

PANAMA CANAL AUTHORITY	VARIATION	PAGE 1 OF 8
1. REQUEST FOR PROPOSAL No.: RFP-76161	2. CONTRACT No.: CMC-221427	3. DATE: October 24, 2013
		4. VARIATION No.: 082

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".

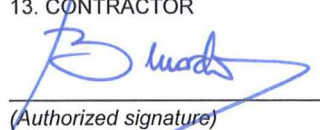
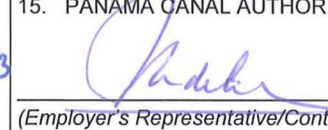
YES. NO. The contractor shall send a copy, duly signed, of this Variation to the Employer's Representative/Contracting Officer.

	9 A. THIS VARIATION IS EXECUTED ON THE BASIS OF: <i>(Specify the legal authority)</i> . 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: <i>(Specify the legal authority)</i> Volume III, Conditions of Contract, Sub-Clause 1.16 [Entire Agreement], 4th Paragraph
	9 D. OTHER. <i>(Specify manner and the legal authority)</i> .
	9 E. ACCOUNT NUMBER <i>(If required)</i> :

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 <i>(Type or print)</i> Bernardo Gonzalez Contractor's Representative	12. NAME AND TITLE OF THE EMPLOYER'S REPRESENTATIVE/CONTRACTING OFFICER <i>(Type or print)</i> Jorge de la Guardia, Employer's Representative
13. CONTRACTOR  (Authorized signature)	14. DATE: 24/10/2013
	15. PANAMA CANAL AUTHORITY  (Employer's Representative/Contracting Officer's signature)
	16. DATE: 24/X/2013

This Variation Agreement Number 082, is dated as of 24th day of October, 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 7, 2012, 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-1284 of June 19, 2012, GUPC-IAE-1545 of November 9, 2012, GUPC-IAE-1567 of November 26, 2013, GUPC-IAE-1617 of December 21, 2012, GUPC-IAE-1623 of December 28, 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;
 - (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-

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- 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; and
- (iv) requested in RFV No. 0204 dated August 13, 2013 that the date for submission of the certificates from the Acceptable Contractor Auditor pursuant to Sub-Clause 13.9.9 for CBLR Period 1 and CBLR Period 3 be extended to no later than October 4, 2013.
- (v) further requested in RFV No. 218 dated October 3, 2013, that the date for the submission of (i) the certificate from the Acceptable Contractor Auditor for the Contractor's combined labour utilization and cost report for CBLR Period 1 pursuant to Sub-Clause 13.9.9, and (ii) the additional information on particular findings in the Employer's audits carried out in the past periods, more specifically on the labour "Other incomes" concepts for CBLR Period 1, CBLR Period 2 and CBLR Period 3 to be provided by the Contractor pursuant to Sub-Clause 13.9.2, be extended to no later than November 4, 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, 067, 070, 071, 073, 075, 077 and 080) 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 responded through letter IAE-UPC-1731 dated October 21, 2013, indicating to the Contractor that the Employer will permit the extension of time up to **November 4, 2013** to submit (i) the certificate from the Acceptable Contractor Auditor for the Contractor's combined labour utilization and cost report for CBLR Period 1, and (ii) the additional information on particular findings in the Employer's audits carried out in the past periods, more specifically on the labor "Other incomes" concepts for CBLR Period 1, CBLR Period 2 and CBLR Period 3 to be provided by the Contractor pursuant to Sub-Clause 13.9.2, but subject always to the parties agreeing a formal variation to reflect such revised arrangements.
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(e) 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 Contractor has also failed to submit to the Employer a certificate from an Acceptable Contractor Auditor pursuant to Sub-Clause 13.9.9 in support of its application in Application for Payment No. 55 for the LLCA applicable to CBLR Period 1 and CBLR Period 3 within 48 days of the letter from KPMG to the Contractor dated June 20, 2013;
- (iii) the Contractor has also failed to submit to the Employer a certificate from an Acceptable Contractor Auditor pursuant to Sub-Clause 13.9.9 in support of its application in Application for Payment No. 55 for the LLCA applicable to CBLR Period 1 by October 4, 2013 pursuant to the extension granted for the same in Variation Agreement No. 075;
- (iv) as a result of the Employer's latest audit findings, the Employer's Representative requires the Contractor to submit additional information regarding the labor "Other incomes" concepts, inclusive of sums and quantities of hours which should be reclassified as "salaries" for CBLR Period 1, CBLR Period 2 and CBLR Period 3;
- (v) the Employer will, however, agree to further extend the period within which the Contractor is obliged to provide the information listed in Sub-Clause 13.9.2(b) (as amended by Sub-Clause 13.9.9) in support of its application for the LLCA applicable to CBLR Period 1, to no later than November 4, 2013, in accordance with the letter from KPMG to the Contractor dated October 3, 2013 in which KPMG has confirmed that it expects to conclude the audit of CBLR Period 1 within such period;
- (vi) the Employer will also agree to extend the period within which the Contractor is obliged to submit the information set out in sub-paragraph (e)(iv) above and any other pending documentation required pursuant to Sub-Clause 13.9.2 for CBLR Period 1, CBLR Period 2 and CBLR Period 3 to no later than November 4, 2013; and
- (vii) 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 un-amended;

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

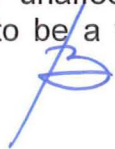


- (f) Therefore, subject to the terms of this Variation Agreement No. 082, and based upon the representations and statements made by the Contractor concerning its financial position and ability to obtain funding, in order to assist the cash flow of the Contractor and for no other reason, the Parties 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. 082, 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. 082 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. 082 or in any way argue or use the fact or the terms of this Variation Agreement No. 082 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. 082 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. 082 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. 082 is intended to be a waiver or relaxation of the Contractor's



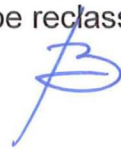
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obligations under the Contract, save only as expressly stated herein and the Contract shall remain fully effective as varied herein and the Contract shall have effect as though the provisions contained in this Variation Agreement No. 082 had been originally contained in the Contract. Any ambiguity or uncertainty in the meaning and effect of this Variation Agreement No. 082 shall be resolved in favour of the Employer.

6. This Variation Agreement No. 082 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-Clauses 13.9.9 and 13.9.12 [*Adjustment for Changes in Local Labor Rates*] of the Contract as follows:
 - (i) in the first sentence of Sub-Clause 13.9.9 replace the words "October 4, 2013" with "November 4, 2013"; and
 - (ii) in the first and second paragraphs of Sub-Clause 13.9.12, both beginning with the words "If the Contractor fails", replace the words "by a date no later than October 4, 2013" with "by a date no later than November 4, 2013".
8. The Parties agree to add a new Sub-Clause 13.9.9A [*Adjustment for Changes in Local Labor Rates*] after Sub-Clause 13.9.9 as follows:

"13.9.9A Notwithstanding the provisions of Sub-Clause 13.9.2, for each of CBLR Period 1, CBLR Period 2 and CBLR Period 3, the Employer shall grant to the Contractor an extension of the time in which to submit to the Employer's Representative for review the information required pursuant to Sub-Clause 13.9.2 regarding the labor "Other incomes" concepts, inclusive of sums and quantities of hours which should be reclassified as "salaries" to no later than November 4, 2013. Subject to Sub-Clauses 13.9.10 to 13.9.14, Sub-Clauses 13.9.1 to 13.9.8 shall continue to apply unamended to the determination of the LLCA for CBLR Period 1, CBLR Period 2 and CBLR Period 3 in all other respects."
9. The Parties agree to amend Sub-Clauses 13.9.13 and 13.9.14 [*Adjustment for Changes in Local Labor Rates*] of the Contract as follows:
 - (i) in the first sentence of Sub-Clause 13.9.13 insert the word "provisionally" before the words "determined in response";
 - (ii) in the third line of Sub-Clause 13.9.14 after the words "Consorcio Borinquen," insert the words "and the information required pursuant to Sub-Clause 13.9.9A regarding the labor "Other incomes" concepts, inclusive of sums and quantities of hours which should be reclassified as "salaries","; and



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- (iii) in the fourth line of Sub-Clause 13.9.14 delete the words "for the Labor Costs paid by the Contractor to Consorcio Borinquen for this period" until the end of the clause and replace with the following:

". If following verification and determination as aforesaid in respect of CBLR Period 2 the LLCA payable by the Employer to the Contractor for CBLR Period 2:

- (a) exceeds the amount provisionally paid by the Employer to the Contractor as provided for in Sub-Clause 13.9.13 then the Employer shall pay the balance of the LLCA for CBLR Period 2 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 13.9.13, then the Employer may:
 - (i) deduct the amount paid in excess of the LLCA for CBLR Period 2 in the next Interim Payment Certificate; and/or
 - (ii) require payment of the amount paid in excess of the LLCA for CBLR Period 2 (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 13.9.14."

10. 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. 082 to the Contract to be executed on the 24th day of October 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
