

PANAMA CANAL AUTHORITY	VARIATION	PAGE 1 OF 4
1. REQUEST FOR PROPOSAL No.:  RFP-76161	2. CONTRACT No.:  CMC-221427	3. DATE: October 8, 2012
		4. VARIATION No.: 051

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: 8/10/2012
	15. PANAMA CANAL AUTHORITY   (Employer's Representative/Contracting Officer's signature)
	16. DATE: 8/10/2012

**This Variation Agreement Number 051, is dated as of the 8<sup>th</sup> day of October 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**

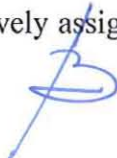
Grupo Unidos por el Canal, S.A., of Corozal Oeste, Building 22B, Brujas Road, Cocoli, Panama, Republic of Panama, a corporation organized under the laws of the Republic of Panama, registered under microjacket number 682266, document number 1683284 of the Mercantile Section of the Public Registry Office 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 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) The Parties entered into Variation Agreement No. 049.
- (c) The Contractor requested through RFV 0147, dated 5<sup>th</sup> October 2012, that the Employer agree to a 45 day extension to the requirement set forth in Sub-Clause 14.2E [Advance Payment for Key Suppliers Security], which was incorporated into the Contract by way of Variation Agreement No. 049, that the Advance Payment for Key Suppliers Security be delivered by the Contractor by no later than September 30, 2012, and instead such delivery be made no later than November 15, 2012.
- (d) For the reasons stated in Variation Agreement No. 049 and in RFV 0147, and based upon the representations and statements made by the Contractor concerning its financial position and ability to obtain funding, all as set forth in Variation Agreement No. 049, in order to assist the cash flow of the Contractor and for no other reason, the Parties have agreed to a modification to Variation Agreement No. 049 as hereinafter stated, but not further or otherwise.
- (e) It is agreed that this modification 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:**

1. In this Variation Agreement No. 051, 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. 051 or in any way argue or use the fact or the terms of this Variation Agreement No. 051 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. 051 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. 051 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.051 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.051 had been originally contained in the Contract. Any ambiguity or uncertainty in the meaning and effect of this Variation Agreement No.051 shall be resolved in favour of the Employer.
5. This Variation Agreement No. 051 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 Employer and the Contractor agree to vary the Contract as follows:
  - 6.1 The Parties agree to add the following Definition to Sub-Clause 1.1[Definitions] of the Contract in proper alphabetical order but without any number):  
    **"Variation Agreement No. 051"** means Variation Agreement Number 051, dated as of the 8th day of October 2012 between the Employer and the Contractor."
  - 6.2 The Parties agree to amend the text of Sub-Clause 14.2E [Advance Payment for Key Suppliers Security] of the Contract to read in its entirety as follows:

**"14.2E Advance Payment for Key Suppliers Security"**

By no later than November 15, 2012, the Contractor shall obtain, at his own cost, and furnish to the Employer, one or more Advance Payment for Key Suppliers Security in such respective amounts as are not less than the

corresponding Advance Payment(s) for Key Suppliers to be made or which have been made by the Employer on or up to such date. Thereafter, for any subsequent Advance Payment for Key Suppliers requested by the Contractor to be made by the Employer, the Contractor expressly agrees that no such Advance Payment for Key Suppliers will be made by the Employer if the Contractor has not provided an Advance Payment for Key Suppliers Security which is at least equivalent to the amount of any such Advance Payment for Key Suppliers so requested by the Contractor, and in each such case in advance of such payment by the Employer and in conformance with the terms of the Contract applicable thereto. Notwithstanding any other term of Variation Agreement No. 049, Variation Agreement No. 051, or the Contract, should the Contractor fail to provide by (i) November 15, 2012, such initial Advance Payment(s) for Key Suppliers Security, or (ii) in any other case, an Advance Payment for Key Suppliers Security which is at least equivalent to the amount of any Advance Payment for Key Suppliers paid by the Employer, the Employer may at its absolute discretion deduct from the next Interim Payment Certificate (as the case may be) or any subsequent Interim Payment Certificate the full amount of any amount previously paid to the Contractor pursuant to the terms of Sub-Clause 14.2C. For the avoidance of doubt, the terms of Sub-Clause 4.2D shall apply to any Advance Payment for Key Suppliers Security, but it is expressly agreed that the terms of Sub-Clause 4.2E shall not so apply thereto.”

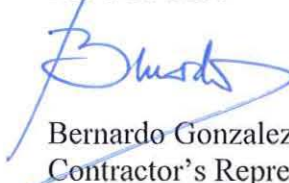
**In Witness whereof** the Parties hereto have caused this Variation Agreement No. 051 to be executed on the 8<sup>th</sup> day of October 2012 by their duly authorized representatives.

For ACP



Jorge de la Guardia  
Employer's Representative

For GUPCSA



Bernardo Gonzalez  
Contractor's Representative