

PANAMA CANAL AUTHORITY	VARIATION	PAGE 1 OF 6
1. REQUEST FOR PROPOSAL No.: RFP-76161	2. CONTRACT No.: CMC-221427	3. DATE: October 17, 2012
		4. VARIATION No.: 052

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: 17/10/2012
	15. PANAMA CANAL AUTHORITY  (Employer's Representative/Contracting Officer's signature)
	16. DATE: 17/X/2012

This Variation Agreement Number 052, is dated as of the 17th 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 Contract 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 have entered into Variation Agreement No. 048.
- (c) The Contractor requested through RFV 0148, dated 11th October 2012, that the Employer agree to a 45 day extension to the September 30, 2012 delivery date requirement for the Plant and Material Security set forth in Sub-Clause 14.5.3 [Plant and Materials Intended for the Works], of the Contract (which September 30, 2012 date was agreed pursuant to Variation Agreement No. 048), and that the Contractor instead make such delivery be made no later than November 15, 2012.
- (d) In addition, the Contractor requested through such RFV 0148, that the Employer also agree that, during the period to November 15, 2012, that the Contractor be allowed to include in its applications for Interim Payment Certificates sums related to lock gates notwithstanding the fact that the Plant and Material Security may not have been delivered to the Employer as at the date of any such application for Interim Payment Certificate during such period; *provided that* the Contractor expressly represented therein that no amounts for water savings basins, lock valves and any associated equipment would be included in any application for Interim Payment Certificate during any period prior to the delivery of the Plant and Material Security.
- (e) For the reasons stated in Variation Agreement No. 048 and in such RFV 0148, 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. 048, 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. 048 as hereinafter stated, but not further or otherwise.
- (f) 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. 052, 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. 052 or in any way argue or use the fact or the terms of this Variation Agreement No. 052 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. 052 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. 052 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.052 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.052 had been originally contained in the Contract. Any ambiguity or uncertainty in the meaning and effect of this Variation Agreement No. 052 shall be resolved in favour of the Employer.
5. This Variation Agreement No. 052 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 (which shall be added in proper alphabetical order but without any number):

“Acceptable Zurich P&M Bond” has the meaning specified in Sub-Clause 8.2 of Variation Agreement No. 048 (as modified by Variation Agreement Number 052).”

“Excess P&M Amount” has the meaning specified in Sub-Clause 8.2 of Variation Agreement No. 048 (as modified by Variation Agreement Number 052).”



“**Variation Agreement No. 052**” means Variation Agreement Number 052, dated as of the 17th day of October 2012 between the Employer and the Contractor.”

7. The Employer and the Contractor agree that Clause 8 of Variation Agreement No. 048 shall be replaced in its entirety with the following clause:

“8. The Parties agree that the following terms also shall apply to the Plant and Material Security:


8.1 By no later than November 15, 2012, the Contractor shall obtain, at his own cost, and furnish to the Employer, the Plant and Material Security, and the date set forth in Sub-Clause 14.5.3 of the Contract for delivery of the Plant and Material Security shall be deemed modified to instead provide for the delivery thereof no later than November 15, 2012.

8.2 Notwithstanding any other term of the Contract, unless expressly consented to in writing by the Employer, the delivery of the Plant and Material Security shall be made by the Contractor in the following manner:

8.2.1 by the delivery of a bond in a form satisfactory to the Employer in its absolute discretion issued by Zurich American Insurance Company and all of which exposure shall be retained by Zurich American Insurance Company and not reinsured (an “Acceptable Zurich P&M Bond”) in an amount not less than one hundred fifty million United States Dollars (US\$150,000,000.00), which bond shall be used as Plant and Material Security **in respect of gates and its associated equipment (in accordance with sub-clause 14.5.1 (a)(1) as modified through Variation No. 048) and;**

8.2.2 by the delivery of an Acceptable Zurich P&M Bond in an amount not less than thirty million United States Dollars (US\$30,000,000.00), which bond shall be used as Plant and Material Security **of respect of water saving basins and lock valves and its associated equipment (in accordance with sub-clause 14.5.1 (a)(2) as modified through Variation No. 048);**

provided that, notwithstanding the terms of this Sub-Clause 8.2, in the event that the amount of any payment to be made by the Employer in respect of Plant and Materials is greater (either itself or in the aggregate with all other payments previously made or to be made by the Employer in respect of Plant and Materials) than the amount of the corresponding Acceptable Zurich P&M Bond securing the payment for such Plant and Materials, as the case may be (the amount of any such excess payment, the “Excess P&M Amount”), the Contractor shall, as a condition to the making of any such payment by the Employer; deliver to the Employer either (i) the previously issued Acceptable Zurich P&M Bond, increased by an amount not less than such Excess P&M



Amount or (ii) a substitute Contractor Security Instrument acceptable to the Employer in its absolute discretion in an amount not less than the sum total of the amount of the corresponding previously issued Acceptable Zurich P&M Bond and the Excess P&M Amount; and the Contractor expressly agrees that the Employer shall be entitled to withhold certification and/or payment for any such Excess P&M Amount and/or if it has been paid deduct such Excess P&M Amount or any part thereof from any subsequent Interim Payment Certificate until such time as the requirements of this proviso have been satisfied.

8.3 For the avoidance of doubt, the terms of Sub-Clause 4.2D shall apply to the Plant and Material Security, but it is expressly agreed that the terms of Sub-Clause 4.2E shall not so apply thereto.

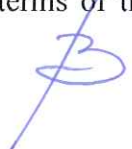
8.4 Notwithstanding any other term of Variation Agreement No. 048 or the Contract, should the Contractor fail to provide by November 15, 2012 the Plant and Material Security in the manner specified in Sub-Clause 8.2 above, the Employer may at its absolute discretion deduct from the next Interim Payment Certificate after the date of Variation Agreement No. 052 or any subsequent Interim Payment Certificate the full amount of any amount previously paid to the Contractor pursuant to the terms of Sub-Clause 14.5.1 (as modified by the terms of Variation Agreement No. 048) and this Sub-Clause 8; *provided that* the Parties agree that, notwithstanding the foregoing provisions of this Clause 8:

8.4.1 during the period to November 15, 2012, the Contractor may include in its applications for Interim Payment Certificates sums related to lock gates (but not any other Plant or Materials) notwithstanding the fact that the Plant and Material Security may not have been delivered to the Employer as at the date of any such application for Interim Payment Certificate during such period;

8.4.2 the Contractor agrees that no amounts for water savings basins, lock valves and any associated equipment (items 2.3.3.1.9.1, 2.3.3.2.9.1, 2.3.3.1.10.1 and 2.3.3.2.10.1 of the Schedule of Project Elements and Prices) will be included in any application for Interim Payment Certificate during any period prior to the delivery of the Plant and Material Security;

8.4.3 the Contractor acknowledges and agrees that, from November 15, 2012 and thereafter, the Employer shall be under no obligation whatsoever to include any sums in any Interim Payment Certificate for, or make any payment in respect of, Plant and Materials unless and until the provisions of Sub-Clause 14.5.3 and otherwise under the Contract relating to Plant and Material Security have been fully complied with by the Contractor in accordance with their terms; and,

8.4.4 the Contractor expressly agrees that in the event of any breach or violation of the terms of this Clause 8 by the Contractor, the Employer



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may at its absolute discretion deduct from any subsequent Interim Payment Certificate the full amount of any amount previously paid to the Contractor pursuant to the terms of Sub-Clause 14.5.1 (as modified by the terms of Variation Agreement No. 048) and this Clause 8.

In Witness whereof the Parties hereto have caused this Variation Agreement No. 052 to be executed on the 17th 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