

PANAMA CANAL AUTHORITY	VARIATION	PAGE 1 OF 5
1. REQUEST FOR PROPOSAL No.: RFP-76161	2. CONTRACT No.: CMC-221427	3. DATE: October 30, 2013
		4. VARIATION No.: 083

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:


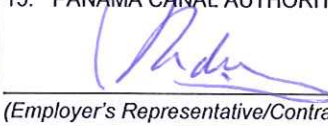
The contract referred to in item No. 2 is hereby varied as set forth in item 10, entitled "DESCRIPTION OF VARIATION".
YES. NO. The contractor shall send a copy, duly signed, of this Variation to the Employer's Representative/Contracting Officer.

	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], 4 th 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: 30/10/2013
	15. PANAMA CANAL AUTHORITY  (Employer's Representative/Contracting Officer's signature)
	16. DATE: 30/X/2013

This Variation Agreement Number 083, is dated as of 30th 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) 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 1.09 R.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 electrical systems materials including grounding (as specified in Section 26 05 26 [*Grounding and Bonding for Electrical Systems*]), medium voltage equipment (as specified in Sections 26 13 00 [*Medium Voltage Switchgear*], 26 05 13 [*Medium Voltage Cables*], and 26 12 19 [*Pad Mounted Liquid Filled Medium Voltage Transformer*]), dry type transformers (as specified in Section 26 22 00 [*Dry Type Transformers*]), direct current equipment (as specified in Section 26 33 00 [*Direct Current Equipment*]), outdoor lighting and indoor lighting (as specified in Section 26 50 00 [*Lighting Systems*]), and electrical and control cabling system, cable trays and lightning systems (as specified in Sections 26 20 00 [*Electrical Low Voltage Distribution Work*], 26 24 19 [*Motor Control Centers*], 26 29 23 [*Variable Frequency Drive*], 26 41 16 [*Lightning Prevention and Dissipation Systems*], and 26 05 43 [*Underground Ducts and Raceways for Electrical Systems*]) that are to be used as part of the electrical systems (as specified in Section 01 81 29 [*Electrical and Lighting System*]) would be made only when the items were installed in the Works.
- (d) The Contractor:

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- (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, 2012, 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 RFV No. 0195 dated June 26, 2013 that the Contract and Current Programme be varied so as to permit interim payments for the delivery, installation, commissioning and ACP training of Electrical Systems, Plant Mechanical Systems and Equipment, Instrumentation and Control Systems, and Bridgeways, in accordance with Appendix 1 to Variation Agreement No. 077;
 - (iii) agreed with the Employer, however, that the Contract and Current Programme shall only be varied so as to permit interim payments for the delivery, installation, commissioning and ACP training in relation to Electrical Systems, as set out at Appendix 1 to Variation Agreement No. 077; and
 - (iv) requested in RFV No. 0216 dated September 30, 2013 that the period for performing an audit of the amounts paid by the Contractor to any of its suppliers in relation to Electrical Systems Materials as set out in Clause 9 of Variation Agreement No. 077 is extended to 75 days after any Interim Payment Certificate relating to the Electrical Systems Materials has been paid to the Contractor.
- (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 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, 080 and 081) 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-1732 dated October 21, 2013, indicating to the Contractor that the Employer will permit the request made pursuant to RFV No. 0216 as described in sub-paragraph d(iv) above, subject to the parties agreeing a formal variation to reflect such revised arrangements.
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- (g) Therefore, subject to the terms of this Variation Agreement No. 083, 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. 083, 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. 083 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. 083 or in any way argue or use the fact or the terms of this Variation Agreement No. 083 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. 083 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. 083 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. 083 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. 083 had been originally contained in the Contract. Any ambiguity or uncertainty in the



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meaning and effect of this Variation Agreement No. 083 shall be resolved in favour of the Employer.

6. This Variation Agreement No. 083 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. 083" means Variation Agreement Number 083, dated 30 of October, 2013 between the Employer and the Contractor."
8. The Parties hereby agree to amend Variation Agreement No. 077 as follows:
 - (a) In Clause 9, in the third line delete "45" and replace with "75"; and
 - (b) In Clause 10, in the second line delete "45" and replace with "75".
9. Nothing in this Variation Agreement No. 083 is intended to or does give the Contractor any greater entitlement in respect of payment for Electrical Systems Materials than was included within the original Contract Price and thus nothing in this Variation Agreement No. 083 is intended to or does increase the Contract Price or the sum due to the Contractor in respect of Electrical Systems Materials.
10. 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. 083.

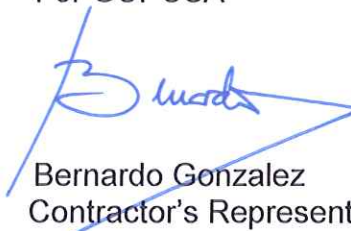
In Witness whereof the Parties hereto have caused this Variation Agreement No. 083 to the Contract to be executed on the 30th day of October of the year 2013 by their duly authorized representatives.

For ACP



Jorge de la Guardia
Employer's Representative

For GUPCSA



Bernardo Gonzalez
Contractor's Representative
