

PANAMA CANAL AUTHORITY		VARIATION	PAGE 1 OF 7
1. REQUEST FOR PROPOSAL No.:		2. CONTRACT No.:	3. DATE:
RFP-76161		CMC-221427	July 16, 2013
			4. VARIATION No.:
			073

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:

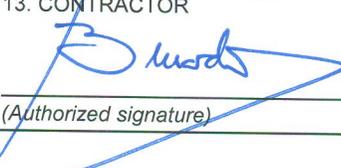
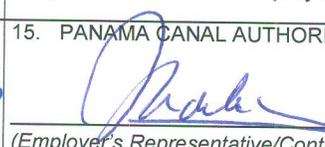
- The contract referred to in item No. 2 is hereby varied as set forth in item 10, entitled "DESCRIPTION OF VARIATION".
 YES. NO. The contractor shall send a copy, duly signed, of this Variation to the Employer's Representative/Contracting Officer.

	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], 4th 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:	15. PANAMA CANAL AUTHORITY	16. DATE:
 (Authorized signature)	16/07/2013	 (Employer's Representative/Contracting Officer's signature)	16/07/2013

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Design and Construction of the Third Set of Locks

This Variation Agreement Number 073, is dated as of 16 day of July 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) For the purposes of interim payments in Sub-Clause 14.3.3(a) of the Contract in relation to the estimated contract value of the Works executed under the Contract, and in accordance with Paragraph 1.09R.2 of Section 01 31 00 [*Project Management and Coordination*] of the Employer's Requirements, the Contractor is paid by reference to its progress measured against the Current Programme which is based on the cost loaded Accepted Baseline Programme.
- (c) The Contractor originally cost loaded the Accepted Baseline Programme in such a manner that payments in respect of the utilities relocation materials including potable water lines, electrical medium voltage lines, fiber optic and telephone lines, and duct banks that are to be used as part of the utilities relocation as more particularly specified in Section 33 11 00.13 [*Water Utility Main Lines*], Section 33 81 26 [*Outside Plant Pathways for Underground Communications*], Section 33 71 00 [*Electrical Power Overhead Line*] and Section 33 82 00 [*Cabling for Underground Communications Outside Plant*] of the Employer's Requirements, would be made only when the items were installed in the Works.
- (d) 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



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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; and

- (ii) requested in RFV No. 0194 dated June 26, 2013 that the Contract and Current Programme be varied so as to permit interim payments for the delivery, installation and commissioning of Utilities Relocation Materials, in accordance with the utilities relocation price breakdown schedule which is attached at Appendix 1 to this Variation Agreement No. 073.
- (e) The request made pursuant to RFV No. 0194 as described in sub-paragraph (d)(ii) above also contained a budget changes proposal dated June 26, 2013, a copy of which is attached at Appendix 2 to this Variation Agreement No. 073, which included the reallocation of budget from "Install Mechanical - Utilities, Fire Fighting, Pot Water, Sani Sewer, Compressed Air, Oil Recovery, Dewatering activities" to "Utility Relocation: Relocate Utilities to Final Position".
- (f) 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, 067, 070 and 071, 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.
- (g) Accordingly, the Employer has responded through letter IAE-UPC-1604 dated July 8, 2013, indicating to the Contractor that the Employer confirms the cost breakdown of Utilities Relocation Materials and the budget changes proposal listed in the appendices to the Contractor's RFV No. 0194 and that such proposal is in accordance with the preliminary agreement reached during a meeting held in June 2013 between the Contractor's and the Employer's Project Control Teams, but subject always to the parties agreeing a formal variation to reflect such revised arrangements.
- (h) For the avoidance of doubt, this Variation Agreement No. 073 supersedes the Contractor's RFV No. 0187 and the price breakdown schedule attached to the Contractor's Letter GUPC-IAE-1995.
- (i) Therefore, subject to the terms of this Variation Agreement No. 073, 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.



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THE PARTIES HEREBY AGREE AS FOLLOWS:

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

1. In this Variation Agreement No. 073, 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. 073 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. 073 or in any way argue or use the fact or the terms of this Variation Agreement No. 073 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. 073 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. 073 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. 073 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. 073 had been originally contained in the Contract. Any ambiguity or uncertainty in the meaning and effect of this Variation Agreement No. 073 shall be resolved in favour of the Employer.



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6. This Variation Agreement No. 073 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):

"Utilities Relocation Materials" means the potable water lines, electrical medium voltage lines, fiber optic and telephone lines, and duct banks as set out in Appendix 1 to Variation Agreement No. 073 and as more particularly specified in Section 33 11 00.13 [*Water Utility Main Lines*], Section 33 81 26 [*Outside Plant Pathways for Underground Communications*], Section 33 71 00 [*Electrical Power Overhead Line*] and Section 33 82 00 [*Cabling for Underground Communications Outside Plant*] of the Employer's Requirements.

"Variation Agreement No. 073" means Variation Agreement Number 073, dated July 16, 2013 between the Employer and the Contractor."

8. The Parties agree to add new Sub-Clauses 14.5.1.5 and 14.5.1.6 [*Plant and Materials Intended for the Works*] to the Contract as follows:

"14.5.1.5 The Contractor shall be paid progress payments in respect of Utilities Relocation Materials, as set out in Appendix 1 of Variation Agreement No. 073 and as stated herein, once such materials are delivered to, stocked on Site and verified in accordance with Section 01 40 00 [*Quality Requirements*] of the Employer's Requirements and Transmittal G00/UPCMGP0016 [*Material Receiving Inspection, Handling and Storage*], and in all respects subject to the other terms and provisions of the Contract. [In this regard, and to reflect this general intent, the Contractor has updated the Current Programme and an extract of the relevant Utilities Relocation Activities from the Current Programme update is attached at Appendix 3 to Variation Agreement No. 073, to include the relevant activities so that progress and payment in respect of Utilities Relocation Materials can be measured and valued on an interim basis as aforesaid.] The Employer and the Contractor acknowledge the revised utilities relocation price breakdown schedule and budget changes proposal in respect of Utilities Relocation Materials pursuant to this Sub-Clause 14.5.1.5 as shown in Appendix 1 and Appendix 2 respectively to Variation Agreement No. 073 although both the Employer and the Contractor agree that, notwithstanding such revised utilities relocation price breakdown and budget changes proposal, the Contractor shall be paid for Utilities Relocation Materials



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according to its actual progress against the revised Current Programme which now includes the new activities in respect of delivery to Site, stocking on Site and verification of Utilities Relocation Materials in accordance with Section 01 40 00 [*Quality Requirements*] of the Employer's Requirements and Transmittal G00/UPCMGP0016 [*Material Receiving Inspection, Handling and Storage*], and in all respects subject to the other terms and provisions of the Contract.

- 14.5.1.6 In assessing and certifying payments in respect of Utilities Relocation Materials delivered to Site as aforesaid, the Contractor shall, in addition to establishing that the required properties of the Utilities Relocation Materials are in all respects in accordance with Section 33 11 00.13 [*Water Utility Main Lines*], Section 33 81 26 [*Outside Plant Pathways for Underground Communications*], Section 33 71 00 [*Electrical Power Overhead Line*] and Section 33 82 00 [*Cabling for Underground Communications Outside Plant*] of the Employer's Requirements, and in all respects subject to the other terms and conditions of the Contract, provide verification that the Contractor has delivered the Utilities Relocation Materials in accordance with Section 01 40 00 [*Quality Requirements*] of the Employer's Requirements and Transmittal G00/UPCMGP0016 [*Material Receiving Inspection, Handling and Storage*], and in all respects subject to the other terms and provisions of the Contract, and has claimed in a Statement amounts owed to the Contractor in relation to such materials. Certification and payment in respect of Utilities Relocation Materials in accordance with Section 01 31 00 [*Project Management and Coordination*] of the Employer's Requirements, and in all respects subject to the other terms and provisions of the Contract, shall not be due under the Contract unless such matters are first established to the satisfaction of the Employer's Representative and in accordance with Contract Requirements."
9. For the avoidance of any doubt, the Parties acknowledge and agree that the Current Programme reflects an adjustment to the progress payments that shall be paid to the Contractor in respect of Utilities Relocation Materials once they are installed and commissioned as a consequence of the Contractor's requests for progress payments on delivery of the Utilities Relocation Materials in RFV No. 0194 dated June 26, 2013. The Parties further acknowledge and agree that progress payments for the installation and commissioning of Utilities Relocation Materials shall be payable in accordance with the terms of the Contract by reference to the estimated contract value of the Works executed pursuant to Sub-Clause 14.3.3(a).
10. Nothing in this Variation Agreement No. 073 is intended to or does give the Contractor any greater entitlement in respect of payment for Utilities Relocation Materials than was included within the original Contract Price and thus nothing in



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this Variation Agreement No. 073 is intended to or does increase the Contract Price or the sum due to the Contractor in respect of Utilities Relocation Materials.

11. The Parties acknowledge and agree that the Employer's rights in relation to the processing of Interim Payments including but not limited to under Sub-Clause 14.6 [*Issue of Interim Payment Certificates*] and Sub-Clause 14.7 [*Payment*] remain unaffected by this Variation Agreement No. 073.

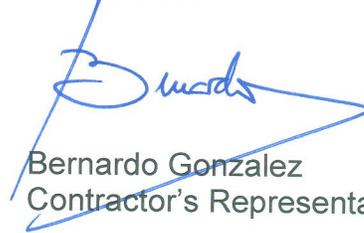
In Witness whereof the Parties hereto have caused this Variation Agreement No. 073 to the Contract to be executed on the 16 day of July of the year 2013 by their duly authorized representatives.

For ACP



Jorge de la Guardia
Employer's Representative

For GUPCSA



Bernardo Gonzalez
Contractor's Representative

Appendix 1 to Variation Agreement No 073

UTILITIES RELOCATION PRICE BREAKDOWN SCHEDULE - ATTACHED TO RFV 194

Jun. 26, 2013

A.) SCOPE OF WORKS

- 1.) Relocation of 6,702 meters of ductil iron pipes.(16" and 30"), necessary to connect existing ACP and IDAAN lines;
- 2.) Relocation of 56.8 Km of medium voltage lines (46Kv,12Kv,5Kv), necessary to connect new facilities with the current ones;
- 3.) Construction of 18.5 Km ductbanks;
- 4.) Relocation 8.0 Km of fiber optics and telephone lines.

B.) PRICE BREAKDOWN

Features of Work	MU	Atlantic				Pacific					
		Qty	Total \$	Delivery	Install	Comm.	Qty	Total \$	Delivery	Install	Comm.
Activity A-40120 / Resource ID : E30.21.19											
Relocation potable water distrib. 16" ACP / Cl.250 lines	M	3,264	1,445,979	1,012,185	404,874	28,920	0	0	0	0	0
Relocation potable water distrib. 30" IDAAN / Cl.53 - 24" ACP / 250 lines	M	0	0	0	0	0	3,438	2,560,124	1,792,087	716,835	51,202
Sub total potable water lines			1,445,979	1,012,185	404,874	28,920		2,560,124	1,792,087	716,835	51,202
Activity P-40040 / Resource ID : E30.31.19											
Relocation electrical medium voltage lines -46KV	M	12,000	625,350	437,745	175,098	12,507	5,600	192,832	134,982	53,993	3,857
Relocation electrical medium voltage lines -12KV	M	0	0	0	0	0	33,600	649,319	454,523	181,809	12,986
Relocation electrical medium voltage lines -5KV	M	5,600	139,391	97,574	39,029	2,788	0	0	0	0	0
Sub total electrical medium voltage lines			764,741	535,318	214,127	15,295		842,151	589,505	235,802	16,843
Activity P-40040 / Resource ID : E30.31.19											
Fiber optics & telephone lines	M	5,000	110,956	77,669	31,068	2,219	3,000	43,990	30,793	12,317	880
Fiber optics from CB & BCB to ACP 7D building	M	0	0	0	0	0	4,500	65,985	46,189	18,476	1,320
Fiber optics from ACP 7D building to Rodman 22	M	0	0	0	0	0	7,000	102,643	71,850	28,740	2,053
Fiber optics from CB & BCB to ACP 26 building	M	5,000	110,956	77,669	31,068	2,219	0	0	0	0	0
Fiber optics from AGUA CLARA building to Gatun 26	M	2,000	44,383	31,068	12,427	888	0	0	0	0	0
Sub total fiber optic lines			266,295	186,407	74,563	5,326		212,617	148,832	59,633	4,252
Duct banks	M	7,000	358,142	0	358,142	0	11,500	388,780	0	388,780	0
Sub total duct banks			358,142	0	358,142	0		388,780	0	388,780	0
Total General Utilities Relocations			2,835,158	1,733,911	1,051,707	49,540		4,003,673	2,530,425	1,400,950	72,298

Activity ID	Activity Name	Current start	Current finish	SS Change	Previous Budget	New Budget	Comments
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Budget Changes proposal - 26/6/2013

A-40120	LOE-A_Site: Install Mechanical- Utilities, Fire Fighting, Pot Water, Sani Sewer, Compressed Air, Oil Recovery, Dewatering	06-Jan-14	05-Jun-14	(2,835,157.50) \$	2,835,157.50 \$	-	
A-40160	LOE: A_Utility Relocation: Relocate Utilities to Final Position	23-Sep-11		2,835,157.50 \$	-	2,835,157.50	Relocation of Money to the correct activity
				\$ - \$	2,835,157.50 \$	2,835,157.50	

P-40040	LOE-A_Site: Install Mechanical- Utilities, Fire Fighting, Pot Water, Sani Sewer, Compressed Air, Oil Recovery, Dewatering	06-Jan-14	05-Jun-14	(4,003,672.50) \$	4,003,672.50 \$	-	
P-40160	LOE: A_Utility Relocation: Relocate Utilities to Final Position	23-Sep-11		4,003,672.50 \$	-	4,003,672.50	Relocation of Money to the correct activity
				\$ - \$	4,003,672.50 \$	4,003,672.50	

B

Appendix 3 to Variation Agreement No 073

PCEP - Current Monthly Update 130624.015.MU41 (OFFICIAL IN PCM)		Plant and Mechanical Budget Movement							Data Date: 24-Jun-13	
WBS	Activity ID	Activity Name	Start	Finish	BL Project Start	BL Project Finish	Remaining Duration	Total Float	Cost % Complete	Budgeted Total Cost
PCEP - Current Monthly Update 130624.015.MU41										
Contract for the Design Build of the Third Set of Loc										
Construction of the Atlantic Post-Panamax Locks										
Electromechanical Packages										
Electromechanical Packages Installation										
General Installation Summary										
	A-40120	LOE: A_Site: Install Mechanical-Utilities, Fire Fighting, Pot Water, Sani Sewer, Compressed Air, Oil Recovery, Dewatering	01-May-13 A	18-Oct-14	06-Jan-12	08-Feb-14	276	58	1.1%	2,835,157.50
	A-40160	LOE: A_Utility Relocation: Relocate Utilities to Final Position	01-May-13 A	18-Oct-14	20-Aug-13	08-Feb-14	399	76	1.1%	2,835,157.50
Construction of the Pacific Post-Panamax Locks										
General Earthmoving and dredging										
Dams and Approach Channel Gatun Side										
Dams										
Utilities Relocation										
	P-40160	LOE: P_Utility Relocation: Relocate Utilities to Final Position	01-Apr-13 A	30-Dec-14	15-May-13	16-Dec-13	453	65	43.8%	4,003,672.50
Electromechanical Packages										
Electromechanical Packages Installation										
Site Utilities Installations										
	P-40040	P_Site: Install Mechanical-Utilities, Fire Fighting, Pot Water, Sani Sewer, Compressed Air, Oil Recovery, Dewatering WS	07-Apr-14	24-Sep-14	19-Jan-12	16-Dec-13	98	102	0%	0.00
New Pacific Locks Project Controls										
Autoridad del Canal de Panamá										

JUNE 13 CP