



DATED 12 DECEMBER 2011

(1) CUMBRIA COUNTY COUNCIL

- and -

(2) SHANKS CUMBRIA LIMITED

**DEED OF VARIATION**

to amend a Project Agreement dated  
4 June 2009 for the Cumbria Waste  
PPP Project

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THIS DEED OF VARIATION is made on 12 DECEMBER 2011

**BETWEEN:**

- (1) **CUMBRIA COUNTY COUNCIL** of The Courts, Carlisle, Cumbria, CA3 8NA (the "Authority"); and
- (2) **SHANKS CUMBRIA LIMITED** a company registered in England (registered in England and Wales with company number 06799850) whose registered office is at Dunedin House, Auckland Park, Mount Farm, Milton Keynes, Buckinghamshire, MK1 1BU (the "Contractor").

**BACKGROUND:**

- A The Authority appointed the Contractor pursuant to a project agreement dated 4 June 2009 (the "Project Agreement"), to, inter alia, provide certain works and services in relation to the Cumbria Waste PPP Project. The Project Agreement has previously been amended by a Deed of Variation dated 24 September 2010 and a Deed of Variation dated 13 April 2011 (the **Deeds of Variation**).
- B The parties wish to make amendments to the Project Agreement as set out in this Deed.

**IT IS AGREED:**

**1. INTERPRETATION**

Save where the context otherwise requires, words and phrases defined in the Project Agreement shall have the same meaning given to them wherever they are used in this Deed and the provisions of clauses 1 (Definitions and Interpretation), 54 (Dispute Resolution), 57 (Assignment and Sub-Contracting), 62 (Notices), 63 (Severability) and 64 (Waiver) shall apply mutatis mutandis to this Deed as they apply to the Project Agreement.

**2. AMENDMENTS**

2.1 With effect from the date of this Deed the Project Agreement shall be amended as follows:

2.1.1 Clause 1.1 (Definitions) of the Project Agreement shall be amended by deleting the definition of Deeds of Variation and inserting the following definition:

**"Deeds of Variation** means;

- (a) the deed of variation entered into between the Authority and the Contractor dated 24 September 2010 varying and supplementing the terms of this Agreement;
- (b) the deed of variation entered into between the Authority and the Contractor dated 13 April 2011 varying and supplementing the terms of this Agreement; and
- (c) the deed of variation entered into between the Authority and the Contractor dated 12 November 2011 varying and supplementing the terms of this Agreement." DECEMBER

2.1.2 Clause 19.2 of the Project Agreement shall be replaced with the following:

"The Service Availability Date for any New Facility shall be the date on which an Acceptance Certificate is issued in respect of that New Facility provided that:

(i) such date for the Southern Resource Park shall be no earlier than the Target Service Availability Date for the Southern Resource Park; and

(ii) such date for the Northern Resource Park shall not be earlier than 30 November 2011."

2.1.3 Paragraph 3.6.1(a) of Schedule 5 of the Project Agreement shall be replaced with the following:

"(a) the Service Availability Date for the Northern Resource Park or 30 November 2011, whichever is the later; or"

2.1.4 In Summary Table 2- 2nd Step Up Period contained in Appendix 11 of Schedule 5 to the Project Agreement the band prices for the period from 01 April 2011 to 31 March 2012, which for the avoidance of doubt are currently:

<b>Period from</b>	01-Apr-11
<b>Period to</b>	31-Mar-12
ROW 1- Band 1 (non-indexed), £s	
ROW 1- Band 1 (to be indexed), £s	
ROW 3- Total Band 1, real, £s	
ROW 4-Band 2, real (to be indexed), £s	

shall be replaced with:

<b>Period from</b>	01-Apr-11
<b>Period to</b>	31-Mar-12
ROW 1- Band 1 (non-indexed), £s	
ROW 1- Band 1 (to be indexed), £s	
ROW 3- Total Band 1, real, £s	
ROW 4-Band 2, real (to be indexed), £s	

### **3. COMPLETION DOCUMENTS**

3.1 The Contractor shall procure that the following documents are delivered to the Authority and the Senior Lender promptly, and in any event, within five (5) Business Days following the date of execution of this Deed:

- 3.1.1 an executed copy of this Deed;
- 3.1.2 certified copies of board minutes of the Contractor authorising the entry into this Deed;
- 3.1.3 a letter of consent from the Senior Lender in which the Senior Lender confirms its consent to the entry into the Contractor of:
  - 3.1.3.1 this Deed;
  - 3.1.3.2 the document referred to at clause 3.1.4 below; and
  - 3.1.3.3 the document referred to at clause 3.1.5 below;
- 3.1.4 a certified copy of a deed of variation relating to the Construction Contract giving effect to amendments that (as appropriate) take into account and flow down the amendments to the Project Agreement which are given effect by this Deed; and
- 3.1.5 a certified copy of a deed of variation relating to the Operating Contract giving effect to amendments that (as appropriate) take into account and flow down the amendments to the Project Agreement which are given effect by this Deed.

3.2 The Authority shall procure that the following documents are delivered to the Contractor and the Senior Lender promptly, and in any event, within five (5) Business Days following the date of execution of this Deed:

- 3.2.1 an executed copy of this Deed; and
- 3.2.2 written evidence of the authorisation of the Authority to enter into this Deed.

3.3 The Authority hereby gives its written consent to the entry into of the Deeds of Variation referred to at clauses 3.1.4 and 3.1.5.

### **4. CONTINUATION**

4.1 Save as varied by this deed, the Project Agreement (as amended by the Deeds of Variation) shall remain in full force and effect.

### **5. MISCELLANEOUS**

5.1 In the event of any discrepancy between the terms and conditions of this Deed and the Project Agreement, the terms and conditions of this Deed shall prevail.

### **6. CONTRACTS (RIGHTS OF THIRD PARTY ACT 1999)**

It is agreed that for the purposes of the Contracts (Rights of Third Parties) Act 1999, this Deed is not intended to, and does not, give any person who is not a party to this Deed any rights to enforce any provisions contained in this Deed.

**7. COUNTERPARTS**

This Deed may be executed in one or more counterparts. Any single counterpart or set of counterparts executed, in either case, by all the parties shall constitute a full original of this Deed.

**8. ENTIRE AGREEMENT**

The parties acknowledge and agree that the Project Agreement has only been amended by the Deeds of Variation and by this Deed, and that this Deed and the Project Agreement (as amended by the Deeds of Variation) set forth the entire agreement between the parties in relation to the matters referred to therein, and supersede and replace all prior communications, representations (other than fraudulent representations), warranties, stipulations, undertakings and agreements, whether oral or written between the parties.

**9. FURTHER ASSURANCE**

The parties agree that they shall do all necessary acts and things in order to give full effect to this Deed.

**10. TERMINATION**

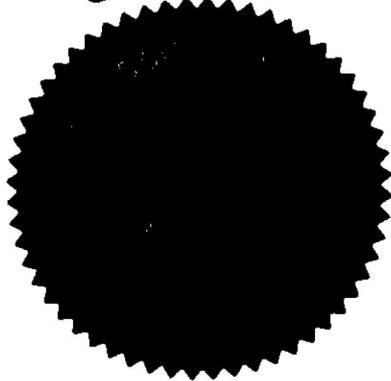
This Deed shall be co-terminus with the Project Agreement, provided that the termination of this Deed shall not prejudice the amendments to the Project Agreement given effect by this Deed.

**11. GOVERNING LAW**

This Deed and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with the laws of England and Wales. The English courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with the Deed.

**THIS DEED IS EXECUTED AS A DEED** and delivered on the date stated at the beginning of this Deed.

C26934



Executed as a deed by **CUMBRIA COUNTY COUNCIL** by the affixing of its common seal in the presence of:

Signature ..

Name (block capitals) .....

**Authorised Signatory**

Executed as a deed by **SHANKS CUMBRIA LIMITED:**

Signature ..

JS

Name (block capitals) .....

**Director**

Signature .....

PGS

Name (block capitals) ..

**Secretary/Director**