

## AGREEMENT

This Agreement ("Agreement") is entered into by and between **INTERNATIONAL SAFE TRANSIT ASSOCIATION**, ("ISTA") and \_\_\_\_\_, ("Consultant").

In consideration of the mutual promises contained herein and other good and valuable consideration, receipt of which is hereby acknowledged, ISTA and Consultant agree as follows:

**I. SCOPE OF AGREEMENT**  
(To be written and agreed)

**II. RESPONSIBILITIES OF THE PARTIES**

A. CONSULTANT

1. (To be written)

B. ISTA

1. (To be written).

**III. PERSONNEL**

A. The majority of the work performed under this Agreement shall be performed by \_\_\_\_\_. ISTA considers them an essential part of this Agreement; therefore, if for any reason any of the above personnel becomes unable to provide his/her expertise, ISTA reserves the right to immediately terminate this Agreement unless Consultant provides a suitable replacement, as determined in the sole discretion of ISTA, and agreed upon in a writing signed by both parties.

B. Consultant is solely responsible for all employee-related compensation, federal, state and local withholding, and applicable benefits, including but not limited to workers disability compensation and unemployment insurance, to Consultant and Consultant's personnel performing under this Agreement and all actions or inactions performed by Consultant and Consultant's personnel in connection with this Agreement.

C. Consultant may subcontract for portions of the work to be performed under this Agreement provided, however, that each subcontractor is expressly subject to all terms of this Agreement and must be approved in writing by ISTA, in ISTA's sole discretion. Furthermore, any subcontractor services shall be expressly for the benefit of ISTA.

**IV. TERM OF AGREEMENT AND TERMINATION**

A. This Agreement shall begin upon execution by both parties and expire on \_\_\_\_\_ unless earlier terminated in accordance with Section B, C, or D below.

B. This Agreement may be terminated by either party upon fifteen (15) days advance written notice in the event of: (i) a material breach of this Agreement by the other party; (ii) fraud by the other party; (iii) insolvency, bankruptcy, reorganization or receivership of one of the parties; (iv) breach of fiduciary duties by the other party; (v) ISTA's dissatisfaction with the quality of the Project; (vi)

Consultant's failure to complete the Project in a timely manner, as determined in the sole discretion of ISTA; (vii) gross or willful negligence, or (viii) persistent or prolonged neglect or misconduct by the Consultant, as determined in the sole discretion of ISTA.

C. If ISTA is dissatisfied with any of the services rendered under this Agreement, it may notify Consultant and provide Consultant a reasonable time within which to remedy any unsatisfactory performance of services or it may terminate this Agreement pursuant to Section B above.

D. Either party may terminate this Agreement without cause upon thirty (30) days prior written notice to the other party. Any terms of this Agreement, that by their nature extend beyond its termination, shall remain in effect until fulfilled, and apply to respective successors and assigns.

E. Upon termination of this Agreement, Consultant shall immediately, within seven (7) days, deliver all work performed pursuant to this Agreement to ISTA (including documents provided to Consultant by ISTA and any work in progress, such as notes, drafts and sketches) and shall, upon ISTA's written request, document on a time and materials basis in detail the status of the services that have been terminated and the delivered work. If requested by ISTA, Consultant shall, after termination, cooperate on a time and materials basis with ISTA in its or another's efforts on ISTA's behalf to complete any services or deliverables set forth in writing and to provide for an orderly transition.

**V. COMPENSATION/ TERMS OF PAYMENT – FIRM FIXED PRICE**

In accordance with this Agreement, the Consultant, independently and not as an agent of ISTA, shall provide all necessary materials, labor, equipment, and facilities, except as specified herein to be furnished by ISTA, and shall do all that which is necessary or incident to the satisfactory completion and timely performance of this Agreement, for the Firm Fixed Price stated below:

Firm Fixed Price: \$ \_\_\_\_\_.

The Firm Fixed Price shall be payable as follows:

( \_\_\_ % or \$ \_\_\_\_\_ ) upon execution of this Agreement  
( \_\_\_ % or \$ \_\_\_\_\_ ) upon delivery of initial results  
( \_\_\_ % or \$ \_\_\_\_\_ ) upon acceptance and approval by ISTA of the final report and any presentations, and all other deliverables specified in the Scope of Work.

The Firm Fixed Price paid to Consultant shall be full compensation for all services rendered hereunder. ISTA shall not be liable for any federal, state or local taxes, social security payments, sick pay, vacation pay, severance pay, bonuses or other social or welfare payments to Consultant, its agents, employees or subcontractors. ISTA's liability to Consultant is limited to the Firm Fixed Price for work that has been authorized in writing by ISTA and completed by Consultant or its subcontractors to the satisfaction of ISTA. In no case shall ISTA be liable for the other costs or damages which may result from Consultant's normal course of doing business.

All travel expenses shall be submitted to ISTA for prior approval and payment as authorized by ISTA in writing. All air travel shall be coach, 14 day advance purchase, unless agreed to otherwise, in writing, by ISTA. Except as provided in this paragraph, all travel expenses are included in the Firm Fixed Price Amount described above.

**VI. OWNERSHIP OF MATERIALS AND RESULTS**

A. All materials provided by ISTA and all work performed and work product, materials and documents produced under this Agreement, either by Consultant or by any sub-contractor hereunder, shall remain the property of ISTA. Consultant shall use such materials only for performing services under this Agreement. All such work product, materials and documents shall be returned to ISTA upon the earlier of ISTA's request or termination of this Agreement.

B. Copyright Ownership

1. Subject to third parties' licensing or other rights, of which ISTA will be informed prior to commencement of any project, all projects contracted for under this Agreement shall be classified as Work Product. Work Product shall be a Work Made for Hire (as such are defined under the U.S. Copyright Laws) owned by and for the benefit of ISTA and, if it does not qualify as a Work Made for Hire, Consultant will and hereby does assign to ISTA all of its rights, title and interest in the Work Product, including all copyrights, patents, trademarks and other proprietary rights.

2. On request, Consultant will take such steps as are necessary to enable ISTA to record such assignment, at ISTA's expense.

3. Consultant will sign, on request, any documents needed to confirm that the Work Product is a Work Made for Hire and/or to effectuate the assignment of its rights therein to ISTA. Consultant further agrees to assist ISTA and its agents, on request, in preparing U.S. and foreign copyright, trademark, and/or patent applications covering the Work Product and will sign any such applications, on request, and deliver them to ISTA.

4. It is understood and agreed that ISTA has the right to use or not use the Work Product and to use, assign to a third party, reproduce, re-use, alter, modify, edit, or change the Work Product as it sees fit and for any purpose, and that the Work Product shall not be returned except for pre-existing copyrighted or proprietary materials used by Consultant as a tool to develop the Work Product. Consultant will inform ISTA in writing of its intent to use said pre-existing copyrighted or proprietary materials prior to their actual use.

5. Consultant shall have no right, title or interest in the Work Product, nor any license to use, sell, exploit, copy, or further develop such Work Product.

6. Consultant's agreed-to compensation on an hourly or per-project basis will be full payment for any Work Product Consultant generates and Consultant will not be entitled to any royalties or proceeds received by ISTA from the commercialization in any manner of the Work product or project.

7. Consultant agrees to inform ISTA of all proposed license agreements and any restrictions included therein regarding use.

8. Consultant represents and warrants that the Work Product shall be original, and shall not infringe on the rights of any other person or party. In the event of a breach of this representation and warranty, Consultant shall immediately return to ISTA all monies received under this Agreement and shall be liable for any consequential damages resulting therefrom, including but not limited to all costs and reasonable attorney fees incurred by ISTA related to the enforcement of this representation and warranty. ISTA shall retain all right, title and ownership in and to all work, including without limitation to all copyright, patent, trade secret and other intellectual property rights pertaining thereto, including but

not limited to, the complete right to modify text, print, publish, copy, distribute, transfer, display and prepare derivative works based upon work prepared under this Agreement.

9. Consultant agrees to affix the copyright notice, **COPYRIGHT, INTERNATIONAL SAFE TRANSIT ASSOCIATION 2016, All Rights reserved**, to the title page of any and all final written materials resulting from work or services performed by Consultant pursuant to this Agreement prior to delivery of each to ISTA for review. Other notices shall be added as required by copyright law.

10. This section shall survive termination of this Agreement.

## **VII. AUTHORIZED CONTACTS**

The following parties are authorized contacts under this Agreement: Andrew Gruber of ISTA and Dwight Schmidt of Consult Schmidt, LLC.

## **VIII. NONDISCLOSURE OF PROPRIETARY INFORMATION**

During the course of the term of this Agreement, Consultant may have access to information of a confidential and proprietary nature. Such confidential information may include, without limitation, membership lists, corporate or facility data regarding ISTA members, information about trade secrets, costs, markets, strategies, plans for future development and any other development, and any other information of a similar nature pertaining to ISTA or its members. Consultant hereby expressly covenants and agrees that, anytime during the term or after termination or expiration of this Agreement, Consultant shall not use, furnish, or disclose any confidential or proprietary information to any other person, corporation, association, or other entity without the prior written consent of ISTA. This section shall survive termination of this Agreement.

## **IX. TAXES**

It is understood and agreed that Consultant is an independent contractor, not an employee or joint venture. Any compensation, therefore, will not be subject to withholding of either income taxes or Social Security taxes. It is understood that in the event that any payments under this Agreement should be deemed taxable, Consultant shall be solely responsible for the payment of those taxes; and Consultant shall indemnify ISTA against any claims for taxes or other payroll deductions, including penalties, provided ISTA promptly notifies Consultant of any such claim.

## **X. TRANSFER OF INTEREST**

Neither this Agreement, nor any of the rights and obligations stated herein or resulting therefrom, may be assigned, transferred or otherwise disposed of by Consultant without the prior written consent of ISTA. Any attempted assignment in violation of this section shall be void and of no effect.

## **XI. NOTICE**

Any legal notice or report required or permitted to be given under provisions of this Agreement shall be in writing and be delivered either by mail or by personal delivery. If delivered by mail, notices shall be sent by Federal Express or a similar type delivery service, or by certified or registered mail, return receipt requested; with all postage and charges prepaid. All notices shall be addressed to the individuals in the capacities indicated below, or as specified by subsequent written notice delivered by the party whose address has changed.

- a) If to ISTA, to:  
Andrew Gruber, President  
INTERNATIONAL SAFE TRANSIT ASSOCIATION  
1400 Abbot Road #380  
East Lansing, MI 48823
- b) If to Consultant, to:

## **XII. INDEMNIFICATION**

A. Consultant agrees to indemnify, defend, and hold harmless ISTA, its officers, directors, employees, members, volunteers, agents, successors, and assigns, from any and all liability, losses, claims, demands, suits, costs, expenses and damages, including the cost of defense, investigation and reasonable attorneys' fees, of whatever nature and description, arising from or in connection with Consultant's breach of this Agreement or Consultant's negligence or willful misconduct, or a third-party claim arising out of Consultant's performance under this Agreement.

B. Consultant shall indemnify and hold ISTA harmless from any proceedings or claims asserted against ISTA resulting from materials solely furnished by Consultant involving copyright, trademark, service mark or patent infringement, violations of personal rights of privacy, misappropriation of ideas or rights and literary piracy or plagiarism, excepting claims arising from materials or information furnished by ISTA or from matters with respect to which Consultant has advised ISTA, in writing, of the legal risks involved and ISTA, by its specific approval, has assumed the risks thereof, in which cases ISTA shall so indemnify Consultant.

C. ISTA agrees to indemnify, defend, and hold harmless Consultant, its officers, directors, employees, members, volunteers, agents, successors, and assigns, from any and all liability, losses, claims, demands, suits, costs, expenses and damages, including the cost of defense, investigation and reasonable attorneys' fees, of whatever nature and description, arising from or in connection with ISTA's negligence or willful misconduct, or a third-party claim arising out of ISTA's performance under this Agreement.

D. This section shall survive termination of this Agreement.

## **XIII. INSURANCE**

Consultant shall obtain, maintain and provide evidence of insurance in minimum amounts of \$1 million per occurrence/\$2 million aggregate per year, to provide coverage for any liabilities arising out of or resulting from Consultant's obligations pursuant to this Agreement. Consultant shall provide proof of insurance upon execution of this Agreement.

## **XIV. GOVERNING LAW/VENUE**

This Agreement shall be exclusively governed by and pursuant to the laws of the State of Michigan, without regard to its conflicts of laws principles. Any and all suits or claims by either party shall be brought exclusively in the State of Michigan.

**XV. AGENCY**

ISTA and Consultant agree that this Agreement is not intended to create any agency, joint venture, subcontractor, or employer-employee relationships of any kind between and ISTA and Consultant, or between ISTA and any other party with whom Consultant has contracted regarding this Agreement. ISTA and Consultant agree not to contract any obligation in the name of the other, to use each other's credit in conducting any activities under this Agreement, or to represent that ISTA is in the business of providing the products and/or services provided by Consultant.

**XVI. ENTIRE AGREEMENT/SEVERABILITY**

This Agreement constitutes the entire agreement between the parties hereto and supersedes all prior understandings and writings, and may be amended or modified only by a writing signed by the parties. If any provision of this Agreement, or the application thereof to any person or circumstances, shall to any extent be void, invalid, unenforceable or illegal for any reason, the remainder of this Agreement, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**XVII. WAIVER**

The failure of either Party to insist upon strict performance of any of the terms or provisions of this Agreement or to exercise any right or remedy contained in this Agreement shall not be construed as a waiver or as a relinquishment for the future of such term, provision, right or remedy. Neither this Agreement nor any provisions thereof may be changed, waived, or discharged, except by an instrument in writing signed by both parties.

**XVIII. EQUAL OPPORTUNITY**

ISTA acknowledges that it is an Equal Employment Opportunity Employer. Consultant agrees that it is in compliance with Executive Order 11246 and Revised Order No. 4, the Vietnam-Era Veterans Readjustment Assistance Act of 1974, the Vocational Rehabilitation Act of 1973 and other applicable federal and state anti-discrimination laws.

**XIX. MISCELLANEOUS**

A. The captions of each paragraph of this Agreement are inserted solely for the reader's convenience and are not to be construed as part of or in interpreting this Agreement.

B. Consultant will be an independent contractor for its performance under this Agreement. As an independent contractor, Consultant will be free to decide the means by which it will provide the required services. This Agreement will not be construed to constitute either party as a representative, agent, employee, partner or joint venturer of the other.

C. Neither party shall be liable for any failure or delay in the performance of its obligations due to a fire, flood, earthquake, elements of nature or acts of God, acts of war, acts or threats of terrorism, riots, civil disorder, rebellions, epidemics, governmental travel advisories, or other similar cause beyond the reasonable control of the party affected, provided such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented, and provided further that the party hindered or delayed immediately notifies the other party describing the circumstances causing delay.

D. All attachments to this Agreement are incorporated herein by reference and made a part of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their authorized representatives.

CONSULTING GROUP

INTERNATIONAL SAFE TRANSIT ASSOCIATION

by \_\_\_\_\_

by \_\_\_\_\_

Title:

Andrew Gruber

Title: President

Date \_\_\_\_\_

Date \_\_\_\_\_

EIN \_\_\_\_\_

I, \_\_\_\_\_, Consultant, certify that to the best of my knowledge, there is no conflict of interest between the issues/services [CONSULTANT] will provide for the International Safe Transit Association and the services [CONSUTANT] provides any other client/entity.

I agree that I will notify ISTA if a conflict arises.

Signed:

\_\_\_\_\_  
Signature of Consultant

\_\_\_\_\_  
Date