed the requested moratorium on the repayment of the Advance Payment for Mobilisation with the Contractor and has indicated to the Contractor certain terms under which such a repayment moratorium could be agreed.
- (h) Therefore, subject to the terms of this Variation Agreement No. 045, and based upon the representations and statements made by the Contractor concerning its financial position and ability to obtain funding, in order to assist the cash flow of the Contractor and for no other reason, the Parties have agreed to a variation to the Contract as hereinafter stated, but not further or otherwise.
- (i) It is agreed in making this variation to the requirements of the Contract that this Variation Agreement No. 045 is 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.

#### **THE PARTIES HEREBY AGREE AS FOLLOWS:**

The Employer and the Contractor agree to vary the Contract as follows:

1. In this Variation Agreement No. 045, 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. Notwithstanding and without prejudice to the merits of any claims that either Party may have against the other relating to the Contract (as to which both Parties' positions are fully reserved) the Contractor acknowledges and agrees that the Employer is not responsible for the Contractor's financial position and its need to request financial assistance. The Contractor agrees and acknowledges that it shall not make any claims against the Employer arising out of or in connection with this Variation Agreement No. 045 or in any way argue or use the fact or the terms of this Variation Agreement No. 045 in a prejudicial way against the Employer or in support of any claims or future actions. The Contractor further agrees and acknowledges that the Employer's agreement to this Variation Agreement No. 045 and the accommodation to the Contractor provided herein is not and shall not be deemed to be an agreement to grant or otherwise provide any similar or other financial accommodation as may be requested by the Contractor on or before the date hereof or in the future.
3. The Parties agree that the Contractor shall have no claims for additional time or money or any other relief or entitlement of any kind as a consequence of this Variation Agreement No. 045 or arising out of it or in any way in connection with it.
4. Further, the Contractor's obligations to complete the Works and comply with the Contract remain in all respects unaffected and nothing within this Variation Agreement No. 045 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





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and the Contract shall have effect as though the provisions contained in this Variation Agreement No. 045 had been originally contained in the Contract. Any ambiguity or uncertainty in the meaning and effect of this Variation Agreement No. 045 shall be resolved in favour of the Employer.

5. This Variation Agreement No. 045 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.
6. The Parties agree to add the following Definition to the Contract:

**"APM Security Amendment"** means, in relation to the issued Advance Payment for Mobilisation Security, being the Irrevocable Letter of Credit Number 700000000645, dated December 18, 2009, issued by The Bank of Nova Scotia, Panama, as amended by an Amendment dated July 22, 2010, a further amendment to such Advance Payment for Mobilisation Security substantially in the form attached to Variation Agreement No. 045 and otherwise in a form acceptable to the Employer, and"

**"Variation Agreement No. 045"** means the Variation Agreement No. 045, dated as of the 10th day of August 2012 between the Employer and the Contractor."

7. The Parties hereby agree to add the following Sub-paragraphs (d) to (h) to Sub-Clause 14.2A [*Advance Payment for Mobilisation*] after the first set of sub-paragraphs (a) to (c):
  - (a) the Employer will, from the month of July 2012, grant a temporary moratorium on the repayment of the Advance Payment for Mobilisation pursuant to the first sub-paragraphs (b) and (c) of Sub-Clause 14.2 A [*Advance Payment for Mobilisation*], so that no further deductions will be made from each Payment Certificate in respect of the Advance Payment for Mobilisation until January 2013 when deductions will resume as provided in sub-paragraph (e), (f) and (g) hereof. The amount of deductions that would, but for this sub-paragraph (d) have been made during the said moratorium, shall be calculated at the end of the moratorium (the "Deferred Repayments").
  - (b) The Deferred Repayments shall instead be repaid in the currency of the Advance Payment for Mobilisation by way of deductions at the rate of 2.75% of the amount of each Payment Certificate commencing in January 2013 until such time as the Deferred Repayments have been repaid in full (or in the case of the final such deduction such lesser percentage of the applicable Payment Certificate as is necessary to make such repayment in full).
  - (c) The Late Repayment will be repaid by way of deductions at the rate of 2.25% of the amount of each Payment Certificate commencing in January 2013 until such time as the Late Repayment has been repaid in full (or in the case of the final, such deduction such lesser percentage of the applicable Payment Certificate as is necessary to make such repayment in full).
  - (d) subject to sub-paragraphs (e) and (f) hereof, repayment of the remaining part of the Advance Payment for Mobilisation (i.e. save in relation to repayment of the Deferred



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Repayments and the Late Repayment which shall be repaid in accordance with sub-paragraphs (e) and (f) hereof) shall resume commencing in the Interim Payment Certificate for January 2013 and continue in accordance with the provisions of the first sub-paragraphs (b) and (c) of Sub-Clause 14.2 A [Advance Payment for Mobilisation] until fully repaid. For the purposes of calculating when 50% of the Advance Payment for Mobilisation has been repaid, this shall include repayments made in respect of the Late Repayment and Deferred Repayments;

- (e) (i) at the Employer's absolute discretion, at any time the Employer may, and (ii) if the APM Security Amendment is not delivered to the Employer on or before **November 12, 2012**, the Employer shall, cancel the moratorium provided in the foregoing clauses of this Sub-Clause 14.2A [*Advance Payment for Mobilisation*], by notice in writing to the Contractor and may make such immediate deduction(s) from any future Interim Payment Certificate(s) in order that the amount repaid by the Contractor following such deduction(s) is equal to the sum that would have been deducted and repaid by that time, by the proper application of the original repayment agreement as set out in the first set of sub-paragraphs (a) to (c) of Sub-Clause 14.2 A [*Advance Payment for Mobilisation*] and notwithstanding how the Parties have hitherto interpreted or operated such provisions.
8. The Parties acknowledge and agree that the Employer's rights in relation to repayment of the whole of the balance of the Advance Payment for Mobilisation outstanding as provided in the final sub-paragraphs (a) to (c) of Sub-Clause 14.2 A [Advance Payment for Mobilisation] and the Employer's rights as to the processing of Interim Payments including but not limited to under Sub-Clause 14.6 (Issue of Interim Payment Certificates) both remain unaffected by this Variation.

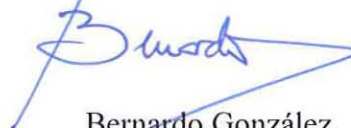
**In Witness** whereof the parties hereto have caused this Variation Agreement No. 045 to the Contract to be executed on the 10th day of August of the year 2012 by their duly authorized representatives.

For ACP



Cheryl George  
Employer's Representative Delegee

For GUPCSA



Bernardo González  
Contractor's Representative