

PANAMA CANAL AUTHORITY	VARIATION	PAGE 1 OF 11
1. REQUEST FOR PROPOSAL No.:  RFP-76161	2. CONTRACT No.:  CMC-221427	3. DATE: January 3, 2014
		4. VARIATION No.: 086

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".

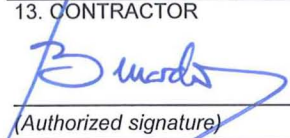

YES. NO. The contractor shall send a copy, duly signed, of this Variation to the Employer's Representative/Contracting Officer.

	9 A. THIS VARIATION IS EXECUTED ON THE BASIS OF: (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)  Bernardo Gonzalez Contractor's Representative	12. NAME AND TITLE OF THE EMPLOYER'S REPRESENTATIVE/CONTRACTING OFFICER (Type or print)  Cheryl P. George, Employer's Representative Delegee
13. CONTRACTOR   (Authorized signature)	14. DATE: 31/ENR/2014
	15. PANAMA CANAL AUTHORITY   (Employer's Representative/Contracting Officer's signature)
	16. DATE: 31/ENR/2014

**This Variation Agreement Number 086 is dated as of the 3rd day of January, 2014 and made**

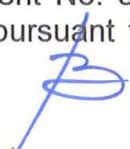
**Between:** Autoridad del Canal de Panama, Building 740, Corozal, Panama, Republic of Panama (hereinafter called the "**Employer**") on the one part,

**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-1303 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, IAE-GUPC-1441 of February 25, 2013 IAE-UPC-1587 of June 13, 2013, IAE-UPC-1595 of July 2, 2013, IAE-UPC-1651 of August 15, 2013, IAE-UPC-1704 of September 25, 2013, IAE-UPC-1748 of October 28, 2013, IAE-UPC-1760 of October 30, 2013, IAE-UPC-1787 of November 22, 2013, IAE-UPC-1794 of December 3, 2013, IAE-UPC-1795 of December 3, 2013, IAE-UPC-1811 of December 13, 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, GUPC-IAE-1755 of February 27, 2013, GUPC-IAE-1973 of June 13, 2013, GUPC-IAE-2099 of August 19, 2013, GUPC-IAE-2086 of August 22, 2013, GUPC-IAE-2210 of October 16, 2013, GUPC-IAE-2248 of November 8, 2013, GUPC-IAE-2252 of November 12, 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*





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- 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 that the Contract be varied so as to permit 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, in accordance to Variation Agreement No. 071;
  - (iv) submitted in letter GUPC-IAE-2296 dated December 11, 2013, the summarized payroll reports for the Contractor and its first-tier subcontractors, and submitted auditors' certificates, for the period from May 2013 to October 2013, for which the Contractor requested to the Employer to determine the Current Base Labor Rate ("CBLR") for Period 4 pursuant to Sub-Clause 13.9 [Adjustment for Changes in Local Labor Rates] of the Contract, and included the aggregate sum of USD 7,445,778.61 in Application for Payment No. 64.
  - (v) failed to submit with the letter set out in sub paragraph (b)(iv) above the following information in support of its application for Payment No. 64 for the LLCA applicable to CBLR Period 4:
    - (A) a certificate from an Acceptable Contractor Auditor pursuant to Sub-Clause 13.9.2(b);
    - (B) certified local payrolls that the Contractor and his first tier Subcontractors submit to the Panamanian Tax Authorities pursuant to Sub-Clause 13.9.2(c); and
    - (C) the Contractor's and his first tier Subcontractors' electronic internal payrolls required by the Employer in section C.1.d of its letter IAE-UPC-1492 dated April 9, 2013, pursuant to Sub-Clause 13.9.2(d);
  - (vi) requested verbally that the period for gathering and submitting the missing information required as set out in sub paragraph (b)(v) above, to enable the Contractor to submit to the Employer the documentation needed for the determination of CBLR Period 4, be extended to January 6, 2014.
- (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,



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059, 060, 063, 065, 066, 067, 070, 071, 073, 075, 077, 080, 081, 082, 083 and 085) 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 in letter IAE-UPC-1824 dated December 19, 2013, that:

- (i) the Contractor has failed to submit to the Employer the required information pursuant to Sub-Clauses 13.9.2(b), (c) and (d) in support of its Application for Payment No. 64 for the LLCA applicable to CBLR Period 4;
- (ii) the Employer will, however, agree to extend the period within which the Contractor is obliged to provide the information listed in Sub-Clauses 13.9.2(b), (c) and (d) in support of its application for the LLCA applicable to CBLR Period 4 to no later than **January 6, 2014**;
- (iii) notwithstanding this, in relation to CBLR Period 4, the Employer will provisionally determine the LLCA applicable to such period pursuant to Sub-Clause 13.9 [*Adjustment for Changes in Local Labor Rates*] and has agreed that following the date of this Variation Agreement No. 086 it will notify the Contractor of this provisional determination and, the Employer will make payment of this provisional amount to the Contractor in the next Interim Payment Certificate in accordance with and subject to the terms of this Variation Agreement No. 086;
- (iv) if the Contractor fails to provide in full the information required pursuant to Sub-Clause 13.9.2 in support of its application in Application for Payment No.64 for the LLCA for CBLR Period 4 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) in all other respects and for all successive periods after CBLR Period 4, 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) As a condition to the Employer permitting the requests as referred to in sub-paragraph (b)(vi) above the Contractor has agreed to provide the VO No. 086 Bond Issuer Confirmation in the form set out in Appendix 1 to this Variation Agreement No. 086.
- (f) Therefore, subject to the terms of this Variation Agreement No. 086, 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





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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. 086, 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. 086 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. 086 or in any way argue or use the fact or the terms of this Variation Agreement No. 086 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. 086 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. 086 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. 086 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. 086 had been originally contained in the Contract. Any ambiguity or uncertainty in the meaning and effect of this Variation Agreement No. 086 shall be resolved in favour of the Employer.



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6. This Variation Agreement No. 086 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 4"** means the period from 1 May 2013 to 31 October 2013 inclusive, which is the fourth 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*].

**"Variation Agreement No. 086"** means Variation Agreement Number 086, dated 3<sup>rd</sup> of January of 2014 between the Employer and the Contractor.


**"VO No. 086 Bond Issuer Confirmation"** has the meaning set out in paragraph 10 of Variation Agreement No. 086.

8. Subject to the prior satisfaction by the Contractor of the condition set out at paragraph 10 of this Variation Agreement No. 086, failing which the amendments set out in this paragraph 8 shall be of no effect and void, the Parties agree to add new Sub-Clauses 13.9.15 to 13.9.18 [*Adjustment for Changes in Local Labor Rates*] to the Contract as follows:

13.9.15 Notwithstanding the provisions of Sub-Clause 13.9.2, for CBLR Period 4 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:

- (a) a certificate from an Acceptable Contractor Auditor pursuant to Sub-Clause 13.9.2(b);
- (b) certified local payrolls that the Contractor and his first tier Subcontractors submit to the Panamanian Tax Authorities pursuant to Sub-Clause 13.9.2(c); and
- (c) the Contractor's and his first tier Subcontractors' electronic internal payrolls required by the Employer in section C.1.d of its letter IAE-UPC-1492 dated April 9, 2013, pursuant to Sub-Clause 13.9.2(d),

to no later than **January 6, 2014**. Subject to Sub-Clauses 13.9.16 to 13.9.18, Sub-Clauses 13.9.1 to 13.9.8 shall continue to apply unamended to the determination of the LLCA for CBLR Period 4 in all other respects.





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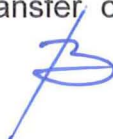
- 13.9.16 For CBLR Period 4, following the date of Variation Agreement No. 086 the Employer's Representative will provisionally determine in response to the Contractor's Application for Payment No. 64 in the next Interim Payment Certificate after the date of this Variation Agreement No. 086 an adjustment pursuant to Sub-Clause 13.9 [*Adjustment for Changes Local Labor Rates*] for CBLR Period 4 and the amount of such provisional adjustment shall be notified to the Contractor in writing by the Employer.

Notwithstanding this provisional payment, the Employer's Representative shall verify the determination of the LLCA payable to the Contractor for CBLR Period 4 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 the documentation required pursuant to Sub-Clause 13.9.2 (including that referred to in Sub-Clause 13.9.15).

- 13.9.17 Upon receipt by the Employer in full in a manageable electronic format of the documentation required pursuant to Sub-Clause 13.9.2 (including that referred to in Sub-Clause 13.9.15) the Employer's Representative shall verify and determine the full LLCA payable by the Employer to the Contractor for CBLR Period 4.

If following verification and determination as aforesaid in respect of CBLR Period 4 the LLCA payable by the Employer to the Contractor for CBLR Period 4:

- (a) exceeds the amount provisionally paid by the Employer to the Contractor as provided for in Sub-Clause 13.9.16 then the Employer shall pay the balance of the LLCA for CBLR Period 4 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 13.9.16, then the Employer may:
  - (i) deduct the amount paid in excess of the LLCA for CBLR Period 4 in the next Interim Payment Certificate; and/or
  - (ii) require payment of the amount paid in excess of the LLCA for CBLR Period 4 (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



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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 13.9.17.

13.9.18 If the Contractor fails to provide in full the documentation required for CBLR Period 4 pursuant to Sub-Clause 13.9.2 (including that referred to in Sub-Clause 13.9.15) by a date no later than January 6, 2014 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 13.9.16 for CBLR Period 4 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 13.9.16 for CBLR Period 4 (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.

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 13.9.18.

- 9. The Parties acknowledge and agree that Sub-Clauses 13.9.1 to 13.9.14 [*Adjustment for Changes in Local Labor Rates*] shall continue to apply in full and without amendment and Sub-Clauses 13.9.15 to 13.9.18 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 4.
  - 10. The Parties agree that the amendment of the Contract and the Employer's agreement to the Contractor requests as set out in and in accordance with paragraph 8 of this Variation Agreement No. 086 is subject to the Contractor delivering to the Employer prior to the execution of this Variation Agreement No. 086 written confirmation (or rider, amendment or modification, as applicable), in the form set out in Appendix 1 to Variation Agreement No. 086 and otherwise acceptable to the Employer, from each of (i) the issuer of the Performance Bond, (ii) the issuer of the Payment Bond and (iii) the issuer of the Plant and Material Security, in each case consenting to the relevant advance payment or payment
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modification, as applicable, of such Variation Agreement and as to the continuing validity of such bonds notwithstanding the modifications to the Contract set out at paragraph 8 of this Variation Agreement No. 086 (the "**VO No. 086 Bond Issuer Confirmation**") failing which such amendments set out in paragraph 8 shall be of no effect and void.

11. The Contractor hereby expressly agrees that nothing in this Variation Agreement No. 086, including the amendments provided in paragraph 8 of this Variation Agreement No. 086 (should such amendments become effective in accordance with the terms set forth herein), shall have any effect on the Employer's rights under the Contract in respect of the Advance Payment for Mobilisation Security or the Advance Payment for Plant Security, or the terms and conditions of any such Contractor Security LOC.
12. The Contractor shall from time to time (at its own cost) do, perform, sign, execute and deliver all such acts, deeds, documents and things (or procure the doing, performance, signing, execution or delivery of them) as the Employer shall from time to time require to give full effect to this Variation Agreement No. 086 and secure to the Employer the full benefit of the rights, powers and remedies conferred upon it in this Variation Agreement No. 086.

**In Witness whereof** the Parties hereto have caused this Variation Agreement No. 086 to be executed on the 3<sup>rd</sup> day of January, 2014, by their duly authorized representatives.

For ACP



Cheryl P. George  
Employer's Representative Delegee

For GUPCSA



Bernardo Gonzalez  
Contractor's Representative

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Appendix 1

**VO No. 086 Bond Issuer Confirmation**

[Letterhead of Zurich]

\_\_\_\_\_, 2014

Autoridad del Canal de Panama  
Building 740, Corozal West  
Panama, Republica of Panama

Reference: Contract No. CMC-221427, Design and Construction of the Third Set of Locks,  
Panama Canal

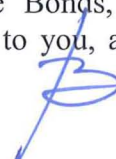
Confirmation regarding Variation Agreement No. 086

Dear Sirs:

We refer to (i) the Design and Build Contract for the Third Set of Locks on the Panama Canal (as amended, modified, varied or supplemented, the "Contract") tendered under RFP #7616 between you, as owner and Employer thereunder (the "Owner") and Grupo Unidos por el Canal, S.A., as contractor (the "Contractor"); (ii) the performance bond, Bond no. 08960193, dated August 7, 2009, in an amount of USD 400,000,000.00, issued in the Owner's favor in respect of the Contract (as amended, supplemented or otherwise modified from time to time, the "Performance Bond"); (iii) the payment bond, Bond no. 08960194, dated August 7, 2009, in an amount of USD 50,000,000.00, issued in the Owner's favor in respect of the Contract (as amended, supplemented or otherwise modified from time to time, the "Payment Bond"); and (iv) the advance payment bond in respect of Plant and Material Security, Bond no. 09098907, dated December 20, 2012, in an amount of USD 150,000,000.00, issued in the Owner's favor in respect of the Contract (as amended, supplemented or otherwise modified from time to time, the "P&M Bond" and, together with the Performance Bond and the Payment Bond, the "Bonds"). Unless otherwise specified, capitalized terms used herein have the respective meanings specified in the Contract.

We have been provided with a copy of Variation Agreement No. 086, dated \_\_\_\_\_ ("Variation Agreement No. 086") to the Contract, executed by the Owner and the Contractor, which provides for an extension of the period for the Contractor to submit the required documentary support for its Application for Payment No. 64 for a Local Labor Cost Adjustment applicable to Current Base Labor Rate Period 4 and the payment modification in connection therewith.

The undersigned, as Surety under and as defined in the Bonds, hereby consents to the aforementioned modifications to the Contract and confirms to you, as Owner and beneficiary





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under the Bonds, the continued validity of the Bonds in the respective amounts originally stated therein, notwithstanding the modifications set forth in Variation Agreement No. 086.

Nothing in this confirmation letter is intended to or shall waive, alter, amend or otherwise affect any of the terms or conditions of the Bonds, other than as stated herein.

ZURICH AMERICAN INSURANCE COMPANY,  
as Surety under the Bonds

By: \_\_\_\_\_  
Name:  
Title:

ACCEPTED:

AUTORIDAD DEL CANAL DE PANAMA,  
as Owner under the Contract and beneficiary under the Bonds referred to above

By: \_\_\_\_\_  
Name:  
Title:

