

<b>PANAMA CANAL AUTHORITY</b>	<b>VARIATION</b>	<b>PAGE 1 OF 6</b>
1. REQUEST FOR PROPOSAL No.:  RFP-76161	2. CONTRACT No.:  CMC-221427	3. DATE: March 20, 2014
		4. VARIATION No.: 092

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:

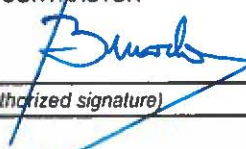

- ☒ The contract referred to in item No. 2 is hereby varied as set forth in item 10, entitled "DESCRIPTION OF VARIATION".
- ☒ YES. ☐ NO. The contractor shall send a copy, duly signed, of this Variation to the Employer's Representative/Contracting Officer.

	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].
	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: 20/MAR/2014
	15. PANAMA CANAL AUTHORITY   (Employer's Representative/Contracting Officer's signature)
	16. DATE: 20/MAR/2014

**This Variation Agreement Number 092, is dated as of the 20<sup>th</sup> day of March 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) Pursuant to Variation Agreement No. 090 dated 13 March 2014, the Parties had agreed that, as a precondition to the payment by the Employer to the Contractor of any amount of the Advance Payment for Specified Expenditures, the Contractor shall provide to the Employer, amongst other things, the Amendment to Advance Payment Parent Company Guarantee and the Amendment to Advance Payment Joint and Several Guarantee, each duly executed by the parties thereto, in the forms set out in Appendix 5 and Appendix 6, respectively, to Variation Agreement No. 090.
- c) The Contractor has informed the Employer that the provision by the Contractor to the Employer of the duly executed Amendment to Advance Payment Parent Company Guarantee and Amendment to Advance Payment Joint and Several Guarantee in the forms set out in Appendix 5 and Appendix 6, respectively, to Variation Agreement No. 090 will be delayed.
- d) The Contractor has requested that the Contract be further amended so that the duly executed Amendment to Advance Payment Parent Company Guarantee and Amendment to Advance Payment Joint and Several Guarantee instead be provided by no later than 15 Business Days after the signature of this Variation Agreement No. 092 and not as a precondition to payment of any amount of the Advance Payment for Specified Expenditures by the Employer to the Contractor.





- e) The Parties consider that unless they agree to the amendments to the terms for the payment of the Advance Payment for Specified Expenditures provided for herein there could be serious risk to the completion of the Project and therefore the Parties' agreement to the terms hereof is in the best interests of the Project.
- f) Therefore, subject to the terms of this Variation Agreement No. 092, 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. 092, 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. 092 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. This Variation Agreement No. 092 is without prejudice to the merits of any claims and defences that either Party may have against the other relating to the Contract (as to which both Parties' positions are fully reserved) or otherwise. Both Parties continue to reserve all rights, remedies and defences related hereto, as set forth at clause 9 of the Memorandum of Understanding (as defined in Variation Agreement No. 090) and clause 9 of the Memorandum of Understanding is hereby incorporated by reference.
- 4. Save in relation to breaches of, or failure by either Party to comply with, the terms of this Variation Agreement No. 092, the Parties agree that they shall have no claims for additional time or money or any other relief or entitlement of any kind as a direct consequence of this Variation Agreement No. 092. Without prejudice to the generality of the foregoing, the fact that the Parties have, in the circumstances set out in the Recitals, agreed to conditions in this Variation Agreement No. 092 which could permit repayment of the Advance Payment for Specified Expenditures beyond the Time for Completion shall not under any circumstances imply that the Employer considers that the Contractor is entitled to any extension of time to the Time for Completion and is entirely without prejudice to the Contractor's obligation to complete the Works by the Time for Completion. Similarly, nothing in this Variation Agreement No. 092 shall imply any agreement on the part of the Contractor that it is not currently entitled to numerous extensions of time under the



March 20, 2014

Design and Construction of the Third Set of Locks

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Contract, and all of the Parties' rights, remedies and defences with respect to delay-related issues are expressly reserved.

5. This Variation Agreement No. 092 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.
6. 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. 092"** means Variation Agreement Number 092, dated 20 of March, 2014 between the Employer and the Contractor.

**"VO No. 092 Bond Issuer Confirmation"** means a written confirmation (or rider, amendment or modification, as applicable), in the form set out in Appendix 1 to Variation Agreement No. 092, 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.

7. The Parties hereby agree to amend Sub-Clause 14.2I [*Advance Payment for Specified Expenditures*] of the Contract as follows:
  - (a) delete the entirety of sub-paragraph (b)(ii) of Sub-Clause 14.2I and insert "obtain and provide to the Employer the VO No. 092 Bond Issuer Confirmation, duly executed by the parties thereto in the form set out in Appendix 1 to Variation Agreement No. 092;"
  - (b) delete the entirety of sub-paragraph (b)(iii) of Sub-Clause 14.2I and insert "[intentionally omitted]";
  - (c) in sub-paragraph (i) of Sub-Clause 14.2I in the first line delete "(h) and (j)" and insert "(h), (j) and (l)";
  - (d) insert a new sub-paragraph (k) of Sub-Clause 14.2I as follows:

"(k) No later 15 Business Days after the signature of this Variation Agreement No. 092 the Contractor shall obtain, at its own cost, and furnish to the Employer:

- (i) the Amendment to Advance Payment Parent Company Guarantee duly executed by the parties thereto in the form set out in Appendix 5 to Variation Agreement No. 090; and





- (ii) the Amendment to Advance Payment Joint and Several Guarantee duly executed by the parties thereto (which for the avoidance of doubt shall be the four shareholders of the Contractor, namely SACYR VALLEHERMOSO S.A. (now SACYR S.A.), JAN DE NUL N.V., IMPREGILO S.p.A. (now SALINI IMPREGILO S.p.A.), and CONSTRUCTORA URBANA, S.A.) in the form set out in Appendix 6 to Variation Agreement No. 090."; and

(e) insert a new sub-paragraph (l) of Sub-Clause 14.2l as follows:

"(l) If the Contractor fails to comply with sub-paragraph (k)(i) and/or (k)(ii) above within the time period specified therein, then the Contractor shall not be entitled to apply for or be paid any further amounts of the Advance Payment for Specified Expenditures, and the whole of the balance of the Advance Payment for Specified Expenditures shall immediately become due and payable by the Contractor to the Employer and the Employer shall be entitled, at its sole and absolute discretion, to:

- (i) deduct the full amount of the Advance Payment for Specified Expenditures paid by the Employer to the Contractor in the next Interim Payment Certificate; and/or

- (ii) require payment of the full amount of the Advance Payment for Specified Expenditures paid by the Employer to the Contractor (or any part thereof not deducted in accordance with sub-paragraph (l)(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 (l)(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 14.2l."

- 8. Each Party 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) to give full effect to this Variation Agreement No. 092 and secure the full benefit of the rights, powers and remedies conferred upon it in this Variation Agreement No. 092.



**In Witness whereof** the Parties hereto have caused this Variation Agreement No. 092 to be executed on the 20th day of March of the year 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

[Letterhead of Zurich]

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

Autoridad del Canal de Panama  
Edificio 740, Corozal  
Panama, Republica de Panama

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

Confirmation regarding certain amendments to the Contract (as defined below)

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. 092, dated March 20, 2014 ("Variation Agreement No. 092") to the Contract, executed by the Owner and the Contractor, which, subject to the Contractor's compliance with certain preconditions, provides for certain amendments to the Contract relating to the making of the Advance Payment for Specified Expenditures (as defined therein) by the Owner to the Contractor.

The undersigned, as Surety under and as defined in the Bonds, hereby consents to the making of the Advance Payment for Specified Expenditures under the Contract pursuant to the aforementioned Variation Agreement No. 092 and confirms to you, as Owner and beneficiary under the Bonds, the continued validity of the Bonds in the respective amounts originally stated



Variation Agreement No. 092

therein, notwithstanding such Advance Payment for Specified Expenditures and the terms of the Variation Agreement No. 092.

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:

