

PANAMA CANAL AUTHORITY	VARIATION	PAGE 1 OF 5
1. REQUEST FOR PROPOSAL No.: RFP-76161	2. CONTRACT No.: CMC-221427	3. DATE: November 23, 2012
		4. VARIATION No.: 55 (R)

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 enclosed

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: 23/11/2012
	15. PANAMA CANAL AUTHORITY  (Employer's Representative/Contracting Officer's signature)
	16. DATE: 23/11/2012

This Variation Agreement Number 055 (R), is dated as of the 23rd day of November 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 relating to the Advance Payment for Key Suppliers, in which the Parties agreed that the Advance Payment for Key Suppliers Security would be delivered by the Contractor by no later than September 30, 2012.
- (c) The Contractor did not comply with this requirement of the Contract.
- (d) The Contractor requested through RFV 0147, dated 5th October 2012 that the Employer agree to a 45 day extension to such delivery requirement, and permit the Contractor to instead deliver the Advance Payment for Key Suppliers Security by no later than November 15, 2012.
- (e) 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, in order to assist the cash flow of the Contractor and for no other reason, the Employer agreed, through Variation Agreement No. 051, to modify the Contract to permit the Contractor to deliver the Advance Payment for Key Suppliers Security by no later than November 15, 2012.
- (f) The Contractor also did not comply with this modified requirement of the Contract.
- (g) The Contractor has now informed the Employer that it cannot presently deliver the Advance Payment for Key Suppliers Security.



November 23, 2012

Design and Construction of the Third Set of Locks

- (h) The Contractor also has informed the Employer, as stated in numerous foregoing Variation Orders, Requests for Variation, correspondence and meetings, of its ongoing financial and cash flow difficulties, which the Contractor affirms remain in existence as of the date of this Variation Order No. 055.
- (i) Given that the Contractor has stated that it cannot presently deliver the Advance Payment for Key Supplier Security, and further based upon the representations and statements made by the Contractor concerning its financial condition, which have been affirmed by the Contractor above, in order to assist the financial position and cash flow of the Contractor and for no other reason, the Employer has agreed to relieve the Contractor of its obligation to provide the Advance Payment for Key Suppliers Security, and therefore the Parties have agreed to a modification to the Contract related thereto, as hereinafter stated, but not further or otherwise.
- (j) 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. 055, 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. 055 or in any way argue or use the fact or the terms of this Variation Agreement No. 055 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. 055 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. 055 or arising out of it or in any way in connection with it.



November 23, 2012

Design and Construction of the Third Set of Locks

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. 055 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. 055 had been originally contained in the Contract. Any ambiguity or uncertainty in the meaning and effect of this Variation Agreement No. 055 shall be resolved in favour of the Employer.
5. This Variation Agreement No. 055 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. 055" means Variation Agreement Number 055, dated as of the 23rd day of November 2012 between the Employer and the Contractor."

- 6.2 The Parties agree to amend the following Definitions in Sub-Clause 1.1[Definitions] of the Contract as follows:

6.2.1 **"Advance Payment for Key Suppliers Security"** shall be deleted in its entirety and all references thereto elsewhere in the Contract shall be deleted.

6.2.2 **"1.1.6.4 Acceptable Bond Issuer Rating"** shall be amended to amend the final clause thereof to read as follows:

and (ii) with respect to the issuer of any Advanced Reinforcement Adjustment Amount Security Bond or any Plant and Material Security, the requirements of sub-clause (b) of, and, if applicable, sub-clause (y) of the provision to, the definition of Acceptable Local Bond Issuer.

6.2.3 **"1.1.6.11 Contractor Security Instrument"** shall be amended to read as follows:

"Contractor Security Instrument" means each of the Performance Bond, the Payment Bond, each Contractor Security LOC, any Advanced Reinforcement Adjustment Amount Security, and any Plant and Material Security.



November 23, 2012

Design and Construction of the Third Set of Locks

6.3 The Parties agree to amend the text of Sub-Clause 14.2C [Advance Payment for Key Suppliers] as follows:

6.3.1 The first clause of Sub-Clause 14.2 C [Advance Payment for Key Suppliers] shall be amended by deleting the following first line thereof:

"Subject to Sub-Clause 14.2E [Advance Payment for Key Suppliers Security,] and instead commencing such first clause with the word "The". In all other respects such first clause shall remain unchanged.

6.3.2 The final clause of Sub-Clause 14.2 C [Advance Payment for Key Suppliers] shall be amended as follows:

6.3.2.1 The first paragraph of the final clause of Sub-Clause 14.2 C [Advance Payment for Key Suppliers] shall be amended to read in its entirety as follows:

The whole of the balance of the Advance Payment for Key Suppliers outstanding shall immediately become due and payable by the Contractor to the Employer if:

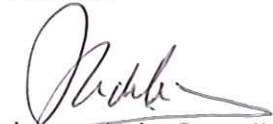
6.3.2.2 sub-paragraph (b) of such final clause shall be deleted and in its place there shall be inserted the following phrase: "[Intentionally Omitted]".

In all other respects such final clause of Sub-Clause 14.2 C [Advance Payment for Key Suppliers] shall remain unchanged.

6.4. The Parties agree to delete the text of Sub-Clause 14.2 E [Advance Payment for Key Suppliers Security] and in its place there shall be inserted the following phrase: "[Intentionally Omitted]".

In Witness whereof the Parties hereto have caused this Variation Agreement No. 055 to be executed on the 23rd day of November 2012 by their duly authorized representatives.

For ACP



Jorge de la Guardia
Employer's Representative

For GUPCSA



Bernardo González
Contractor's Representative
