

This Agreement dated the 5<sup>th</sup> day of August 2016, and effective as of the 6<sup>th</sup> day of September 2016,

BETWEEN:

**CORPORATION OF THE TOWN OF MIDLAND ("MIDLAND")**  
- and -  
**ONTARIO MUNICIPAL LEADERSHIP INSTITUTE INC. ("OMLI")**

In consideration of the mutual covenants in this Agreement and for other good and valuable consideration, MIDLAND and OMLI agree as follows:

**1. ENGAGEMENT OF SERVICES**

**WHEREAS** the *Municipal Act, S.O. 2001*, as amended, authorizes a municipal council to appoint a Chief Administrative Officer ("CAO");

**AND WHEREAS** Midland wishes to contract with OMLI / John Skorobohacz and OMLI wishes to accept this offer with Midland as its Chief Administrative Officer (CAO);

**NOW THEREFORE**, in consideration of mutual covenants set out in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the Parties, the Parties covenant and agree as follows:

- (a) MIDLAND retains OMLI / John Skorobohacz to provide the services necessary to perform the duties and responsibilities (collectively "the Services") of the CAO for Midland.
- (b) OMLI acknowledges and agrees that the Services include working with and responding to the requirements of the Corporation. OMLI shall use current state-of-the-art principles and shall skillfully and competently perform the services and shall employ John Skorobohacz to deliver the services of CAO on behalf of OMLI.

**2. EFFECTIVE DATE AND TERM OF AGREEMENT**

- (a) Subject to the provisions for earlier termination as hereinafter provided, the term of this Agreement shall begin on September 6, 2016 and shall terminate at midnight on August 31, 2021.
- (b) The Employer and OMLI shall give consideration to the renewal of this Agreement during its final year. Each party shall advise the other not later than the last day of February, 2021 (DATE WHICH IS ONE HUNDRED AND EIGHTY (180) DAYS IN ADVANCE OF LAST DAY OF CONTRACT) whether or not they wish to extend or renew this Agreement and the Parties shall thereafter meet to determine the terms, if any, under which they might be willing to extend or renew this Agreement but neither party shall be obligated to agree to any such renewal or extension and may

terminate any renewal discussions at any time in their absolute discretion.

- (c) The term of this Agreement cannot be extended or renewed without a further Agreement between MIDLAND and OMLI in writing under which this Agreement is extended or renewed (with or without modifications as agreed upon by the parties).
- (d) In the event that MIDLAND does not wish to exercise its option to renew this Agreement or the Parties cannot agree upon the terms and conditions for the renewal, the Agreement shall terminate at the expiration of the existing term and neither party shall be entitled to receive further notice.

### 3. SERVICES

- (a) The duties of OMLI shall be those duties set forth in the Municipal Act, S.O. 2001, and any amendments thereto, and those duties set forth in Town of Midland By-law Number 2013-4, or as amended by Council and such other duties as Council may, from time to time, assign. OMLI, through John Skorobohacz shall report to the Mayor and Town Council.
- (b) OMLI undertakes to fully and faithfully discharge the duties and responsibilities of the Chief Administrative Officer to a high standard of professional competence through the engagement of John Skorobohacz to perform such duties and responsibilities.
- (c) OMLI/John Skorobohacz will devote sufficient time effort and attention to the business and well-being of the Corporation of the Town of Midland. Without limiting the generality of the foregoing, OMLI/John Skorobohacz:
  - (i) will not engage in or accept any similar office or position or consulting business assignment that might interfere with the on-going regular business and well-being of MIDLAND; and
  - (ii) periodically OMLI/John Skorobohacz may use time away from the Midland assignment to provide training and/or instruction supporting the advancement of OMLI's objectives to enhance leadership development in the field of municipal administration. Written notice shall be provided to the Mayor and Council of such assignments.
- (d) Regular MIDLAND public administrative hours of work are Monday to Friday (except for statutory holidays) from 8:30 am to 4:30 pm and the expectation is that OMLI, through John Skorobohacz, will provide a minimum of 35 hours of work per week. John Skorobohacz can manage evening meeting times, etc., by simply adjusting his normal work day / week, recognizing that from time to time additional hours of work beyond 35 hours may be required as addressed below. From time to time it is acknowledged that serving the interests of the Town of Midland will require attendance at meetings and other events off site and possibly out of the municipality. This is considered as part of the normal course of business and it is expected to be part of managing the work expectations. The hours invested in advancing the interests of the Town of Midland beyond the traditional or typical public administrative hours are acknowledged and will count toward the minimum 35 hours of work per week.

- (e) At the initiative of the Mayor (or designate) of the Town of Midland, the performance of the Chief Administrative Officer (OMLI through John Skorobohacz) shall be reviewed annually, at a minimum. The performance evaluation shall be conducted according to Council approved policy. The completed written performance evaluation shall be confidential and it shall include objectives for the following year. It is expected that the annual objectives as determined jointly by the Mayor and Council and the CAO are likely to be shared publicly (or at least internally as part of the organizational work-plan).

#### **4. RELATIONSHIP**

- (a) OMLI, through John Skorobohacz, shall perform the Services to the satisfaction of MIDLAND in accordance with the terms and conditions in this Agreement.
- (b) John Skorobohacz shall in no way be found to be or deemed to be an employee of MIDLAND and this agreement shall not in any way constitute an employment agreement. John Skorobohacz shall perform his duties through OMLI such that MIDLAND'S only obligations pursuant to this agreement shall be to OMLI.

#### **5. OTHER POLICIES**

OMLI acknowledges and agrees that in carrying out the Services it must continue to comply with MIDLAND'S purchasing policies and any other relevant MIDLAND policies.

#### **6. FEES AND INVOICES**

- (a) In recognition for the Services contemplated under this Agreement, MIDLAND shall pay OMLI an annual fee of \$180,000.00, excluding HST. OMLI's fee will be subject to annual performance review by Town Council or a subcommittee of Council.
- (b) Based on the annual performance review and subject to Council approval, the annual fee may be adjusted by an amount equal to that granted for the Town non-union leadership staff and not to exceed inflation.
- (c) OMLI/John Skorobohacz waives participating in any and all Town benefit plans, OMERS, etc. including all cash and non-cash components of compensation.
- (d) OMLI/John Skorobohacz may in the performance of the duties be required to travel to such places, whether in or outside the Town, by such means and on such occasions as the responsibilities of the CAO position requires. The Town will reimburse these expenses according to Town policies. OMLI will assign a cell phone for Town Business and will be reimbursed at the rate of \$75/month plus HST. OMLI will use their laptop provided MIDLAND IT staff are satisfied that it conforms to Town access and security requirements.

- (e) OMLI shall perform all of the Services notwithstanding that the value of the time spent by OMLI in performance thereof exceeds the fee specified in subsection 6(a), on the basis that neither the rate nor any provision of this Agreement shall relieve the OMLI from performing all the Services or reduce its obligation to one of performing only some proportionate or other part of the Services. This subsection will not apply if the Agreement is terminated prior to completion.
- (f) The contract amount will be paid bi-weekly ( $\$180,000 / 26 = \$6,923.08 + \text{HST}$ ). MIDLAND shall establish an open purchase order for the purpose of setting up the payment schedule, as noted in this agreement. Payment will be made through Electronic Funds Transfer. OMLI to provide MIDLAND'S Treasurer with the applicable banking information.

## **7. TIME AWAY**

- (a) MIDLAND will allow up to 8 weeks of time away (for personal time for John Skorobohacz. Time away from the performance of the services contemplated in this contract shall be submitted in advance by OMLI/John Skorobohacz and subject to reasonable consideration and approval by the Mayor (or Designate). All time will be tracked and submitted to the Town.
- (b) OMLI will not be compensated for any overtime (above the 35 hours). However, MIDLAND recognizes that additional hours worked or overtime over and above the normal work week will be required each year. These hours will be accounted for and may be used for additional time away, including but not limited to such times as statutory holidays when the office is closed, bereavement/illness or personal time, etc, all of which will be subject to the approval of the Mayor (or Designate).

## **8. TERMINATION**

This contract may be terminated in the following manner.

- (a) Either party may terminate the contract upon providing 6 months' notice or payment of the equivalent in lieu (or a combination of payment and notice equal to 6 months).
- (b) MIDLAND may terminate this contract without notice or pay in lieu thereof for wilful misconduct, disobedience, wilful neglect of duty or breach of a fundamental term of this agreement.
- (c) Should the contract be cancelled by MIDLAND for any reason before completion, then fees will be charged by OMLI only for the actual time incurred and any reasonable expenses which OMLI must incur in relation to this Agreement notwithstanding such cancellation.

## **9. PROPRIETARY RIGHTS**

- (a) All reports, disks, tapes, documents, information and all other material prepared by

OMLI and all persons employed, engaged or retained by OMLI for the performance of the Services under this Agreement (the "Material"), including any copyright therein, shall be and become the sole and absolute property of MIDLAND upon completion of the Services to be performed under this Agreement or upon termination of this Agreement for any reason whatsoever, including termination under section 8.

- (b) OMLI agrees, to cause all persons employed, engaged or retained by it to perform the Services, to waive any proprietary rights it or they may have with respect to any and all reports, disks, tapes, documents, information and all other material prepared pursuant to this Agreement in favour of MIDLAND

## 10. CONFIDENTIALITY

OMLI and all persons employed, engaged or retained by OMLI for the performance of the Services, will treat as confidential all information related to the operations of MIDLAND which come to the attention of the OMLI and its personnel in the course of carrying out the Services, and which are not or do not subsequently become public knowledge, and will not disseminate the information for any reason whatsoever without the MIDLAND's express written permission; however, the OMLI shall not be required to keep confidential any data which are required by law to be disclosed or which become publicly available, are already rightfully in possession of the OMLI and not subject to any pre-existing obligation of confidentiality, are independently developed by the OMLI outside the scope of this Agreement, or are rightfully obtained from third parties.

## 11. NOTICE

All notices required or permitted by this Agreement shall be in writing and delivered personally, by courier or by ordinary mail or sent by facsimile, to the attention of the individuals at the addresses or facsimile number set out below:

- (a) in the case of **MIDLAND**:  
Mr. Gord McKay  
Mayor/or Designate  
**CORPORATION OF THE TOWN OF MIDLAND**  
575 Dominion Avenue  
Midland, Ontario L4R 1R2  
FAX # 705-526-9971
- (b) in the case of **OMLI**:  
**ONTARIO MUNICIPAL LEADERSHIP INSTITUTE INC.**  
Address: [REDACTED]  
Fax #: [REDACTED]

or at such other address as may be given by each party to the other party in writing from time to time. A notice shall be deemed to have been sent and received on the day it is delivered personally, by courier or by letter mail or on the third day following mailing or, if sent by facsimile, on the day that receipt is confirmed. If such day is not a usual normal business day or if a confirmed facsimile transmission is sent or received after 5:00 p.m.

Eastern Standard Time (EST), the notice shall be deemed to have been sent and received on the next usual business day.

## 12. WAIVER

No action or failure to act by MIDLAND shall constitute a waiver of any right afforded to MIDLAND under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

## 13. INDEMNITY

- (a) OMLI agrees that it will, from time to time, and at all times hereafter, well and truly save, keep harmless and fully indemnify MIDLAND and any of its officers, employees, agents or representatives from and against all actions, claims and demands whatsoever which may be brought against or made upon any of them and against all loss, liability, judgments, costs, demands or expenses which any of them may sustain, suffer or be put to resulting from or arising directly from, the work done by it, its employees, agents, servants or sub-consultants or any of them, or by reason of, or on account of, or resulting from or arising out of the performance or rendering of, or the failure to knowingly perform or render, or the failure to knowingly exercise reasonable care, skill or diligence in the performance or rendering of any work or service required hereunder to be performed or rendered by the OMLI, its agents, servants, employees or sub-consultants or any of them.
- (b) Without limiting the generality of subsection 10, OMLI agrees that it will truly save, keep harmless and fully indemnify MIDLAND and any of its officers, employees, agents or representative, successor or assigns, from and against all actions, claims and demands whatsoever which may be brought against or made upon any of them for the infringement of or use of any intellectual property rights including any copyright or patent arising out of the reproduction or use in any manner of any plans, designs, drawings, specifications, information, negatives, data, material, sketches, notes, documents, memoranda or computer software furnished by OMLI in the performance of this Agreement.

## 14. INSURANCE

- a) OMLI shall furnish, not later than 60 days from the commencement of this contract, to MIDLAND copy of a professional liability insurance policy covering the work and services in an amount not less than two million dollars (\$2,000,000.00) inclusive per occurrence;
- b) OMLI shall furnish MIDLAND with a copy of a **general liability insurance** policy covering contractual liability with damage coverage for a minimum amount of two million dollars (\$2,000,000.00) inclusive with a deductible not greater than five thousand dollars (\$5,000.00);
  - (i) The Liability Insurance Policy shall be written on an "occurrence basis". 'Claims

Made' insurance policies will not be permitted;

- (ii) The Liability Insurance Policy shall contain an endorsement certifying that Corporation of the Town of Midland is included as an additional insured;
- c) OMLI shall also furnish MIDLAND with a copy of a Standard **Automobile Liability Insurance** Policy on both owned and non-owned vehicles with inclusive limits of not less than two million dollars (\$2,000,000.00) per occurrence for bodily injury and property damage with a deductible not greater than five thousand dollars (\$5,000.00);
- d) **All policies listed above shall contain:**
  - (i) A "Cross Liability" clause or endorsement;
  - (ii) An endorsement to the effect that the policy or policies will not be altered, cancelled or allowed to lapse without thirty (30) days advance written notice to MIDLAND;
  - (iii) An endorsement certifying that MIDLAND is an Additional Insured.
  - (iv) All policies listed above shall apply as primary insurance and not excess to any other Insurance available to MIDLAND.

## **15. SEVERABILITY**

The invalidity or unenforceability of any provision or part of any provision of this Agreement or any covenant shall not affect the validity or enforceability of any other provision or part of any provision and any such invalid provision or part thereof or covenant shall be deemed to be severable.

## **16. ENTIRE AGREEMENT & AMENDMENTS**

- (a) This Agreement constitutes the entire agreement between MIDLAND and the OMLI with respect to the Services.
- (b) Except as otherwise expressly provided in this Agreement, this Agreement may only be amended or supplemented by written agreement signed by MIDLAND and the OMLI.

## **17. FURTHER ASSURANCES**

MIDLAND and the OMLI agree to do such things, attend such meetings and execute such further documents and assurances as may be deemed necessary or advisable from time to time in order to carry out the terms and conditions of this Agreement in accordance with its true intent.

## 18. ASSIGNMENT AND SUCCESSORS

- (a) Neither this Agreement nor any part of it shall be assigned by OMLI without prior written consent of MIDLAND, which consent may be arbitrarily and reasonably withheld.
- (b) This Agreement and everything contained in it shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assignees.

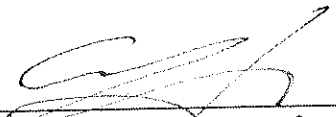
## 19. APPLICABLE LAW

This Agreement shall be interpreted in accordance with the laws of the Province of Ontario. This Agreement has been executed on behalf of each of the parties by its signing authorities.

SIGNED, SEALED AND DELIVERED

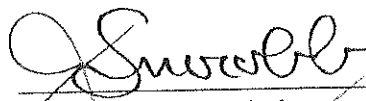
**CORPORATION OF THE TOWN OF MIDLAND**

per

  
\_\_\_\_\_  
Name: Gord McKay  
Title: Mayor

**ONTARIO MUNICIPAL LEADERSHIP INSTITUTE**

per:

  
\_\_\_\_\_  
Name: John Skorobohacz  
Title: Corporate Officer  
I have the authority to bind Ontario Municipal Leadership Institute