

PANAMA CANAL AUTHORITY	VARIATION	PAGE 1 OF 5
1. REQUEST FOR PROPOSAL No.:  RFP-76161	2. CONTRACT No.:  CMC-221427	3. DATE: May 22, 2013
		4. VARIATION No.: 067

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:**

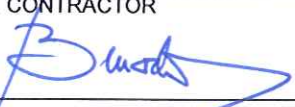

- ☒ The contract referred to in item No. 2 is hereby varied as set forth in item 10, entitled "DESCRIPTION OF VARIATION".  
☒ YES. ☐ NO. The contractor shall send a copy, duly signed, of this Variation to the Employer's Representative/Contracting Officer.

	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], 4 <sup>th</sup> Paragraph
	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)  Cheryl P. George, Employer's Representative Delegee
13. CONTRACTOR   (Authorized signature)	14. DATE: 22/05/2013
	15. PANAMA CANAL AUTHORITY   (Employer's Representative/Contracting Officer's signature)
	16. DATE: 22/05/13

**This Variation Agreement Number 067, is dated as of the 21th day of May 2013 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 been or may be varied, amended, supplemented or otherwise modified (the "**Contract**")).
- (b) Pursuant to Variation Agreement No. 048 dated September 10, 2012, the Employer agreed to certain revised payment arrangements for Plant and Materials on the terms set out in Variation Agreement No. 048.
- (c) The Contractor:
  - (i) by letter dated June 19, 2012 (Reference GUPC-IAE-1284), informed the Employer of very serious financial problems which it contended that it was facing as a consequence of the global financial and liquidity crisis and therein requested financial assistance from the Employer, including in general terms and without specific conditions rescheduling the payment on Plant and Materials. Further, by letter dated November 9, 2012 (Reference GUPC-IAE-1545) the Contractor informed the Employer of very serious financial problems which it contended that it was facing, that the situation was now "extremely critical" and therein requested financial support in the short to medium term from the Employer, which issues are considered in the subsequent correspondence of the Employer, including the Employer's Letters IAE-UPC-1313 of November 20, 2012, IAE-UPC-1359 of December 24, 2012, IAE-GUPC-1374 of January 9, 2013, and IAE-UPC-1441 of February 25, 2013 and the Contractor's Letters GUPC-IAE-1617 of December 21, 2012, GUPC-IAE-1716 of February 8, 2013, and GUPC-IAE-1755 of February 27, 2013; and
  - (ii) requested through RFV 0183, dated May 9, 2013 that the progress payments in relation to Gates be further amended so that the first forty percent (40%)





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certification and progress payment currently provided for be made as follows: twenty-four percent (24%) when the Gates have been fabricated and assembled, and sixteen percent (16%) when the two gate blocks have been properly welded to each other, all in accordance with the quality requirements and the terms of the Contract and validation from the Employer.

- (d) In reliance on the Contractor's representations and assertions regarding its financial condition, ability to obtain funding 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 such a modification (in addition to the various other measures already agreed such as but not limited to those provided for in Variation Agreements No. 042, 043, 045, 47, 048, 49, 051, 052, 055, 056, 058, 59 and 60) 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) Accordingly, the Employer has responded through letter No. IAE-UPC-1544 dated May 21, 2013 indicating to the Contractor that the Employer is willing to consider a revised payment profile, but subject to the parties agreeing a formal variation to reflect such revised arrangements.
- (f) Therefore, subject to the terms of this Variation Agreement No. 067, 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

**THE PARTIES HEREBY AGREE AS FOLLOWS:**

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

1. In this Variation Agreement No. 067, 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. This Variation Agreement No. 067 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





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Variation Agreement No. 067 or in any way argue or use the fact or the terms of this Variation Agreement No. 067 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. 067 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. All of the Contractor's existing and ongoing obligations as to the progress of the Works remain unaffected.

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. 067 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. 067 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. 067 had been originally contained in the Contract. Any ambiguity or uncertainty in the meaning and effect of this Variation Agreement No. 067 shall be resolved in favour of the Employer.
6. This Variation Agreement No. 067 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 add the following definition to Sub-Clause 1.1 [*Definitions*] of the Contract under the Sub-Clause 1.1.6 [*Other Definitions*] (which shall be added in proper alphabetical order but without any number):  
  
"Variation Agreement No. 067" means Variation Agreement Number 067, dated May 22, 2013 between the Employer and the Contractor."
8. The Parties hereby agree in Sub-Clause 14.5.1(b)(1) [*Plant and Materials Intended for the Works*] of the Contract to delete the reference to "Appendix 1 to Variation Agreement No. 048" and replace with a reference to "Appendix 1 to Variation Agreement No. 067"
9. The Parties hereby agree to delete existing Sub-Clause 14.5.1(b)(1)(A) of the Conditions of Contract (which for the avoidance of doubt commences with "The first 40%...") and replace it with the new Sub-Clauses 14.5.1(b)(1)(A)(i) and (ii) as follows:

- (i) The first twenty-four percent (24%) of the individual block value when the first two gates blocks have been fabricated, assembled, erected and tack



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welded in accordance with the terms of the Contract, all of which shall be validated by the Employer's Representative.

(ii) The next sixteen percent (16%) of the individual block value when the first two gates blocks have been welded to each other in accordance with the terms of the Contract, all of which shall be validated by the Employer's Representative. Validation for the individual welded blocks will be effective only when they are welded to the other individual blocks as part of a whole gate unit.


10. The Parties acknowledge and agree that the Employer's rights as to the processing of Interim Payments including but not limited to under Sub-Clause 14.6 [*Issue of Interim Payment Certificates*] remain unaffected by this Variation.

**In Witness** whereof the Parties hereto have caused this Variation Agreement No. 067 to the Contract to be executed on the 22th date of May of the year 2013 by their duly authorized representatives.

For ACP

  
Cheryl P. George  
Employer's Representative Delegee

For GUPCSA

  
Bernardo Gonzalez  
Contractor's Representative



## APPENDIX 1 TO VARIATION AGREEMENT NO. 067

### PROCEDURE TO EFFECT PROGRESS PAYMENTS FOR GATES

#### A. BACKGROUND

1. Sub-Clause 14.5 [*Plant and Materials Intended for the Works*] of the Conditions of Contract has been varied by the agreement of the Parties in Variation Agreement No. 048 and Variation Agreement No. 052. This Appendix 1 is referred to in the new Sub-Clause 14.5.1 (b) (1) (paragraph 6.3 of Variation Agreement No 067).
2. The purpose of this Procedure is to establish the required steps to properly validate the progress of Gate fabrication so as to effect progress payments in accordance with Variation Agreement No. 067 and Sub-Clause 14.3 [*Application for Interim Payment Certificates*].
3. The breakdown is as explained below.

#### B. BASIS FOR VALIDATION OF PERIODIC PAYMENTS TO BE INCLUDED IN INTERIM PAYMENT CERTIFICATES

1. As specified in the Locks Contract, a complete gate comprises the following components: the gate itself (main gate hereinafter), embeds, seals, guides, rails, wagons, mechanical and hydraulic systems.
2. The total price for fabrication and delivery of gates is \$152,033,849.00 for the Atlantic Locks and \$156,699,089.00 for the Pacific Locks. From these total amounts, 68.31% of the value has been assigned specifically for "main gate". The remaining 31.69% is reserved for all other components outside the main gate, as listed in B.1 above.
3. To validate the progress of the "main gate" for the purposes of interim payments, the following criteria will be used:
  - The main gates are divided by blocks. Gates type "A", "D" and "F", have 16 blocks; gates type "B", "C", and "E" have 20 blocks.
  - The value of completed blocks will include all steel, materials, labor, and welding. Payment for the blocks will be made as the blocks are assembled and joined to comprise part of a Gate.
  - The total payment for "main gate" fabrication and delivery will be recognized in a 70%-30% basis. The 70% will be partially progressed in a 40%-18%-12% basis.


#### First Step of Main Gate Progress Payment: 40%

- The Contractor may make application in the next application for payment for the first 24% of the individual block value, pursuant to Sub-Clause 14.3 [*Application for Interim Payment Certificates*] when the first two gates blocks have been

fabricated, assembled, erected and tack welded in accordance with the terms of the Contract, all of which shall be validated by the Employer's Representative. The Contractor may make an application for the next 16% of the individual block value pursuant to Sub-Clause 14.3 [*Application for Interim Payment Certificates*] when the first two gates blocks have been welded to each other in accordance with the terms of the Contract, all of which shall be validated by the Employer's Representative. Validation for the individual welded blocks will be effective only when they are welded to the other individual blocks as part of a whole gate unit.

- For each individual block the Contractor must submit the corresponding assembly quality documentation and the welds between blocks must be properly tested and demonstrated to be in compliance with the Contract. The value for each block will be an average percentage by weight, as per table attached in RFV-0131.
- Only the blocks assembled prior to the cutoff date will be considered for certification and payment.
- The progress payment for each block is subject to the submission of relevant Quality Documentation to validate compliance with contract requirements. All required quality documentation should be uploaded in PCM prior to the relevant application for payment.
- The progress payment for each block is also subject to all relevant documentation being issued to the Employer by SGS (Société Générale de Surveillance) to confirm that the blocks are partially or tack welded.

#### Second Step of Main Gate Progress Payment: 18%

- The Contractor may make application in the next application for payment pursuant to Sub-Clause 14.3 after all components associated with the main gate are completely installed in the "main gate" and painting is complete.
  - Some of these components are shafts, watertight hatches, manholes; also included are protective coating system for all gates, anti-slip coating on walkways, epoxy coating to roadway surfaces, ladders, gratings, cable trays, etc.
  - Only one 18% payment will become due per Gate and only when all systems for such Gate are completed. The Contractor must submit all quality documentation properly validated by the Contractor's on site Quality Assurance Team.
- 



Third Step of Main Gate Progress Payment: 12%

- The Contractor may make application in the next application for payment pursuant to Sub-Clause 14.3 when the gate is ready for shipment and all quality documentation (Factory Acceptance Tests) is ready and has been uploaded in PCM.

Fourth Step of Main Gate Progress Payment: 30%

- The Contractor may make application in the next application for payment pursuant to Sub-Clause 14.3 when each Gate has been delivered to the Site, is properly stored on the Site, is protected against loss, damage or deterioration, and is in accordance with the Contract.
- The gate must be properly inspected to ensure that no damage occurred during transportation to the Site. If the gate requires any rectification to comply with the Contract Requirements, Sub-Clause 14.6 (a) and/or (b) of the Conditions of Contract will be applicable.
- It is intended that the Atlantic Gates, will be validated when they arrive at the Atlantic Site. The Pacific Gates, will be recognized 15% upon arrival at the Atlantic site and the other 15% when arrives to the Pacific site.

To validate the progress of "all other gates components", the following criteria will be used:

- The Contractor may make application in the next application for payment pursuant to Sub-Clause 14.3 for 70% when the plant items are ready for shipment. The Contractor shall have ready all documentation related with Factory Acceptance Tests.
- The Contractor may make application in the next application for payment pursuant to Sub-Clause 14.3 for 30% when the components have been delivered to the Site, are properly stored on the Site and are protected against loss, damage or deterioration and are in accordance with the Contract.
- The gate components must be properly inspected to ensure that no damage occurred during transportation to the Site. If the gate components require any rectification to comply with the contract requirement, Sub-Clause 14.6 (a) and/or (b) of the Conditions of Contract will be applicable.







May 22, 2013

DCN: IAE-UPC-1546

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

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

Subject: Variation Agreement No. 66

Dear Mr. Gonzalez:

Enclosed is Variation Agreement No. 066 to the above referenced contract.

Please sign Item 13 and complete Item 14 (Date Signed) on the Variation form and also at the space provided at the end of the Variation Agreement.

The duly signed Variation Agreement shall be returned promptly to Ms. Tere Abadia or Mr. Elis A. Vargas G., Contract Specialists.

Sincerely yours,

Cheryl P. George  
Employer's Representative Delegee  
Locks Project Management Division

Enclosure

c.  
Joe Cazares/IAE  
Tere Abadia/IAE  
Elis Vargas/IAE