

PANAMA CANAL AUTHORITY	VARIATION	PAGE 1 OF 8
1. REQUEST FOR PROPOSAL No.: RFP-76161	2. CONTRACT No.: CMC-221427	3. DATE: January 27, 2014
		4. VARIATION No.: 089

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 th 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  (Authorized signature)	14. DATE: 27/01/2014
	15. PANAMA CANAL AUTHORITY  (Employer's Representative/Contracting Officer's signature)
	16. DATE: 27/I/2014

This Variation Agreement Number 089, is dated as of the 27th 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 organised 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 the 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 Sub-Clause 14.5.1.7 [*Plant and Materials Intended for the Works*], the Contractor is entitled to be paid progress payments in respect of Electrical Systems Materials, as set out in Appendix 1 of Variation Agreement No. 077 dated August 22, 2013, and the Contractor is obliged to provide the information set out in



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Clause 9 of Variation Agreement No. 077 to the Employer within the time period set out therein as amended by Variation Agreement No. 083 dated October 30, 2013 and Variation Agreement No. 085 dated December 20, 2013.

- (d) The Contractor has requested in the letter GUPC-IAE-2337 of January 07, 2014 that in respect of Interim Payment Certificate No.59 dated August 23, 2013 the period within which the Contractor is obliged to provide to the Employer the information set out in Clause 9 of Variation Agreement No. 077 as amended by Variation Agreement No. 083 and Variation Agreement No. 085 is further extended to 165 days after Interim Payment Certificate No.59 dated August 23, 2013 has been paid to the Contractor.
- (e) In reliance on the Contractor's representations and assertions regarding its financial condition and cash flow difficulties, which the Parties agree that the Employer is not able to independently verify and in consideration of the Contractor's compliance with the terms of Variation Agreement No. 089, the Employer considers that unless it agrees to an extension of the time period within which the Contractor is obliged to provide to the Employer the information set out in Clause 9 of Variation Agreement No. 077 as amended by Variation Agreement No. 083 and Variation Agreement No. 085, 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, 069, 070, 071, 073, 075, 077, 080, 081, 082, 083, 085, 086, 087 and 88 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-1875, dated January 27, 2014, indicating to the Contractor that the Employer will permit the request made in the letter GUPC-IAE-2337 of January 07, 2014 as described in sub-paragraph (d) above in respect of a further extension of the period within which the Contractor is obliged to provide to the Employer the information set out in Clause 9 of Variation Agreement No. 077 as amended by Variation Agreement No. 083 and Variation Agreement No. 085, subject to certain conditions and subject to the parties agreeing a formal variation to reflect such revised arrangements.
- (g) As a condition to the Employer permitting the request as referred to in sub-paragraph (f) above the Contractor has agreed to provide the VO No. 089 Bond Issuer Confirmation in the form set out in Appendix 1 to this Variation Agreement No. 089.
- (h) Therefore, subject to the terms of this Variation Agreement No. 089, 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. 089, 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. It is agreed that this Variation Agreement No. 089 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. 089 or in any way argue or use the fact or the terms of this Variation Agreement No. 089 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. 089 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. 089 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. 089 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. 089 had been originally contained in the Contract. Any ambiguity or uncertainty in the meaning and effect of this Variation Agreement No. 089 shall be resolved in favour of the Employer.



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6. This Variation Agreement No. 089 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 1.1.6 [*Other Definitions*] of the Contract (which shall be added in proper alphabetical order but without any number):

"Variation Agreement No. 089 " means Variation Agreement Number 089, dated January 27, 2014 between the Employer and the Contractor.

"VO No. 089 Bond Issuer Confirmation" has the meaning set out in paragraph 13 of Variation Agreement No. 089.

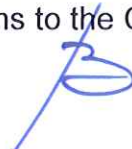
8. Subject to the prior satisfaction by the Contractor of the condition set out at paragraph 10 of this Variation Agreement No. 089, failing which the amendments set out in this paragraph 8 shall be of no effect and void, the Parties hereby agree to amend Variation Agreement No. 077, as amended by Variation Agreement No. 083 and Variation Agreement No. 085, as follows:

(a) In Clause 9, after the words "save in respect of Interim Payment Certificate No.59 dated August 23, 2013 where the Employer shall perform such audit" delete "135" and insert "165"; and

(b) In Clause 10, after the words "save in respect of Interim Payment Certificate No.59 dated August 23, 2013 where such period shall be" delete "135" and insert "165".

9. Nothing in this Variation Agreement No. 089 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. 089 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 agree that the amendment of the Contract and the Employer's agreement to the Contractor's request as set out in and in accordance with paragraph 8 of this Variation Agreement No. 089 is subject to the Contractor delivering to the Employer on or before **January 29, 2014** written confirmation (or rider, amendment or modification, as applicable), in the form set out in Appendix 1 to Variation Agreement No. 089 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 such Variation Agreement and as to the continuing validity of such bonds notwithstanding the modifications to the Contract regarding the modifications to the



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Contract related to the period for provision of documentary proof of payment to suppliers of Electrical Systems Materials made pursuant to the terms of Variation Agreement No. 089 (the "**VO No. 089 Bond Issuer Confirmation**") failing which the amendments set out in such paragraph 8 shall be of no effect and void.

11. 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. 089 and secure to the Employer the full benefit of the rights, powers and remedies conferred upon it in this Variation Agreement No. 089.

In Witness whereof the Parties hereto have caused this Variation Agreement No. 089 to be executed on the 27th day of January of the year 2014 by their duly authorized representatives.

For ACP



Jorge de la Guardia
Employer's Representative

For GUPCSA



Bernardo Gonzalez
Contractor's Representative

Appendix 1

[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. 089

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. 089, dated January 27, 2014 ("Variation Agreement No. 089") to the Contract, executed by the Owner and the Contractor, which provides for certain modifications to the Contract related to the period for provision of documentary proof of payment to suppliers of Electrical Systems Materials.



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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. 089.

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:

