

MUNICIPALITY OF MIDDLESEX CENTRE

BY-LAW NUMBER 2017-028

BEING A BY-LAW TO AUTHORIZE THE EXECUTION OF A SERVICE LEVEL AGREEMENT BETWEEN THE MUNICIPALITY OF MIDDLESEX CENTRE AND SIFTON PROPERTIES LIMITED

WHEREAS *The Municipal Act, 2001*, S.O. 2001, c. 25 as amended authorizes a municipal council to enter into agreements;

AND WHEREAS Sifton Properties Limited requires certain water services support for its pumping stations known as the Sifton Riverbend Pumping Stations;

AND WHEREAS the Municipality of Middlesex Centre provides water and wastewater support to the municipality and has remaining support capacity and the ability to provide Sifton Property Limited with service support for its pumping stations;

AND WHEREAS the Municipality of Middlesex Centre wishes to enter into an agreement with Sifton Properties Limited for the provision of service;

AND WHEREAS the Council of the Municipality of Middlesex Centre deems it necessary to enter into an agreement with Sifton Property Limited for the provision of service;

THEREFORE the Council of the Municipality of Middlesex Centre enacts as follows:

1. THAT the Service Level Agreement for the provision of services attached hereto be approved and ratified.
2. THAT the Mayor and Clerk be authorized to execute the attached Service Level Agreement on behalf of the Municipality of Middlesex Centre.

READ A FIRST, SECOND AND THIRD TIME, AND FINALLY PASSED this 22nd day of February, 2017.

Mayor

Clerk

SERVICE LEVEL AGREEMENT

MEMORANDUM OF AGREEMENT effective this _____ day of January, 2017.

B E T W E E N:

MUNICIPALITY OF MIDDLESEX CENTRE
(hereinafter referred to as the “**Municipality**” and/or the “**Service Provider**”)

OF THE FIRST PART

- and -

SIFTON PROPERTIES LIMITED
(hereinafter referred to as “**Sifton**” and/or the “**Customer**”)

OF THE SECOND PART

WHEREAS:

- A. The Municipality is a lower-tier municipality, as defined by the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended (hereinafter the “**Municipal Act**”);
- B. Subject only to the specific sphere assignment rules in subsection 11(4) of the *Municipal Act*, subsection 11(1-2) of the *Municipal Act* provides broad authority for a lower-tier municipality to manage its financial affairs and provide any service or thing the lower-tier municipality considers necessary or desirable for the public;
- C. Subsection 9 of the *Municipal Act* provides that municipalities have the capacity, rights, powers and privileges of a natural person, which includes the power *inter alia*, to do things natural persons can do and enter into agreements;
- D. Subsection 8 of the *Municipal Act* provides that the powers of municipalities shall be interpreted broadly so as to confer broad authority to enable municipalities to govern their own affairs;
- E. The Service Provider’s Water / Wastewater Operations provides water and wastewater support to the municipality;
- F. Sifton requires certain water services support for its pumping stations known as the Sifton Riverbend Pumping Stations, as defined in this Agreement;
- G. The Service Providers’ Water / Wastewater Operations has remaining support capacity and the ability to provide Sifton with service support for its pumping stations;
- H. Subsection 5 of the *Municipal Act* provides that the powers of a municipality are exercised by its Council and by by-law; and

- I. Municipal Council deems it financially wise, desirable, and appropriate for the Municipality to use its support capacity to provide the service support identified in this Agreement as a means of cost recovery for the Municipality.

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT, in consideration of the payment of the sum of TWO DOLLARS (\$2.00) from each Party to the other and for other good and valuable consideration, including the covenants herein, the receipt and sufficiency of which is hereby acknowledged, the Parties covenant and agree as follows:

RECITALS

1. The above recitals are true and are hereby incorporated into this Agreement by reference.

DEFINITIONS

2. In this Agreement, in addition to terms defined elsewhere in this Agreement, the following terms have the following meanings:
 - a. **“Additional Services”** has the meaning set out in sections 5 and 6.
 - b. **“Agreement”** means this Agreement, including all Schedules, as may be confirmed, amended, modified, supplemented or restated by written agreement between the Parties;
 - c. **“Optional Services”** has the meaning set out in section 7.
 - d. **“Pumping Stations”** means the two sewage pumping stations located in the Riverbend Community in London, more particularly one of the pumping stations is located on Jack Nash Drive and the second is located just off of Jack Nash Terrace near a maintenance building. The Parties acknowledge that they understand the location and nature of the Pumping Stations.
 - e. **“Parties”** means the Municipality and Sifton collectively, and **“Party”** means one of them.
 - f. **“Routine Services”** has the meaning as set out in section 4 (referencing 3a. through 3d.).
 - g. **“Services”** means the combination of Routine Services, Additional Services and Optional Services together.

ROUTINE SERVICES

3. The Municipality shall provide to the Customer the following Routine Services to Sifton:
 - a. Attendance by a certified operator to inspect the Pumping Stations once per week for a combined maximum of 2 hours of inspection per week;

- b. Provision of on-call coverage twenty-four (24) hours per day, every day of the year;
- c. Routine testing of high level alarms to ensure proper operation, on a testing schedule that conforms with industry standards and the Municipality's own testing schedule recommendation;
- d. General inspection of equipment and recording of readings;

For greater certainty, the following are not included in the Routine Services:

- i) Responding to any alarms or requests for work not indicated in sub-paragraphs 3a. to 3d.;
 - ii) Any inspections or testing as set out in sub-paragraphs 3a. to 3d. beyond the maximum limit of 2 hours per week set out in sub-paragraph 3a.
 - iii) Repairing or replacing any equipment or item identified during a Routine Services inspection;
 - iv) The provision of any utility service to the Pumping Station;
 - v) Any work defined in section 5 as an Additional Service
 - vi) Any work defined in section 7 as an Optional Service
4. The water / wastewater services enumerated in section 3a. through 3d. above shall hereinafter collectively be referred to as the "**Routine Services**".

ADDITIONAL SERVICES

5. The Municipality hereby agrees that it shall perform the following Additional Services:
- a. Responding to and resolving any alarm it receives;
 - b. Performing any repair that may be reasonably necessary and such repair may be performed by municipal forces or a sub-contractor;
6. In addition to and notwithstanding section 5, any work performed by the municipality not included in the Routine Services or Optional Services shall be considered an Additional Service and compensation for Additional Services shall be paid by Sifton to the Municipality as set out in sections 10-12 of this Agreement.

The municipality shall use commercially reasonable efforts to notify and seek approval for Additional Services however for greater certainty, Sifton hereby acknowledges and agrees that Additional Services including but not limited to responding to alarms at the Pumping Station, replacing or repairing defective or damaged equipment, or any other reasonably required work shall not require the approval of Sifton prior to the work being performed and Sifton agrees to pay the compensation for such Additional Services as set out in sections 10-12 of this Agreement for any Additional Service performed by the Municipality, acting reasonably, whether or not such Additional Service was requested or approved prior to the work being performed.

OPTIONAL SERVICES

7. The Municipality has the ability to arrange for the following **Optional Services** at the request of Sifton, and such work shall be performed by a specialized sub-contractor and not Municipal staff where appropriate, for the compensation indicated in section 13.
- a. Wet-well cleaning;
 - b. Manufacturer's recommended annual preventative maintenance;

For greater certainty, Optional Services are not included in the Routine Services or Additional Services set out in sections 3-6:

COMPENSATION

Routine Services:

8. The Parties hereby agree that for the provision of the Routine Services, Sifton shall pay to the Municipality an amount of \$3,500.00 per month excluding HST which shall be added to the monthly amount, during the year 2017. Each subsequent year the monthly fee shall be in accordance with sections 8a – 8c and HST shall be added to the monthly fee.
- a. Following 2017, in each subsequent year during the Term of this Agreement the price shall be adjusted annually in accordance with the Consumer Price Index ("CPI") for Ontario using the figures published by Statistics Canada.
 - b. The Parties hereby agree that the reference date for the CPI adjustment shall be October 2016 at a rate of 130.6.
 - c. Pursuant to sections 8a and 8b above, the CPI price increase will be adjusted annually on January 1 of each year using the following calculation:
 - i. 2018 Rate: $\$3,500^* ((\text{CPI of October 2017})/130.6) = \text{New monthly rate}$
 - ii. 2019 Rate: $\$3,500^* ((\text{CPI of October 2018})/130.6) = \text{New monthly rate}$
 - iii. 2020 Rate: $\$3,500^* ((\text{CPI of October 2019})/130.6) = \text{New monthly rate}$
 - iv. 2021 Rate: $\$3,500^* ((\text{CPI of October 2020})/130.6) = \text{New monthly rate}$
 - v. 2022 Rate: $\$3,500^* ((\text{CPI of October 2021})/130.6) = \text{New monthly rate}$
9. In addition to the monthly fee set out in section 8 of this Agreement, all tools, safety equipment and consumables used during Routine Services including but not limited to lubricants, cleaning and disposal of waste materials will be recharged at cost plus 15%. The Municipality shall determine what tools, safety equipment, consumables, lubricants and other such items are necessary to perform the Routine Services in its sole and absolute discretion, acting reasonably.

Additional Services:

10. Charges for Additional Services, including but not limited to additional personnel time or vehicle time **during** normal business hours, being 7:30am-4:00pm Monday through

Friday save and except statutory holidays, not included in the Services shall be charged in accordance with the rates set out in the Fees and Charges By-Law of the Municipality as may be amended or replaced from time to time.

11. Charges for Additional Services, including but not limited to additional personnel time or vehicle time **outside of** normal business hours, being 7:30am-4:00pm Monday through Friday save and except statutory holidays, not included in the Services shall be charged in accordance with the rates set out in the Fees and Charges By-Law of the Municipality as may be amended or replaced from time to time.
12. In addition to the compensation described in sections 10 and 11 of this Agreement, all tools, safety equipment and consumables including but not limited to lubricants, cleaning and disposal of waste materials used during the Additional Services will be recharged at cost plus 15%. The Municipality shall determine what tools, safety equipment, consumables, lubricants and other such items are necessary to perform the Additional Services in its sole and absolute discretion, acting reasonably.

Optional Services:

13. The Parties hereby agree that for Optrional Services requested by Sifton, Sifton shall pay to the Municipality:
 - a. Wet Well Cleaning – the cost of the specialized sub-contractor's Invoice plus 15%.
 - b. Manufacturer's Recommended Annual Preventative Maintenance – the cost of the specialized sub-contractor's Invoice plus 15%.

LIABILITY, INDEMNIFICATIONS AND INSURANCE – SERVICE PROVIDER

14. In addition to and without limiting any other provision of this Agreement, the Service Provider covenants that it shall be fully responsible for the following:
 - c. The provision of the Services as set out in this Agreement;
 - d. Its own employees, Councillors, officers, and agents engaging in the furtherance of their duties, wherever situate, in relation to the performance of the Services under this Agreement;
 - e. Its own negligence and the negligence of its own employees, Councillors, officers, and agents engaging in the furtherance of their duties, wherever situate, in relation to the performance of the Services under this Agreement;
15. The Service Provider hereby agrees to release, indemnify, defend and hold harmless Sifton, including Sifton's respective employees, directors, officers, and agents from and against any and all claims, causes of action, demands, losses, costs, charges, fees, expenses, duties, dues, accounts, covenants, or other proceeding of every kind or nature whatsoever at law or in equity brought against, suffered by or imposed which arise out of or are related to any loss, damage or injury to any person or property

(including injury resulting in death) which is caused by its own employees acting negligently in the course of their duties or performing obligations pursuant to this Agreement whether by act or omission.

16. The Service Provider agrees that it shall, at its own expense, obtain and maintain in full force and effect during the Term of this Agreement and any renewal thereof the following policies of insurance coverage:

a. Commercial General Liability Insurance (“CGL”) on an occurrence basis insuring against damages to persons (personal injury, including death) and property, contractual liability, employer’s liability, and employee benefits liability with a limit of not less than five million dollars (\$5,000,000.00) per occurrence or such greater amount that any Party may from time to time request and/or reasonably require. The CGL shall:

- i. include Sifton as additional insured;
- ii. contain a cross-liability clause;
- iii. contain a severability of interests clause endorsement;
- iv. contain a clause including contractual liability coverage arising out of this Agreement;
- v. contain the Service Provider liability (all risks) coverage for all obligations pursuant to this Agreement; and shall

The above noted CGL shall include a provision that if cancelled or changed in any manner that would affect the Parties as outlined in the coverage specified, the insurer will endeavor to provide thirty (30) days prior written notice by mail or facsimile transmission to the Parties.

- b. Errors and Omissions or Professional Insurance coverage for potential errors and omissions arising from the operations of its employees (including employee benefits liability) underwritten by an insurer licensed to conduct business in the Province of Ontario.
- c. If the above noted insurance policy is to be cancelled or non-renewed for any reason, ninety (90) days notice of said cancellation or non-renewal must be provided to Sifton.

LIABILITY, INDEMNIFICATIONS AND INSURANCE – SIFTON

17. In addition to and without limiting any other provision of this Agreement, Sifton covenants that it shall be fully responsible for the following:

- a. Its own employees, directors, officers, and agents engaging in the furtherance of their duties, wherever situate;
 - b. Its own negligence or the negligence of its own employees, directors, officers, and agents;
 - c. The physical property and the physical elements of the pumping station;
 - d. Its own corporate operations and activities;
18. Sifton hereby agrees to release, indemnify, defend and hold harmless the Municipality, including the Municipality's respective employees, Councillors, officers, and agents from and against any and all claims, causes of action, demands, losses, costs, charges, fees, expenses, duties, dues, accounts, covenants, or other proceeding of every kind or nature whatsoever at law or in equity brought against, suffered by or imposed which arise out of or are related to any loss, damage or injury to any person or property (including injury resulting in death) which is caused by it, or its own employees, directors, officers or agents' negligence whether by act or omission.
19. Sifton agrees that it shall, at its own expense, obtain and maintain in full force and effect during the Term of this Agreement and any renewal thereof the following policies of insurance coverage:
- f. Commercial General Liability Insurance ("CGL") on an occurrence basis insuring against damages to persons (personal injury, including death) and property, contractual liability, employer's liability, and employee benefits liability with a limit of not less than five million dollars (\$5,000,000.00) per occurrence or such greater amount that any Party may from time to time request and/or reasonably require. The CGL shall:
 - i. include the Municipality as additional insured;
 - ii. contain a cross-liability clause;
 - iii. contain a severability of interests clause endorsement;
 - iv. contain a clause including contractual liability coverage arising out of this Agreement;
 - v. contain liability (all risks) coverage for all obligations pursuant to this Agreement; and shall

The above noted CGL shall include a provision that if cancelled or changed in any manner that would affect the Parties as outlined in the coverage

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COMPLIANCE WITH LAW

24. The Service Provider agrees that in providing the Services, Additional Services and Optional Services under this Agreement, it shall do so in compliance with all applicable laws.

CONFIDENTIALITY

25. The Parties agree to treat each other's information that is not publicly available, including information relating to the business affairs, operations, and proprietary practices as confidential.
26. Notwithstanding section 25 above and in recognition of section 24 above, Sifton acknowledges that the Municipality, being an Ontario municipality, is subject to the *Municipal Freedom of Information and Protection of Privacy Act*, RSO 1990, c M56 ("MFIPPA") and as a result, some information may be required to be disclosed by the Municipality as a statutory requirement. Sifton agrees that notwithstanding section 25 of this Agreement, the Municipality shall have no obligation with respect to the disclosure of confidential information and does hereby fully and finally release the Municipality, its Mayor, Councillors, officers, directors, employees, agents, and legal counsel from any liability for disclosing confidential information in the event that the Municipality discloses confidential information in accordance with a lawful statute applicable in Ontario, including MFIPPA, or is ordered to disclose such information by the Office of the Information and Privacy Commissioner or any court or tribunal of competent jurisdiction.

TERMINATION

27. This Agreement may be terminated by either party one months' written notice at any time during the Term of this Agreement or upon a period of notice agreed to by the Parties at the time of notice. The Service Provider shall be entitled to payment from the Customer for the portion of the Service Support completed up to the date of termination.

FORCE MAJEURE

28. Despite any section of this Agreement, the Municipality shall not be liable for damages caused by delay or failure to perform its obligations under this Agreement where such delay or failure is caused by an event beyond its reasonable control (hereinafter referred to as a "Force Majeure Event."). The Parties agree that an event shall not be considered a Force Majeure Event if a reasonable person owing duties to others in the same or similar circumstances as provided for under this Agreement would have put in place contingency plans to either materially mitigate or negate the effects of such an event. If a Party seeks to excuse itself from its obligations under this Agreement due to a Force Majeure Event, that Party shall immediately notify the other Party of the delay or non-performance, the reason for such delay or non-performance, and the anticipated period of delay or non-performance. In addition, the Party excusing itself due to a Force Majeure Event shall use its best efforts to remedy any such non-performance, except that nothing herein contained

shall require any such party to make settlement of any labour dispute on terms unacceptable to it.

AMNDMENT & WAIVER

29. No amendment, discharge, modification, restatement, supplement, termination or waiver of this Agreement or any section of this Agreement is binding unless it is in writing and executed by the Parties to be bound. No waiver of, failure to exercise, or delay in exercising, any section of this Agreement constitutes a waiver of any other section (whether or not similar) nor does any waiver constitute a continuing waiver unless otherwise expressly provided.

ASSIGNMENT

30. Neither this Agreement nor any right or obligation under this Agreement may be assigned by any Party, other than provided for herein, without the prior written consent of the other Parties.

ENTIRE AGREEMENT

31. This Agreement constitutes the entire agreement between the Parties pertaining to the provision of information technology service support by the Service Provider to the Customer and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties. The Parties acknowledge that there are no representations, warranties or other agreements between the Parties in connection with the subject matter of this Agreement except as specifically set out in this Agreement and that no Party has been induced to enter into this Agreement in reliance on, and there will be no liability assessed, either in tort or contract, with respect to, any warranty, representation, opinion, advice or assertion of fact, except to the extent it has been reduced to writing and included as a term in this Agreement. Except as amended herein, the terms of this Agreement shall remain in full force and effect.

COUNTERPARTS

32. This Agreement may be executed and delivered by the Parties in one or more counterparts, each of which will be an original, and each of which may be delivered by facsimile, e-mail or other functionally equivalent electronic means of transmission, and those counterparts will together constitute one and the same instrument.

SEVERABILITY

33. Each section of this Agreement is distinct and severable. If any section of this Agreement, in whole or in part, is or becomes illegal, invalid, void, voidable or unenforceable in any jurisdiction by any court of competent jurisdiction, the illegality, invalidity or unenforceability of that section, in whole or in part, will not affect:

- i. the legality, validity or enforceability of the remaining sections of this Agreement, in whole or in part; or

- j. the legality, validity or enforceability of that section, in whole or in part, in any other jurisdiction.

GOVERNING LAW

34. This Agreement is governed by, and is to be construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable in that Province.

{One (1) Signature Page Follows}

IN WITNESS WHEREOF this Agreement has been executed by the Parties hereto on the date(s) set out below and the Parties agree that this Agreement shall be effective on the date set out at the top of page one (1) of this Agreement.

MUNICIPALITY OF MIDDLESEX CENTRE

Date: _____, 2017

Per: _____
Mr. Al Edmondson, Mayor

Per: _____
Ms. Stephanie Troyer-Boyd, Clerk

We have authority to bind the Corporation

Address for Service:
Attn: Municipality Clerk
Administration Offices
399 Ridout Street North
London, ON N6A 2P1

SIFTON PROPERTIES LIMITED

Date: _____, 2017

Per: _____
Name: Mr. Matthew Robertson
Title:

I have authority to bind the Corporation

Address for Service:
Attn: Matthew Robertson
195 Dufferin Ave
London, ON, N6A 1K7