

PANAMA CANAL AUTHORITY	VARIATION	PAGE 1 OF 6
1. REQUEST FOR PROPOSAL No.: RFP-76161	2. CONTRACT No.: CMC-221427	3. DATE: September 6, 2012 4. VARIATION No.: 047

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 attached Variation Agreement

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) Jorge de la Guardia Employer's Representative
13. CONTRACTOR  (Authorized signature)	14. DATE: 6/19/2012 15. PANAMA CANAL AUTHORITY  (Employer's Representative/Contracting Officer's signature)
	16. DATE: 6/19/2012

This Variation Agreement Number 047, is dated as of 6th day of September 2012 and made

Between: Autoridad del Canal de Panama, Building 740, Corozal Oeste, 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 or may be varied, amended, modified or supplemented, the "Contract").
- (b) For the purposes of interim payments in Sub-Clause 14.3.3 (a) of the Contract in relation to the estimated contract value of the Works executed under the Contract, and in accordance with paragraph 1.09R.2 of Section 01 31 00 [*Project Management and Co-ordination*] of the Employer's Requirements, the Contractor is paid by reference to its progress measured against the Current Programme which is based on the cost loaded Accepted Baseline Programme.
- (c) The Contractor originally cost loaded the Accepted Baseline Programme in such a manner that payments in respect of Grounding and Appurtenances, including Fenders, Bollards, Capstans and other electrical and mechanical items (hereinafter "EMC Plant and Materials") would be made only when the items were installed in the Works.
- (d) The Contractor:
 - (i) by letter dated June 19, 2012 (Reference GUPC-IAE-1284), 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 in general terms and without specific conditions rescheduling the payment on permanent electrical and mechanical plant listed in Appendix 1; and
 - (ii) requested in RFV 0140 dated August 1st, 2012 that Interim Payment Certificates shall include, under Sub-Clause 14.3.3 (a) [*Application for Interim*



Payments] of the Contract, partial progress in respect to the procurement and associated activities of EMC Plant and Materials as established in Appendix 1 to RFV 0140 as they are delivered to Site, rather than as the Contract currently provides as set out in Recitals (b) and (c) above..

- (e) 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 agrees to revise the payment profile in relation to the EMC Plant and Material (in conjunction with various other measures such as but not limited to Variation Agreement No. 042, Variation Agreement No. 043, Variation Agreement No.045, Variation Agreement No. 049, and Variation Agreement No. 047), 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.
- (f) Accordingly, the Employer has responded through letter IAE-GUPC 1175 dated July 27, 2012 indicating to the Contractor that the Employer was willing to consider a revised payment profile in respect of EMC Plant and Materials in respect of the Appendix 1 of RFV 0140, albeit not precisely in the terms requested in RFV 0140 which, for the avoidance of any doubt, is not part of this agreed Variation Agreement No. 047 but subject to the Parties agreeing a formal variation to reflect such revised arrangements;
- (g) Therefore, subject to the terms of this Variation Agreement No. 047, 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.
- (h) It is agreed in making this variation to the requirements of the Contract that this Variation Agreement No. 047 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 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. 047, 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 herein.
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 No. 047 or in any way argue or use the fact or the terms of this Variation Agreement No. 047 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. 047 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. 047 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. 047 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 shall have effect as though the provisions contained in this Variation Agreement No. 047 had been originally contained in the Contract. Any ambiguity or uncertainty in the meaning and effect of this Variation Agreement No. 047 shall be resolved in favour of the Employer.
5. This Variation Agreement No. 047 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 Definitions to the Contract which shall be added in proper alphabetical order but without any number):

"EMC Plant and Materials" has the meaning provided in Variation Agreement No.047."

"Variation Agreement No. 047" means Variation Agreement No. 047 dated as of 6th day of September 2012, between the Employer and the Contractor."



7. The Parties agree to add new Sub-Clauses 14.5.1.1 and 14.5.1.2 [*Plant and Materials Intended for the Works*] to the Contract as follows:

"14.5.1.1 The Contractor shall be paid progress payments in respect of EMC Plant and Materials once they are delivered to and stocked on Site and verified in accordance with Quality procedure G00-UPCMGP0016 – Material Receiving, Inspection, Handling and Storage as stated herein and in accordance with the intent shown in Appendix 1 to Variation Agreement No. 047. In this regard, and to reflect this general intent, the Contractor has updated the Current Programme to add additional activities so that progress and payment in respect of EMC Plant and Materials can be measured and valued on an interim basis as aforesaid. The Employer and the Contractor acknowledge the revised budget allocation for progress payments in respect of EMC Plant and Materials pursuant to this Sub-Clause 14.5.1.1 as shown in Appendix 1 to Variation Agreement No. 047 although both the Employer and the Contractor agree that, notwithstanding such revised budget allocation, the Contractor shall be paid for EMC Plant and Materials according to its actual progress against the revised Current Programme which now includes the new activities in respect of delivery to Site of EMC Plant and Materials, shown in the attached Appendix 1 and in all respects subject to the other terms and provisions of the Contract.

14.5.1.2 In assessing and certifying payments in respect of EMC Plant and Materials delivered to Site as aforesaid, the Contractor shall, in addition to establishing that the required properties of the EMC Plant and Materials are in all respects in accordance with the Contract, provide verification that the Contractor has delivered and installed the EMC Plant and Materials established in Appendix 1 claimed in an Interim Statement. Certification and payment in respect of EMC Plant and Materials established in Appendix 1 shall not be due under the Contract unless such matters are first established to the satisfaction of the Employer's Representative and in accordance with Contract Requirements."

8. Nothing in this Variation Agreement No. 047 is intended to or does give the Contractor any greater entitlement in respect of payment for EMC Plant and Materials than was included within the original Contract Price and thus nothing in this Variation Agreement No. 047 is intended to or does increase the sum due to the Contractor in respect of EMC Plant and Materials.
9. The Parties acknowledge and agree that the Employer's rights in relation to the processing of Interim Payments including but not limited to under Sub-Clause

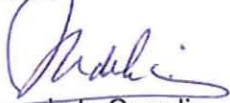


14.6 (*Issue of Interim Payment Certificates*) remain unaffected by this Variation Agreement No. 047.

Appendix 1—Stage payments for appurtenances

In Witness whereof the Parties hereto have caused this Variation Agreement No. 047 to the Contract to be executed on the 6th day of the year 2012 by their duly authorized representatives.

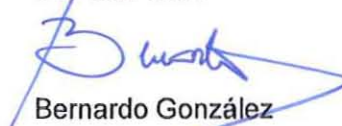
For ACP



Jorge de la Guardia

Employer's Representative

For GUPCSA



Bernardo González

Contractor's Representative

Appendix 1: STAGE PAYMENTS FOR APPURTENANCES

	Subactivities	weight	1ST Breakdown	WEIGHT	2ND Breakdown	Weight breakdown	Quantity Total	Receipt	% UOM Complete
A-40860 P-41040 A-43000 P-43260	FENDERS	4.0%	EMBEDS	30%	RECEIPT	65%			
					INSTALATION	35%			
			FENDERS	70%	RECEIPT	70%			
					INSTALATION	30%			
	FENDERS CORNER	13.0%	EMBEDS	10%	RECEIPT	75%			
					INSTALATION	25%			
			FENDERS	90%	RECEIPT	80%			
					INSTALATION	20%			
	BOLLARDS	1.0%	EMBEDS	35%	RECEIPT	65%			
					INSTALATION	35%			
			BOLLARDS	65%	RECEIPT	90%			
					INSTALATION	10%			
	MECH. SYS. FIRE	22.0%			RECEIPT			For Future Discussion	
					INSTALATION			For Future Discussion	
	MECH. SYS. DEWATER	60.0%			RECEIPT			For Future Discussion	
					INSTALATION			For Future Discussion	

	Subactivities	weight	1ST Breakdown	WEIGHT	2ND Breakdown	Weight breakdown	Quantity Total	Receipt	% UOM Complete
A-41480 P-41640 A-42020 P-42220 A-42500 P-42780	FENDERS	86.0%	EMBEDS	30%	RECEIPT	65%			
					INSTALATION	35%			
			FENDERS	70%	RECEIPT	70%			
					INSTALATION	30%			
	BOLLARDS	7.0%	EMBEDS	31%	RECEIPT	65%			
					INSTALATION	35%			
			IN LINE BOLLARDS	15%	RECEIPT	65%			
					INSTALATION	35%			
			BOLLARDS	54%	RECEIPT	90%			
					INSTALATION	10%			
	CAPSTANS	7.0%	EMBEDS	5%	RECEIPT	65%			
					INSTALATION	35%			
			CAPSTANS	95%	RECEIPT	80%			
					INSTALATION	20%			

	Subactivities	weight	1ST Breakdown	WEIGHT	2ND Breakdown	Weight breakdown	Quantity Total	Receipt	% UOM Complete
A-41100 P-41220 A-41680 P-41820 A-42240 P-42400 A-42760 P-42980	FENDERS	4.0 to 7.5%	EMBEDS	30%	RECEIPT	65%			
					INSTALATION	35%			
			FENDERS	70%	RECEIPT	70%			
					INSTALATION	30%			
	BOLLARDS	1.0%	EMBEDS	35%	RECEIPT	65%			
					INSTALATION	35%			
			BOLLARDS	65%	RECEIPT	90%			
					INSTALATION	10%			
	MECH. SYS. FIRE	57.5% to 61%			RECEIPT			For Future Discussion	
					INSTALATION			For Future Discussion	
	Process Measuring Devices for PCS	15% to 17%			RECEIPT			For Future Discussion	
					INSTALATION			For Future Discussion	
	Vessel Detection System	9.0%			RECEIPT			For Future Discussion	
					INSTALATION			For Future Discussion	
	Waterway Signaling and Control Equipment	2.6%			RECEIPT	70%			
					INSTALATION	30%			
	Distance Markings on the walls, Livesaving rings (hook)	1.4%			RECEIPT	40%			
					INSTALATION	60%			
	Station Posts: Signaling	5.5%			RECEIPT	86%			
					INSTALATION	14%			

	Subactivities	weight	1ST Breakdown	WEIGHT	2ND Breakdown	Weight breakdown	Quantity Total	Receipt	% UOM Complete
A-40080 P-40060	Grounding	10.0%			MATERIAL	36.58%			
					INSTALATION	63.42%			
	Electrical Infrastructure	90.0%						For Future Discussion	
	Equipment							For Future Discussion	
	Cable							For Future Discussion	

B. Buck