

088PANAMA CANAL AUTHORITY	VARIATION	PAGE 1 OF 10
1. REQUEST FOR PROPOSAL No.: RFP-76161	2. CONTRACT No.: CMC-221427	3. DATE: January 23, 2014
		4. VARIATION No.: 088

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], 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)

Bernardo Gonzalez
Contractor's Representative

12. NAME AND TITLE OF THE EMPLOYER'S REPRESENTATIVE/CONTRACTING OFFICER (Type or print)

Jorge de la Guardia, Employer's Representative

13. CONTRACTOR

14. DATE:

15. PANAMA CANAL AUTHORITY

16. DATE:

(Authorized signature)

(Employer's Representative/Contracting Officer's signature)

23/01/2014

23/I/2014

This Variation Agreement Number 088, is dated as of the 23rd 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, 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.
- (c) Pursuant to Variation Agreement No. 059 dated February 14, 2013, the Employer granted temporary deferrals of the repayment of the Advance Payment for Mobilisation, the Advance Payment for Plant and the Advance Payment for Key Suppliers subject to the terms set out therein. Variation Agreement No. 059 required the Contractor to provide the Further APM Security Amendment and the APP Security Amendments to the Employer no later than June 30, 2013, failing

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which repayments of the Advance Payment for Mobilisation and the Advance Payment for Plant would recommence by way of equal instalment deductions from the Payment Certificate of June 2013 issued in July 2013 and would continue up to and including the Payment Certificate of November 2013 issued in December 2013 (in respect of the Advance Payment for Mobilisation) and up to and including the Payment Certificate of January 2014 issued in February 2014 (in respect of the Advance Payment for Plant).

- (d) Pursuant to Variation Agreement No. 065 dated June 24, 2013, the Employer granted further temporary deferrals of the repayment of the Advance Payment for Mobilisation, the Advance Payment for Plant and the Advance Payment for Key Suppliers subject to the terms set out therein. Variation Agreement No. 065 extended the date by which the Contractor was to provide the Further APM Security Amendment and the APP Security Amendments to the Employer to no later than November 30, 2013, failing which repayments of the Advance Payment for Mobilisation and the Advance Payment for Plant would recommence by way of equal instalment deductions from the Payment Certificate of November 2013 issued in December 2013 and would continue up to and including the Payment Certificate of December 2013 issued in January 2014 (in respect of the Advance Payment for Mobilisation) and up to and including the Payment Certificate of February 2014 issued in March 2014 (in respect of the Advance Payment for Plant).
- (e) Pursuant to Variation Agreement No. 085 dated December 20, 2013, the Employer granted a further extension to the date by which the Contractor was to provide the Further APM Security Amendment and the APP Security Amendments to the Employer to no later than December 31, 2013, failing which:
 - (i) repayment of the Advance Payment for Mobilisation, including the Deferred Repayments and Late Repayment, would be made by way of the deduction of the full amount of the Advance Payment for Mobilisation, including the Deferred Repayments and Late Repayment, from the Payment Certificate of December 2013 issued in January 2014, in accordance with the provisions of sub-paragraph (dd) of Sub-Clause 14.2A [*Advance Payment for Mobilisation*]; and
 - (ii) repayment of the Advance Payment for Plant, including the Deferred Repayments for Plant, would recommence by way of equal instalment deductions beginning with the Payment Certificate of December 2013 issued in January 2014 continuing up to and including the Payment Certificate of February 2014 issued in March 2014, in accordance with the provisions of sub-paragraph (x) of Sub-Clause 14.2B [*Advance Payment for Plant*].
- (f) The Contractor has failed to provide:
 - (i) the Further APM Security Amendment, which extends the Advance Payment for Mobilisation Security for a recurring period of not less than one year in

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accordance with the third paragraph of Sub-Clause 14.2A [*Advance Payment for Mobilisation*]; and

- (ii) the APP Security Amendments, which extend the Advance Payment for Plant Security for a recurring period of not less than one year in accordance with the fourth paragraph of Sub-Clause 14.2B [*Advance Payment for Plant*];

by December 31, 2013, as required pursuant to sub-paragraph (z) of Sub-Clause 14.2A [*Advance Payment for Mobilisation*] and sub-paragraph (t) of Sub-Clause 14.2B [*Advance Payment for Plant*] of the Contract.

- (g) 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 the modifications contained herein (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, 081, 082, 083, 084, 085 and 086 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.

- (h) Further to letter IAE-UPC-1867, dated January 21, 2014, the Employer has determined, for the reasons stated therein and in its discretion, to permit the Contractor to submit to the Employer:

- (i) the Further APM Security Amendment in the form of an extension of the Advance Payment for Mobilisation Security for such security to expire no earlier than **October 20, 2014**, which period is less than the one (1)-year extension period prescribed by the third paragraph of Sub-Clause 14.2A [*Advance Payment for Mobilisation*]; and
- (ii) the APP Security Amendments in the form of an extension of the Advance Payment for Plant Security for such security to expire no earlier than **October 20, 2014**, which period is less than the one (1)-year extension period prescribed by the fourth paragraph of Sub-Clause 14.2B [*Advance Payment for Plant*];

by no later than January 23, 2014, subject always to the Parties agreeing a formal variation to reflect such revised arrangements.

- (j) As a condition to the Employer agreeing to the terms of this Variation Agreement No. 088, the Contractor has agreed to provide the VO No. 088 Bond Issuer Confirmation in the form set out in Appendix 1 to this Variation Agreement No. 088.

- (k) Therefore, subject to the terms of this Variation Agreement No. 088, and based upon the representations and statements made by the Contractor concerning its




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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. 088, 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. 088 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. 088 or in any way argue or use the fact or the terms of this Variation Agreement No. 088 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. 088 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. 088 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. 088 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. 088 had been originally contained in the Contract. Any ambiguity or uncertainty in the meaning and effect of this Variation Agreement No. 088 shall be resolved in favour of the Employer.
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6. This Variation Agreement No. 088 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):

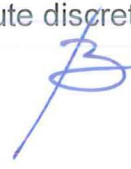
"Variation Agreement No. 088" means Variation Agreement Number 088, dated 21 of January, 2014, between the Employer and the Contractor.

"VO No. 088 Bond Issuer Confirmation" has the meaning set out in paragraph 10 of Variation Agreement No. 088.

8. Subject to the prior satisfaction by the Contractor of the conditions set out at paragraph 10 of this Variation Agreement No. 088, failing which the waivers set out in this paragraph 8 shall be of no effect and void, the Parties agree that:

(a) the requirement in the third paragraph of Sub-Clause 14.2A [*Advance Payment for Mobilisation*] that the Contractor shall, not later than 30 days prior to the specified expiry date of the Advance Payment for Mobilisation Security, extend the validity of such security for a period not less than one year shall be waived in this single instance in order to permit the Contractor to instead provide an extension of the Advance Payment for Mobilisation Security for such security to expire no earlier than **October 20, 2014** in a form acceptable to the Employer in its sole and absolute discretion by no later than January 23, 2014; and

(b) the requirement in the fourth paragraph of Sub-Clause 14.2B [*Advance Payment for Plant*] that the Contractor shall, not later than 30 days prior to the specified expiry date of the Advance Payment for Plant Security, extend the validity of such security for a period not less than one year shall be waived in this single instance in order to permit the Contractor to instead provide an extension of the Advance Payment for Plant Security for such security to expire no earlier than **October 20, 2014** in a form acceptable to the Employer in its sole and absolute discretion by no later than January 23, 2014;



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provided that the terms of the Contract relating to the Advance Payment for Mobilisation Security in Sub-Clause 14.2A and the Advance Payment for Plant Security in Sub-Clause 14.2B shall otherwise apply to such Contractor Security LOC, including without limitation the requirement to extend such Contractor Security LOC for the duration and by the time required in Sub-Clause 14.2A [*Advance Payment for Mobilisation*] or Sub-Clause 14.2B [*Advance Payment for Plant*], as applicable.

9. Subject to:

- (i) the prior satisfaction by the Contractor of the conditions set out at paragraph 10 of this Variation Agreement No. 088; and
- (ii) the delivery of the Further APM Security Amendment and the APP Security Amendments in the form of extensions of each of the Advance Payment for Mobilisation Security and the Advance Payment for Plant Security in accordance with paragraph 8 above,

failing which the modifications set out in this paragraph 9 shall be of no effect and void, the Employer acknowledges and agrees that:

- (a) the repayment conditions set forth in sub-paragraph (dd) of Sub-Clause 14.2A [*Advance Payment for Mobilisation*] and sub-paragraph (x) of Sub-Clause 14.2B [*Advance Payment for Plant*] shall not apply; and
- (b) the reference to "December 31, 2013" in each of sub-paragraphs (z) and (dd) of Sub-Clause 14.2A [*Advance Payment for Mobilisation*] and sub-paragraphs (t) and (x) of Sub-Clause 14.2B [*Advance Payment for Plant*] shall be replaced with "January 23, 2014".

10. The Parties agree that the modifications to the Contract and the permissions determined by the Employer as set out in and in accordance with paragraphs 8 and 9 of this Variation Agreement No. 088, are subject to the Contractor delivering to the Employer on the date of execution of this Variation Agreement No. 088:

- (a) written confirmation, in the form set out in Appendix 1 to this Variation Agreement No. 088 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 terms of this Variation Agreement No. 088 and as to the continuing validity of such bonds notwithstanding the modifications to the Contract made pursuant to the terms of this Variation Agreement No. 088 (the "**VO No. 088 Bond Issuer Confirmation**");
- (b) the provision by the issuer of each of the Advance Payment for Mobilisation Security and the Advance Payment for Plant Security of a power of attorney registered at the appropriate public registry for each signatory of the



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extensions referred to in paragraph 8 of this Variation Agreement No. 088;
and

- (c) the provision by the issuer of the Advance Payment for Mobilisation Security of an amendment to such security setting forth the correct address of the issuer for purposes of drawing under such security;

failing which such modifications set out in paragraphs 8 and 9 shall be of no effect and void.

- 11. The Contractor hereby expressly agrees that nothing in this Variation Agreement No. 088, including the modifications provided in paragraphs 8 and 9 of this Variation Agreement No. 088 (should such modifications 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. 088 and secure to the Employer the full benefit of the rights, powers and remedies conferred upon it in this Variation Agreement No. 088.

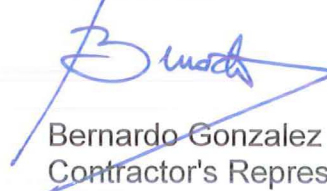
In Witness whereof the Parties hereto have caused this Variation Agreement No. 088 to be executed on the 23rd day of January 2014, by their duly authorized representatives.

For ACP



Jorge de la Guardia
Employer's Representative

For GUPCSA



Bernardo Gonzalez
Contractor's Representative

Appendix 1

VO No. 088 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. 088

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 #76161 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. 088, dated January 21, 2014 ("Variation Agreement No. 088") to the Contract, executed by the Owner and the Contractor, which waives the one (1)-year extension requirement of the Advance Payment for Mobilisation Security and the Advance Payment for Plant Security in order to permit the Contractor to instead deliver an extension of such securities to expire no earlier than **October 20, 2014** (in the case of the Advance Payment for Mobilisation Security) and no earlier than **October 20, 2014** (in the case of the Advance Payment for Plant Security) and provides for certain modifications to the terms of the Contract related thereto.



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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 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. 088.

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: _____

