



EAST CAMBRIDGESHIRE DISTRICT COUNCIL

THE GRANGE, NUTHOLT LANE,
ELY, CAMBRIDGESHIRE CB7 4EE
Telephone: 01353 665555

MEETING: **SHAREHOLDER COMMITTEE**

TIME: 4:00pm

DATE: 28th June 2018

VENUE: Vernon Cross Room, Ely Museum, Ely

ENQUIRIES REGARDING THIS AGENDA: Adrian Scaites-Stokes

DIRECT DIAL:(01353) 616456 EMAIL: adrian.scaites-stokes@eastcambs.gov.uk

Membership:

Conservative Members

Cllr Mike Bradley (Chairman)
Cllr David Chaplin (Vice Chairman)
Cllr David Brown
Cllr Steve Cheetham
Cllr Richard Hobbs
Cllr Alan Sharp

Substitutes

Cllr Lis Every
Cllr Chris Morris
Cllr Mathew Shuter

Lead Officer:

Maggie Camp, Monitoring Officer

Quorum: 3 Members

Liberal Democrat Member

Cllr Lorna Dupré
(Spokesperson)

Substitute

Cllr Sue Austen
Cllr Christine Whelan

A G E N D A

- 1. Public Question Time**
- the meeting will commence with up to 15 minutes public question time
- 2. Apologies and Substitutions**
- 3. Declarations of Interest**
To receive declarations of interest from Members for any items on the Agenda in accordance with the Members Code of Conduct.

4. Minutes

- (a) Minutes of the Committee meeting held 8th February 2018
- (b) Minutes of the Committee meeting held 24th May 2018

5. Chairman's Announcements

6. Future Role of the Shareholder Committee

7. EXCLUSION OF THE PUBLIC INCLUDING REPRESENTATIVES OF THE PRESS

That the press and public be excluded during the consideration of the remaining item no. 8 because it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the public were present during the items there would be disclosure to them of exempt information of Categories 1,2 and 3 of Part I Schedule 12A to the Local Government Act 1972 (as amended).

8. East Cambs Trading Company Board Minutes

- (a) 12th April 2018
- (b) 17th May 2018

For noting

NOTES:

1. The maximum capacity for meetings in the Council Chamber has been set by the Fire Officer at 100 persons.
Allowing for Member/Officer attendance and room layout constraints, this will normally give **a capacity for public attendance of 60 people**.
Admittance to the Council Chamber is on a "**first come, first served**" basis and public access will be from 30 minutes before the start time of the meeting.
2. Fire instructions for meetings:
 - If the fire alarm sounds please make your way out of the building by the nearest available exit - i.e. the back staircase or the fire escape in the chamber. Do not to use the lifts.
 - The fire assembly point is in the front staff car park by the exit barrier.
 - This building has an auto-call system to the fire services, so there is no need for anyone to call the fire services.
 - The Democratic Services Officer will sweep the area to ensure that everyone is out of this area.
3. Reports are attached for each agenda item unless marked "oral".
4. If required all items on the agenda can be provided in different formats (e.g. large type, Braille or audio tape, or translated into other languages), on request, by calling Main Reception on (01353) 665555 or e-mail: translate@eastcambs.gov.uk
5. If the Committee wishes to exclude the public and press from the meeting, a resolution in the following terms will need to be passed:
"That the press and public be excluded during the consideration of the remaining item no(s). X because it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the public were present during the item(s) there would be disclosure to them of exempt information of Category X of Part I Schedule 12A to the Local Government Act 1972 (as amended)."



EAST
CAMBRIDGESHIRE
DISTRICT COUNCIL

SHAREHOLDER COMMITTEE

Minutes of the meeting of the Shareholder Committee held in the Council Chamber, The Grange, Nutholt Lane, Ely on Thursday 8th February 2018 commencing at 4:00pm.

PRESENT

Councillor Mike Bradley (Chairman)
Councillor David Brown
Councillor Steve Cheetham
Councillor Lorna Dupré
Councillor Alan Sharp

OTHERS

Councillor Peter Cresswell
Maggie Camp – Legal Services Manager and Monitoring Officer
Adrian Scaites-Stokes – Democratic Services Officer
Ian Smith – Finance Manager
Paul Remington – Chairman, East Cambs Trading Company
John Hill – Managing Director, East Cambs Trading Company
Jo Brooks – Director Operations, East Cambs Street Scene Limited
Emma Grima – Commercial Director, East Cambs Trading Company
Phil Rose – Director, Property Services, East Cambs Trading Company

26. **ELECTION OF CHAIRMAN**

Councillor Mike Bradley was proposed by Councillor Alan Sharp, seconded by Councillor Steve Cheetham, to be elected as Chairman of the Shareholder Committee for the remainder of the municipal year. There being no other nominations:

It was resolved that:

Councillor Mike Bradley be elected as Chairman of the Shareholder Committee for the remainder of the municipal year.

As there was now a vacancy for the position of Vice Chairman, Councillor David Chaplin was proposed by Councillor Mike Bradley, seconded by Councillor Steve Cheetham, to be appointed as Vice Chairman of the Shareholder Committee for the remainder of the municipal year. There being no other nominations:

It was resolved that:

Councillor David Chaplin be appointed as Vice Chairman of the Shareholder Committee for the remainder of the municipal year.

27. **PUBLIC QUESTION TIME**

There were no public questions.

28. **APOLOGIES AND SUBSTITUTIONS**

Apologies were received from Councillors David Chaplin and Richard Hobbs.

29. **DECLARATIONS OF INTEREST**

There were no declarations of interest.

30. **MINUTES**

It was resolved:

That the minutes of the Shareholder Committee meeting held on 11th December 2017 be confirmed as a correct record and be signed by the Chairman.

31. **CHAIRMAN'S ANNOUNCEMENTS**

The Chairman revealed that discussions had been ongoing relating to an accounting package for the Trading Companies and relevant policies connected to resourcing and work in progress. Such policies needed to be right.

The Finance Manager, at the request of the Chairman, explained that a version of the Council's finance software package was being used by East Cambs Trading Company, but its use had proven to be onerous. East Cambs Street Scene would be buying in a different accounts package for use during 2018/19. Depending how successful this was would determine whether that package would then be used by East Cambs Trading Company in 1919/20.

32. **EAST CAMBS TRADING COMPANY ANNUAL BUSINESS PLAN**

The Committee considered a report, reference S240, previously circulated, that detailed the East Cambs Trading Company Annual Business Plan for 2018/19.

The Director Commercial advised the Committee that overall the Business Plan had been approved by the Board with no changes to report. It set out a summary of expenditure, governance and management structure, which would not change for 2018/19, and the risk register. No new additional risks had been identified.

The Commercial Services Business Plan outlined the successful achievements of the Ely markets over the last twelve months, which had included world markets, late evening markets, mini markets and the Christmas market which had all been well received and had provided additional income. Over the next twelve months it was intended to introduce mini markets in Ely on Tuesdays, Wednesday and Fridays, to complement the existing provision. Additional infrastructure would be installed on Ely Market Place with support from an administration officer.

The Grounds Maintenance service had secured new schools and parish council contracts. The service also understood Sustainable Drainage Systems, which would be a key focus area to generate additional work. The Company were becoming a trusted company by Cambridgeshire County Council.

Councillor Steve Cheetham queried the figures shown for salaries. It appeared that salaries overall increase by £36K in 2018/19 but income would only increase by £10K, which did not make sense. Similarly it appeared to be the case with Grounds Maintenance. The Director Commercial explained that initially the services had been under-resourced. As the Company intended to work on developing its markets it would need additional resources. It was anticipated that this would lead to an increase in turnover.

Councillor Lorna Dupré did not think it was clear from the risk report what the Company's level of risk appetite was, whether it was risk-averse or whether it was willing to take significant risks to grow its business. Either would require the Company to check the levels of risk involved. No large risks had been included in the register, as the Company was obviously not prepared to bear them. In relation to the Grounds Maintenance contracts, had they been won via a competitive tender situation? The Director Commercial confirmed that this had been the case.

Councillor David Brown asked whether the Sanctuary Grounds Maintenance contract and play ground checks were still current. Would this Committee be involved in delivering the Business Plan? It was hard to believe that introducing the mini markets would only result in a £500 increase in transport costs. Evidence should be provided to show that there was demand for these from stallholders and that it would not dilute the income of the normal markets. Had any work been done on consulting the city's shops and cafés for their views?

The Director Commercial responded by confirming that work was still going on regarding Sanctuary and the play grounds. Delivery of the Business Plan would come through this Committee before going on to full Council. Interest for the mini markets had been received and they would usually consist of six or seven stalls. They would not require as much resource as normal markets. Engagement work was still ongoing.

Councillor Mike Bradley hoped the mini markets would not include a café stall and that they would not be regarded as permanent, as they would pay a fraction of the costs of normal businesses. It was noted that no Council Member had been consulted about plans for the mini markets. As the Company was separate from the Council, more consultation with Members should be done and how the Company did this should be reviewed.

The Managing Director acknowledged that Members need to be consulted but the Company also had to react quickly when opportunities arose. The mini markets would be an extension of what had already been done and provide some services Ely did not have. Research suggested that it could impact on the wider economy, so it had been decided not to increase market stalls down Ely High Street. The mini markets would operate on a trial basis, although the Company would look for long-term viability. The stallholders had a habit of

moving around the area and were developing different strands to their businesses. So the markets would be very different to the usual Thursday market, though this was changing. The vibrancy of all the markets was critical for the whole city centre. The point made about consulting the Shareholder Committee was acknowledged.

Councillor Alan Sharp recognised the importance of the work in progress but thought that the Property Division needed to identify 'peaks and troughs' in its workload. What premises did the Grounds Maintenance service use for storage? The Director Commercial confirm they used part of the Council depot.

Councillor Lorna Dupré questioned how the mini markets would be promoted and advertised, and whether they would be themed with lists of the stalls available. The Director Commercial stated the team were working on that and would take on board the comments made.

The Director, Property Services, advised the Committee that the Property and Community Housing Division Business Plan looked back so it could gauge how it had progressed against its commitments. The financial projections were listed on page 4 but excluded the potential Kennett project. The Plan also set out where the Company was at present and the need to decide how it would grow. Success stories were included, to demonstrate the progress made, with a list of future projects in the pipeline. It was revealed that planning permission for the Haddenham project had been achieved the previous day.

The Community Housing section had spent time working on community land trusts (CLTs), including working outside the district. Although this had provided additional turnover, it had been difficult to resource. So this service would be re-focussed more around this district and conversations had been held with the new Combined Authority about projects in this area. It would continue to support CLTs, offer community housing advice and develop skills and expertise in CLT management.

Councillor Lorna Dupré queried why the community housing section was branded as it was, particularly as it was difficult to resource work outside the district. Were there any discussions about risks? Was it not a bit early to designate Kennett as a success story? The Director, Property Services stated that the branding references the work being done, which was way ahead of other local authorities on CLT work. This opened up opportunities for community housing by using other methods or models in other parts of Cambridgeshire. The branding of the Company and its website was still being worked on, as it was seen as an advice hub nationally, so it could change into an advice service. Risks were high on the agenda of the Board and were being given due consideration. The success with the Kennett site related more to the acceptance of the local community, which now stood at 79% support which was much different to that twelve months ago. It was always expected that other developers might become interested and compete with CLTs, although it would be difficult for them, as the Company's success might encourage them to become involved.

In reply to Councillor Steve Cheetham's question, it was revealed that any development partners for the Kennett site would share income, but the figures in the report assumed the Company would work alone.

There was no update on a potential doctor's surgery for Stretham. Councillor Mike Bradley thought this would be great for the community and that the Company ought to work with the National Health Service on it.

Councillor David Brown proposed an additional amendment to the recommendations that would allow delegated authority in conjunction with the Chairman and Vice Chairman of this Committee to approve any minor amendments to the Business Plan prior to its submission to Council.

Councillor Lorna Dupré pointed out that the delegated authority should go to a named post and their scope needed to be clear. This post should be the Legal Services Manager, who could make any necessary minor amendments in consultation with the Chairman and Vice Chairman.

Councillor David Brown then tabled two alternative recommendations in addition to his previous proposal and this was agreed by the Committee.

Councillor Mike Bradley asked that the amended document be circulated to everyone on the Committee with tracked changes, providing it was only a public document.

It was resolved to RECOMMEND TO FULL COUNCIL:

- (i) That the ECTC Annual Business Plan 2018/19 be approved;
- (ii) That the quorum requirements under the Articles of Association include the attendance of an Elected Member Board Director within the quorum for East Cambs Trading Company and East Cambs Street Scene Limited;
- (iii) That the Legal Services Manager be authorised, in consultation with the Chairman and/or Vice Chairman of the Shareholder Committee, to make any minor amendments to reports presented to the Shareholder Committee, as necessary, prior to their submission to full Council.

33. **EAST CAMBS TRADING COMPANY QUARTERLY UPDATE**

The Committee considered a report, reference S241, previously circulated, that gave an update from East Cambs Trading Company for the quarter September 2017 to December 2017.

The Director Commercial advised the Committee that the highlights included the Grounds Maintenance team securing more contracts and the markets being very busy.

The Director, Property Services advised the Committee that the Property section had dealt with some CLTs and were providing ongoing support. Palace

Green Homes had two sites under construction and had completed two car parks. It had also submitted a planning CLT application for Haddenham.

Councillor Mike Bradley queried the Quarter 4 Grounds Maintenance costs when compared with the turnover figure. Other figures did not make sense, so should be checked. Councillor David Brown thought the costs might be related to less work and income during that quarter. The Director Commercial agreed to check the figures.

Councillor Alan Sharp also queried the Grounds Maintenance figures shown, as there appeared to be a disproportionate cost in Quarter 4, compared to the first ¾ of the year. On the property side, he would have liked to see one figure relating to properties sold and another for work in progress. The Finance Manager thought the figures related to cash flow.

It was resolved:

That the update be noted.

34. **WASTE CONTRACT**

The Committee considered a report, reference S242, previously circulated, that detailed the latest actions of the Council and East Cambs Street Scene Limited relating to the Waste Services contract.

The Director Operations reminded the Committee that the 1st of April was fast approaching but the transfer of the service was still on-track. The new vehicles had been built and promotion for the second blue bin had started. The Regulatory Services Committee had approved the transfer of the Waste Service to East Cambs Street Scene Limited and the Memorandum of Agreement, as attached in the report papers, and had looked at the work in progress. That Committee had made its recommendations to full Council, as set out in paragraph 3.1 of the report. East Cambs Street Scene Limited's Board had considered the Memorandum of Agreement and had decided to accept the contract.

Councillor David Brown thought the recommendation relating to delegating powers should have a standard set of words for consistency.

Councillor Lorna Dupré suggested that the recommendation for delegating powers was unconstitutional. The Managing Director suggested that the wording of the recommendation be checked.

The meeting adjourned at this point, 5:15pm, and the Managing Director, Director Commercial, Director Operations and Legal Services Manager left the meeting.

The meeting reconvened at 5:23pm with the Managing Director, Director Commercial, Director Operations and Legal Services Manager all returning.

The Managing Director confirmed that the wording in the report was the actual wording used in the Committee's recommendation. This would have to be

amended when presented to full Council for approval. In the meantime, no action would be taken on that recommendation.

Councillor Steve Cheetham questioned the £850K figure allocated to the Depot and asked whether this was additional to the original budget or whether it would be an additional cost. Would this money have been allocated to the Depot if the waste contract had not come back in-house? This figure should also be shown to depreciate.

The Finance Manager disclosed that in the original business case this sum had not been included for the Depot. The Director Operations thought it was difficult to answer whether the money would have been allocated to the Depot, but the original business case had not included for any improvements. Since the Company had taken over it had become obvious that significant improvements would be needed. The risks were split between the staff and the assets. The Council would retain the assets and any outlay for the Company would be repaid eventually.

Councillor Lorna Dupré asked about the expectations for dog bins. The Director Operations reminded the Members that schedules 2, 3 and 9 were missing from the Memorandum of Agreement and included the specifications on what could be expected. These documents were very long and were still being finalised. All the papers would go to full Council.

Councillor David Brown reminded the Committee that different villages treated dog bins differently and he hoped the relevant document reflected that.

Councillor Alan Sharp questioned whether the vehicles costs would be costs depreciating within the Council. Were the stretch performance targets similar to that use for Veolia? The Finance Manager stated that the costs would be met by the Council with lease costs to the Company. The Director Operations declared that the stretch targets had aimed at an elite service and benchmarking had been done comparing the top performing local authorities.

It was resolved:

That the latest actions of the Council and East Cambs Street Scene Limited (as detailed in Appendix 1) be noted.

The Chairman of the Trading Company, the Managing Director and the Director Operations left the meeting at this point, 5:35pm.

35. EAST CAMBS STREET SCENE LIMITED – CHAIRMAN'S REMUNERATION

The Committee considered a report, reference S243, previously circulated, that considered the remuneration for the Chairman of East Cambs Street Scene Limited.

The Legal Services Manager reminded the Committee that this would be a recommendation to full Council and outlined that Paul Remington had been formally appointed as the Chairman by both the Board of Directors and Council. The matter for consideration by Members was his remuneration only. In

making a decision, Members might wish to consider the points set out in paragraph 4.1 of the report. Mr Remington was the Chairman of both the East Cambs Trading Company and East Cambs Street Scene Limited.

Councillor Steve Cheetham understood that each company had a separate Chairman post but as that was currently the same person then no remuneration should be given for the second post. Where the Chairmen were not the same person then the remuneration should stay as suggested.

Councillor Lorna Dupré thought that the principle should be that the posts should receive different remuneration. Overall the quantum of work remained the same before and after the second company was created. She did not believe that once the Trading Company had taken on the waste contract anything would change. But now the overall work would be split between the two companies. The Chairman of the Street Scene should receive £4K but this should be deducted from the remuneration given by the Trading Company.

Councillor Mike Bradley explained that it would not work, as the Chairman was under a current contract with the remuneration agreed. Although the original company had split, the role had not. The Director Commercial confirmed it was an employment contract. Councillor Bradley continued and stated that nothing should be given for the second post as it was the same person, but if this changed in the future then it could be re-visited.

It was therefore proposed that no remuneration be given to the Chairman of East Cambs Street Scene Limited and the Shareholder Committee be given authority to review the situation if it changed.

It was resolved to RECOMMEND TO FULL COUNCIL:

- (i) That no remuneration be given to the Chairman of East Cambs Street Scene Limited where the post holder is also the Chairman of the East Cambs Trading Company Limited; and
- (ii) That if circumstances changed, the Shareholder Committee be requested to review the situation and make a recommendation to Council as to the remuneration of the Chairman of East Cambs Street Scene Limited.

36. **FORWARD AGENDA PLAN**

The Chairman noted that future meetings would also receive Board minutes from East Cambs Street Scene Limited.

The Committee noted its forward agenda plan.

37. **EXCLUSION OF THE PUBLIC INCLUDING REPRESENTATIVES OF THE PRESS**

It was resolved:

That the press and public be excluded during the consideration of items 13 and 14 because it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the public were present during the item(s) there would be disclosure to them of exempt information of Categories 1, 2 and 3 of Part I Schedule 12A to the Local Government Act 1972 (as amended).

38. **EAST CAMBRIDGESHIRE TRADING COMPANY BOARD MINUTES 1ST FEBRUARY 2018**

The Committee considered an Exempt set of minutes, previously circulated, of the East Cambridgeshire Trading Company Board meeting held on 1st February 2018.

Councillor Alan Sharp asked for information about a fibre optic cable problem at the Barton Road Ely site. The Director, Property Services, explained that the Company had become aware of the cable running across the car park entrance. It had been laid at the incorrect level, so the decision had been made to lower it to the correct level, although this had incurred additional costs.

Councillor Lorna Dupré hoped that something more active would be done with regards risk management. How was it envisioned that Members would be instilled with a “sense of ownership” of the Property & Community Housing Division Business Plan?

The Director Commercial would consider how this could be promoted. The Director, Property Services noted that the publication was about community housing, with case studies and numerous references to East Cambridgeshire throughout.

The Committee noted the exempt minutes.

39. **SHAREHOLDER COMMITTEE EXEMPT MINUTES 11TH DECEMBER 2017**

It was resolved:

That the Exempt minutes of the Shareholder Committee meeting held on 11th December 2017 be confirmed as a correct record and be signed by the Chairman.

The meeting concluded at 5:51pm.



EAST
CAMBRIDGESHIRE
DISTRICT COUNCIL

SHAREHOLDER COMMITTEE

Minutes of the meeting of the Shareholder Committee held in the Council Chamber, The Grange, Nutholt Lane, Ely on Thursday, 24 May 2018 at 6:44pm.

PRESENT

Cllr Mike Bradley
Cllr David Chaplin
Cllr Steve Cheetham
Cllr Lorna Dupré
Cllr Lis Every (as Substitute)
Cllr Chris Morris (as Substitute)
Cllr Alan Sharp

APOLOGIES

Cllr David Brown
Cllr Richard Hobbs

OFFICERS

John Hill – Chief Executive
Maggie Camp – Legal Services Manager and Monitoring Officer
Jo Brooks – Director Operations
Emma Grima – Director Commercial
Adrian Scaites-Stokes – Democratic Services Officer

1. **ELECTION OF CHAIRMAN**

Councillor Mike Bradley was nominated by Councillor Alan Sharp and seconded by Councillor Lis Every. There being no other nominations:

It was resolved:

That Councillor Mike Bradley be elected as Chairman of the Shareholder Committee for the ensuing municipal year.

2. **APPOINTMENT OF VICE-CHAIRMAN**

Councillor David Chaplin was nominated by Councillor Mike Bradley and seconded by Councillor Steve Cheetham. There being no other nominations:

It was resolved:

That Councillor David Chaplin be appointed as Vice-Chairman of the Shareholder Committee for the ensuing municipal year.

The meeting concluded at 6:45pm.

**D. OTHER COMMITTEES/JOINT COMMITTEES/OTHER
PARTNERSHIP BODIES**

**EAST CAMBRIDGESHIRE TRADING COMPANIES SHAREHOLDER
COMMITTEE**

ANGLIA REVENUES PARTNERSHIP JOINT COMMITTEE

EAST CAMBRIDGESHIRE TRADING COMPANIES SHAREHOLDER COMMITTEE

1.0 CONSTITUTION

1.1 The East Cambridgeshire Trading Companies Shareholder Committee shall comprise of 7 members of Council who shall be appointed by Full Council. Its quorum is 3. Directors of the Trading Companies may not be Members or Substitute Members of the Shareholder Committee.

1.2 In accordance with the Shareholder Agreement for the Trading Companies:

- a Shareholder Committee Meeting shall be held no less than 4 times per annum every quarter;
- the Chairman of the Shareholder Committee may call an extraordinary committee,
 - o on giving not less than 6 Business Days' notice; and,
 - *o And the Chairman and Managing Director will be required to attend. If they are unable to attend, a Board Director will attend in their place, provided they are given not less than 10 Business Days' notice in writing;
- the Trading Companies shall ensure that at least one representative shall attend each meeting of the Shareholder Committee who shall be a Director and qualified to address the issues on the agenda for the meeting.

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2.0 OBJECTIVES

2.1 To scrutinise the East Cambridgeshire Trading Companies.

3.0 TERMS OF REFERENCE

3.1 To act as the Shareholder Committee for the purposes of the scrutiny of the Trading Companies and, in particular, to consider/review and make recommendations to Full Council, where relevant, on:

- the appointment of the Chairman of the Board and best practice policies in relation to such an appointment;
- the constitution of the Board of Directors;
- the Business Plans and each annual Business Plan;
- the financial performance of the Trading Companies ;
- how Council should exercise the functions flowing from its ownership of shares.

3.2 In order to discharge the functions in paragraph 3.1 above, to receive a report from the Board of Directors of each Trading Company at least twice a year which shall provide all information reasonably required for the Shareholder Committee to conduct an effective review of the following items:

- 3.2.1 ~~the services provided by the Company, with quality performance matched against contractually agreed service levels, strategic risk assessment;~~
- 3.2.2 progress against the Business Plan; ~~and~~ and financial projections;
- 3.2.3 summary management accounts and key financial metrics including financial projections and variations.;
- ~~3.2.4 the review of future service developments and opportunities.;~~ and
- ~~3.2.5 information and assessment of any additional ad-hoc requests.~~

3.3 To comment and make recommendations, as appropriate, on the following matters relating to the Trading ~~Companies that~~Companies that are reserved for decision by Full Council:

- 3.3.1 issuing or allotting any shares;
- 3.3.2 granting any option or other interest (in the form of convertible securities or in any other form) over or in its share capital, redeeming or purchasing any of its own shares or effecting any other reorganisation of its share capital;
- 3.3.3 altering in any respect its articles of association or the rights attaching to any of its shares;
- 3.3.4 permitting the registration of any person as a Shareholder of the Company;
- ~~3.3.5 declaring or paying any dividend;~~
- 3.3.56 re-registering the Company as a public limited company, or as any entity other than a company limited by shares;
- 3.3.67 applying for the listing or trading of any shares or debt securities on any stock exchange or market;
- ~~3.3.8 forming any Subsidiary Undertaking or acquiring shares in any other company or participating in a joint venture (incorporated or not);~~
- 3.3.79 amalgamating or merging with any other company or business undertaking; or
- 3.3.840 passing any resolution for its winding up or presenting any petition for its administration, unless it has become insolvent;
- 3.3.944 changing the nature of the Business or commencing any new business which is not ancillary or incidental to the Business;
- ~~3.3.12 engaging in any business other than as contemplated by the Business Plan or defraying any monies other than in good faith for the purposes of or in connection with the carrying on of such business;~~
- 3.3.1043 appointing or removing any Director;
- 3.3.114 the grant of any power of attorney or the appointment of any agent, or the entry into any other agreement which devolves or transfers management control of the Company from the Board of Directors;
- 3.3.125 agreeing to remunerate (by payment of fees, the provision of benefits-in-kind or otherwise) any Director;
- 3.3.136 the entry into any service contract, terms of appointment or other agreement with a Director;
- 3.3.147 agreeing to remunerate (by payment of fees, the provision of benefits-in-kind or otherwise) any key employee of, or consultant to, the Company at a rate in excess of £100,000 per annum ~~or increasing the remuneration of any such person to a rate in excess of 1% per annum;~~
- 3.3.158 establishing or amending any profit-sharing, share option, bonus or other incentive scheme of any nature for directors ~~or employees;~~
- 3.3.169 making any bonus payment to any director ~~or key employee;~~
- ~~3.3.20 instituting, settling or compromising any material legal proceedings instituted or threatened against it or submitting any dispute to arbitration or alternative dispute resolution;~~
- 3.3.1724 borrowing any monies which require a guarantee or security from the Council (other than normal trade credit);
- 3.3.1822 changing its name or its registered office; ~~or~~
- ~~3.3.23 replacing or modifying the Business Plan;~~
- ~~3.3.24 creating or granting any Security Interest over the whole or any part of its business, undertaking or assets or agreeing to do so;~~

- ~~3.3.25 entering into any arrangement, contract or transaction outside the normal course of its business or otherwise than on arm's length terms;~~
- ~~3.3.26 making any loan (otherwise than by way of deposit with a bank or other institution the normal business of which includes the acceptance of deposits) or granting any credit (other than in the normal course of trading) or giving any guarantee or indemnity; or~~
- 3.3.1927 entering into an agreement to do any of the foregoing.

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3.4 To host an annual Shareholder meeting for all Members of the Council.

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4.0 Delegation to East Cambridgeshire Trading Companies Shareholder Committee

- 4.1 Subject to the provisions of the Council's Constitution, the Committee has delegated authority to act on behalf of the Council in relation to the above, unless:
 - reserved to Council; or
 - delegated to officers under these or the other Committee terms of reference.

5.0 Delegation to Officers

- 5.1 The Monitoring Officer or appropriate Service Lead, are authorised to act in relation to any matter of immediate urgency, which must be dealt with before the next meeting of the Committee provided:

- the Chairman or Vice-Chairman of the Committee is consulted prior to the delegated decisions being made;
- the appropriate Service Delivery Champion is consulted prior to the delegated decisions being made;
- spokespersons of minority groups are notified immediately of any action taken under this delegated power;
- action taken is reported to the next Committee; and
- it excludes any decision, which is by law expressly vested in the Council.

- 5.2 There shall be delegated to the Monitoring Officer or appropriate Service Lead, the exercise of any power or function of the Council in routine matters related to the implementation of agreed Strategies, Policies and programmes, falling within established policies and procedures and within existing budgets.
For the avoidance of doubt this delegation shall include the power to authorise others to exercise such powers.

This delegation shall not be taken to include any matter reserved to Full Council.

- 5.3 There are further delegated to the officers indicated below the exercise of any power or function of the Council relating to the matters set out below (whether Policy approval, monitoring or operational matters have been delegated to a Sub-Committee or not) under the Listed Acts or any amendment, modification or re-enactment of those Acts, or Regulations/Orders made under those Acts:

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APPENDIX 2A

Dated

2018

EAST CAMBRIDGESHIRE DISTRICT COUNCIL
and
EAST CAMBS TRADING COMPANY LIMITED

Shareholders' Agreement relating to
East Cambs Trading Company Limited

1	Interpretation and definitions	1
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Shareholders' agreement

Dated 20186

Parties

- (1) **East Cambridgeshire District Council** whose principal office is at The Grange, Nutholt Lane, Ely, Cambridgeshire CB7 4EE (the **Council**); and
- (2) **East Cambs Trading Company Limited** a company incorporated and registered in England and Wales with registered number [10061867] whose registered office is at The Grange, Nutholt Lane, Ely, Cambridgeshire CB7 4EE (the **Company**).

Introduction

- (A) The Company was incorporated under the Companies Act 2006 on 14th March 2016 as a private company limited by shares. At the date of this Agreement the Company has issued share capital of 1 ordinary share of £1 owned by the Council.
- (B) This Agreement sets out the terms upon which the Council will participate in the Company as its shareholder.

Agreed terms

1 Interpretation and definitions

1.1 In this Agreement:

Annual Accounts Date means the accounting reference date of the Company from time to time;

Board of Directors means the board of directors of the Company;

Board Meeting means a meeting of the Board of Directors;

Business means the business of the Company described in clause 2 and the Business Plan and such other business as the Shareholder may agree from time to time in writing should be carried on by the Company;

Business Plan means the business plan adopted in accordance with clause 2 and clause 6 and applicable from time to time;

Business Day means a day other than a Saturday or Sunday or public holiday in England and Wales;

Director means any director for the time being of the Company, including where applicable any alternate director;

Environmental Information Regulations means the Environmental Information Regulations 2004;

FOIA means the Freedom of Information Act 2000;

Information has the meaning given to it under section 84 of the FOIA;

Prudential Code for Local Authorities means the Chartered Institute of Public Finance and Accountancy (**CIPFA**) Prudential Code for Capital Finance in Local Authorities 2011 and accompanying Guidance Notes for Practitioners 2013 (as updated or revised from time to time);

Request for Information has the meaning set out in the FOIA or any apparent request for information made under the FOIA or the Environment Information Regulations;

Security Interest means any mortgage, charge, pledge, lien, hypothecation, assignment by way of security, guarantee, indemnity, debenture, declaration of trust, right of set off or combination of accounts or any other type of preferential arrangement (including without limitation, a title transfer and retention of title) or any encumbrance or security interest whatsoever, howsoever arising and whether monetary or not;

Shareholder means any holder of any Share(s), being the Council at the date of this Agreement;

Shareholder Committee means a group which will be constituted and operate in accordance with clause 5;

Shareholder Committee Meeting means a meeting of the members of the Shareholder Committee;

Shares means the ordinary shares of £1 each in the capital of the Company;

Subsidiary Undertaking means a subsidiary undertaking as defined in section 1162 of the Companies Act 2006.

- 1.2 Any reference to a statute or statutory provision is a reference to it as it is in force from time to time, taking account of any change, extension, consolidation or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.3 Clause headings in this Agreement are for convenience only and do not affect the construction of any provision.
- 1.4 References to any gender shall include the other genders and references to the singular shall include the plural and vice versa.
- 1.5 Any reference to a person (which for the purposes of this Agreement shall include a firm, unincorporated association, body corporate, government, state or agency of state, any association or partnership or joint venture (whether or not having a separate legal personality)) shall include its successors in title.
- 1.6 In this Agreement all obligations and liabilities on the part of the Shareholder are (unless expressly stated otherwise) several and shall be construed accordingly.
- 1.7 Any reference to a document in the agreed form shall be a reference to that document in the form agreed and initialled by or on behalf of each of the Shareholder for the purpose of identification and attached to this Agreement.

2 **The business of the Company**

- 2.1 The parties acknowledge and agree that unless and until they agree otherwise, the business of the Company shall be the provision of the markets service grounds maintenance activity and property consultancy and development services to the Council and to other customers in accordance with the Business Plan. The Company shall:
- 2.1.1 carry on and conduct its business and affairs in a proper and efficient manner, for its own benefit, on sound commercial profit-making principles; and
- 2.1.2 transact all its business on arm's length terms.
- 2.2 The first Business Plan of the Company is in agreed form and will be approved by the Board of Directors as soon as reasonably practicable following execution of this Agreement. The Company shall circulate a revised version of the then current Business Plan to the Shareholder Committee ~~by the end of December in each year~~ annually in line with the coming financial year and invite the Shareholder Committee to provide comments on the proposed Business Plan. Following the receipt of such comments, the Board of Directors shall (in accordance with this Agreement) consider and, if appropriate, update and revise the proposed Business Plan and forward it to the Shareholder for consent in accordance with clause 6 ~~no later than the end of January~~. No adoption, variation or replacement of any Business Plan shall take effect unless such adoption, variation or replacement has received consent in accordance with clause 6.
- 2.3 Each Business Plan shall be substantially in the format of the first Business Plan and shall be for a five year period.
- 2.4 Notwithstanding any other provision of this clause 2 following the requisite approval by the Directors of a new proposed Business Plan or an amended or updated and revised Business Plan, such draft Business Plan shall become, or such amended or updated Business Plan shall become, the Business Plan of the Company. For any period when a proposed Business Plan presented under clause 2.2 has not been approved in accordance with clause 6 and adopted by the Directors in accordance with this Agreement, the relevant existing Business Plan shall continue to be the Business Plan of the Company.
- 2.5 The principal place of business of the Company and the principal place for management of the Company shall be within the boundaries of East Cambridgeshire, unless otherwise agreed in writing by the Council.

3 **Conduct of the Company's affairs**

- 3.1 With the exception of those matters requiring consent pursuant to clause 6, the day-to-day management of the Company shall be vested in the Directors. Without prejudice to the generality of the foregoing, the Directors will determine the general policies of the Company and the manner in which the Business is to be carried out to those matters requiring consent pursuant to clause 6 and to any other express provisions of this Agreement.
- 3.2 The Company shall not carry out any activity which would render the holding of Shares by the Council unlawful provided that where a proposed change of law would render such shareholding unlawful the Council will use all reasonable endeavours to take such steps as are necessary to allow it to continue lawfully to hold its Shares.

3.3 The Company will if it requires any approval, consent or licence for the carrying on of its Business in the manner in which it is from time to time carried on or proposed to be carried on, use all reasonable endeavours to obtain and maintain the same in full force and effect.

3.4 The Company shall permit any Director to discuss the affairs, finances and accounts of the Company and its subsidiaries at any time with any officers and employees [and Members of the Shareholder Committee as](#) designated in writing by the Council for this purpose. All books, records, accounts and documents relating to the business and the affairs of the Company and its subsidiaries shall be open to the inspection of any officers and employees designated in writing by the Council for this purpose, who shall be entitled to make any copies thereof as he or she deems appropriate to keep the Council properly informed about the business and affairs of the Company or to protect its interests as a Shareholder. Any confidential information secured as a consequence of such discussions and examinations shall be kept confidential by the Council and its designated officers and employees in accordance with the terms of clause 11.

3.5 The Company agrees with the Council that it will maintain effective and appropriate control systems in relation to the financial, accounting and record-keeping functions of the Company and will generally keep the Council informed of the progress of the Company's business and affairs and in particular will procure that the Shareholder is given such information and such access to the officers, employees and premises of the Company as it may reasonably require for the purposes of enabling it to monitor its investment in the Company and to comply with its obligations under the Prudential Code for Local Authorities.

3.6 The Company shall not breach nor cause the Council to be in breach of the relevant provisions of the Local Authorities (Companies) Order 1995, Part V of the Local Government and Housing Act 1989 or the Local Government Public Involvement in Health Act 2007 or its obligations under the Public Contracts Regulations 2015 or any European Directive on public procurement.

3.7 The Company shall:

3.7.1 identify the participation of the Council on all its official business stationery; and

3.7.2 not engage in any party political publicity.

~~3.8 The Company use its reasonable endeavours to ensure that:~~

~~3.8.1 no more than 19.99% of the total average annual turnover of the Company in any period of three financial years shall derive from activities undertaken for any person who is not the Council or a person over which the Council exercises Control (and for the purposes of this obligation only Control shall have the meaning attributed to it in Regulation 12(3) or 12(5) of the Public Contracts Regulations 2015); and~~

~~3.8.2 the Company shall not accept any direct private capital participation (with the exception of non-controlling and non-blocking forms of private capital participation as may be required by English legislation in conformity with the Treaty on the Functioning of the European Union, which do not exert a decisive influence on the Company).~~

~~3.9 If any of the parties become aware that, for whatever reason, that the Company no longer fulfils any of the requirements of Regulation 12(4) of the Public Contracts Regulations 2015 (Teckal Non-Compliance) or such Teckal Non-Compliance is likely to occur, it shall immediately notify the other parties. Following such notification, the parties shall work together to ensure action is taken to either:~~

~~3.9.1 remedy the Teckal Non-Compliance; or~~

~~3.9.2 take steps to prevent such Teckal Non-Compliance occurring~~

4 **The Board of Directors**

4.1 The Board of Directors shall consist of not less than 4 Directors.

4.2 Board Meetings shall be held no less than 4 times ~~per annum in every year and at not more than three monthly intervals~~. All Board Meetings shall be held in the United Kingdom.

4.3 Unless otherwise agreed by all the Directors, not less than 5 Business Days' notice shall be given to each of the Directors of all Board Meetings. The notice convening a Board Meeting shall include an agenda specifying in reasonable detail the matters to be discussed, together with any relevant papers for discussion at such meeting. If any matter is not identified in reasonable detail the Board of Directors shall not decide on it unless all Directors agree in writing

5 **Shareholder Committee**

5.1 The Shareholder Committee shall not have powers to make decisions on behalf of the Council or the Company. The purpose of the Shareholder Committee shall be to:

5.1.1 recommend, where relevant, the appointment of the Chairman of the Board and approve best practice policies in relation to such an appointment;

5.1.2 receive and review and comment on or recommend any amendments to the Business Plan;

5.1.3 review the financial performance of the Company; and

5.1.4 make recommendations to the Council on how it should exercise the functions flowing from its ownership of Shares.

5.2 ~~Unless and until the Council resolves otherwise, the Shareholder Committee will be the Council's Asset Development Committee, save that e~~lected members of the Council who are appointed as Directors cannot be members (or substitutes) of the Shareholder Committee.

5.3 A Shareholder Committee Meeting shall be held no less than ~~every quarter~~four times per annum.

~~5.4~~ 5.4 The Chairman of the Shareholder Committee may call an extraordinary committee;

(i) On giving not less than 6 Business Days' notice; and

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~~(ii) and the~~ Chairman and Managing Director will be required to attend. If they are unable to attend, a Board Director will attend in their place, provided they are given not less than 10 Business Days' notice in writing.

5.5 The Board of Directors shall send a report ~~at least~~ twice a year to ~~each member of the~~ Shareholder Committee. The report shall provide all information reasonably required for the Shareholder Committee to conduct an effective review of the following items:

~~5.5.1 the services provided by the Company, with quality performance matched against contractually agreed service levels~~the strategic risk assessment;

~~5.5.2~~ 5.5.2 progress against the Business Plan; ~~and~~ and financial projections;

~~5.5.3~~ 5.5.3 summary management accounts and key financial metrics including financial projections and variations;

~~5.5.4~~ the review of future service developments and opportunities; and

~~5.5.5~~ information and assessment of any additional ad-hoc requests.

For the avoidance of doubt, the list of items in this clause 5.5 is not exhaustive, ~~and ad-hoc meetings of the Shareholder Committee can be called at other times in accordance with Procedure 27.4 of the East Cambridgeshire District Council Constitution.~~

5.6 Unless otherwise agreed by the Chairman of the Shareholder Committee appointed by the Council before a Shareholder Committee Meeting not less than 5 Business Days' notice shall be given to each of the members of the Shareholder Committee and to the directors of the Company which shall include an agenda specifying in reasonable detail the matters to be discussed, together with any relevant papers for discussion at such meeting.

~~5.7 The Company will supply members of the Shareholder Committee with the agendas and support papers provided to the Board of Directors and shall do so at the same time, as far as possible, as the relevant board receives those agendas and papers (except for minutes, which need only be supplied after signature). In addition,~~ the Company will supply the members of the Shareholder Committee with all information and data reasonably requested by the Shareholder Committee to enable it to reach an informed judgment on any matter within its purview.

5.8 The Company shall ensure that at least one representative shall attend each meeting of the Shareholder Committee who shall be a Director and qualified to address the issues on the agenda for the meeting.

6 **Reserved Matters** (Matters requiring consent of the Council)

6.1 Each of the parties shall take all such steps and do all such acts and things as may be necessary or desirable, including, without limitation, exercising all voting and other rights and powers of control available to it in relation to the Company, so as to procure (insofar as it is able to do so by the exercise of those rights and powers) that at all times during the term of this Agreement no Company Member shall, except with the prior consent of the Council, take any action or pass any resolution in respect of:

6.1.1 issuing or allotting any shares;

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- 6.1.2 granting any option or other interest (in the form of convertible securities or in any other form) over or in its share capital, redeeming or purchasing any of its own shares or effecting any other reorganisation of its share capital;
- 6.1.3 altering in any respect its articles of association or the rights attaching to any of its shares;
- 6.1.4 permitting the registration of any person as a Shareholder of the Company;
- ~~6.1.5 declaring or paying any dividend;~~
- ~~6.1.6~~6.1.5 re-registering the Company as a public limited company, or as any entity other than a company limited by shares;
- ~~6.1.7~~6.1.6 applying for the listing or trading of any shares or debt securities on any stock exchange or market;
- ~~6.1.8 forming any Subsidiary Undertaking or acquiring shares in any other company or participating in a joint venture (incorporated or not);~~
- ~~6.1.9~~6.1.7 amalgamating or merging with any other company or business undertaking; or
- ~~6.1.10~~6.1.8 passing any resolution for its winding up or presenting any petition for its administration, unless it has become insolvent;
- ~~6.1.11~~6.1.9 changing the nature of the Business or commencing any new business which is not ancillary or incidental to the Business;
- ~~6.1.12 engaging in any business other than as contemplated by the Business Plan or defraying any monies other than in good faith for the purposes of or in connection with the carrying on of such business;~~
- ~~6.1.13~~6.1.10 appointing or removing any Director;
- ~~6.1.14~~6.1.11 the grant of any power of attorney or the appointment of any agent, or the entry into any other agreement which devolves or transfers management control of the Company from the Board of Directors;
- ~~6.1.15~~6.1.12 agreeing to remunerate (by payment of fees, the provision of benefits-in-kind or otherwise) any Director;
- ~~6.1.16~~6.1.13 the entry into any service contract, terms of appointment or other agreement with a Director;
- ~~6.1.17~~6.1.14 agreeing to remunerate (by payment of fees, the provision of benefits-in-kind or otherwise) any key employee of, or consultant to, the Company at a rate in excess of £100,000 per annum ~~or increasing the remuneration of any such person to a rate in excess of 1% per annum;~~
- ~~6.1.18~~6.1.15 establishing or amending any profit-sharing, share option, bonus or other incentive scheme of any nature for directors ~~or employees;~~
- ~~6.1.19~~6.1.16 making any bonus payment to any director ~~or key employee;~~

~~6.1.206.1.17~~ instituting, settling or compromising any material legal proceedings instituted or threatened against it or submitting any dispute to arbitration or alternative dispute resolution;

~~6.1.246.1.18~~ borrowing any monies which require a guarantee or security from the Council (other than normal trade credit);

~~6.1.226.1.19~~ changing its name or its registered office; or

~~6.1.23~~ replacing or modifying the Business Plan;

~~6.1.24~~ creating or granting any Security Interest over the whole or any part of its business, undertaking or assets or agreeing to do so;

~~6.1.25~~ entering into any arrangement, contract or transaction outside the normal course of its business or otherwise than on arm's length terms;

~~6.1.26~~ making any loan (otherwise than by way of deposit with a bank or other institution the normal business of which includes the acceptance of deposits) or granting any credit (other than in the normal course of trading) or giving any guarantee or indemnity; or

~~6.1.276.1.20~~ entering into an agreement to do any of the foregoing.

7 **Production of accounts and reports**

7.1 The Company shall provide the information referred to in clause 7.2 to the Shareholder.

7.2 The Company shall instruct its accountants to prepare a balance sheet of the Company, as at the Annual Accounts Date each year and a consolidated profit and loss account of the Company, for the 12 month financial period ending on the Annual Accounts Date each year to be presented to the Shareholder within 3 calendar months after the end of the period to which such accounts relate. The Company shall appoint an independent auditor to audit the balance sheet and profit and loss account for the Company.

7.3 The Company will provide to the Shareholder full details of any actual or prospective material change in the Business or the financial position or affairs of the Company, as soon as such details are available.

7.4 All accounts referred to in this clause shall be prepared in pounds sterling and in accordance with applicable law and generally accepted accounting standards, principles and practices in the United Kingdom.

8 **Anti-corruption**

8.1 In this clause:

Adequate Procedures means adequate procedures, as referred to in section 7(2) of the Bribery Act 2010 and any guidance issued by the Secretary of State under section 9 of the Bribery Act 2010;

Associated Person means in relation to a party to this Agreement, any person (including an officer, employee, agent or Subsidiary Undertaking) who performs services for or on behalf of that party;

Corrupt Activity means extortion, fraud, deception, collusion, cartels, abuse of power, embezzlement, trading in influence, money-laundering or any similar activity including without limitation any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 Bribery Act;

8.2 Each party declares and undertakes to the other parties that:

8.2.1 it has not and will not in relation to the Company or the operation of the Business, engage in any Corrupt Activity;

8.2.2 it will not authorise or acquiesce in or turn a blind eye to, any Corrupt Activity;

8.2.3 it has and will maintain in place, or in the case of the Company it will put and maintain in place, Adequate Procedures designed to prevent any Associated Person from undertaking any conduct that would give rise to an offence under section 7 of the Bribery Act 2010;

8.2.4 it has not and will not engage in any activity, practice or conduct which could place the Company or any other party in breach of section 7(1) Bribery Act;

8.2.5 from time to time, at the reasonable request of the other party, it will confirm in writing that it has complied with its undertakings under this clause 8.2 and will provide any information reasonably requested by the other party in support of such compliance; and

8.2.6 it will ensure that its Associated Persons will comply with its commitments under this clause 8.

9 **No fetter**

Nothing in this Agreement shall operate to bind the Company or any Council to the extent that it constitutes an unlawful fetter on any statutory power of the Company or the Council.

10 **Duration and termination**

10.1 This Agreement shall continue in full force and effect, unless otherwise agreed in writing by the Council, provided that this Agreement shall cease to have effect as regards any Shareholder who ceases to hold any Shares in the Company, except for any provisions which are expressed to continue in force thereafter.

10.2 Termination of this Agreement pursuant to this clause shall not release any party from any liability which at the time of termination has already accrued to another party or which may accrue after termination of this Agreement in respect of any act or omission prior to such termination.

11 **Confidentiality**

11.1 This clause applies to:

- 11.1.1 all information of a confidential nature disclosed (whether in writing, verbally or by any other means and whether directly or indirectly) by one party to one of the other parties whether before or after the date of this Agreement;
- 11.1.2 any information concerning the business affairs of one party or other information confidential to that party which one of the other parties learns as a result of the relationship between the parties pursuant to this Agreement;
- including any information relating to any party's products, operations, processes, plans or intentions, product information, know-how, design rights, trade secrets, market opportunities and business affairs (together, **Confidential Information**).
- 11.2 In this clause, in relation to a particular item of Confidential Information:
- 11.2.1 the **Disclosing Party** means the party by whom (or on whose behalf) that Confidential Information is disclosed or (where there is no such disclosure) the party to whom the Confidential Information relates, or to whom the Confidential Information is proprietary or who otherwise desires that the confidentiality of the Confidential Information is respected; and
- 11.2.2 the **Receiving Party** means the other party.
- 11.3 During the term of this Agreement and after termination of this Agreement for any reason whatsoever, the Receiving Party shall:
- 11.3.1 keep the Confidential Information confidential;
- 11.3.2 not disclose the Confidential Information to any other person other than with the prior written consent of the Disclosing Party or in accordance with this clause 11; and
- 11.3.3 not use the Confidential Information for any purpose other than the performance of its obligations and the exercise of its rights under this Agreement.
- 11.4 Notwithstanding clause 11.3, the Receiving Party may disclose Confidential Information as follows:
- 11.4.1 to its professional advisers (each, a Recipient) providing the Receiving Party ensures that each Recipient is made aware of and complies with all the Receiving Party's obligations of confidentiality under this Agreement as if the Recipient was a party to this Agreement; and
- 11.4.2 to other parties to this Agreement, and where disclosure is required by law, by any court of competent jurisdiction or by any appropriate regulatory body.
- 11.5 This clause 11 shall not apply to any Confidential Information which:
- 11.5.1 is at the date of this Agreement or at a later date comes into the public domain other than through breach of this Agreement by the Receiving Party or any Recipient;
- 11.5.2 was known by the Receiving Party before receipt from (or on behalf of) the Disclosing Party (or, as appropriate, before the Receiving Party learnt of the

same pursuant to this Agreement) and which had not previously been obtained under an obligation of confidence; or

11.5.3 subsequently comes lawfully into the Receiving Party's possession from a third party, free of any obligation of confidence.

11.6 The Company acknowledges that the Council is subject to the requirements of the FOIA, the Environmental Information Regulations and other access to information and propriety controls as provided in legislation, and shall facilitate the Council's compliance with its Information disclosure requirements pursuant to and in the manner provided for in clauses 11.7 and 11.10.

11.7 If a Council receives a Request for Information in relation to Information that the Company is holding and which the Council does not hold itself, the Council shall refer to the Company such Request for Information as soon as practicable and in any event within five (5) Business Days of receiving a Request for Information, and the Company shall:

11.7.1 provide the Council with a copy of all such Information in the form that the Council requires as soon as practicable and in any event within 10 Business Days (or such other period as the Council acting reasonably may specify) of the Council's request; and

11.7.2 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

11.8 Following notification under clause 11.7, and up until such time as the Company has provided the Council with all the Information specified in clause 11.7, the Company may make representations to the Council as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Council shall be responsible for determining, at its absolute discretion:

11.8.1 whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and

11.8.2 whether Information is to be disclosed in response to a Request for Information, and in no event shall the Company respond directly to a Request for Information.

11.9 The Company acknowledges that (notwithstanding the provisions of clause 11.1) the Council may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under part I of the Freedom of Information Act 2000, be obliged under the FOIA or the Environmental Information Regulations to disclose Information concerning the Company:

11.9.1 in certain circumstances without consulting with the Company; or

11.9.2 following consultation with the Company and having taken its views into account.

11.10 The Company shall transfer to the relevant Council any Request for Information received by it as soon as practicable and in any event within 3 Business Days of receiving it.

11.11 The Company acknowledges that any lists provided which list or outline Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with clause 11.9.

12 **General**

12.1 Except where this Agreement provides otherwise, each party shall pay its own costs relating to or in connection with the negotiation, preparation, execution and performance by it of this Agreement and of each agreement or document entered into pursuant to this Agreement and the transactions contemplated by this Agreement.

12.2 No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties.

12.3 No delay, indulgence or omission in exercising any right, power or remedy provided by this Agreement or by law shall operate to impair or be construed as a waiver of such right, power or remedy or of any other right, power or remedy.

12.4 No single or partial exercise or non-exercise of any right, power or remedy provided by this Agreement or by law shall preclude or restrict any other or further exercise of such rights, power or remedy or of any other right, power or remedy.

12.5 A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement does not constitute a waiver of any other breach or default and shall not affect the other terms of this Agreement.

12.6 A waiver of a breach of any of the terms of this agreement or of a default under this Agreement will not prevent a party from subsequently requiring compliance with the waived obligation.

12.7 The rights and remedies provided by this Agreement are cumulative and are not exclusive of any rights, powers or remedies provided by law.

12.8 If any provision of this Agreement is or becomes illegal, invalid or unenforceable under the law of any jurisdiction, that shall not affect or impair:

12.8.1 the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or

12.8.2 the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Agreement.

12.9 This Agreement, and the documents referred to in it, constitute the entire agreement and understanding between the parties and supersede any previous agreement, understanding or arrangement between the parties relating to the subject matter of this Agreement.

12.10 Each of the parties acknowledges and agrees that:

12.10.1 in entering into this Agreement, and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, assurance, warranty or understanding of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement or those documents;

12.10.2 the only remedy available to it arising out of or in connection with this Agreement or its subject matter shall be for damages for breach of contract under the terms of this Agreement;

12.10.3 nothing in this clause shall operate to limit or exclude any liability for fraud.

12.11 No person who is not a party to this Agreement shall have any right to enforce this Agreement or any agreement or document entered into pursuant to this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

13 **Assignment**

This Agreement is personal to the parties and neither party shall assign, transfer, charge, make the subject of a trust or deal in any other manner with this Agreement or any of its rights or obligations under it, or purport to do any of the same, nor sub-contract any or all of its obligations under this Agreement without the prior written consent of the other party save where the Council's functions are transferred or assigned to a successor body. Each party is entering into this Agreement for its benefit and not for the benefit of another person.

14 **No partnership or agency**

Nothing in this Agreement is intended to or shall operate to create a partnership, or to authorise any party to act as agent for any other or to establish any other fiduciary relationship between the parties. No party shall have authority to act in the name or on behalf of or otherwise to bind any other party in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

15 **Notices**

15.1 Any notice or other communication given under this Agreement:

15.1.1 shall be in writing;

15.1.2 shall be signed by or on behalf of the party giving it;

15.1.3 shall be served by delivering it by hand or sending it by pre-paid recorded delivery or registered post or by fax at the address or fax number set out in clause 15.2 of the party due to receive it and marked for the attention of the person named in clause 15.2 (or at such other address in the United Kingdom or fax number or marked for the attention of such other person as last notified in writing to the other parties;

15.1.4 shall be deemed to have been received:

- (a) if delivered by hand, at the time of actual delivery;
- (b) in the case of pre-paid recorded delivery or registered post, two Business Days after the date of posting; and
- (c) in the case of fax, at the time of completion of transmission.

- 15.2 The addresses of the parties for the purposes of clause 15.1 are as set out at the beginning of this Agreement and the notice details and fax numbers are as follows:
- 15.3 To prove delivery it shall be sufficient to prove that the envelope containing the notice was addressed to the address of the relevant party set out in clause 15.2 and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery, registered post or airmail letter, or that the notice was transmitted by fax to the fax number of the relevant party set out in clause 15.2.
- 15.4 In this clause if deemed receipt occurs before 9am on a Business Day the notice shall be deemed to have been received at 9am on that day, and if deemed receipt occurs after 5pm on a Business Day, or on a day which is not a Business Day, the notice shall be deemed to have been received at 9am on the next Business Day.
- 15.5 For the avoidance of doubt, a notice or other communication given under this Agreement shall not be validly served if sent by e-mail.

16 Counterparts

This Agreement may be executed in any number of counterparts and by different parties on separate counterparts (which may be facsimile copies), but shall not take effect until each party has executed at least one counterpart. Each counterpart shall constitute an original, and all the counterparts together shall constitute a single agreement.

17 Applicable law

- 17.1 The parties agree that this Agreement and any dispute or claim arising out of or in connection with this Agreement, its negotiation or its subject matter, or any non-contractual obligation arising in connection with the foregoing, shall be governed by and construed in accordance with English law.
- 17.2 Each of the parties irrevocably agrees to submit to the exclusive jurisdiction of the courts of England and Wales in relation to any claim or matter arising out of or in connection with this Agreement, its negotiation or its subject matter, or any non-contractual obligation arising in connection with the foregoing.

This Agreement has been executed on the date stated at the beginning of this Agreement.

The Common Seal of EAST CAMBRIDGESHIRE)
DISTRICT COUNCIL was hereunto affixed in)
the presence of:-)

Legal Services Manager/Chief Executive

EXECUTED AS A DEED by EAST CAMBS)
TRADING COMPANY LIMITED in the)
presence of:)

Director

Director/Secretary

APPENDIX 2B

Dated

2018~~6~~

EAST CAMBRIDGESHIRE DISTRICT COUNCIL

and

~~[LATC]~~EAST CAMBS STREET SCENE LIMITED

Shareholders' Agreement relating to

~~[LATC]~~EAST CAMBS STREET SCENE LIMITED

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Shareholders' agreement

Dated 2018

Parties

- (1) **East Cambridgeshire District Council** whose principal office is at The Grange, Nutholt Lane, Ely, Cambridgeshire CB7 4EE (the **Council**); and
- (2) ~~[LATC]~~**East Cambs Street Scene Limited** a company incorporated and registered in England and Wales with registered number [11150811] whose registered office is at The Grange, Nutholt Lane, Ely, Cambridgeshire CB7 4EE (the **Company**).

Introduction

- (A) The Company was incorporated under the Companies Act 2006 on ~~[15 January 2018]~~ 2015 as a private company limited by shares. At the date of this Agreement the Company has issued share capital of 1 ordinary share of £1 owned by the Council.
- (B) This Agreement sets out the terms upon which the Council will participate in the Company as its shareholder.

Agreed terms

1 Interpretation and definitions

1.1 In this Agreement:

Annual Accounts Date means the accounting reference date of the Company from time to time;

Board of Directors means the board of directors of the Company;

Board Meeting means a meeting of the Board of Directors;

Business means the business of the Company described in clause 2 and the Business Plan and such other business as the Shareholder may agree from time to time in writing should be carried on by the Company;

Business Plan means the business plan adopted in accordance with clause 2 and clause 6 and applicable from time to time;

Business Day means a day other than a Saturday or Sunday or public holiday in England and Wales;

Director means any director for the time being of the Company, including where applicable any alternate director;

Environmental Information Regulations means the Environmental Information Regulations 2004;

FOIA means the Freedom of Information Act 2000;

Information has the meaning given to it under section 84 of the FOIA;

Prudential Code for Local Authorities means the Chartered Institute of Public Finance and Accountancy (**CIPFA**) Prudential Code for Capital Finance in Local Authorities 2011 and accompanying Guidance Notes for Practitioners 2013 (as updated or revised from time to time);

Request for Information has the meaning set out in the FOIA or any apparent request for information made under the FOIA or the Environment Information Regulations;

Security Interest means any mortgage, charge, pledge, lien, hypothecation, assignment by way of security, guarantee, indemnity, debenture, declaration of trust, right of set off or combination of accounts or any other type of preferential arrangement (including without limitation, a title transfer and retention of title) or any encumbrance or security interest whatsoever, howsoever arising and whether monetary or not;

Shareholder means any holder of any Share(s), being the Council at the date of this Agreement;

Shareholder Committee means a group which will be constituted and operate in accordance with clause 5;

Shareholder Committee Meeting means a meeting of the members of the Shareholder Committee;

Shares means the ordinary shares of £1 each in the capital of the Company;

Subsidiary Undertaking means a subsidiary undertaking as defined in section 1162 of the Companies Act 2006.

- 1.2 Any reference to a statute or statutory provision is a reference to it as it is in force from time to time, taking account of any change, extension, consolidation or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.3 Clause headings in this Agreement are for convenience only and do not affect the construction of any provision.
- 1.4 References to any gender shall include the other genders and references to the singular shall include the plural and vice versa.
- 1.5 Any reference to a person (which for the purposes of this Agreement shall include a firm, unincorporated association, body corporate, government, state or agency of state, any association or partnership or joint venture (whether or not having a separate legal personality)) shall include its successors in title.
- 1.6 In this Agreement all obligations and liabilities on the part of the Shareholder are (unless expressly stated otherwise) several and shall be construed accordingly.
- 1.7 Any reference to a document in the agreed form shall be a reference to that document in the form agreed and initialled by or on behalf of each of the Shareholder for the purpose of identification and attached to this Agreement.

2 **The business of the Company**

- 2.1 The parties acknowledge and agree that unless and until they agree otherwise, the business of the Company shall be the provision of the waste & recycling service and grounds maintenance activity to the Council and to other customers in accordance with the Business Plan. The Company shall:
- 2.1.1 carry on and conduct its business and affairs in a proper and efficient manner, for its own benefit, on sound commercial profit-making principles; and
- 2.1.2 transact all its business on arm's length terms.
- 2.2 The first Business Plan of the Company is in agreed form and will be approved by the Board of Directors as soon as reasonably practicable following execution of this Agreement. The Company shall circulate a revised version of the then current Business Plan to the Shareholder Committee annually [in line with the coming financial year](#) and invite the Shareholder Committee to provide comments on the proposed Business Plan. Following the receipt of such comments, the Board of Directors shall (in accordance with this Agreement) consider and, if appropriate, update and revise the proposed Business Plan and forward it to the Shareholder for consent in accordance with clause 6. No adoption, variation or replacement of any Business Plan shall take effect unless such adoption, variation or replacement has received consent in accordance with clause 6.
- 2.3 Each Business Plan shall be substantially in the format of the first Business Plan and shall be for a three year period.
- 2.4 Notwithstanding any other provision of this clause 2 following the requisite approval by the Directors of a new proposed Business Plan or an amended or updated and revised Business Plan, such draft Business Plan shall become, or such amended or updated Business Plan shall become, the Business Plan of the Company. For any period when a proposed Business Plan presented under clause 2.2 has not been approved in accordance with clause 6 and adopted by the Directors in accordance with this Agreement, the relevant existing Business Plan shall continue to be the Business Plan of the Company.
- 2.5 The principal place of business of the Company and the principal place for management of the Company shall be within the boundaries of East Cambridgeshire, unless otherwise agreed in writing by the Council.

3 **Conduct of the Company's affairs**

- 3.1 With the exception of those matters requiring consent pursuant to clause 6, the day-to-day management of the Company shall be vested in the Directors. Without prejudice to the generality of the foregoing, the Directors will determine the general policies of the Company and the manner in which the Business is to be carried out to those matters requiring consent pursuant to clause 6 and to any other express provisions of this Agreement.
- 3.2 The Company shall not carry out any activity which would render the holding of Shares by the Council unlawful provided that where a proposed change of law would render such shareholding unlawful the Council will use all reasonable endeavours to take such steps as are necessary to allow it to continue lawfully to hold its Shares.

- 3.3 The Company will if it requires any approval, consent or licence for the carrying on of its Business in the manner in which it is from time to time carried on or proposed to be carried on, use all reasonable endeavours to obtain and maintain the same in full force and effect.
- 3.4 The Company shall permit any Director to discuss the affairs, finances and accounts of the Company and its subsidiaries at any time with any officers and employees [and Members of the Shareholder Committee](#) designated in writing by the Council for this purpose. All books, records, accounts and documents relating to the business and the affairs of the Company and its subsidiaries shall be open to the inspection of any officers and employees designated in writing by the Council for this purpose, who shall be entitled to make any copies thereof as he or she deems appropriate to keep the Council properly informed about the business and affairs of the Company or to protect its interests as a Shareholder. Any confidential information secured as a consequence of such discussions and examinations shall be kept confidential by the Council and its designated officers and employees in accordance with the terms of clause 11.
- 3.5 The Company agrees with the Council that it will maintain effective and appropriate control systems in relation to the financial, accounting and record-keeping functions of the Company and will generally keep the Council informed of the progress of the Company's business and affairs and in particular will procure that the Shareholder is given such information and such access to the officers, employees and premises of the Company as it may reasonably require for the purposes of enabling it to monitor its investment in the Company and to comply with its obligations under the Prudential Code for Local Authorities.
- 3.6 The Company shall not breach nor cause the Council to be in breach of the relevant provisions of the Local Authorities (Companies) Order 1995, Part V of the Local Government and Housing Act 1989 or the Local Government Public Involvement in Health Act 2007 or its obligations under the Public Contracts Regulations 2015 or any European Directive on public procurement.
- 3.7 The Company shall:
- 3.7.1 identify the participation of the Council on all its official business stationery; and
 - 3.7.2 not engage in any party political publicity.
- 3.8 The Company use its reasonable endeavours to ensure that:
- 3.8.1 no more than 19.99% of the total average annual turnover of the Company in any period of three financial years shall derive from activities undertaken for any person who is not the Council or a person over which the Council exercises Control (and for the purposes of this obligation only Control shall have the meaning attributed to it in Regulation 12(3) or 12(5) of the Public Contracts Regulations 2015); and
 - 3.8.2 the Company shall not accept any direct private capital participation (with the exception of non-controlling and non-blocking forms of private capital participation as may be required by English legislation in conformity with the Treaty on the Functioning of the European Union, which do not exert a decisive influence on the Company).

3.9 If any of the parties become aware that, for whatever reason, that the Company no longer fulfils any of the requirements of Regulation 12(4) of the Public Contracts Regulations 2015 (Teckal Non-Compliance) or such Teckal Non-Compliance is likely to occur, it shall immediately notify the other parties. Following such notification, the parties shall work together to ensure action is taken to either:

3.9.1 remedy the Teckal Non-Compliance; or

3.9.2 take steps to prevent such Teckal Non-Compliance occurring

4 **The Board of Directors**

4.1 The Board of Directors shall consist of not less than 4 Directors.

4.2 Board Meetings shall be held no less than 4 times ~~per annum in every year~~ and at not more than ~~three monthly intervals~~. All Board Meetings shall be held in the United Kingdom.

4.3 Unless otherwise agreed by all the Directors, not less than 5 Business Days' notice shall be given to each of the Directors of all Board Meetings. The notice convening a Board Meeting shall include an agenda specifying in reasonable detail the matters to be discussed, together with any relevant papers for discussion at such meeting. If any matter is not identified in reasonable detail the Board of Directors shall not decide on it unless all Directors agree in writing

5 **Shareholder Committee**

5.1 The Shareholder Committee shall not have powers to make decisions on behalf of the Council or the Company. The purpose of the Shareholder Committee shall be to:

5.1.1 recommend, where relevant, the appointment of the Chairman of the Board and approve best practice policies in relation to such an appointment;

5.1.2 receive and review and comment on or recommend any amendments to the Business Plan;

5.1.3 review the financial performance of the Company; and

5.1.4 make recommendations to the Council on how it should exercise the functions flowing from its ownership of Shares.

5.2 Elected members of the Council who are appointed as Directors cannot be members (or substitutes) of the Shareholder Committee.

5.3 A Shareholder Committee Meeting shall be held no less than ~~every quarter~~ four times per annum.

~~5.4~~ 5.4 The Chairman of the Shareholder Committee may call an extraordinary committee;

(i) On giving not less than 6 Business Days' notice; and

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~~(ii) and~~ the Chairman and Managing Director will be required to attend. If they are unable to attend, a Board Director will attend in their place, provided they are given not less than 10 Business Days' notice in writing.

5.5 The Board of Directors shall send a report ~~at least~~ twice a year to ~~each member of the~~ Shareholder Committee. The report shall provide all information reasonably required for the Shareholder Committee to conduct an effective review of the following items:

5.5.1 the ~~services provided by the Company~~ strategic risk assessment;

~~5.5.2 progress against the Business Plan and financial projections;~~

~~5.5.3~~ 5.2 summary management accounts and key financial metrics including financial projections and variations; and

~~5.5.4 information and assessment of any additional ad-hoc requests.~~

For the avoidance of doubt, the list of items in this clause 5.5 is not exhaustive, ~~and ad-hoc meetings of the Shareholder Committee can be called at other times in accordance with Procedure 27.4 of the East Cambridgeshire District Council Constitution.~~

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5.6 Unless otherwise agreed by the Chairman of the Shareholder Committee appointed by the Council before a Shareholder Committee Meeting not less than 5 Business Days' notice shall be given to each of the members of the Shareholder Committee and to the directors of the Company which shall include an agenda specifying in reasonable detail the matters to be discussed, together with any relevant papers for discussion at such meeting.

~~5.7 The Company will supply members of the Shareholder Committee with the agendas and support papers provided to the Board of Directors and shall do so at the same time, as far as possible, as the relevant board receives those agendas and papers (except for minutes, which need only be supplied after signature). In addition,~~ the Company will supply the members of the Shareholder Committee with all information and data reasonably requested by the Shareholder Committee to enable it to reach an informed judgment on any matter within its purview.

5.8 The Company shall ensure that at least one representative shall attend each meeting of the Shareholder Committee who shall be a Director and qualified to address the issues on the agenda for the meeting.

6 **Reserved Matters** (Matters requiring consent of the Council)

6.1 Each of the parties shall take all such steps and do all such acts and things as may be necessary or desirable, including, without limitation, exercising all voting and other rights and powers of control available to it in relation to the Company, so as to procure (insofar as it is able to do so by the exercise of those rights and powers) that at all times during the term of this Agreement no Company Member shall, except with the prior consent of the Council, take any action or pass any resolution in respect of:

6.1.1 issuing or allotting any shares;

- 6.1.2 granting any option or other interest (in the form of convertible securities or in any other form) over or in its share capital, redeeming or purchasing any of its own shares or effecting any other reorganisation of its share capital;
- 6.1.3 altering in any respect its articles of association or the rights attaching to any of its shares;
- 6.1.4 permitting the registration of any person as a Shareholder of the Company;
- ~~6.1.5 declaring or paying any dividend;~~
- ~~6.1.6~~ 6.1.5 re-registering the Company as a public limited company, or as any entity other than a company limited by shares;
- ~~6.1.7~~ 6.1.6 applying for the listing or trading of any shares or debt securities on any stock exchange or market;
- ~~6.1.8 forming any Subsidiary Undertaking or acquiring shares in any other company or participating in a joint venture (incorporated or not);~~
- ~~6.1.9~~ 6.1.7 amalgamating or merging with any other company or business undertaking; or
- ~~6.1.10~~ 6.1.8 passing any resolution for its winding up or presenting any petition for its administration, unless it has become insolvent;
- ~~6.1.11~~ 6.1.9 changing the nature of the Business or commencing any new business which is not ancillary or incidental to the Business;
- ~~6.1.12 engaging in any business other than as contemplated by the Business Plan or defraying any monies other than in good faith for the purposes of or in connection with the carrying on of such business;~~
- ~~6.1.13~~ 6.1.10 appointing or removing any Director;
- ~~6.1.14~~ 6.1.11 the grant of any power of attorney or the appointment of any agent, or the entry into any other agreement which devolves or transfers management control of the Company from the Board of Directors;
- ~~6.1.15~~ 6.1.12 agreeing to remunerate (by payment of fees, the provision of benefits-in-kind or otherwise) any Director;
- ~~6.1.16~~ 6.1.13 the entry into any service contract, terms of appointment or other agreement with a Director;
- ~~6.1.17~~ 6.1.14 agreeing to remunerate (by payment of fees, the provision of benefits-in-kind or otherwise) any key employee of, or consultant to, the Company at a rate in excess of £100,000 per annum ~~or increasing the remuneration of any such person to a rate in excess of 1% per annum;~~
- ~~6.1.18~~ 6.1.15 establishing or amending any profit-sharing, share option, bonus or other incentive scheme of any nature for directors ~~or employees;~~
- ~~6.1.19~~ 6.1.16 making any bonus payment to any director ~~or key employee;~~

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~~6.1.20 instituting, settling or compromising any material legal proceedings instituted or threatened against it or submitting any dispute to arbitration or alternative dispute resolution;~~

~~6.1.24~~ 6.1.17 borrowing any monies which require a guarantee or security from the Council (other than normal trade credit);

~~6.1.22~~ 6.1.18 changing its name or its registered office; or

~~6.1.23~~ replacing or modifying the Business Plan;

~~6.1.24~~ creating or granting any Security Interest over the whole or any part of its business, undertaking or assets or agreeing to do so;

~~6.1.25~~ entering into any arrangement, contract or transaction outside the normal course of its business or otherwise than on arm's length terms;

~~6.1.26~~ making any loan (otherwise than by way of deposit with a bank or other institution the normal business of which includes the acceptance of deposits) or granting any credit (other than in the normal course of trading) or giving any guarantee or indemnity; or

~~6.1.27~~ 6.1.19 entering into an agreement to do any of the foregoing.

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7 Production of accounts and reports

7.1 The Company shall provide the information referred to in clause 7.2 to the Shareholder.

7.2 The Company shall instruct its accountants to prepare a balance sheet of the Company, as at the Annual Accounts Date each year and a consolidated profit and loss account of the Company, for the 12 month financial period ending on the Annual Accounts Date each year to be presented to the Shareholder within 3 calendar months after the end of the period to which such accounts relate. The Company shall appoint an independent auditor to audit the balance sheet and profit and loss account for the Company.

7.3 The Company will provide to the Shareholder full details of any actual or prospective material change in the Business or the financial position or affairs of the Company, as soon as such details are available.

7.4 All accounts referred to in this clause shall be prepared in pounds sterling and in accordance with applicable law and generally accepted accounting standards, principles and practices in the United Kingdom.

8 Anti-corruption

8.1 In this clause:

Adequate Procedures means adequate procedures, as referred to in section 7(2) of the Bribery Act 2010 and any guidance issued by the Secretary of State under section 9 of the Bribery Act 2010;

Associated Person means in relation to a party to this Agreement, any person (including an officer, employee, agent or Subsidiary Undertaking) who performs services for or on behalf of that party;

Corrupt Activity means extortion, fraud, deception, collusion, cartels, abuse of power, embezzlement, trading in influence, money-laundering or any similar activity including without limitation any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 Bribery Act;

8.2 Each party declares and undertakes to the other parties that:

8.2.1 it has not and will not in relation to the Company or the operation of the Business, engage in any Corrupt Activity;

8.2.2 it will not authorise or acquiesce in or turn a blind eye to, any Corrupt Activity;

8.2.3 it has and will maintain in place, or in the case of the Company it will put and maintain in place, Adequate Procedures designed to prevent any Associated Person from undertaking any conduct that would give rise to an offence under section 7 of the Bribery Act 2010;

8.2.4 it has not and will not engage in any activity, practice or conduct which could place the Company or any other party in breach of section 7(1) Bribery Act;

8.2.5 from time to time, at the reasonable request of the other party, it will confirm in writing that it has complied with its undertakings under this clause 8.2 and will provide any information reasonably requested by the other party in support of such compliance; and

8.2.6 it will ensure that its Associated Persons will comply with its commitments under this clause 8.

9 **No fetter**

Nothing in this Agreement shall operate to bind the Company or any Council to the extent that it constitutes an unlawful fetter on any statutory power of the Company or the Council.

10 **Duration and termination**

10.1 This Agreement shall continue in full force and effect, unless otherwise agreed in writing by the Council, provided that this Agreement shall cease to have effect as regards any Shareholder who ceases to hold any Shares in the Company, except for any provisions which are expressed to continue in force thereafter.

10.2 Termination of this Agreement pursuant to this clause shall not release any party from any liability which at the time of termination has already accrued to another party or which may accrue after termination of this Agreement in respect of any act or omission prior to such termination.

11 **Confidentiality**

11.1 This clause applies to:

- 11.1.1 all information of a confidential nature disclosed (whether in writing, verbally or by any other means and whether directly or indirectly) by one party to one of the other parties whether before or after the date of this Agreement;
- 11.1.2 any information concerning the business affairs of one party or other information confidential to that party which one of the other parties learns as a result of the relationship between the parties pursuant to this Agreement;
- including any information relating to any party's products, operations, processes, plans or intentions, product information, know-how, design rights, trade secrets, market opportunities and business affairs (together, **Confidential Information**).
- 11.2 In this clause, in relation to a particular item of Confidential Information:
- 11.2.1 the **Disclosing Party** means the party by whom (or on whose behalf) that Confidential Information is disclosed or (where there is no such disclosure) the party to whom the Confidential Information relates, or to whom the Confidential Information is proprietary or who otherwise desires that the confidentiality of the Confidential Information is respected; and
- 11.2.2 the **Receiving Party** means the other party.
- 11.3 During the term of this Agreement and after termination of this Agreement for any reason whatsoever, the Receiving Party shall:
- 11.3.1 keep the Confidential Information confidential;
- 11.3.2 not disclose the Confidential Information to any other person other than with the prior written consent of the Disclosing Party or in accordance with this clause 11; and
- 11.3.3 not use the Confidential Information for any purpose other than the performance of its obligations and the exercise of its rights under this Agreement.
- 11.4 Notwithstanding clause 11.3, the Receiving Party may disclose Confidential Information as follows:
- 11.4.1 to its professional advisers (each, a Recipient) providing the Receiving Party ensures that each Recipient is made aware of and complies with all the Receiving Party's obligations of confidentiality under this Agreement as if the Recipient was a party to this Agreement; and
- 11.4.2 to other parties to this Agreement, and where disclosure is required by law, by any court of competent jurisdiction or by any appropriate regulatory body.
- 11.5 This clause 11 shall not apply to any Confidential Information which:
- 11.5.1 is at the date of this Agreement or at a later date comes into the public domain other than through breach of this Agreement by the Receiving Party or any Recipient;
- 11.5.2 was known by the Receiving Party before receipt from (or on behalf of) the Disclosing Party (or, as appropriate, before the Receiving Party learnt of the

same pursuant to this Agreement) and which had not previously been obtained under an obligation of confidence; or

11.5.3 subsequently comes lawfully into the Receiving Party's possession from a third party, free of any obligation of confidence.

11.6 The Company acknowledges that the Council is subject to the requirements of the FOIA, the Environmental Information Regulations and other access to information and propriety controls as provided in legislation, and shall facilitate the Council's compliance with its Information disclosure requirements pursuant to and in the manner provided for in clauses 11.7 and 11.10.

11.7 If a Council receives a Request for Information in relation to Information that the Company is holding and which the Council does not hold itself, the Council shall refer to the Company such Request for Information as soon as practicable and in any event within five (5) Business Days of receiving a Request for Information, and the Company shall:

11.7.1 provide the Council with a copy of all such Information in the form that the Council requires as soon as practicable and in any event within 10 Business Days (or such other period as the Council acting reasonably may specify) of the Council's request; and

11.7.2 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

11.8 Following notification under clause 11.7, and up until such time as the Company has provided the Council with all the Information specified in clause 11.7, the Company may make representations to the Council as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Council shall be responsible for determining, at its absolute discretion:

11.8.1 whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and

11.8.2 whether Information is to be disclosed in response to a Request for Information, and in no event shall the Company respond directly to a Request for Information.

11.9 The Company acknowledges that (notwithstanding the provisions of clause 11.1) the Council may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under part I of the Freedom of Information Act 2000, be obliged under the FOIA or the Environmental Information Regulations to disclose Information concerning the Company:

11.9.1 in certain circumstances without consulting with the Company; or

11.9.2 following consultation with the Company and having taken its views into account.

11.10 The Company shall transfer to the relevant Council any Request for Information received by it as soon as practicable and in any event within 3 Business Days of receiving it.

11.11 The Company acknowledges that any lists provided which list or outline Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with clause 11.9.

12 **General**

12.1 Except where this Agreement provides otherwise, each party shall pay its own costs relating to or in connection with the negotiation, preparation, execution and performance by it of this Agreement and of each agreement or document entered into pursuant to this Agreement and the transactions contemplated by this Agreement.

12.2 No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties.

12.3 No delay, indulgence or omission in exercising any right, power or remedy provided by this Agreement or by law shall operate to impair or be construed as a waiver of such right, power or remedy or of any other right, power or remedy.

12.4 No single or partial exercise or non-exercise of any right, power or remedy provided by this Agreement or by law shall preclude or restrict any other or further exercise of such rights, power or remedy or of any other right, power or remedy.

12.5 A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement does not constitute a waiver of any other breach or default and shall not affect the other terms of this Agreement.

12.6 A waiver of a breach of any of the terms of this agreement or of a default under this Agreement will not prevent a party from subsequently requiring compliance with the waived obligation.

12.7 The rights and remedies provided by this Agreement are cumulative and are not exclusive of any rights, powers or remedies provided by law.

12.8 If any provision of this Agreement is or becomes illegal, invalid or unenforceable under the law of any jurisdiction, that shall not affect or impair:

12.8.1 the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or

12.8.2 the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Agreement.

12.9 This Agreement, and the documents referred to in it, constitute the entire agreement and understanding between the parties and supersede any previous agreement, understanding or arrangement between the parties relating to the subject matter of this Agreement.

12.10 Each of the parties acknowledges and agrees that:

12.10.1 in entering into this Agreement, and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, assurance, warranty or understanding of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement or those documents;

12.10.2 the only remedy available to it arising out of or in connection with this Agreement or its subject matter shall be for damages for breach of contract under the terms of this Agreement;

12.10.3 nothing in this clause shall operate to limit or exclude any liability for fraud.

12.11 No person who is not a party to this Agreement shall have any right to enforce this Agreement or any agreement or document entered into pursuant to this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

13 **Assignment**

This Agreement is personal to the parties and neither party shall assign, transfer, charge, make the subject of a trust or deal in any other manner with this Agreement or any of its rights or obligations under it, or purport to do any of the same, nor sub-contract any or all of its obligations under this Agreement without the prior written consent of the other party save where the Council's functions are transferred or assigned to a successor body. Each party is entering into this Agreement for its benefit and not for the benefit of another person.

14 **No partnership or agency**

Nothing in this Agreement is intended to or shall operate to create a partnership, or to authorise any party to act as agent for any other or to establish any other fiduciary relationship between the parties. No party shall have authority to act in the name or on behalf of or otherwise to bind any other party in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

15 **Notices**

15.1 Any notice or other communication given under this Agreement:

15.1.1 shall be in writing;

15.1.2 shall be signed by or on behalf of the party giving it;

15.1.3 shall be served by delivering it by hand or sending it by pre-paid recorded delivery or registered post or by fax at the address or fax number set out in clause 15.2 of the party due to receive it and marked for the attention of the person named in clause 15.2 (or at such other address in the United Kingdom or fax number or marked for the attention of such other person as last notified in writing to the other parties;

15.1.4 shall be deemed to have been received:

(a) if delivered by hand, at the time of actual delivery;

(b) in the case of pre-paid recorded delivery or registered post, two Business Days after the date of posting; and

(c) in the case of fax, at the time of completion of transmission.

- 15.2 The addresses of the parties for the purposes of clause 15.1 are as set out at the beginning of this Agreement and the notice details and fax numbers are as follows:
- 15.3 To prove delivery it shall be sufficient to prove that the envelope containing the notice was addressed to the address of the relevant party set out in clause 15.2 and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery, registered post or airmail letter, or that the notice was transmitted by fax to the fax number of the relevant party set out in clause 15.2.
- 15.4 In this clause if deemed receipt occurs before 9am on a Business Day the notice shall be deemed to have been received at 9am on that day, and if deemed receipt occurs after 5pm on a Business Day, or on a day which is not a Business Day, the notice shall be deemed to have been received at 9am on the next Business Day.
- 15.5 For the avoidance of doubt, a notice or other communication given under this Agreement shall not be validly served if sent by e-mail.

16 Counterparts

This Agreement may be executed in any number of counterparts and by different parties on separate counterparts (which may be facsimile copies), but shall not take effect until each party has executed at least one counterpart. Each counterpart shall constitute an original, and all the counterparts together shall constitute a single agreement.

17 Applicable law

- 17.1 The parties agree that this Agreement and any dispute or claim arising out of or in connection with this Agreement, its negotiation or its subject matter, or any non-contractual obligation arising in connection with the foregoing, shall be governed by and construed in accordance with English law.
- 17.2 Each of the parties irrevocably agrees to submit to the exclusive jurisdiction of the courts of England and Wales in relation to any claim or matter arising out of or in connection with this Agreement, its negotiation or its subject matter, or any non-contractual obligation arising in connection with the foregoing.

This Agreement has been executed on the date stated at the beginning of this Agreement.

The Common Seal of EAST CAMBRIDGESHIRE)
DISTRICT COUNCIL was hereunto affixed in)
the presence of:-)

Legal Services Manager/Chief Executive

EXECUTED AS A DEED by ~~EAST CAMBS~~)
~~TRADING COMPANY LIMITED (LTC)~~ East Cambs Street Scene Limited in the)
presence of:)

Director

Director/Secretary

APPENDIX 3 – MODUS OPERANDI

THE SHAREHOLDER INTEREST

The Shareholder Committee recognises that:

- the efficient and effective working of the Council's trading companies are essential to the achievement of the Council's corporate objectives;
- the trading companies are central to the achievement of the Council's medium term financial strategy and its long term financial sustainability and self-sufficiency;
- the operational independence and integrity of the Council's trading company is essential to its effective working and profitability.

The Shareholder Committee wants to work in partnership with the Council's trading companies on a proactive basis to ensure their success, specifically:

- focus and provide effective feedback on the key strategic risks affecting the effectiveness and efficiency of the Council's trading companies;
- promote an understanding of the Council's trading companies to the membership of the Council and the wider community.

FUTURE ROLE OF THE SHAREHOLDER COMMITTEE

Committee: Shareholder Committee

Date: 28 June 2018

Author: Chief Executive and Legal Services Manager

[T40]

1.0 ISSUE

1.1 Proposed revisions to the role and terms of reference of the Shareholder Committee.

2.0 RECOMMENDATIONS

2.1 Members are requested to recommend to Council:

- (i) revision to the terms of reference of the Shareholder Committee detailed in Appendix 1;
- (ii) revisions to the Shareholder Agreements detailed in Appendix 2;
- (iii) endorse the 'modus operandi' detailed in Appendix 3.

3.0 BACKGROUND

3.1 The Council on 7 January 2016 (ref: Agenda Item 12) agreed the establishment of the East Cambs Trading Company (ECTC) and on 4 January 2018 (ref: Agenda Item 9c) agreed the establishment of the East Cambs Street Scene Limited (ECSSL).

3.2 The approval to the establishment of ECTC included the agreement of a Shareholder Agreement which sets out the responsibilities of the Shareholder Committee and reserved matters for Council. A subsequent Shareholder Agreement was agreed for ECSSL which largely mirrored the ECTC one.

3.3 The Council revised its arrangements for the Shareholder Committee on 11 April 2017 (ref: Agenda Item 10) to establish a standalone Committee.

4.0 ARGUMENT/CONCLUSIONS

4.1 Since the establishment of ECTC and subsequently ECSSL, there have been a number of developments which necessitates a review of the shareholder arrangements within the Council and together with feedback from members during the first year of the standalone committee.

4.2 There have been significant developments since the inception of ECTC in January 2016, specifically:-

- the requirement to establish a teckal compliant company to receive the new waste and recycling service from the Council;

- the expanding property development role of ECTC requiring the formation of an additional teckal compliant company;
- the ambitions of the Council's housing building programme especially Community Land Trusts highlighting a revised risk profile, requirements for additional external funding sources and flexibility required to take advantage of commercial opportunities;
- the development of the Combined Authority including as a source of loan capital and partnership working;
- the track record of delivery is now attracting significant interest and widening the possibilities of further investments;
- the scope and ambition of the trading companies have accelerated significantly to ensure the Council delivers its ambitions and meets its long term financial strategy.

4.3 A number of issues have been raised formally and informally in relation to the current arrangements for Shareholder Committee, specifically:-

- focus on minor operational issues at the expense of strategic risk assessment;
- lack of clarity of the role of the Shareholder Committee;
- member concern over the presentation of information, particularly in relation to financial matters.

4.4 From the perspective of the Board, there are a number of issues which can inform the debate on the future relationship between the companies and the shareholder, specifically:-

- the Shareholder Agreement is overly prescriptive and onerous on both the company and the Shareholder Committee, particularly in terms of reporting arrangements;
- the formality of the Shareholder Committee and the requirements of the Shareholder Agreement does not lend itself to a genuine sharing of key information, particularly in relation to strategic risk;
- the current arrangements may well have been 'fit for purpose' in the early years of the start up of the company but need to be revisited in light of the dynamic environment in which it operates;
- the shareholder agreement places unreasonable constraints on the operation of the companies, specifically in relation to human resources matters and opportunities for accessing loan finance.

4.5 It is recommended that there be revisions to the current terms of reference of the Shareholder Committee (See Appendix 1) and shareholder agreements (Appendix 2), both of which require Council approval. In addition, to reflect a new way of working, a draft 'modus operandi' is attached as Appendix 3 for member consideration, which would append the terms of reference. These proposals do not affect the current client side responsibilities of Policy Committees to agree and monitor Service Delivery Plans.

5.0 FINANCIAL IMPLICATIONS/EQUALITY IMPACT ASSESSMENT

5.1 There are no direct financial implications arising from this report at this stage.

5.2 Equality Impact Assessment (INRA) not required.

6.0 APPENDICES

- 6.1 Appendix 1 – Revisions to Terms of Reference
Appendix 2A – Revisions to Shareholder Agreement (Tracked) ECTCL
Appendix 2B – Revisions to Shareholder Agreement (Tracked) ECSSL
Appendix 3 – Modus Operandi

<u>Background Documents</u>	<u>Location</u>	<u>Contact Officer</u>
Council 7 January 2016 Agenda Item 12	Room 103 The Grange Ely	John Hill Chief Executive (01353) 616271 E-mail: john.hill@eastcambs.gov.uk
Council 4 January 2018 Agenda Item 9c		