



**DATED**

**2010**

**(1) CUMBRIA COUNTY COUNCIL**

**- and -**

**(2) SHANKS CUMBRIA LIMITED**

**- and -**

**(3) SHANKS WASTE MANAGEMENT LIMITED**

**DEED OF VARIATION TO THE  
PROJECT AGREEMENT**

relating to  
the Cumbria Waste Public Private Partnership

## CONTENTS

1.	INTERPRETATION .....	1
2.	AMENDMENTS .....	2
3.	CONTINUATION.....	3
4.	SUBCONTRACTOR ACKNOWLEDGEMENT .....	3
5.	GOVERNING LAW AND JURISDICTION.....	4
6.	COUNTERPARTS.....	4
7.	GENERAL .....	4

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**THIS DEED OF VARIATION** is made on

2010

**BETWEEN:**

- (1) **CUMBRIA COUNTY COUNCIL** whose address for the purposes of this Deed of Variation is The Courts, Carlisle, Cumbria, CA3 8NA ("**Authority**");
- (2) **SHANKS CUMBRIA LIMITED** (company registered number 06799850) whose registered office is at Dunedin House, Auckland Park, Mount Farm, Bletchley, Milton Keynes, Buckinghamshire MK1 1BU ("**Contractor**"); and
- (3) **SHANKS WASTE MANAGEMENT LIMITED** (company registration number 02393309) whose registered office is at Dunedin House, Auckland Park, Mount Farm, Bletchley, Milton Keynes, Buckinghamshire MK1 1BU.

**BACKGROUND:**

- A The Contractor entered into a project agreement with the Authority dated 4 June 2009 ("**Project Agreement**"). Pursuant to the terms of the Project Agreement the Contractor has agreed to finance, design, construct and provide certain facilities and services in connection with the management of waste arising in Cumbria ("**Project**").
- B The Authority and the Contractor have agreed to vary the Project Agreement in accordance with the terms and conditions contained in this deed of variation in order to take into account the grant of additional land at the site of the Northern Resource Park by the Authority to the Contractor ("**Deed of Variation**").
- C The Contractor has also entered into the Building Contract with the Building Contractor for the design and construction of the New Facilities and the Operating Contract with the Operating Contractor for the provision of certain services in connection with the New Facilities. The Building Contractor and the Operating Contractor have agreed to join in this Deed of Variation to acknowledge that the amendments to the Project Agreement contained in this Deed of Variation shall also amend the Building Contract and the Operating Contract accordingly.

**IT IS AGREED** as follows:

**1. INTERPRETATION**

**1.1 Project Agreement**

Words and expressions defined in the Project Agreement (as further amended by this Deed of Variation) shall have the same meanings in this Deed of Variation unless otherwise defined in this Deed of Variation or the context otherwise requires.

**1.2 Headings**

Clause headings in this Deed of Variation are for convenience only and will not be taken into account in the interpretation of this Deed of Variation.

### 1.3 Clauses

Unless the context otherwise requires, references in this Deed of Variation to clauses are references to those contained in this Deed of Variation.

## 2. AMENDMENTS

### 2.1 General

With effect from the date of this Deed of Variation the Project Agreement is to be amended and is to be read and construed and is to take effect as follows:

- 2.1.1 by the insertion of a new definition of "Additional Land" in clause 1.1 (Definitions) of the Project Agreement:

**"Additional Land"** means the additional land at the site of the Northern Resource Park shown hatched blue on the plan attached to the appendix to the Deed of Variation;"

- 2.1.2 by the insertion of a new definition for "Deed of Variation" in clause 1.1 (Definitions) of the Project Agreement:

**"Deed of Variation"** means the deed of variation entered into between the Authority, the Contractor and Shanks Waste Management Limited varying and supplementing the terms of this Agreement dated [ ] 2010;"

- 2.1.3 by the insertion of a new definition for "Supplemental Lease" in clause 1.1 (Definitions) of the Project Agreement:

**"Supplemental Lease"** means a lease of the additional land at the site of the Northern Resource Park shown hatched blue on the plan attached to the appendix to the Deed of Variation and entered into between (1) the Authority and (2) the Contractor;"

- 2.1.4 by the insertion of "and the Supplemental Lease" after "(Leases)" in the first column of the first row of the table in part 2 (New Facilities) of Schedule 3 (Facilities);

- 2.1.5 by deleting from the definition of "Resource Park" the words, "specified as Resource Parks in Part 3" and replacing with the words, "listed in Part 2 (New Facilities)"; and

- 2.1.6 by the insertion of a new clause ~~7.5A~~ <sup>7.5.1A</sup> of the Project Agreement:

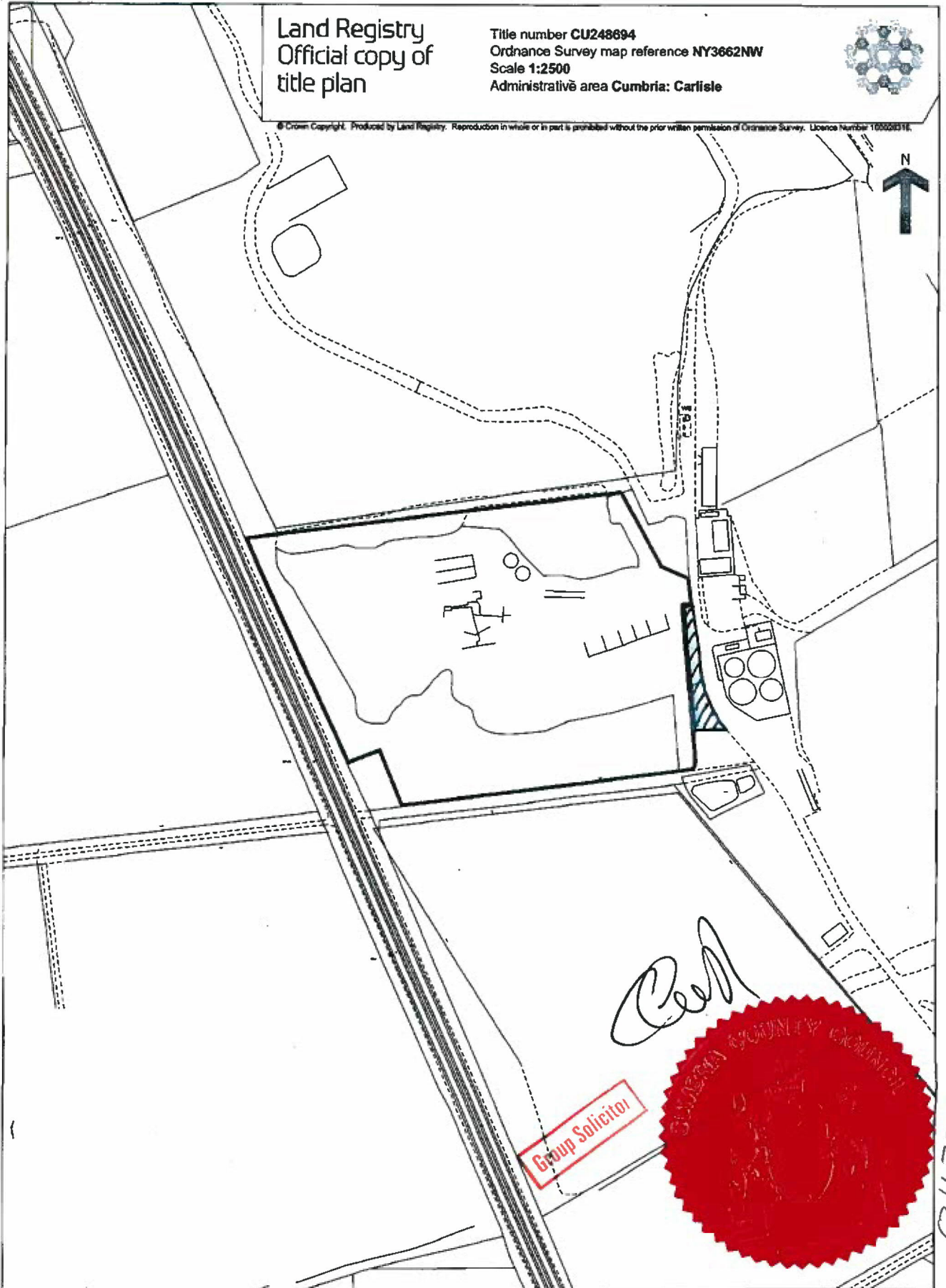
**7.5A** The Authority warrants that the Replies to Enquiries Before Contract insofar as they relate to the Northern Resource Park constitute such information that would have been given by the Authority if such Replies to Enquiries Before Contract insofar as they relate to the Northern Resource Park also related to the Additional Land and were given on the date of the Deed of Variation. The Authority further warrants that it is not aware of any matters that would be listed in Schedule 33 (Title Defects) in respect of the Additional Land as at the date of the Deed of Variation other than:

Land Registry  
Official copy of  
title plan

Title number CU248694  
Ordnance Survey map reference NY3662NW  
Scale 1:2500  
Administrative area Cumbria: Carlisle



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This official copy issued on 15 July 2009 shows the state of this title plan on 15 July 2009 at 09:55:38. It is admissible in evidence to the same extent as the original (s.67 Land Registration Act 2002).

This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground. See Land Registry Public Guide 19 - Title Plans and Boundaries.

This title is dealt with by Land Registry, Durham Office.

(1) those listed in Schedule 33 (Title Defects) in respect of the Northern Resource Park as at the date of the Project Agreement; and

(2) failure to procure completion of, and the appropriate registration at the Land Registry of a Deed of Surrender of even date between (1) Cumbria County Council and (2) Cumbria Waste Management Limited of part of the lease dated 1 July 1993 (as subsequently varied) made between (1) Cumbria County Council and (2) Cumbria Waste Management Limited insofar as it relates to the Additional Land."

2.1.7 by the insertion of a new item 14 at the end of page 38 of part 2 (New Facilities) of Schedule 33 (Title Defects):

"14. Deed of Surrender and Variation dated [ ] 2010 of part of the lease comprising document 3 above relating to land to be let to the Contractor under the Supplemental Lease of additional land at the site of the Northern Resource Park made between (1) the Authority and (2) Cumbria Waste Management Limited;"

2.1.8 by the replacing of "document 4" with "documents 4 and 14" in the sixth row of the table on page 39 of part 2 (New Facilities) of Schedule 33 (Title Defects) of the Project Agreement; and

2.1.9 by the insertion of "and the Supplemental Lease" after "the lease of the Hespian Wood Landfill site" in the tenth row of the table on page 39 of part 2 (New Facilities) of Schedule 33 (Title Defects) of the Project Agreement.

### 3. CONTINUATION

Save as varied and amended by this Deed of Variation, the Project Agreement shall remain in full force and effect.

### 4. SUBCONTRACTOR ACKNOWLEDGEMENT

4.1 Shanks Waste Management Limited (both in its capacity as the Building Contractor and as the Operating Contractor) hereby acknowledges the terms of this Deed of Variation and agrees that:

4.1.1 all amendments to the Project Agreement contained in this Deed of Variation shall also be deemed to amend all corresponding provisions of the Building Contract and the Operating Contract; and

4.1.2 any references in the Building Contract and the Operating Contract to Schedule 3 (Facilities), Schedule 4 (Leases) or Schedule 33 (Title Defects) to the Project Agreement shall be deemed to be a reference to such schedules as amended by this Deed of Variation.

4.2 Pursuant to clause 71.3 (Ancillary Documents) of Project Agreement, the Authority acknowledges its agreement to the variations set out in clause 4.1 and any variation to the Principal Building Subcontracts or any other Ancillary Document made on or about the date of this Deed of Variation which are necessary or advisable to reflect the changes to the Project Agreement made pursuant to this Deed of Variation.

## **5. GOVERNING LAW AND JURISDICTION**

This Deed of Variation, 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 and shall be subject to the Dispute Resolution Procedure as set out in the Project Agreement as if incorporated herein mutatis mutandis.

## **6. COUNTERPARTS**

This Deed of Variation may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute the same instrument.

## **7. GENERAL**

### **7.1 Third Party Rights**

This Deed of Variation is not intended to confer any right on any third party who would not have had such a right but for the Contracts (Rights of Third Parties) Act 1999.

### **7.2 No waiver**

No failure to exercise and no delay in exercising on the part of either party any right, power or privilege under this Deed of Variation will operate as a waiver of it, nor will any single or partial exercise by it of any right, power or remedy preclude any other or further exercise of it, or the exercise of any other right, power or remedy.

### **7.3 Rights cumulative**

The rights and remedies in this Deed of Variation are cumulative and (except where expressly provided otherwise) not exclusive of any rights or remedies provided by law.

### **7.4 Incorporation of Terms**

The provisions of clauses 49 (Freedom of Information and Confidentiality), 57 (Assignment and Sub-contracting), 60 (No Agency), 61 (Entire Agreement), 62 (Notices), 63 (Severability) and 64 (Waiver) of the Project Agreement (as amended) shall be incorporated into this Deed of Variation and shall apply mutatis mutandis.

**EXECUTED** as a Deed and unconditionally delivered by the Parties on the date first referred to above :

The common seal of **CUMBRIA COUNTY** )  
**COUNCIL** was hereto fixed in the presence of )  
an authorised signatory )

.....  
.....

Authorised  
signatory

**Group Solicitor**

Authorised  
signatory name  
(block capitals)

Authorised  
signatory address

.....  
**LONSDALE BUILDING**  
.....  
**THE COURTS**  
.....  
**ENGLISH ST**  
.....  
**CARLISLE**  
.....



Executed as a deed by two directors or a )  
director and the company secretary of )  
**SHANKS CUMBRIA LIMITED** )

Signature .....

Name (block capitals) .....

**Director**

)  
)  
)  
Signature .....

Name (block capitals) .....

**Director/Company  
Secretary**



Executed as a deed by two directors or a  
director and the company secretary of  
**SHANKS WASTE MANAGEMENT  
LIMITED**

)  
)  
)

Signature .....

Name (block capitals) .....

**Director**

)  
)  
)

Signature .....

Name (block capitals) .....

**Director/Company  
Secretary**