

PANAMA CANAL AUTHORITY	VARIATION	PAGE 1 OF 10
1. REQUEST FOR PROPOSAL No.:	2. CONTRACT No.:	3. DATE:
RFP-76161	CMC-221427	June 28, 2013
		4. VARIATION No.:
		071

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)	7. CONTRACTOR'S TELEPHONE NUMBER:
Grupo Unidos por el Canal, S.A. Building 22B, Brujas Road Cocoli, Republic of Panama	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 th 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)	12. NAME AND TITLE OF THE EMPLOYER'S REPRESENTATIVE/CONTRACTING OFFICER (Type or print)
Bernardo Gonzalez Contractor's Representative	Jorge de la Guardia, Employer's Representative
13. CONTRACTOR	14. DATE:
	28/06/2013
(Authorized signature)	15. PANAMA CANAL AUTHORITY
	16. DATE:
	28/VI/2013
	(Employer's Representative/Contracting Officer's signature)

This Variation Agreement Number 071, is dated as of the 28th day of June 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 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.

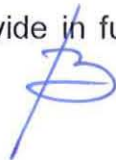
Whereas:

- (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) The Contractor:
 - (i) 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, 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 letter IAE-GUPC-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;
 - (ii) requested in Application for Payment No. 55 dated May, 31 2013, a Local Labor Cost Adjustment ("**LLCA**") pursuant to Sub-Clause 13.9 [*Adjustment for Changes in Local Labor Rates*] of the Contract in the aggregate sum of USD 12,233,240.07 for the first three successive six month periods after the month in which the Payment Certificate was issued in which the total of all certified interim payments (excluding the Advance Payment for Mobilisation) exceeded 25% of the Accepted Contract Amount, being the periods of: (1) 1 November 2011 to 30 April 2012; (2) 1 May 2012 to 31 October 2012; and (3) 1 November 2012 to 30 April 2013; and
 - (iii) requested in RFV No. 0192 dated June 19, 2013 for the Employer to make an interim payment of the LLCA for the three six month periods set out in



sub-paragraph (b)(ii) above subject to the further submission by the Contractor of the information required pursuant to Sub-Clause 13.9.2 for each such period, and for a corresponding variation to the conditions of Sub-Clause 13.9 [*Adjustment for Changes in Local Labor Rates*] of the Contract for the three six month periods set out in sub-paragraph (b)(ii) above only, to enable the Contractor to submit to the Employer the certificates from the Acceptable Contractor Auditor pursuant to Sub-Clause 13.9.2(b) for such periods within 48 days of the letter from KPMG to the Contractor dated June 20, 2013.

- (c) 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 Nos. 042, 043, 045, 047, 048, 049, 051, 052, 055, 056, 058, 059, 060, 063, 065, 066 and 067) 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.
- (d) Accordingly, the Employer has confirmed to the Contractor that:
 - (i) the Contractor has failed to submit to the Employer a certificate from an Acceptable Contractor Auditor pursuant to Sub-Clause 13.9.2(b) in support of its application in Application for Payment No. 55 for the LLCA applicable to CBLR Period 1 and CBLR Period 3;
 - (ii) the Employer will, however, agree to extend the period within which the Contractor is obliged to provide the information listed in Sub-Clause 13.9.2(b) in support of its application for the LLCA applicable to CBLR Period 1 and CBLR Period 3 to no later than 48 days from June 20, 2013, in accordance with the letter from KPMG to the Contractor dated June 20, 2013 in which KPMG has confirmed that it expects to conclude the audit of CBLR Period 1 and CBLR Period 3 within such period;
 - (iii) notwithstanding this, in relation to CBLR Period 1 and CBLR Period 3, the Employer will provisionally determine the LLCA applicable to such periods pursuant to Sub-Clause 13.9 [*Adjustment for Changes in Local Labor Rates*] and has agreed that following the date of this variation agreement it will notify the Contractor of this provisional determination and, subject to receipt of an extraordinary payment application from the Contractor in the amount of such provisional determination so notified, the Employer will make payment of this provisional amount to the Contractor in accordance with and subject to the terms of this variation agreement;
 - (iv) if the Contractor fails to provide in full the information required pursuant to



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Sub-Clause 13.9.2 in support of its application in Application for Payment No.55 for the LLCA for CBLR Period 1 and/or CBLR Period 3 in accordance with the time periods set out in Clause 13.9.2 (as amended in line with sub-paragraph (d)(ii) above), then the Employer shall deduct the amount provisionally paid as aforesaid from the next Interim Payment Certificate and/or shall require payment of the same from the Contractor;

- (v) the Employer has performed a provisional review of the information submitted by the Contractor pursuant to Sub-Clause 13.9.2 [*Adjustment for Changes in Local Labor Rates*] in support of its application for the LLCA payable to the Contractor for CBLR Period 2 and the Employer has identified that the Contractor has failed to submit a certificate from an Acceptable Contractor Auditor in respect of the Labor Costs paid by the Contractor to its first tier Subcontractor, Consorcio Borinquen. Accordingly, the Employer shall not make any payment to the Contractor for the LLCA referable to the labor costs paid by the Contractor to Consorcio Borinquen in CBLR Period 2 unless and until the Contractor has complied in full with the requirements of Sub-Clause 13.9 [*Adjustment for Changes in Local Labor Rates*] and to that end the Employer has agreed an extension of time for delivery of the certificate from an Acceptable Contractor Auditor pursuant to Sub-Clause 13.9.2(b) for the labor costs paid to Consorcio Borinquen in CBLR Period 2 to no later than 48 days from June 20, 2013;
- (vi) save as set out in sub-paragraph (d)(v) above, the Employer has made a determination of the LLCA payable to the Contractor for CBLR Period 2 and has agreed to make a payment of USD 6,032,192.06 in the Payment Certificate of May 2013 issued in June 2013;
- (vii) upon receipt of the certificate from an Acceptable Contractor Auditor pursuant to Sub-Clause 13.9.2(b) for the labor costs paid by the Contractor to Consorcio Borinquen in CBLR Period 2 as set out in sub-paragraph (d)(v) above, the Employer shall determine the determination of the LLCA payable to the Contractor for the labor costs paid to Consorcio Borinquen for CBLR Period 2 and if it is determined that the Contractor is entitled to an amount of LLCA for the labor costs paid to Consorcio Borinquen for CBLR Period 2, then an adjustment shall be made in the next Interim Payment Certificate; and
- (viii) in all other respects and for all successive periods after CBLR Period 3, the provisions of Sub-Clause 13.9 [*Adjustment for Changes in Local Labor Rates*] shall remain unamended;

but subject always to the parties agreeing a formal variation to reflect such revised arrangements.

- (e) Therefore, subject to the terms of this Variation Agreement No. 071, and based upon the representations and statements made by the Contractor concerning its

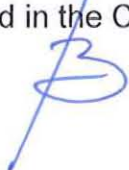


financial position and ability to obtain funding, in order to assist the cash flow of the Contractor and for no other reason, the Parties have agreed to a variation to the Contract as hereinafter stated, but not further or otherwise.

THE PARTIES HEREBY AGREE AS FOLLOWS:

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

1. In this Variation Agreement No. 071, 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. 071 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. 071 or in any way argue or use the fact or the terms of this Variation Agreement No. 071 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. 071 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. 071 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. 071 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. 071 had been originally contained in the Contract. Any ambiguity or uncertainty in the



meaning and effect of this Variation Agreement No. 071 shall be resolved in favour of the Employer.

6. This Variation Agreement No. 071 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 under the Sub-Clause 1.1.6 [*Other Definitions*] (which shall be added in proper alphabetical order but without any number):

"CBLR Period 1" means the period from 1 November 2011 to 30 April 2012 inclusive, which is the first six month period for which the Employer's Representative shall determine the CBLR pursuant to Sub-Clause 13.9.4 [*Adjustment for Changes in Local Labor Rates*].

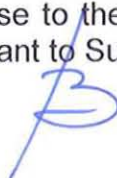
"CBLR Period 2" means the period from 1 May 2012 to 31 October 2012 inclusive, which is the second six month period for which the Employer's Representative shall determine the CBLR pursuant to Sub-Clause 13.9.4 [*Adjustment for Changes in Local Labor Rates*].

"CBLR Period 3" means the period from 1 November 2012 to 30 April 2013 inclusive, which is the third six month period for which the Employer's Representative shall determine the CBLR pursuant to Sub-Clause 13.9.4 [*Adjustment for Changes in Local Labor Rates*].

8. The Parties agree to add new Sub-Clauses 13.9.9 to 13.9.14 [*Adjustment for Changes in Local Labor Rates*] to the Contract as follows:

13.9.9 Notwithstanding the provisions of Sub-Clause 13.9.2, for each of CBLR Period 1 and CBLR Period 3 only, the Employer shall grant to the Contractor an extension of the time in which to submit to the Employer's Representative for review in a manageable electronic format the certificate from the Acceptable Contractor Auditor pursuant to Sub-Clause 13.9.2(b) to no later than 48 days after June 20, 2013. Subject to Sub-Clauses 13.9.10 to 13.9.12, Sub-Clauses 13.9.1 to 13.9.8 shall continue to apply unamended to the determination of the LLCA for CBLR Period 1 and CBLR Period 3 in all other respects.

13.9.10 For CBLR Period 1 and CBLR Period 3, following the date of Variation Agreement No. 071 the Employer's Representative will provisionally determine in response to the Contractor's Application for Payment No.55 an adjustment pursuant to Sub-Clause 13.9 [*Adjustment for Changes in*



Local Labor Rates] for CBLR Period 1 and for CBLR Period 3 and the amount of such provisional adjustment shall be notified to the Contractor in writing by the Employer. Thereafter, such amounts provisionally determined for CBLR Period 1 and CBLR Period 3 shall be paid to the Contractor provided always that the Contractor shall have first submitted to the Employer an extraordinary application for payment in a form acceptable to the Employer of the amounts provisionally determined pursuant to this Sub-Clause 13.9.10. Subject to the foregoing, the Employer shall make payment of such amounts provisionally determined within ten (10) days of receipt of the Contractor's extraordinary payment application provided for in this Sub-Clause 13.9.10.

Notwithstanding this provisional payment, the Employer's Representative shall verify the determination of the LLCA payable to the Contractor for CBLR Period 1 and CBLR Period 3 in accordance with the provisions of Sub-Clauses 13.9.1 to 13.9.8 upon receipt by the Employer in full in a manageable electronic format of the certificate from the Acceptable Contractor Auditor pursuant to Sub-Clause 13.9.2(b) as referred to in Sub-Clause 13.9.9.

- 13.9.11 Upon receipt by the Employer in full in a manageable electronic format of the certificate from the Acceptable Contractor Auditor pursuant to Sub-Clause 13.9.2(b) in accordance with Sub-Clause 13.9.9 the Employer's Representative shall verify and determine the full LLCA payable by the Employer to the Contractor for CBLR Period 1 and CBLR Period 3.

CBLR Period 1

If following verification and determination as aforesaid in respect of CBLR Period 1 the LLCA payable by the Employer to the Contractor for CBLR Period 1:

- (a) exceeds the amount provisionally paid by the Employer to the Contractor as provided for in Sub-Clause 13.9.10 then the Employer shall pay the balance of the LLCA for CBLR Period 1 to the Contractor in the next Interim Payment Certificate; or
- (b) is less than the amount provisionally paid by the Employer to the Contractor as provided for in Sub-Clause 13.9.10, then the Employer may:
 - (i) deduct the amount paid in excess of the LLCA for CBLR Period 1 in the next Interim Payment Certificate; and/or
 - (ii) require payment of the amount paid in excess of the LLCA for CBLR Period 1 (or any part thereof not deducted in accordance

with sub-paragraph (b)(i) above) from the Contractor, in which case the Contractor shall within 21 days of written request from the Employer make payment of such amount to the Employer and/or the Employer may recover such amount as a debt due from the Contractor to the Employer. Payment of any amount due from the Contractor to the Employer pursuant to this sub-paragraph (b)(ii) shall be made by electronic transfer of funds to the bank account nominated by the Employer.

CBLR Period 3

If following verification and determination as aforesaid in respect of CBLR Period 3 the LLCA payable by the Employer to the Contractor for CBLR Period 3:

- (a) exceeds the amount provisionally paid by the Employer to the Contractor as provided for in Sub-Clause 13.9.10 then the Employer shall pay the balance of the LLCA for CBLR Period 3 to the Contractor in the next Interim Payment Certificate; or
- (b) is less than the amount provisionally paid by the Employer to the Contractor as provided for in Sub-Clause 13.9.10, then the Employer may:
 - (i) deduct the amount paid in excess of the LLCA for CBLR Period 3 in the next Interim Payment Certificate; and/or
 - (ii) require payment of the amount paid in excess of the LLCA for CBLR Period 3 (or any part thereof not deducted in accordance with sub-paragraph (b)(i) above) from the Contractor, in which case the Contractor shall within 21 days of written request from the Employer make payment of such amount to the Employer and/or the Employer may recover such amount as a debt due from the Contractor to the Employer. Payment of any amount due from the Contractor to the Employer pursuant to this sub-paragraph (b)(ii) shall be made by electronic transfer of funds to the bank account nominated by the Employer.

For the avoidance of any doubt, Sub-Clause 2.5 [*Employer's Claims*] and Sub-Clause 3.5 [*Determinations*] shall not apply to any deduction and/or payment from the Contractor to the Employer pursuant to this Sub-Clause 13.9.11.

13.9.12 If the Contractor fails to provide in full the certificate from the Acceptable Contractor Auditor pursuant to Sub-Clause 13.9.2(b), by a date no later than 48 days after June 20, 2013 for CBLR Period 1 pursuant to Sub-

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Clause 13.9.9 then the Employer shall, at its sole and absolute discretion:

- (a) deduct the amount provisionally paid by the Employer to the Contractor as provided for in Sub-Clause 13.9.10 for CBLR Period 1 in the next Interim Payment Certificate; and/or
- (b) require payment of the amount provisionally paid by the Employer to the Contractor as provided for in Sub-Clause 13.9.10 for CBLR Period 1 (or any part thereof not deducted in accordance with sub-paragraph (a) above) from the Contractor, in which case the Contractor shall within 21 days of written request from the Employer make payment of such amount to the Employer and/or the Employer may recover such amount as a debt due from the Contractor to the Employer. Payment of any amount due from the Contractor to the Employer pursuant to this sub-paragraph (b) shall be made by electronic transfer of funds to the bank account nominated by the Employer.

If the Contractor fails to provide in full the certificate from the Acceptable Contractor Auditor pursuant to Sub-Clause 13.9.2(b) by a date no later than 48 days after June 20, 2013 for CBLR Period 3 pursuant to Sub-Clause 13.9.9 then the Employer shall, at its sole and absolute discretion:

- (c) deduct the amount provisionally paid by the Employer to the Contractor as provided for in Sub-Clause 13.9.10 for CBLR Period 3 in the next Interim Payment Certificate; and/or
- (d) require payment of the amount provisionally paid by the Employer to the Contractor as provided for in Sub-Clause 13.9.10 for CBLR Period 3 (or any part thereof not deducted in accordance with sub-paragraph (c) above) from the Contractor, in which case the Contractor shall within 21 days of written request from the Employer make payment of such amount to the Employer and/or the Employer may recover such amount as a debt due from the Contractor to the Employer. Payment of any amount due from the Contractor to the Employer pursuant to this sub-paragraph (d) shall be made by electronic transfer of funds to the bank account nominated by the Employer.

For the avoidance of any doubt, Sub-Clause 2.5 [*Employer's Claims*] and Sub-Clause 3.5 [*Determinations*] shall not apply to any deduction and/or payment from the Contractor to the Employer pursuant to this Sub-Clause 13.9.12.

13.9.13 For CBLR Period 2, the Employer's Representative has determined in response to the Contractor's Application for Payment No.55 that an adjustment pursuant to Sub-Clause 13.9 [*Adjustment for Changes in Local Labor Rates*] of USD 6,032,192.06 shall be paid to the Contractor in the



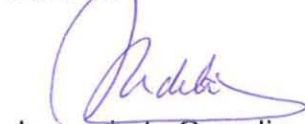
Payment Certificate of May 2013 issued in June 2013, but that such adjustment does not include any determination of the LLCA applicable to the Labor Costs paid by the Contractor's first tier Subcontractor, Consorcio Borinquen, for CBLR Period 2. The Employer shall grant to the Contractor an extension of the time in which to submit to the Employer's Representative for review the certificate from the Acceptable Contractor Auditor pursuant to Sub-Clause 13.9.2(b) applicable to the Labor Costs paid by the Contractor's first tier Subcontractor, Consorcio Borinquen, to no later than 48 days after June 20, 2013.

13.9.14 Upon receipt of the certificate from the Acceptable Contractor Auditor pursuant to Sub-Clause 13.9.2(b) applicable to the Labor Costs paid by the Contractor to its first tier Subcontractor, Consorcio Borinquen, for CBLR Period 2, the Employer's Representative shall verify and determine the LLCA payable by the Employer to the Contractor for CBLR Period 2 for the Labor Costs paid by the Contractor to Consorcio Borinquen for this period. If the Employer determines that any additional LLCA is payable by the Employer to the Contractor for CBLR Period 2 the Employer shall pay such additional sum to the Contractor in the next Interim Payment Certificate.

9. The Parties acknowledge and agree that Sub-Clauses 13.9.1 to 13.9.8 [*Adjustment for Changes in Local Labor Rates*] shall continue to apply in full and without amendment and Sub-Clauses 13.9.9 to 13.9.14 shall be of no effect to any subsequent application by the Contractor for a LLCA for each and every successive six month period after the end of CBLR Period 3.

In Witness whereof the Parties hereto have caused this Variation Agreement No. 071 to be executed on the 28 day of June 2013, by their duly authorized representatives.

For ACP



Jorge de la Guardia
Employer's Representative

For GUPCSA



Bernardo Gonzalez
Contractor's Representative
