



DATED 8 OCTOBER 2013

(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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APPENDIX: VARIATION SPECIFICATION

THIS DEED OF VARIATION is made on

8 OCTOBER

2013

BETWEEN:

- (1) CUMBRIA COUNTY COUNCIL of The Courts, Carlisle, Cumbria, CA3 8NA ("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 ("Contractor").

BACKGROUND:

- A The Authority appointed the Contractor pursuant to a project agreement dated 4 June 2009 ("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, a Deed of Variation dated 13 April 2011 and a Deed of Variation dated 12 December 2011 ("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 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;
- (c) the deed of variation entered into between the Authority and the Contractor dated 12 December 2011 varying and supplementing the terms of this Agreement; and

- (d) the deed of variation entered into between the Authority and the Contractor dated on or about 2013 varying and supplementing the terms of the Agreement."

2.2 Output Specification

- 2.2.1 The Parties acknowledge that the Authority wishes to vary the Output Specification so that the Contractor is required to place a cover over the previously planned open biofilter at the Southern Resource Park.
- 2.2.2 The specification for such revised aspect of the Output Specification is contained at the appendix hereto ("**Variation Specification**").
- 2.2.3 The parties agree that to the extent that the Contractor undertakes the works necessary in order to satisfy fully the Variation Specification, the Contractor shall for the purpose of the Project Agreement not be deemed to have failed to undertake the Works in accordance with the Output Specification and/or the Contractor's Works Proposals to the extent that such works are required to satisfy the Variation Specification.

3. PAYMENT

- 3.1 Upon the Contractor satisfying fully the requirements of the Variation Specification the Contractor shall provide the Authority with a statement of the costs incurred by the Contractor in carrying out the required works. Such information shall be provided on an open book basis together with a detailed breakdown showing how such costs are made up. The Contractor shall provide such additional information as may reasonably be required by the Authority in relation to the completion of the works and/or the costs claimed by the Contractor. The Authority may (acting reasonably) object to any of the costs claimed on the basis that the requirements of the Variation Specification have not been satisfied and/or the costs claimed have not been incurred.
- 3.2 Within ten (10) Working Days of receipt by the Authority of the costs breakdown and associated information referred to in clause 3.1, the Authority shall give notice of the amount which is proposed to be paid being the amount claimed by the Contractor which is not disputed by the Authority and such amount shall be paid to the Contractor within five (5) Working Days of the said notice being provided. Any failure by the Parties to reach agreement in relation to the costs claimed by the Contractor in accordance with clause 3.1 shall be resolved in accordance with the Dispute Resolution Procedure.
- 3.3 Following the execution by both parties of this Deed, the Contractor shall provide the Authority with a statement of the costs incurred by the Contractor by way of professional advisor fees in relation to the negotiation and agreement of this Deed. Such information shall be provided on an open book basis together with a detailed breakdown showing how such costs are made up. The Contractor shall provide such additional information as may reasonably be required by the Authority in relation to the professional advisor fees claimed by the Contractor. The Authority may (acting reasonably) object to any of such professional advisor fees on the basis that the costs claimed have not been reasonably incurred.
- 3.4 Within ten (10) Working Days of receipt by the Authority of the professional advisor fees breakdown and associated information referred to in clause 3.3, the Authority shall give notice of the amount which is proposed to be paid being the amount claimed by the Contractor which is not disputed by the Authority and such amount shall be paid to the Contractor within five (5) Working Days of the said notice being provided. Any failure by

the Parties to reach agreement in relation to the professional fees claimed by the Contractor in accordance with clause 3.3 shall be resolved in accordance with the Dispute Resolution Procedure.

3.5 For the avoidance of doubt, the maximum amount payable to the Contractor in accordance with this clause 3 (Payment) shall be the sum of

3.6 The Parties acknowledge that the extent to which an adjustment is required to the Annual Unitary Charge to reflect any agreed increase in lifecycle costs associated with the maintenance of the cover of the biofilter at the Southern Resource Park shall be included by the Parties the next time that the Base Case is updated.

4. COMPLETION DOCUMENTS

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

4.1.1 an executed copy of this Deed;

4.1.2 certified copies of board minutes of the Contractor authorising the entry into this Deed;

4.1.3 a letter of consent from the Agent in which the Agent confirms consent to the entry into the Contractor of:

4.1.3.1 this Deed; and

4.1.3.2 the document referred to at clause 4.1.4; and

4.1.4 a certified copy of a deed of variation relating to the Building 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.

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

4.2.1 an executed copy of this Deed; and

4.2.2 written evidence of the authorisation of the Authority to enter into this Deed.

4.3 The Authority hereby gives its written consent to the entry into of the Deed of Variation referred to at clause 4.1.4.

5. CONTINUATION

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

6. MISCELLANEOUS

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.

7. 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.

8. 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.

9. 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.

10. FURTHER ASSURANCE

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

11. 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.

12. 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.

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



C29737915



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

Signature

Name (block capitals)

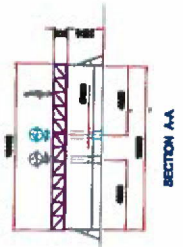
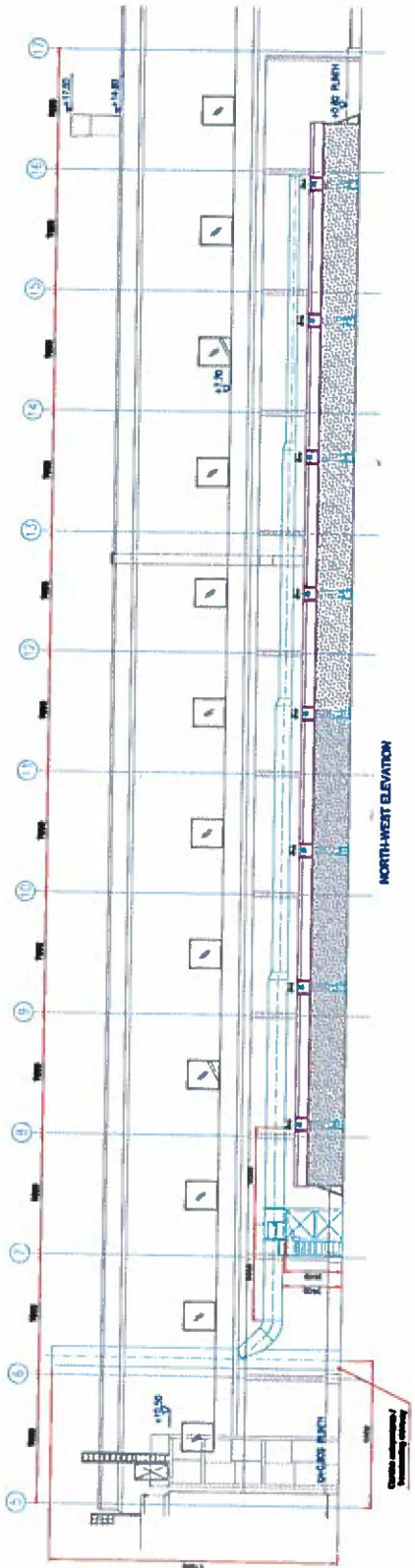
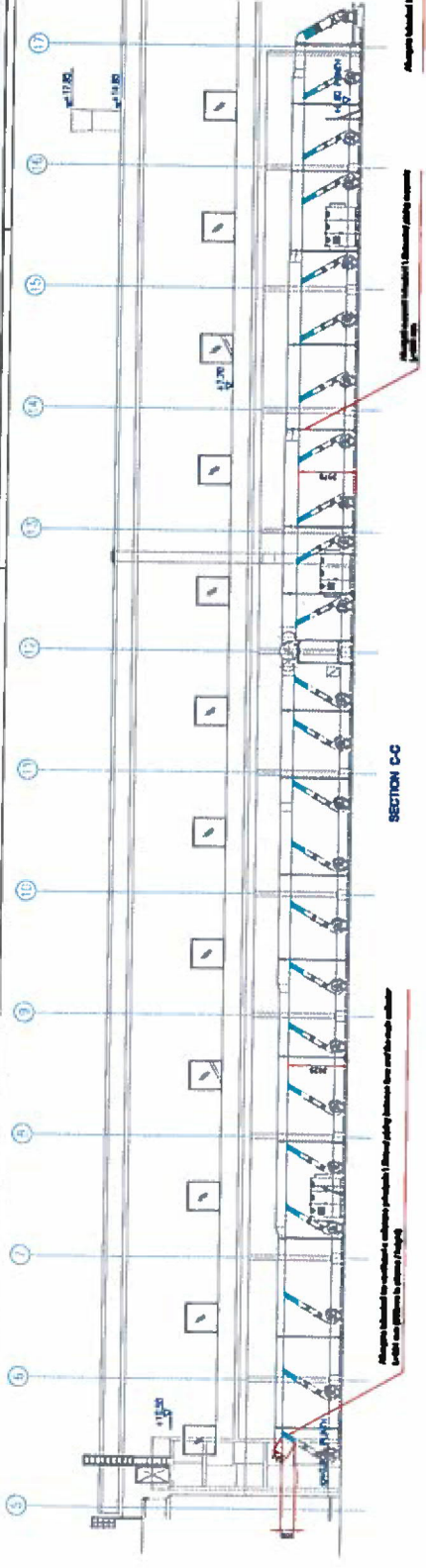
Director //

Signature

Name (block capitals)

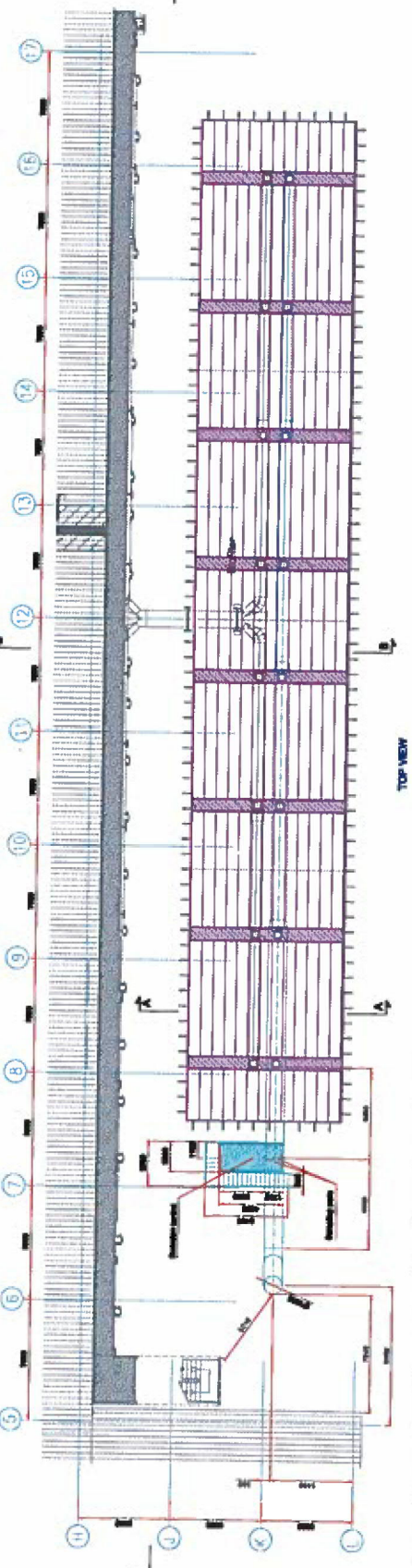
Secretary/Director

APPENDIX: VARIATION SPECIFICATION



Reinforcement indicated in section (shaded) (Shaded joints indicate bar and bar end within light non shaded area)

LISTA FORMITORE / SUPPLIERS LIST			
Material / Part	Quantity	Supplier / Manufacturer	Notes
Reinforcement (Bridging)	Quantity 1 / Supply 1	Supplier 1 / Supply 1	Part 1 / Supply 1
Reinforcement (Bridging)	Quantity 2 / Supply 2	Supplier 2 / Supply 2	Part 2 / Supply 2



41	REINFORCING BARS	Quantity	Supplier / Manufacturer	Notes
42	REINFORCING BARS	Quantity	Supplier / Manufacturer	Notes
43	REINFORCING BARS	Quantity	Supplier / Manufacturer	Notes
44	REINFORCING BARS	Quantity	Supplier / Manufacturer	Notes
45	REINFORCING BARS	Quantity	Supplier / Manufacturer	Notes
46	REINFORCING BARS	Quantity	Supplier / Manufacturer	Notes
47	REINFORCING BARS	Quantity	Supplier / Manufacturer	Notes
48	REINFORCING BARS	Quantity	Supplier / Manufacturer	Notes
49	REINFORCING BARS	Quantity	Supplier / Manufacturer	Notes
50	REINFORCING BARS	Quantity	Supplier / Manufacturer	Notes

Green Group

Green Group is a leading provider of construction services. We are committed to providing high-quality, cost-effective solutions for our clients. Our services include structural design, construction management, and project management. We have a proven track record of successful projects and a dedicated team of professionals. Contact us today for more information.

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