

PANAMA CANAL AUTHORITY		VARIATION	PAGE 1 OF 8
1. REQUEST FOR PROPOSAL No.:	2. CONTRACT No.:	3. DATE:	4. VARIATION No.:
RFP-76161	CMC-221427	September 13, 2013	080

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:

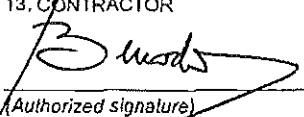
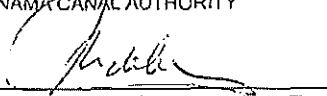
The contract referred to in item No. 2 is hereby varied as set forth in item 10, entitled 'DESCRIPTION OF VARIATION'.  
YES. NO. The contractor shall send a copy, duly signed, of this Variation to the Employer's Representative/Contracting Officer.

	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 <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)	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:
 (Authorized signature)	13/09/2013
	15. PANAMA CANAL AUTHORITY
	16. DATE:
	 (Employer's Representative/Contracting Officer's signature)
	13/11/2013

**This Variation Agreement Number 080, is dated as of 13<sup>th</sup> day of September 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) Pursuant to Clause 8 of Variation Agreement No. 048 dated September 10, 2012, as amended and restated in its entirety in Clause 7 of Variation Agreement No. 052 dated October 17, 2012, and as also amended by Clause 6.2 of Variation Agreement No. 056 dated December 4, 2012 and Clause 6.2.1 of Variation Agreement No. 060 dated January 23, 2013, the Contractor was required to deliver the Plant and Material Security in respect of the gates and associated equipment in the form of a bond in an amount not less than one hundred twenty five million United States Dollars (US\$125,000,000) to be issued by Zurich American Insurance Company with the requirement that Zurich American Insurance Company retain all exposure without reinsurance of such exposure.
- (c) Pursuant to Sub-Clause 14.2H(c) of the Contract, the Contractor was required to obtain the VO 070 Plant and Material Security Modification within 20 days of receipt by the Contractor of the Advance Payment for Lock Gates made by the Employer.
- (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 December 24, 2012, IAE-GUPC-1374 of January 9, 2013, and letter

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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 RFV No. 200 dated July 23, 2013 that the restriction related to retention of the full exposure under the Plant and Material Security by Zurich American Insurance Company as referred to in paragraph (b) above be deleted; and,
  - (iii) as a result of the request contained in RFV No. 200, requested in RFV No. 201 (Corrected) dated September 13, 2013 an extension of time up to **September 30, 2013** to submit the VO 070 Plant and Material Security Modification together with an associated amendment to Sub-Clause 14.2H(c) of the Contract to reflect such extension of time.
- (e) 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 modifications (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, 071, 073 and 077) 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.
- (f) Accordingly, the Employer has responded through letter IAE-UPC-1636 dated August 6, 2013, indicating to the Contractor that the Employer will permit the deletion of the restriction related to retention of the full exposure under the Plant and Material Security by Zurich American Insurance Company and the extension of time up to **September 30, 2013** to submit the VO 070 Plant and Material Security Modification together with associated amendment to Sub-Clause 14.2H(c) of the Contract as requested by the Contractor pursuant to RFV No. 200 and No. 201 (Corrected), but subject always to the parties agreeing a formal variation to reflect such revised arrangements.
- (g) Therefore, subject to the terms of this Variation Agreement No. 080, 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:

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1. In this Variation Agreement No. 080, 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. 080 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. 080 or in any way argue or use the fact or the terms of this Variation Agreement No. 080 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. 080 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. 080 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. 080 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. 080 had been originally contained in the Contract. Any ambiguity or uncertainty in the meaning and effect of this Variation Agreement No. 080 shall be resolved in favour of the Employer.
6. This Variation Agreement No. 080 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:

7.1 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):

**"Variation Agreement No. 080"** means Variation Agreement Number 080, dated September 13, 2013 between the Employer and the Contractor."

7.2 The Parties agree to amend and restate the following definitions in Sub-Clause 1.1 [Definitions] of the Contract to read in their entirety as follows:

**"Acceptable Zurich P&M Bond"** means a bond in a form satisfactory to the Employer in its absolute discretion issued by Zurich American Insurance Company."

**"Excess P&M Amount"** means the amount of any payment to be made by the Employer in respect of Plant and Materials which is greater (either itself or in the aggregate with all other payments previously made or to be made by the Employer in respect of Plant and Materials) than the amount of the corresponding Acceptable Zurich P&M Bond securing the payment for such Plant and Materials."

The Parties (a) acknowledge that Sub-Clause 14.5.3 of the Contract has been amended and modified by Clause 8 of Variation Agreement No. 048, which was amended and restated in its entirety in Clause 7 of Variation Agreement No. 052, which was amended by Clauses 6.2 and 6.3 of Variation Agreement No. 056 and also amended by Clause 6.2.1 of Variation Agreement No. 060 (such Clause 7, as amended, "Amended Clause 7"), and (b) agree that (i) Amended Clause 7 shall be superseded and replaced in its entirety by the following Clause 8 of this Variation Agreement No. 080:

8. Sub-Clause 14.5.3 shall be amended by the addition of the following subparagraphs (c) through (f) to Sub-Clause 14.5.3 as follows:
  - (c) By no later than December 15, 2012, the Contractor shall obtain, at his own cost, and furnish to the Employer, the Plant and Material Security, and the date set forth in Sub-Clause 14.5.3(b) for delivery of the Plant and Material Security shall be deemed modified to instead provide for the delivery thereof no later than December 15, 2012.
  - (d) Notwithstanding any other term of the Contract, unless expressly consented to in writing by the Employer, the delivery of the Plant and Material Security shall be made by the Contractor in the following manner:
    - (1) by the delivery of an Acceptable Zurich P&M Bond in an amount not less than one hundred twenty-five million United States Dollars (US\$125,000,000.00), which bond shall be used as Plant and Material Security in respect of gates and their associated equipment in

accordance with the terms of item (1) following the proviso to Sub-Clause 14.5.1; and

- (2) by the delivery of an Acceptable Zurich P&M Bond in an amount not less than twenty-five million United States Dollars (US\$25,000,000.00), which bond shall be used as Plant and Material Security in respect of water savings basins and lock valves and their associated equipment in accordance with the terms of item (2) following the provision to Sub-Clause 14.5.1;

*“ provided that, notwithstanding the terms of this Sub-Clause 14.5.3(d), in the event that the Employer is to make a payment which contains in whole or in part any Excess P&M Amount, the Contractor shall, as a condition to the making of any such payment by the Employer, deliver to the Employer either (i) the previously issued Acceptable Zurich P&M Bond, increased by an amount not less than such Excess P&M Amount or (ii) a substitute Contractor Security Instrument acceptable to the Employer in its absolute discretion in an amount not less than the sum total of the amount of the corresponding previously issued Acceptable Zurich P&M Bond and the Excess P&M Amount; and the Contractor expressly agrees that the Employer shall be entitled to withhold certification and/or payment for any such Excess P&M Amount and/or if it has been paid deduct such Excess P&M Amount or any part thereof from any subsequent Interim Payment Certificate until such time as the requirements of this proviso have been satisfied.”*

- (e) For the avoidance of doubt, the terms of Sub-Clause 4.2D shall apply to the Plant and Material Security, but it is expressly agreed that the terms of Sub-Clause 4.2E shall not so apply thereto.
- (f) Notwithstanding any other term of any Variation Agreement or the Contract, should the Contractor fail to provide by December 15, 2012 the Plant and Material Security in the manner specified in sub-paragraph (d) of this Sub-Clause 14.5.3, the Employer may at its absolute discretion deduct from the next Interim Payment Certificate after the date of Variation Agreement No. 052 or any subsequent Interim Payment Certificate the full amount of any amount previously paid to the Contractor pursuant to the terms of Sub-Clause 14.5.1 and this Sub-Clause 14.5.3; *provided that* the Parties agree that, notwithstanding the foregoing provisions of this Sub-Clause 14.5.3:

- (1) during the period to December 15, 2012, the Contractor shall be allowed to include in its applications for Interim Payment Certificates sums related to lock gates (but not any other Plant or Materials) notwithstanding the fact that the Plant and Material Security may not have been delivered to the Employer as at the date of any such application for Interim Payment Certificate during such period;
  - (2) the Contractor agrees that no amounts for water savings basins, lock valves or any associated equipment (items 2.3.3.1.9.1, 2.3.3.2.9.1, 2.3.3.1.10.1 and 2.3.3.2.10.1 of the Schedule of Project Elements and Prices) will be included in any application for Interim Payment Certificate during any period prior to the delivery of the Plant and Material Security;
  - (3) the Contractor acknowledges and agrees that, from December 15, 2012 and thereafter, the Employer shall be under no obligation whatsoever to include any sums in any Interim Payment Certificate for, or make any payment in respect of, Plant and Materials unless and until the provisions of this Sub-Clause 14.5.3 and otherwise under the Contract relating to Plant and Material Security have been fully complied with by the Contractor in accordance with their terms; and
  - (4) the Contractor expressly agrees that in the event of any breach or violation of the terms of this Sub-Clause 14.5.3 by the Contractor, the Employer may at its absolute discretion deduct from any subsequent Interim Payment Certificate the full amount of any amount previously paid to the Contractor pursuant to the terms of Sub-Clause 14.5.1 and this Sub-Clause 14.5.3.
9. The Parties agree to amend Sub-Clause 14.2H(c) of the Contract by deleting the words "No later than 20 days after receipt by the Contractor of the amount of the Advance Payment for Lock Gates made by the Employer" and inserting the words "No later than **September 30, 2013**".
  10. The Parties acknowledge and agree that the remainder of Sub-Clause 14.2H [*Advance Payment for Lock Gates*] shall continue to apply in full and without amendment.
  11. The Parties agree to correct a typographical error in the Contract by amending Sub-Clause 14.5.1 to insert a return after the " ," in Sub-Clause 14.5.1(b) so that the provision therein is set forth as a standalone clause in such provision.
  12. The Contractor hereby covenants and agrees to provide written confirmation no later than sixty days following the date of execution of this Variation Agreement No. 080 by Zurich American Insurance Company to the Employer as beneficiary under

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the Acceptable Zurich P&M Bond, that such bond secures and guarantees the advance payments made by the Employer in respect of the Plant and Materials described in each of Sub-Clause 14.5.3(d)(1) and 14.5.3(d)(2). (as each such Sub-Clause is included in the Contract pursuant to Clause 8 of this Variation Agreement No. 080).

In Witness whereof the Parties hereto have caused this Variation Agreement No. 080 to the Contract to be executed on the 13<sup>th</sup> day of September 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

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