

PANAMA CANAL AUTHORITY	VARIATION	PAGE 1 OF 11
1. REQUEST FOR PROPOSAL No.: RFP-76161	2. CONTRACT No.: CMC-221427	3. DATE: December 24, 2012
		4. VARIATION No.: 68

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: 24/12/2012
15. PANAMA CANAL AUTHORITY  (Employer's Representative/Contracting Officer's signature)	16. DATE: 24/12/2012

This Variation Agreement Number 058, is dated as of 24th day of December 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 Building 22B, Brujas Road, Cocoli, Panama, Republic of Panama, a corporation organised 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 the 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 11 August 2009 (as the same has been or may be varied, amended, supplemented or otherwise modified, the "Contract").
- b) The Contractor, by letter dated November 9, 2012 (Reference GUPC-IAE-1545), informed the Employer of very serious financial problems which it contends that it is facing, that the situation was now "extremely critical" and therein requested financial support in the short to medium term from the Employer, including in general terms and without specific conditions the payment in respect of certain main suppliers for the Project, which issues are considered in the subsequent correspondence of the Employer, including the Employer's letter of November 20, 2012 and December 24th 2012, and the Contractor's letter of December 21, 2012.
- c) The Contractor then requested through RFV No 163, dated December 11, 2012 that the Employer make an advance payment to the Contractor so that the Contractor could make payment to certain suppliers and subcontractors as set out in the RFV.
- d) 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 an advance payment (in addition to the various other measures already agreed such as but not limited to those provided for in Variation Agreements No. 042, No. 043, No. 045, No. 048, No. 049, No. 051, No. 052, No. 55, No. 56 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.

- e) Therefore, subject to the terms of this Variation Agreement No. 058, 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.
- f) The Employer wishes to appoint, a Certified Public Accountant ("CPA"), who shall be an employee of the Autoridad del Canal de Panama, and who may assist in the Employer's review of the various information, certifications and documentation required to be provided by the Contractor in relation to the matters set out in this Variation Agreement No. 058.

THE PARTIES HEREBY AGREE AS FOLLOWS:

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

1. In this Variation Agreement No. 058, the 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. It is agreed that this Variation Agreement No. 058 and the modifications contained herein are 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.
3. 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. 058 or in any way argue or use the fact or the terms of this Variation Agreement No. 058 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. 058 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.
4. 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. 058 or arising out of it or in any way in connection with it.

5. 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. 058 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. 058 had been originally contained in the Contract. Any ambiguity or uncertainty in the meaning and effect of this Variation Agreement No. 058 shall be resolved in favour of the Employer.
6. This Variation Agreement No. 058 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.
7. The Parties agree to amend Sub-Clause 1.1[Definitions] of the Contract as follows:
The Parties agree to add the following definitions to Sub-Clause 1.1[Definitions] of the Contract (which shall be added in proper alphabetical order but without any number):

"Advance Payment Bond Issuer Confirmations" means a written confirmation (or rider, amendment or modification), each in the form set out in Appendix 5 to Variation Agreement No. 058 and otherwise acceptable to the Employer, from each of (i) the issuer of the Performance Bond, (ii) the issuer of the Payment Bond, in each case as to the continuing validity of such bond notwithstanding the modifications to the Contract regarding the Advance Payment for Specified Suppliers made pursuant to the terms of Variation Agreement No. 058."

"Advance Payment for Specified Suppliers" has the meaning provided in Sub-Clause 14.2F [Advance Payment for Specified Suppliers]."

"Advance Payment Joint and Several Guarantee" means the guarantee required pursuant to Sub-Clause 14.2G [Advance Payment Joint and Several Guarantee; Advance Payment Parent Guarantee; Advance Payment Bond Issuer Confirmations] in the form set out in Appendix 6 to Variation Agreement No. 058 and otherwise acceptable to the Employer."

"Advance Payment Parent Guarantee" means the guarantee required pursuant to Sub-Clause 14.2G [Advance Payment Joint and Several Guarantee; Advance Payment Parent Guarantee; Advance Payment Bond Issuer Confirmations] in the form set out in Appendix 7 to Variation Agreement No. 058 and otherwise acceptable to the Employer."

"CPA" means a Certified Public Accountant, who shall be an employee of the Autoridad del Canal de Panama, who may be appointed to assist in the Employer's review of the various information, certifications and documentation required to be

provided by the Contractor in relation to the matters set out in Variation Agreement No. 058."

"Specified Supplier Cut-Off Date" shall mean April 30, 2013, or the date when the total amount of the Advance Payment to Specified Suppliers certified in Interim Payment Certificates and paid as a result of Extraordinary Applications taken together has reached the maximum amount of USD150 Million, whichever occurs first."

"Specified Suppliers" means those suppliers and subcontractors listed in Appendix 1 to Variation Agreement No. 058 and any other suppliers and subcontractors which may be previously approved in writing as such from time to time by the Employer in its sole and absolute discretion until the total amount of the Advance Payment to Specified Suppliers certified in Interim Payment Certificates and paid as a result of Extraordinary Applications taken together has reached the maximum amount of USD150 Million."

"Specified Supplier Payment Certification No.1" has the meaning provided in Sub-Clause 14.2F [Advance Payment for Specified Suppliers]."

"Specified Supplier Payment Certification No.2" has the meaning provided in Sub-Clause 14.2F [Advance Payment for Specified Suppliers]."

"Variation Agreement No. 058" means Variation Agreement Number 058, dated as of December 24, 2012 between the Employer and the Contractor."

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

"Payment Certificate Deductions" shall be amended to read as follows:

"Payment Certificate Deductions" means the deductions to be made from the amount of any Payment Certificates in respect of any of (i) the Advance Payment for Plant, (ii) the Advance Payment for Mobilisation (including the Late Repayment and Deferred Repayment), (iii) the Advance Payment for Key Suppliers, (iv) the Advance Payment for Specified Suppliers, and (v) the retention pursuant to subparagraph (c) of Sub-Clause 14.3.3 [Application for Interim Payment Certificates] of the Contract".

8. The Parties agree to amend the Contract by adding the following new Sub-Clauses 14.2F [Advance Payment for Specified Suppliers] and 14.2G [Advance Payment Joint and Several Guarantee; Advance Payment Parent Guarantee; Advance Payment Bond Issuer Confirmations]:

14.2F [Advance Payment for Specified Suppliers]

Subject to Sub-Clause 14.2G [Advance Payment Joint and Several Guarantee; Advance Payment Parent Guarantee; Advance Payment Bond Issuer Confirmations], the Employer shall make a further advance payment of part of the Contract Price up to a maximum of USD150 million to be made and repaid in accordance with this Sub-Clause 14.2F in respect of sums which may be made to Specified Suppliers as set out in Appendix 1 to Variation Agreement No. 058 or such other sums as may be certified for payment by the Employer's Representative pursuant to the terms of this Sub-Clause 14.2F (the "Advance Payment for Specified Suppliers").

As a precondition to payment by the Employer to the Contractor of any amount of the Advance Payment for Specified Suppliers, the Contractor shall provide to the Employer:

- (a) the Advance Payment Joint and Several Guarantee, duly executed by the parties thereto (which for the avoidance of doubt shall be the four shareholders of the Contractor, namely SACYR VALLEHERMOSO, S.A., JAN DE NUL N.V., IMPREGILO S.p.A., and CONSTRUCTORA URBANA, S.A.) in the form included in Appendix 5 to Variation Agreement No. 058;
- (b) the Advance Payment Parent Guarantee, duly executed by the parties thereto in the form included in Appendix 6 to Variation Agreement No. 058;
- (c) the Advance Payment Bond Issuer Confirmations, duly executed by the parties thereto in the form included in Appendix 7 to Variation Agreement No. 058; and
- (d) Appendix 1 to Variation Agreement No. 058 with columns A, B and F duly completed, and signed by the Contractor's Representative.

Subject to the terms of this Sub-Clause 14.2F the Contractor shall be entitled to apply for payment of an amount of the Advance Payment for Specified Suppliers as follows:

Alternative 1

Subject to the terms of this Sub-Clause 14.2F, the Contractor may include an amount of the Advance Payment for Specified Suppliers in an application for an Interim Payment Certificate pursuant to Sub-Clause 14.3 [Application for Interim Payment Certificates]. The first application for an Interim Payment Certificate pursuant to Sub-Clause 14.3 [Application for Interim Payment Certificates] in respect of any part of the Advance Payment for Specified Suppliers may, subject to satisfaction of the preconditions above and in all cases subject to the terms of this Sub-Clause 14.2F, be included in the Contractor's application for an Interim

December 24, 2012

Design and Construction of the Third Set of Locks

Payment Certificate pursuant to Sub-Clause 14.3 [Application for Interim Payment Certificates] in the month following the date of the execution of Variation Agreement No. 058. No applications for an Interim Payment Certificate pursuant to Sub-Clause 14.3 [Application for Interim Payment Certificates] in respect of any part of the Advance Payment for Specified Suppliers may be made after the Specified Supplier Cut-Off Date.

Where in respect of any one of the Specified Suppliers the Contractor wishes to include in an application for an Interim Payment Certificate pursuant to Sub-Clause 14.3 [Application for Interim Payment Certificates] any amount of the Advance Payment for Specified Suppliers, the Contractor shall submit with its application for an Interim Payment Certificate pursuant to Sub-Clause 14.3 [Application for Interim Payment Certificates] and as a precondition to payment of any amount of the Advance Payment for Specified Suppliers, a certification from the Contractor in the form set out in Appendix 2 to Variation Agreement No. 058, duly completed in accordance with the required information set out therein (the "Specified Supplier Payment Certification No.1"), together with the documentation required to be provided as set out in Appendix 3 to Variation Agreement No. 058, which documentation listed in such Appendix shall be sent through DTCS. Provided that the Specified Supplier Payment Certification No.1 is duly completed, and both it and the documentation required to be provided as set out in Appendix 3 to Variation Agreement No. 058 are in accordance with the terms of this Sub-Clause 14.2F and are to the Employer's Representative's satisfaction, then the Employer's Representative may include in the next Interim Payment Certificate to which the application relates the amount of the Advance Payment for Specified Suppliers applied for, or such other sum as the Employer's Representative may certify in its sole and absolute discretion. For the avoidance of doubt, and notwithstanding any other provision of the Contract, the Employer's Representative shall have the sole and absolute discretion as to whether any amount of the Advance Payment for Specified Suppliers included in the Interim Payment Certificate shall be accepted by the Employer's Representative and therefore, paid by the Employer.

Alternative 2

Alternatively, the Contractor may, in addition to its right to make an application for an amount of the Advance Payment for Specified Suppliers in an application for an Interim Payment Certificate pursuant to Sub-Clause 14.3 [Application for Interim Payment Certificates], and subject to the satisfaction of the pre-conditions above and in all cases subject to the terms of this Sub-Clause 14.2F, separately apply for an amount of the Advance Payment for Specified Suppliers by providing to the Employer the Specified Supplier Payment Certification No.1, duly completed in accordance with the requirements set out therein (the "Extraordinary Application"), together with the documentation required to be provided in accordance with Appendix 3 to Variation Agreement No. 058, which documentation listed in such Appendix shall be sent through DTCS. No Extraordinary Applications in respect of any part of the Advance Payment for Specified Suppliers may be made after the Specified Supplier Cut-Off Date.

Provided that the Specified Supplier Payment Certification No.1 is duly completed, and both it and the documentation required to be provided as set out in Appendix 3 to Variation Agreement No. 058 are in accordance with the terms of this Sub-Clause 14.2F and are to the Employer's Representative's satisfaction, then the Employer may pay to the Contractor the amount of the Advance Payment for Specified Suppliers applied for, or such other sum as the Employer's Representative may decide in its sole and absolute discretion. For the avoidance of doubt, and notwithstanding any other provision of the Contract, the Employer's Representative shall have the sole and absolute discretion as to whether an amount of the Advance Payment for Specified Suppliers included in an Extraordinary Application is certified for payment by the Employer's Representative and therefore paid by the Employer to the Contractor.

The Contractor may, subject to the terms of this Sub-Clause 14.2F, continue to include in any application for an Interim Payment Certificate pursuant to Sub-Clause 14.3 [Application for Interim Payment Certificates] or any Extraordinary Application any amount of the Advance Payment for Specified Suppliers until the total amount certified in both Interim Payment Certificates and paid as a result of Extraordinary Applications taken together amount to USD150 million save that no further advances shall be made after the Specified Supplier Cut-Off Date, even if by that time the maximum amount of the Advance Payment for Specified Suppliers has not been certified or paid. For the avoidance of doubt, under no circumstances whatsoever shall the Contractor be entitled to payment of the Advance Payment for Specified Suppliers in excess of the sum of USD150 million.

The Contractor shall use all amounts of the Advance Payment for Specified Suppliers solely for the purposes of making payment to the Specified Suppliers in accordance with the terms of this Sub-Clause 14.2F and shall make such payments to Specified Suppliers so that the amount of the Advance Payment for Specified Suppliers that the Contractor will pay to each Specified Supplier shall be as per the amounts, and in respect of the Works, goods, services and/or materials, set out in Appendix 1 to Variation No. 058 or as otherwise certified by the Employer's Representative, or in respect of Specified Suppliers not listed in Appendix 1 to Variation Agreement No. 058, as per the amounts, and in respect of the Works, goods, services and/or materials as may be agreed by the Employer in writing or as otherwise certified by the Employer's Representative. Payments to Specified Suppliers shall be made within 5 Business Days of receipt by the Contractor of each amount of the Advance Payment for Specified Suppliers made by the Employer. In no event shall the Contractor use or apply any portion of the Advance Payment for Specified Suppliers for any other purpose than such payment as aforesaid, including without limitation for its own corporate or cash flow purposes (other than in respect of such payments) or to make payment to any other supplier, subcontractor or person (other than any Specified Supplier) for any part of the Works, Plant and/or Materials, or otherwise.

For the avoidance of doubt, all amounts of the Advance Payment for Specified Suppliers shall be paid by the Contractor to the Specified Suppliers only, and under no circumstances whatsoever shall such amounts be paid to any third party who has been assigned the right to receive payment in respect of such amounts.

Within 5 Business Days of the Contractor making any payment to a Specified Supplier in accordance with this Sub-Clause 14.2F, the Contractor shall provide to the Employer certification in the form set out in Appendix 4 to Variation Agreement No. 058, duly completed in accordance with the requirements set out therein (the "Specified Supplier Payment Certification No.2"), together with the documentation required to be provided as set out in Appendix 3 to Variation Agreement No. 058, which documentation listed in such Appendix shall be sent through DTCS.

Without prejudice to the foregoing, the Employer shall at any time be entitled to audit the Contractor's books and records to verify that any payment to any Specified Supplier has been made, or is to be made, in accordance with the terms of this Sub-Clause 14.2F, and to make copies and take extracts thereof in relation thereto.

For the avoidance of any doubt and notwithstanding any other provision of this Sub-Clause 14.2F, the Employer's Representative may at any time conduct a review, investigation or audit of the payments made, or to be made, to any Specified Supplier under this Sub-Clause 14.2F and in the event that any payments have been made, or are to be made, otherwise than in accordance with the requirements of this Sub-Clause 14.2F, or where any payments have been made but the aforementioned audit rights have not been afforded to the Employer's Representative, or where the Contractor fails to provide to the Employer the "Specified Supplier Payment Certification No.2", together with all the documentation required to be provided as set out in Appendix 3 to Variation Agreement No. 058, or where the Contractor uses or applies any portion of the Advance Payment for Specified Suppliers for any other purpose than payment to a Specified Supplier in accordance with the terms of Sub-Clause 14.2F, the Employer's Representative may, in any subsequent Interim Payment Certificate, make any correction, modification or adjustment as it deems necessary including deducting the value of any such payment, or, at the sole discretion of the Employer's Representative, the value of all such payments made to all Specified Suppliers from any subsequent Interim Payment Certificate. In such event, and in addition to the foregoing right, the Employer's Representative, at its sole and absolute discretion, shall also be entitled to suspend temporarily or permanently, as it shall decide, the making of any and all further advances to the Contractor of the Advance Payment for Specified Suppliers. Further, the Employer's Representative may request that the CPA undertakes a review of any information, certifications and documentation that may be provided by the Contractor pursuant to this Sub-Clause 14.2F.

The Advance Payment for Specified Suppliers shall be repaid by the Contractor through equal instalments in Interim Payment Certificates commencing with the Interim Payment Certificate issued in response to the January 2014 application for an Interim Payment Certificate and continuing in each subsequent Interim Payment Certificate through to October 2014, at which time the final such repayment will be the amount as is necessary to make such repayment of the Advance Payment for Specified Suppliers in full. In the event that the Employer is unable, in any given month, to deduct any amount of repayment of the Advance Payment for Specified Suppliers due to be made for that month, the Employer may deduct in any subsequent month the amount that was due to be deducted in any such previous month in addition to the amount due to be deducted in such subsequent month.

The whole of the balance of the Advance Payment for Specified Suppliers outstanding shall immediately become due and payable by the Contractor to the Employer and the Employer shall be entitled to make a claim for the entire outstanding balance under the Advance Payment Joint and Several Guarantee, if:

- a) the Advance Payment for Specified Suppliers has not been repaid in full prior to the issue of the Taking-Over Certificate for the Works or prior to a termination under Clause 15 [Termination by Employer], Clause 16 [Suspension and Termination by Contractor] or Clause 19 [Force Majeure] (as the case may be);
- b) the Employer is entitled to terminate the Contractor's right to complete the Contract under Sub-Clause 15.2 [Termination by Employer], irrespective of whether notice of termination has been given;
- c) the Contractor fails to pay the Employer an amount due, as either agreed by the Contractor or determined under Sub-Clause 2.5 [Employer's Claims] or Sub-Clause 20 [Claims, Disputes and Arbitration] within 42 days of its agreement or determination; and/or
- d) the Contractor fails to remedy a default within the time stated in the Employer's notice requiring the default to be remedied;

14.2G [Advance Payment Joint and Several Guarantee; Advance Payment Parent Guarantee; Advance Payment Bond Issuer Confirmations]

The Contractor shall obtain, at its own cost, and furnish to the Employer as a precondition to the making of any amount of the Advance Payment for Specified Suppliers, each of (i) the Advance Payment Joint and Several Guarantee, duly executed by the parties thereto (which for the avoidance of doubt shall be the four shareholders of the Contractor, namely SACYR VALLEHERMOSO, S.A., JAN DE NUL N.V., IMPREGILO S.p.A., and

Variation No. 058

11 of 11

December 24, 2012

Design and Construction of the Third Set of Locks

CONSTRUCTORA URBANA, S.A.) (II) the Advance Payment Parent Guarantee, duly executed by the parties thereto, and (III) each of the Advance Payment Bond Issuer Confirmations, duly executed by the parties thereto.

In Witness whereof the Parties hereto have caused this Variation Agreement No. 058 to be executed on the 24th day of December 2012 by their duly authorized representatives.

For ACI



Jorge de la Guardia
Employer's Representative

For GUPCSA



Bernardo Gonzalez
Contractor's Representative

APPENDIX 1 SPECIFIED SUPPLIERS LIST

	A	B	C	D	E = B - C	F = C - D	G
No.	Specified Supplier	Subcontract Price	Subcontract Price Invoiced to Date	Subcontract Price Paid to Date	Remaining Subcontract Price	Balance to Pay*	Verified by ACP (for ACP use only)
1							
2							
3							
4							
5							
6							
7							
8							
	TOTALS						

* such amount being the amount of the Advance Payment for Specified Suppliers/Other Suppliers which is attributable to the Specified Supplier.

Signed for and on behalf of the Contractor

APPENDIX 2

SPECIFIED SUPPLIERS PAYMENT CERTIFICATION NO. 1

SPECIFIED SUPPLIERS LIST

	A	B	C	D	E = B - C	F = C - D	G
No.	Specified Supplier	Subcontract Price	Subcontract Price Invoiced to Date	Subcontract Price Paid to Date	Remaining Subcontract Price	Balance to Pay*	Verified by ACP (for ACP use only)
1							
2							
3							
4							
5							
6							
7							
8							
	TOTALS						

* such amount being the amount of the Advance Payment for Specified Suppliers/Other Suppliers which is attributable to the Specified Supplier.

Signed for and on behalf of the Contractor

APPENDIX 3

As part of the Contractor's application for any amount of the Advance Payment for Specified Suppliers the Contractor must comply with the requirements of Requirement A, or Requirements B and C, whichever are applicable.

Requirement A is applicable where, subject to the terms of Sub-Clause 14.2F of the Contract, the Contractor includes an amount of the Advance Payment for Specified Suppliers in an application for an Interim Payment Certificate pursuant to Sub-Clause 14.3 [Application for Interim Payment Certificates] or makes an Extraordinary Application, in either case in respect of sums already paid by the Contractor to Specified Suppliers after November 9, 2012 up to the date of execution of Variation Agreement No. 058. In all other cases, and subject to the terms of Sub-Clause 14.2F of the Contract, Requirements B and C shall apply.

Requirement A

Where, subject to the terms of Sub-Clause 14.2F of the Contract, the Contractor includes an amount of the Advance Payment for Specified Suppliers in an application for an Interim Payment Certificate pursuant to Sub-Clause 14.3 [Application for Interim Payment Certificates] or makes an Extraordinary Application, in either case in respect of sums already paid by the Contractor to Specified Suppliers after November 9, 2012 up to date of execution of Variation Agreement No. 058, the Contractor shall provide to the Employer at the same time as the Specified Supplier Payment Certification No.1 the following:

- a) A copy of the application for Interim Payment Certificate/Extraordinary Application (as applicable) as required under Sub-Clause 14.2F of the Contract, uploaded in the DTCS;
- b) A copy of the Specified Supplier Payment Certification No.1 as required under Sub-Clause 14.2F of the Contract;
- c) Spreadsheets detailing the payments made by the Contractor to the Specified Suppliers, including the name of the Specified Supplier; the relevant subcontract or purchase order number; subcontract or purchase order amount; invoice number; invoice dates; invoice amount; number and amount of the check;
- d) The original invoices duly stamped by authorized personnel of the Contractor evidencing the receipt of the relevant material or service on Site referenced to the Contract;
- e) Proof of payment by the Contractor to the relevant Specified Supplier such as: signed check, bank transfer, bank debit note referenced to the invoices submitted;

- f) Confirmation from the relevant Specified Supplier of the payment having been received, such as: receipt, certification from the relevant Specified Supplier, bank certification of the transfer - credited to the Specified Supplier's account; and
- g) Such other evidence or substantiation that may be required by the Employer's Representative in order to validate the invoices and payment of the same.

The Contractor should note that all invoices must comply with Panamanian fiscal laws.

It shall be a precondition to payment that all invoices be immediately available for inspection upon receipt of the Application for Interim Payment Certificate or Extraordinary Application and that the Employer Representative's validation is completed.

For the avoidance of doubt, and notwithstanding any other provision of the Contract, the Employer's Representative shall have the sole and absolute discretion as to whether an application for any amount of the Advance Payment for Specified Suppliers shall be accepted by the Employer's Representative and therefore certified in any Interim Payment Certificate or paid by the Employer pursuant to an Extraordinary Application (as the case may be).

Requirement B - Pre-audit to validate the due amounts to be paid to – Specified Suppliers

Where, subject to the terms of Sub-Clause 14.2F of the Contract, the Contractor includes an amount of the Advance Payment for Specified Suppliers in an application for an Interim Payment Certificate pursuant to Sub-Clause 14.3 [Application for Interim Payment Certificates] or makes an Extraordinary Application, the Contractor shall provide to the Employer with the Specified Supplier Payment Certification No.1 the following:

- a) A copy of the application for Interim Payment Certificate/Extraordinary Application (as applicable) as required under Sub-Clause 14.2F of the Contract, uploaded in the DTCS;
- b) A copy of the Specified Supplier Payment Certification No.1 as required under Sub-Clause 14.2F of the Contract;
- c) Spreadsheets detailing the payments to be made by the Contractor to the Specified Suppliers, including the name of the Specified Supplier; the relevant subcontract or purchase order number; subcontract or purchase order amount; invoice number; invoice dates; invoice amount number;

- d) Signed Contracts between the Contractor and the relevant Specified Supplier that contains the Conditions, prices, and details of the goods or services rendered and any variations and modifications thereto;
- e) Invoices (no photocopies) duly stamped by authorized personnel of the Contractor evidencing the receipt of the relevant material or service on Site referenced to the Contract;
- f) Such other evidence or substantiation that may be required by the Employer's Representative in order to validate the amounts due; and
- g) Electronic funds transfer form completed and signed by the relevant Specified Supplier showing the bank account details where the funds will be transferred.

The Contractor should note that all invoices must comply with Panamanian fiscal laws.

It shall be a precondition to payment that all invoices be immediately available for inspection upon receipt of the Application for Interim Payment Certificate or Extraordinary Application and that the Employer Representative's validation is completed.

For the avoidance of doubt, and notwithstanding any other provision of the Contract, the Employer's Representative shall have the sole and absolute discretion as to whether an application for any amount of the Advance Payment for Specified Suppliers shall be accepted by the Employer's Representative and therefore certified in any Interim Payment Certificate/paid by the Employer pursuant to an Extraordinary Application.

Requirement C - Post-audit to validate - the paid amounts to Specified Suppliers – referred to in item B

Where, subject to the terms of Sub-Clause 14.2F of the Contract, the Contractor has included an amount of the Advance Payment for Specified Suppliers in an application for an Interim Payment Certificate pursuant to Sub-Clause 14.3 [Application for Interim Payment Certificates] or has made an Extraordinary Application in accordance with Requirement B, the Contractor shall provide to the Employer with the **Specified Supplier Payment Certification No.2** the following:

- a) Proof of payment by the Contractor to the Specified Supplier such as the bank wire transfer or bank debit note referring to the invoices submitted, which shall be sent to the Employer directly by the bank institute that received the wire transfer. For Specified Suppliers in Panama, if payment was made by check, the Contractor shall send a copy of said check to the Employer;
- b) Original paid invoices according to the Panamanian Fiscal Law.

- c) Confirmation of the payment from the relevant Specified Supplier such as: receipt, certification from the Specified Supplier, bank certification of the transfer being credited to the Specified Supplier's account; and
- d) Such other evidence or substantiation that may be reasonably required by the Employer's Representative in order to validate the invoices and payment of the same.

[TO BE PROVIDED ON YOUR HEADED NOTEPAPER]

APPENDIX 4

Grupo Unidos por el Canal, S.A.
Building 22B
Brujas Road, Cocoli
Panama
Republic of Panama

Autoridad de Canal de Panama
Building 740, Corozal
Panama
Republic of Panama

[●] December 2012

Dear Sirs

Specified Supplier Payment Certification No.2

We hereby provide Specified Supplier Payment Certification No.2 in respect of *[insert name of Specified Supplier]* Specified Supplier and in accordance with Variation Agreement No. 058 of December [●], 2012 entered into in relation to Contract CMC-221427 for the Design and Construction of the Third Set of Locks dated August 11, 2009.

We enclose with this Specified Supplier Payment Certification No.2 a payment receipt from the Specified Supplier for the amount of \$*[insert sum]* which we confirm is the amount payable to the Specified Supplier as certified/informed by the Employer's Representative in respect of the application for Interim Payment Certificate/Extraordinary Application *[insert details]*.

We hereby certify that the contents of this Specified Supplier Payment Certification No. 2 are true and accurate in all respects.

[GUPCSA]

APPENDIX 5

[Letterhead of Zurich]

_____, 2012

Autoridad del Canal de Panama
Centro de Capacitacion Ascanio Arosemena
Edificio 705, Ala Gerencial, Balboa
Panama, Republica of Panama

Reference: Contract No. CMC-221427, Design and Construction of the Third Set of Locks, Panama Canal

Confirmation regarding Advance Payment for Specified Suppliers

Dear Sirs:

We refer to (i) the Design and Build Contract for the Third Set of Locks on the Panama Canal (as amended, modified, varied or supplemented, the "Contract") tendered under RFP #7616 between you, as owner and Employer thereunder (the "Owner") and Grupo Unidos por el Canal, S.A., as contractor (the "Contractor"); (ii) the performance bond, Bond no. 08960193, dated Aug. 7, 2009 in an amount of USD 400,000,000.00, issued in the Owner's favor in respect of the Contract (the "Performance Bond"); and (iii) the payment bond, Bond no. 08960193, dated Aug. 7, 2009, in an amount of USD 50,000,000.00, issued in the Owner's favor in respect of the Contract (the "Payment Bond" and, together with the Performance Bond, the "Bonds"). Unless otherwise specified, capitalized terms used herein have the respective meanings specified in the Contract.

We have been provided with a copy of Variation Agreement, No. 0XX, dated _____ ("Variation Agreement No. 0XX") to the Contract, executed by the Owner and the Contractor, which provides for certain amendments to the Contract relating to the making of the Advance Payment for Specified Suppliers (as defined therein) by the Owner to the Contractor.

The undersigned, as Surety under and as defined in the Bonds, hereby confirms to you, as Owner and beneficiary under the Bonds, the continued validity of each of the Bonds in the respective amounts originally stated therein, notwithstanding the making of the Advance Payment for Specified Suppliers under the Contract.

Nothing in this confirmation letter is intended to or shall waive, alter, amend or otherwise affect any of the terms or conditions of either of the Bonds, other than as stated herein.

ZURICH AMERICAN INSURANCE
COMPANY, as Surety under each of the
aforementioned Bonds

By: _____
Name:
Title:

ACCEPTED:

AUTORIDAD DEL CANAL DE PANAMA,
as Owner under the Contract and the Bonds referred to above

By: _____
Name:
Title:

APPENDIX No. 6

ADVANCE PAYMENT
JOINT AND SEVERAL GUARANTEE

- (1) THE GUARANTORS NAMED HEREIN
- (2) AUTORIDAD DEL CANAL DE PANAMÁ

ADVANCE PAYMENT JOINT AND SEVERAL GUARANTEE IN RESPECT OF THE THIRD SET OF
LOCKS CONTRACT
relating to the realization of the Panamá Canal Expansion Program

THIS ADVANCE PAYMENT JOINT AND SEVERAL GUARANTEE is dated December ___, 2012 (as amended, modified or supplemented, this "Guarantee") and made between:

- (1) SACYR VALLEHERMOSO, S.A., a company incorporated in Spain, having its registered office at Paseo de la Castellana Nº 83-85, Madrid, 28046, Spain,
- (2) JAN DE NUL N.V., a company incorporated in Belgium, having its registered office at Tragel 60, 9308 Hofstade-Aalst, Belgium,
- (3) IMPREGILO S.p.A., a company incorporated in Italy, having its registered office at via dei Missaglia 97, 20142 Milan, Italy, and
- (4) CONSTRUCTORA URBANA, S.A., a company incorporated in Panamá, having its registered office at Calle 19, Río Abajo, Panamá, Panamá
(each, a "Guarantor" and, collectively, the "Guarantors"); and
- (5) AUTORIDAD DEL CANAL DE PANAMÁ an autonomous entity of the Panamanian Government established under Title XIV of the Panamanian National Constitution whose principal place of business is at Edificio de la Administración, Altos de Balboa, Balboa, Republic of Panamá (which term shall include permitted assigns) ("Employer").

BACKGROUND:

- (A) The Guarantors (including Sacyr Vallehermoso S.A., as Lead Member of the consortium) and the Employer entered into a contract, on a joint and several basis, for the design and construction of a third set of locks dated August 11th, 2009 in relation to the Panamá Canal expansion project (as amended, modified or supplemented, "Contract"). In this Guarantee, the words and expressions shall have the same meanings as are respectively assigned to them in the Contract, save as amended or as expressly stated herein.
- (B) Pursuant to Sub-Clause 1.7 of the Contract, the Guarantors requested, and the Employer consented, to the assignment of the whole of the Contract to Grupo Unidos por el Canal SA, who, pursuant to an Assignment and Acceptance Agreement, dated as of May 31, 2010, became the Contractor pursuant to the terms of the Contract (the "Contractor").
- (C) The Guarantors are the Shareholders in and collectively own directly one hundred percent (100%) of the Share Capital of the Contractor.
- (D) As further specified and for the reasons provided therein, the Contractor and the Employer have entered into Variation Agreement Number OXX, dated as of the ___ day of December 2012 ("Variation Agreement No. OXX"), pursuant to which the Employer has agreed, for the reasons and on the terms specified therein, to make the Advance Payment for Specified Suppliers (as defined therein).
- (E) Pursuant to Sub-Clause 14.2F [Advance Payment for Specified Suppliers] of the Contract, added pursuant to Clause 7 of Variation Agreement No. OXX, It is an express condition to Variation Agreement No. OXX and the making of all or any portion of the Advance Payment for Specified Suppliers by the Employer that the Guarantors execute and deliver this Guarantee to the Employer.

- (F) The entry into Variation Agreement No. OXX by the Employer and the making of the Advance Payment for Specified Suppliers by the Employer are desired by each of the Guarantors for their own respective valuable corporate interests and purposes.
- (G) Therefore, each of the Guarantors, for its own valuable corporate interests and purposes, has, jointly and severally, agreed to guarantee the obligations of the Contractor under the Contract in respect of the Advance Payment for Specified Suppliers on the terms set out in this Guarantee.

1. GUARANTEE AND INDEMNITY

1.1 Each of the Guarantors, jointly and severally:

- (a) as primary obligor and not as surety, unconditionally, jointly and severally guarantees to the Employer the due and punctual performance by the Contractor of each and all the obligations, warranties, duties and undertakings of the Contractor under and pursuant to the Contract regarding or in relation to the Advance Payment for Specified Suppliers, including without limitation, the obligation of the Contractor to make full, complete and timely repayment of the Advance Payment for Specified Suppliers, all according to the terms of the Contract; and
- (b) if the Contractor is in breach of any of its obligations, warranties, duties and undertakings as set out in sub-paragraph (a), shall upon demand by the Employer from time to time, forthwith perform the obligations, warranties, duties and undertakings of which the Contractor is in breach in the same manner that the Contractor is required to perform such obligations, warranties, duties and undertakings according to the terms of the Contract.

1.2 Each of the Guarantors, jointly and severally, unconditionally agrees, as a separate and distinct obligation to its obligations set out in paragraph 1.1, to indemnify on demand the Employer against all losses, damages, costs and expenses which the Employer may suffer or incur arising out of or in any way in connection with (a) any breach by the Contractor of any of its obligations, warranties, duties and undertakings under the Contract, or (b) any proceedings taken by the Employer for the enforcement of any claim under this Guarantee or the Contract.

2. PROTECTIVE CLAUSES

2.1 This Guarantee cannot be revoked without the prior written consent of the Employer, and none of the Guarantors shall in any way be released or discharged or otherwise absolved of liability hereunder by reason of, and each of the Guarantors hereby waives notice of, any of the following:

- (a) any suspension of the Works or the Maintenance Services or variation to or amendment of the Works or the Contract;
- (b) any extension of time for performance by the Contractor under the Contract;
- (c) any adjustment to the amounts payable to the Contractor under the Contract;

- (d) the termination of the Contractor's right to complete the Contract, or the Contract;
- (e) any forbearance, variation or waiver of any right or remedy the Employer may have against the Contractor or any Member or negligence by the Employer in enforcing any right or remedy afforded under the Contract or granting of time, indulgence or concession;
- (f) any bond, security, insurance, surety or guarantee (other than this Guarantee) held or obtained by the Employer, including any actions taken pursuant to such instruments, in respect of the obligations of the Contractor or any Member under the Contract, or any release or waiver thereof;
- (g) any act or omission of the Contractor or any Member pursuant to any other arrangement with the Guarantors, any change in the relationship between the Guarantors and the Contractor and/or any Member or dispute or disagreement between them under or in relation to the Contract or otherwise;
- (h) any change in status or constitution of the Contractor, any Member, any Guarantor or the Employer;
- (i) the Issuance of the Performance Certificate or any other certificate under the Contract;
- (j) any breach of the Contract by or other default of the Employer;
- (k) the Contract or any provision thereof being or becoming illegal, invalid, void, voidable or unenforceable, including without limitation, any liquidated damages under the Contract;
- (l) the Dissolution (as defined in paragraph 8.4) of the Contractor, any Member, or any Guarantor;
- (m) the taking over of the Contract by any other guarantor, surety or any other person;
- (n) the Employer's step-in rights under any Subcontractor Warranty; and/or
- (o) any other matter or thing which may otherwise create a defense, whether legal or equitable, whereby the obligations of the Guarantor hereunder might be discharged or affected.

2.2 Each of the Guarantors authorizes the Contractor and the Employer to make any addendum, variation or amendment to the Contract or the Works without reference to it or any other Guarantor, and agrees that this Guarantee shall apply to such addendum, variation or amendment.

2.3 The obligations of each of the Guarantors hereunder are primary and not by way of surety and none of the Guarantors shall be entitled as against the Employer to any right of set-off or counterclaim whatsoever and howsoever arising. The Employer shall

not be obliged to take any action in any court or arbitral proceedings against the Contractor or any Member, to make any claim against or any demand of the Contractor or any Member, to enforce any bond, security, insurance, surety or guarantee (other than this Guarantee) held by it in respect of the obligations of the Contractor under the Contract or to exercise, levy or enforce any distress, diligence or other process of execution against the Contractor or any Member. In the event that the Employer brings proceedings (including any counterclaims) against the Contractor, each of the Guarantors will be bound absolutely by any findings of fact, interim or final award or judgment made by an arbitrator or arbitrators or court in such proceedings or counterclaims or any decision of the DAB where such decision has become final and binding under the Contract.

- 2.4 Each of the Guarantors' obligations under this Guarantee are continuing and accordingly shall remain in full force and effect (notwithstanding any intermediate satisfaction by the Contractor, any Member, any of the Guarantors or any other person) until all obligations, warranties, duties and undertakings now or hereafter to be carried out or performed by the Contractor under the Contract shall have been satisfied or performed in full and are not revocable and are in addition to and not in substitution for and shall not merge with, otherwise prejudice or affect or be prejudiced by, any other right, remedy, guarantee, indemnity, insurance, surety or security which the Employer may at any time hold for the performance of such obligations and may be enforced without first having recourse to any such right, remedy, guarantee, indemnity or security. Accordingly this Guarantee may be enforced notwithstanding the existence of all or any of the same and also notwithstanding the Employer at any time releasing or abstaining from perfecting or enforcing or otherwise dealing or omitting to deal with all or any of the same.

3. PAYMENTS

- 3.1 In relation to a demand under paragraph 1.1 (b) where the relevant obligation, warranty, undertaking or duty is to pay a sum of money or a demand under any other provision of this Guarantee, the Guarantors shall have fourteen (14) days from the date of demand to make payment in full to the Employer. The Guarantors shall pay interest on any amount due under this Guarantee from the date of demand to the date of full payment (as well as before any judgment) calculated on a daily basis at the rate of two (2) percent per annum in excess of LIBOR (as defined in clause 3.2), or the highest rate allowed by law, whichever is less.
- 3.2 Determinations of interest rate and amounts under this Guarantee shall be made by the Employer, which determinations shall be conclusive and binding hereunder in the absence of manifest error. For purposes of this Guarantee, "LIBOR" shall mean a rate per annum (calculated on the basis of a 360 day year and actual days elapsed) equal to (a) the average (rounded upwards, if necessary, to the nearest 1/16 of 1%) of the offered rates which appear on Bloomberg Page BBAM1 (or on any successor or substitute page of such service, or any successor to or substitute for such service, providing rate quotations comparable to those currently provided on such page of such service, for purposes of providing quotations of interest rates of leading reference banks in the London interbank market, as designated from time to time by the Employer) as of 11:00 A.M. (London time) for deposits in U.S. dollars for a period equal to the relevant period for calculation of interest hereunder on the day two (2)

Business Days prior to the first day of such period, or (b) if fewer than two (2) such offered rates appear which are relevant to the applicable period, the average (rounded upwards, if necessary, to the nearest 1/16 of 1%) of the rates at which the Employer in its reasonable discretion shall determine at approximately 11:00 A.M. (London time) on the day that is two (2) Business Days preceding such period are the applicable rates offered for U.S. dollar deposits by at least two (2) prime banks in the London interbank market for a period comparable to such period.

- 3.3 If at any time any applicable law, regulation or regulatory requirement or any governmental authority requires any of the Guarantors to make any deduction or withholding in respect of taxes or other governmental levies or duties from any payment due under this Guarantee, the sum due from the Guarantors in respect of such payment shall be increased to the extent necessary to ensure that after the making of such deduction or withholding, the Employer receives on the due date for such payment net sum equal to the sum which it would have received had no such deduction or withholding been required to be made and the Guarantors, jointly and severally, shall on demand indemnify the Employer against any losses or costs which it has incurred by reason of failure by any of the Guarantors to make any such deduction or withholding or by reason of any increased payment not being made on the due date for such payment. Each of the Guarantors shall promptly deliver to the Employer any receipts, certificates or other proof evidencing the amounts (if any) paid or payable in respect of any deduction or withholding as aforesaid.

4. REPRESENTATIONS AND WARRANTIES

- 4.1 (a) Until all obligations, warranties, duties and undertakings now or hereafter to be carried out or performed by the Contractor under the Contract shall have been satisfied or performed in full, none of the Guarantors shall as result of this Guarantee or any payment or performance under this Guarantee be subrogated to any right or security of the Employer or claim or prove in competition with the Employer against the Contractor, any Member or any other person or demand or accept repayment of any monies from the Contractor or claim any right of contribution, set-off or indemnity from the Contractor or any Member and any sums received by any of the Guarantors or the amount of any set-off exercised by any of the Guarantors in breach of this provision shall be held by such Guarantor in trust for and shall be promptly paid to the Employer.
- (b) None of the Guarantors shall hold any security from the Contractor in respect of this Guarantee and any such security which is held in breach of this provision shall be held by the Guarantor in trust for and shall promptly be transferred to the Employer.
- (c) Until all obligations, warranties, duties and undertakings now or hereafter to be carried out or performed by the Contractor under the Contract shall have been satisfied or performed in full, if (notwithstanding the provisions of subparagraphs 4.1 (a) and 4.1 (b)) any of the Guarantors has any rights of subrogation against the Contractor or any rights to prove in a Dissolution (as defined in paragraph 8.4) of the Contractor, such Guarantor agrees to exercise such rights in accordance with the directions of the Employer.

5.
 - (a) Each of the Guarantors warrants and undertakes that it is duly incorporated and validly existing under the laws of its respective jurisdiction of incorporation or formation, as the case may be, and that this Guarantee is its legally binding obligation, enforceable in accordance with its terms, and that all necessary governmental and other consents and authorizations for the giving, validity, enforceability and implementation of this Guarantee and the transactions contemplated by it have been obtained and are in full force and effect.
 - (b) Each of the Guarantors warrants and undertakes to the Employer that it shall take all necessary action directly or indirectly to perform the obligations expressed to be assumed by it or contemplated by this Guarantee and to implement the provisions of this Guarantee.
 - (c) Each of the Guarantors warrants and undertakes to the Employer that it has not entered into this Guarantee in reliance upon, nor was it induced to enter into this Guarantee by any representation, warranty or undertaking made by or on behalf of the Employer (whether express or implied and whether pursuant to statute or otherwise).
6. **ASSIGNMENT**
 - 6.1 No party hereto shall assign any or all of its right, title and interest in and to this Guarantee without, in the case of any assignment by the Employer, the Lead Member's, or, in the case of any assignment by any of the Guarantors, the Employer's, prior written consent.
7. **NOTICES**
 - 7.1 All documents and notices arising out of or in connection with this Guarantee shall be served upon each of the Guarantors at the address specified in the Schedule attached hereto.
 - 7.2 Any Guarantor may change its nominated address for service of documents or notices to another address in the same country as the address stated herein but only by prior written notice to the Employer. All documents and notices served by the Employer shall be in writing and in English.
8. **MISCELLANEOUS**
 - 8.1 The Employer's rights under this Guarantee are cumulative and are in addition to and not in substitution for any rights provided by law or the Contract or any other guarantee, surety, bond, insurance or security that the Employer may have or hold in relation to the Contract, and the Employer may exercise its rights under this Guarantee from time to time without first having recourse to any such right, guarantee, surety, bond, insurance or security.
 - 8.2 Any waiver by the Employer of the terms of this Guarantee or any consent or approval given by the Employer shall only be effective if given in writing and then only for the purpose and upon the terms and conditions if any on which it is given.

- 8.3 If at any time any one or more of the provisions of this Guarantee is or becomes illegal, invalid or otherwise unenforceable in any respect, such provision or provisions will be ineffective to the extent only of such illegality, invalidity or unenforceability and such illegality, invalidity or unenforceability will not invalidate any other provision of this Guarantee.
- 8.4 In this Guarantee, "Dissolution" of a person includes the bankruptcy, insolvency, liquidation, amalgamation, reconstruction, reorganization, administration, administrative or other receivership or dissolution of that person, and any equivalent or analogous proceedings by whatever name known and in whatever jurisdiction, and any step taken (including, without limitation, the presentation of a petition or the passing of a resolution) for or with a view to any of the foregoing.
- 8.5 Where applicable, words and expressions used in this Guarantee shall have the meaning assigned to them in the Contract, as the case may be. The singular will include the plural and vice versa unless the context otherwise clearly requires. All references to the Contract shall be deemed to include any amendment, variation or supplemental agreement thereto. Headings are inserted for convenience only and are to be ignored for the purposes of construction. For the avoidance of doubt, all references to the Contractor shall be deemed to mean the Contractor from and after the date of assignment of the Contract.
- 8.6 This Guarantee constitutes the entire agreement between the Employer and each of the Guarantors, and it may not be modified except by written agreement of the Employer and each of the Guarantors.
- 8.7 Nothing herein shall prejudice the rights (including any step-in rights) of the Employer under any Subcontractor Warranty.
9. DISPUTE RESOLUTION
- 9.1 This Guarantee shall be governed by and construed in accordance with the laws of the Republic of Panamá.
- 9.2 Any dispute arising out of, under or in connection with this Guarantee or out of the subject matter of this Guarantee shall be finally settled by international arbitration in law (within the meaning of Panamanian law). Unless otherwise agreed by the Parties:
- (a) the dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (the "Rules");
 - (b) in addition to the Rules, the arbitration shall be conducted according to the International Bar Association Rules on the Taking of Evidence in International Commercial Arbitration;
 - (c) the dispute shall be settled by three arbitrators who shall all be licensed lawyers appointed in accordance with these Rules;
 - (d) the arbitration shall be decided in law (within the meaning of Panamanian law) and conducted in the English language;

(e) the venue of the arbitration shall be Miami, Florida - United States of America;
and

(f) the arbitration agreement and the arbitration shall be governed by the United States Federal Arbitration Act, 9 U.S.C. §§ 1 et seq.

Arbitration may be commenced prior to or after completion of the Works.

10. EXECUTION

In Witness whereof the parties hereto have caused this Guarantee to be executed the day and year before written by their duly authorised representatives.

SIGNED by:

Name: Jorge de la Guardia
Position: Employer's Representative
Address: Building 740, Corozal
Date:

for and on behalf of the Employer in the presence of

Witness:

Name:
Address: Building ____, Corozal

Date:

SIGNED for and on behalf of the
Guarantors;
SIGNED by:

Name:
Position:
Address:
Date:

for and on behalf of the Guarantors and
for and on behalf of SACYR
VALLEHERMOSO, S.A., as Guarantor in
the presence of

Witness:
Name:
Address:
Date:

SIGNED by:

Name:
Position:
Address:
Date:

for and on behalf of the Guarantors and
for and on behalf of JAN DE NUL N.V., as
Guarantor in the presence of

Witness:
Name:
Address:
Date:

SIGNED by:

Name:
Position:
Address:
Date:

for and on behalf of the Guarantors and
for and on behalf of IMPREGILO S.p.A., as
Guarantor in the presence of

Witness:
Name:
Address:
Date:

SIGNED by:

Name:
Position:
Address:
Date:

for and on behalf of the Guarantors and
for and on behalf of CONSTRUCTORA
URBANA, S.A., as Guarantor in the
presence of

Witness:
Name:
Address:
Date:

SCHEDULE

NOTICE ADDRESSES FOR GUARANTORS

If to SACYR VALLEHERMOSO, S.A., at:

Paseo de la Castellana n° 83-85
28046, Madrid, Spain
Tel: +34 915455178
Attention:

If to JAN DE NUL N.V., at:

Tragel 60
B-9308 Hofstade (Aalst)
Belgium
Tel: 16.9906
Attention: Jan Kop

If to IMPREGILO S.p.A., at:

Via dei Missaglia n° 97
Milan, 20142, Italy
Tel: 0039-02-44422526
Attention:

If to CONSTRUCTORA URBANA, S.A., at:

Calle 19 Final Río Abajo
Panamá, Republic of Panamá
Tel: +507-301-7000
Attention: Carlos Fábrega

APPENDIX 7

PARENT COMPANY GUARANTEE IN RESPECT OF ADVANCE PAYMENT JOINT AND SEVERAL GUARANTEE OBLIGATIONS OF A MEMBER

Dated December __, 2012

- (1) JAN DE NUL GROUP (SOFIDRA S.A.)
- (2) AUTORIDAD DEL CANAL DE PANAMÁ

GUARANTEE IN RESPECT OF THE THIRD SET OF LOCKS
CONTRACT
relating to the realization of the Panamá Canal
Expansion Program

THIS ADVANCE PAYMENT PARENT COMPANY GUARANTEE is dated December [●], 2012 (as amended, modified or supplemented, this "Advance Payment Parent Guarantee" and made between:

- (1) JAN DE NUL GROUP (SOFIDRA S.A.), a company incorporated in Grand Duchy of Luxembourg, having its registered office at 5, Rue Guillaume Kroll, L-1882 Luxembourg, Grand Duchy of Luxembourg ("Guarantor"); and
- (2) AUTORIDAD DEL CANAL DE PANAMÁ an autonomous entity of the Panamanian Government established under Title XIV of the Panamanian National Constitution whose principal place of business is at Edificio de la Administración, Altos de Balboa, Balboa, Republic of Panamá (which term shall include permitted assigns) ("Employer").

BACKGROUND:

- (A) Jan De Nul N.V. ("Relevant Member"), Impregilo S.p.A., Constructora Urbana, S.A. and Sacyr Vallehermoso, S.A. and the Employer have entered into the Advance Payment Joint and Several Guarantee, dated December [●], 2012 (as amended, modified or supplemented, "Advance Payment JS Guarantee"), in respect of the obligations of the Contractor under (i) a contract for the design and construction of a third set of locks dated 11 August 2009 in relation to the Panamá Canal expansion project (as amended, modified or supplemented, "Contract"), and (ii) Variation Agreement Number OXX, dated as of the ____ day of December 2012 ("Variation Agreement No. OXX"), pursuant to which the Employer has agreed, for the reasons and on the terms specified therein, to make the Advance Payment for Specified Suppliers (as defined therein). In this Advance Payment Parent Guarantee, the words and expressions shall have the same meanings as are respectively assigned to them in the Contract, save as amended or as expressly stated herein.
- (B) Pursuant to Sub-Clause 14.2G [Advance Payment Joint and Several Guarantee; Advance Payment Parent Guarantee; Advance Payment Bond Issuer Confirmations] of the Contract, added pursuant to Clause 7 of Variation Agreement No. OXX, it is an express condition to Variation Agreement No. OXX and the making of all or any portion of the Advance Payment for Specified Suppliers by the Employer that the Guarantor execute and deliver this Advance Payment Parent Guarantee to the Employer.
- (C) The Relevant Member is a wholly and directly owned subsidiary of the Guarantor.
- (D) The entry into Variation Agreement No. OXX by the Employer and the making of the Advance Payment for Specified Suppliers by the Employer are desired by the Relevant Member for its own valuable corporate interests and purposes.
- (E) Therefore, the Guarantor, for its own valuable corporate interests and purposes, has agreed to guarantee the obligations of the Relevant Member under the Advance Payment JS Guarantee in respect of the Advance Payment for Specified Suppliers on the terms set out in this Advance Payment Parent Guarantee.

1. GUARANTEE AND INDEMNITY

1.1 The Guarantor:

- (a) as primary obligor and not as surety, unconditionally, jointly and severally guarantees to the Employer the due and punctual performance by the Relevant Member of each and all the obligations, warranties, duties and undertakings of the Relevant Member under and pursuant to the Advance Payment JS Guarantee according to the terms of the Advance Payment JS Guarantee; and
- (b) If the Relevant Member is in breach of any of its obligations, warranties, duties and undertakings as set out in sub-paragraph (a), shall upon demand by the Employer from time to time, forthwith perform the obligations, warranties, duties and undertakings of which the Relevant Member is in breach in the same manner that the Relevant Member is required to perform such obligations, warranties, duties and undertakings according to the terms of the Advance Payment JS Guarantee.

1.2 The Guarantor unconditionally agrees, as a separate and distinct obligation to its obligations set out in paragraph 1.1, to indemnify on demand the Employer against all losses, damages, costs and expenses which the Employer may suffer or incur arising out of or in any way in connection with (a) any breach by the Relevant Member of any of its obligations, warranties, duties and undertakings under the Advance Payment JS Guarantee, or (b) any proceedings taken by the Employer for the enforcement of any claim under this Advance Payment Parent Guarantee or the Advance Payment JS Guarantee.

2. PROTECTIVE CLAUSES

2.1 This Advance Payment Parent Guarantee cannot be revoked without the prior written consent of the Employer, and the Guarantor shall not in any way be released or discharged or otherwise absolved of liability hereunder by reason of, and the Guarantor hereby waives notice of, any of the following:

- (a) any suspension of the Works or Maintenance Services or variation to or amendment of the Works or the Contract, or any variation to or amendment of the Advance Payment JS Guarantee;
- (b) any extension of time for performance by the Contractor under the Contract, or for performance of the Relevant Member under the Advance Payment JS Guarantee;
- (c) any adjustment to the amounts payable to the Contractor under the Contract;
- (d) the termination of the Contractor's right to complete the Contract, or of the Contract or of the Advance Payment JS Guarantee;
- (e) any forbearance, variation or waiver of any right or remedy the Employer may have against the Contractor or any Member (including without limitation the Relevant Member) or negligence by the Employer in enforcing any right or remedy afforded under the Contract or the Advance Payment JS Guarantee or granting of time, indulgence or concession;

- (f) any bond, security, insurance, surety or guarantee (other than this Advance Payment Parent Guarantee) held or obtained by the Employer, including any actions taken pursuant to such instruments, in respect of the obligations of the Contractor or any Member (including without limitation the Relevant Member) under the Contract, or any release or waiver thereof;
- (g) any act or omission of the Contractor or any Member (including without limitation the Relevant Member) pursuant to any other arrangement with the Guarantor, any change in the relationship between the Guarantor and the Contractor and/or any Member (including without limitation the Relevant Member) or dispute or disagreement between them under or in relation to the Contract or otherwise;
- (h) any change in status or constitution of the Contractor, any Member (including without limitation the Relevant Member), the Guarantor or the Employer;
- (i) the issuance of the Performance Certificate or any other certificate under the Contract;
- (j) any breach of the Contract by or other default of the Employer;
- (k) the Contract or the Advance Payment JS Guarantee or any provision thereof being or becoming illegal, invalid, void, voidable or unenforceable including (without limitation) any liquidated damages under the Contract;
- (l) the Dissolution (as defined in paragraph 8.4) of the Contractor, any Member (including without limitation the Relevant Member), or the Guarantor;
- (m) the taking over of the Contract by any other guarantor, surety or any other person;
- (n) the Employer's step-in rights under any Subcontractor Warranty; and/or
- (o) any other matter or thing which may otherwise create a defense, whether legal or equitable, whereby the obligations of the Guarantor hereunder might be discharged or affected.

2.2 The Guarantor authorizes (a) the Contractor and the Employer to make any addendum, variation or amendment to the Contract or the Works, and (b) the Relevant Member and the Employer to make any addendum, variation or amendment to the Advance Payment JS Guarantee, without reference to the Guarantor, and agrees that this Advance Payment Parent Guarantee shall apply to such addendum, variation or amendment.

2.3 The obligations of the Guarantor hereunder are primary and not by way of surety and the Guarantor shall not be entitled as against the Employer to any right of set-off or counterclaim whatsoever and howsoever arising. The Employer shall not be obliged to take any action in any court or arbitral proceedings against the Contractor or any Member (including without limitation the Relevant Member) to make any claim against or any demand of the Contractor or any Member (including without limitation the

Relevant Member), to enforce any bond, security, insurance, surety or guarantee (including without limitation the Advance Payment JS Guarantee) (other than this Advance Payment Parent Guarantee) held by it in respect of the obligations of the Contractor under the Contract or the Relevant Member or any other Member under the Advance Payment JS Guarantee, or to exercise, levy or enforce any distress, diligence or other process of execution against the Contractor or any Member (including without limitation the Relevant Member). In the event that the Employer brings proceedings (including any counterclaims) against the Contractor under the Contract and/or against the Relevant Member or any other Member under the Advance Payment JS Guarantee, the Guarantor will be bound absolutely by any findings of fact, interim or final award or judgment made by an arbitrator or arbitrators or court in such proceedings or counterclaims or any decision of the DAB where such decision has become final and binding under the Contract.

- 2.4 The Guarantor's obligations under this Advance Payment Parent Guarantee are continuing and accordingly shall remain in full force and effect (notwithstanding any intermediate satisfaction by the Contractor, any Member (including without limitation the Relevant Member), the Guarantor or any other person) until all obligations, warranties, duties and undertakings now or hereafter to be carried out or performed by the Contractor under the Contract and by the Members (including without limitation the Relevant Member) under the Advance Payment JS Guarantee shall have been satisfied or performed in full and are not revocable and are in addition to and not in substitution for and shall not merge with, otherwise prejudice or affect or be prejudiced by any other right, remedy, guarantee, indemnity, insurance, surety or security which the Employer may at any time hold for the performance of such obligations and may be enforced without first having recourse to any such right, remedy, guarantee, indemnity or security. Accordingly this Advance Payment Parent Guarantee may be enforced notwithstanding the existence of all or any of the same and also notwithstanding the Employer at any time releasing or abstaining from perfecting or enforcing or otherwise dealing or omitting to deal with all or any of the same.
- 2.5 The Guarantor shall not have any greater liability to the Employer under this Advance Payment Parent Guarantee than the Guarantor would have had to the Employer had the Guarantor been an original party to the Advance Payment JS Guarantee in place of the Relevant Member; provided that this paragraph 2.5 shall not limit or otherwise modify the Guarantor's liability to the Employer under paragraph 1.2 (b).

3. PAYMENTS

- 3.1 In relation to a demand under paragraph 1.1 (b) where the relevant obligation, warranty, undertaking or duty is to pay a sum of money or a demand under any other provision of this Guarantee, the Guarantor shall have fourteen (14) days from the date of demand to make payment in full to the Employer. The Guarantor shall pay interest on any amount due under this Guarantee from the date of demand to the date of full payment (as well as before any judgment) calculated on a daily basis at the rate of two (2) percent per annum in excess of LIBOR (as defined in clause 3.2), or the highest rate allowed by law, whichever is less.
- 3.2 Determinations of interest rate and amounts under this Guarantee shall be made by

the Employer, which determinations shall be conclusive and binding hereunder in the absence of manifest error. For purposes of this Guarantee, "LIBOR" shall mean a rate per annum (calculated on the basis of a 360 day year and actual days elapsed) equal to (a) the average (rounded upwards, if necessary, to the nearest 1/16 of 1%) of the offered rates which appear on Bloomberg Page BBAM1 (or on any successor or substitute page of such service, or any successor to or substitute for such service, providing rate quotations comparable to those currently provided on such page of such service, for purposes of providing quotations of interest rates of leading reference banks in the London interbank market, as designated from time to time by the Employer) as of 11:00 A.M. (London time) for deposits in U.S. dollars for a period equal to the relevant period for calculation of interest hereunder on the day two (2) Business Days prior to the first day of such period, or (b) if fewer than two (2) such offered rates appear which are relevant to the applicable period, the average (rounded upwards, if necessary, to the nearest 1/16 of 1%) of the rates at which the Employer in its reasonable discretion shall determine at approximately 11:00 A.M. (London time) on the day that is two (2) Business Days preceding such period are the applicable rates offered for U.S. dollar deposits by at least two (2) prime banks in the London interbank market for a period comparable to such period.

- 3.3 If at any time any applicable law, regulation or regulatory requirement or any governmental authority requires the Guarantor to make any deduction or withholding in respect of taxes or other governmental levies or duties from any payment due under this Guarantee, the sum due from the Guarantor in respect of such payment shall be increased to the extent necessary to ensure that after the making of such deduction or withholding, the Employer receives on the due date for such payment a net sum equal to the sum which it would have received had no such deduction or withholding been required to be made and the Guarantor shall on demand indemnify the Employer against any losses or costs which it has incurred by reason of failure by the Guarantor to make any such deduction or withholding or by reason of any increased payment not being made on the due date for such payment. The Guarantor shall promptly deliver to the Employer any receipts, certificates or other proof evidencing the amounts (if any) paid or payable in respect of any deduction or withholding as aforesaid.

4. REPRESENTATIONS AND WARRANTIES

- 4.1 (a) Until all obligations, warranties, duties and undertakings now or hereafter to be carried out or performed by the Contractor under the Contract and by the Members (including without limitation the Relevant Member) under the Advance Payment JS Guarantee shall have been satisfied or performed in full, the Guarantor shall not as a result of this Advance Payment Parent Guarantee or any payment or performance under this Advance Payment Parent Guarantee be subrogated to any right or security of the Employer or claim or prove in competition with the Employer against the Contractor, any Member (including without limitation the Relevant Member) or any other person or demand or accept repayment of any monies from the Contractor or claim any right of contribution, set-off or indemnity from the Contractor or any Member (including without limitation the Relevant Member), and any sums received by the Guarantor or the amount of any set-off exercised by the Guarantor in breach of this provision shall be held by the Guarantor in trust for and shall be promptly paid to the Employer.

- (b) The Guarantor shall not hold any security from the Relevant Member or the Contractor in respect of this Advance Payment Parent Guarantee and any such security which is held in breach of this provision shall be held by the Guarantor in trust for and shall promptly be transferred to the Employer.
 - (c) Until all obligations, warranties, duties and undertakings now or hereafter to be carried out or performed by the Contractor under the Contract and by the Members (including without limitation the Relevant Member) under the Advance Payment JS Guarantee shall have been satisfied or performed in full, if (notwithstanding the provisions of sub-paragraphs 4.1 (a) and 4.1 (b)) the Guarantor has any rights of subrogation against any Member (including without limitation the Relevant Member) or the Contractor or any rights to prove in a Dissolution (as defined in paragraph 8.4) of the Relevant Member or the Contractor, the Guarantor agrees to exercise such rights in accordance with the directions of the Employer.
- 5.
 - (a) The Guarantor warrants and undertakes that it is duly incorporated and validly existing under the laws of Grand Duchy of Luxembourg and that this Advance Payment Parent Guarantee is its legally binding obligation, enforceable in accordance with its terms, and that all necessary governmental and other consents and authorizations for the giving, validity, enforceability and implementation of this Advance Payment Parent Guarantee and the transactions contemplated by it have been obtained and are in full force and effect.
 - (b) The Guarantor warrants and undertakes to the Employer that it shall take all necessary action directly or indirectly to perform the obligations expressed to be assumed by it or contemplated by this Advance Payment Parent Guarantee and to implement the provisions of this Advance Payment Parent Guarantee.
 - (c) The Guarantor warrants and undertakes to the Employer that it has not entered into this Advance Payment Parent Guarantee in reliance upon, nor was it induced to enter into this Advance Payment Parent Guarantee by any representation, warranty or undertaking made by or on behalf of the Employer (whether express or implied and whether pursuant to statute or otherwise).
- 6. ASSIGNMENT
- 6.1 Neither party shall assign any or all of its right, title and interest in and to this Advance Payment Parent Guarantee without the other party's prior written consent.
- 7. NOTICES
- 7.1 All documents and notices arising out of or in connection with this Advance Payment Parent Guarantee shall be served upon the Guarantor at 12, Rue du Cimetière, L-8413 Steinfort, Grand Duchy of Luxembourg, with a copy to Jan De Nul N.V. at Tragel 60, B-9803 Hofstade (Aalst), Belgium.
- 7.2 The Guarantor may change its nominated address for service of documents or notices to another address in the same country as the address stated herein but only by prior

written notice to the Employer. All documents and notices served by the Employer shall be in writing and in English.

8. MISCELLANEOUS

- 8.1 The Employer's rights under this Advance Payment Parent Guarantee are cumulative and are in addition to and not in substitution for any rights provided by law or the Contract or any other guarantee, surety, bond, insurance or security that the Employer may have or hold in relation to the Contract, including any and all such rights as the Employer may hold under or in relation to the Advance Payment JS Guarantee, and the Employer may exercise its rights under this Advance Payment Parent Guarantee from time to time without first having recourse to any such right, guarantee, surety, bond, insurance or security.
- 8.2 Any waiver by the Employer of the terms of this Advance Payment Parent Guarantee or any consent or approval given by the Employer shall only be effective if given in writing and then only for the purpose and upon the terms and conditions if any on which it is given.
- 8.3 If at any time any one or more of the provisions of this Advance Payment Parent Guarantee is or becomes illegal, invalid or otherwise unenforceable in any respect, such provision or provisions will be ineffective to the extent only of such illegality, invalidity or unenforceability and such illegality, invalidity or unenforceability will not invalidate any other provision of this Guarantee.
- 8.4 In this Advance Payment Parent Guarantee, "Dissolution" of a person includes the bankruptcy, insolvency, liquidation, amalgamation, reconstruction, reorganization, administration, administrative or other receivership or dissolution of that person, and any equivalent or analogous proceedings by whatever name known and in whatever jurisdiction, and any step taken (including, without limitation, the presentation of a petition or the passing of a resolution) for or with a view to any of the foregoing.
- 8.5 Where applicable, words and expressions used in this Advance Payment Parent Guarantee shall have the meaning assigned to them in the Contract, as the case may be. The singular will include the plural and vice versa unless the context otherwise clearly requires. All references to the Contract and the Advance Payment JS Guarantee shall be deemed to include any amendment, variation or supplemental agreement thereto. Headings are inserted for convenience only and are to be ignored for the purposes of construction.
- 8.6 This Advance Payment Parent Guarantee constitutes the entire agreement between the Employer and the Guarantor, and it may not be modified except by written agreement of the Employer and the Guarantor.
- 8.7 Nothing herein shall prejudice the rights (including any step-in rights) of the Employer under any Subcontractor Warranty.

9. DISPUTE RESOLUTION

- 9.1 This Advance Payment Parent Guarantee shall be governed by and construed in

accordance with the laws of the Republic of Panamá.

9.2 Any dispute arising out of, under or in connection with this Advance Payment Parent Guarantee or out of the subject matter of this Advance Payment Parent Guarantee shall be finally settled by international arbitration in law (within the meaning of Panamanian law). Unless otherwise agreed by both Parties:

- (a) the dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (the "Rules");
- (b) in addition to the Rules, the arbitration shall be conducted according to the International Bar Association Rules on the Taking of Evidence in International Commercial Arbitration;
- (c) the dispute shall be settled by three arbitrators who shall all be licensed lawyers appointed in accordance with these Rules;
- (d) the arbitration shall be decided in law (within the meaning of Panamanian law) and conducted in the English language;
- (e) the venue of the arbitration shall be Miami, Florida - United States of America; and
- (f) the arbitration agreement and the arbitration shall be governed by the United States Federal Arbitration Act, 9 U.S.C. §§ 1 et seq.

Arbitration may be commenced prior to or after completion of the Works.

10. EXECUTION

In Witness whereof the parties hereto have caused this Advance Payment Parent Guarantee to be executed the day and year before written by their duly authorised representatives.

SIGNED by:

SIGNED by:

Name:
Position:
Address:
Date:

Name:
Position:
Address:
Date: [●], 2012

for and on behalf of the Employer in the presence of

for an on behalf of the Guarantor in the presence of

Witness:

Witness:

Name:
Address:
Date:

Name:
Address:
Date: [•], 2012