

# Request for Qualifications For Tri-County Comprehensive Safety Action Plan

Tri-County Regional Planning Commission  
456 Fulton Street, Suite 401  
Peoria, Illinois 61602

Issued Date: Friday, September 1, 2023  
Question Deadline: Wednesday, September 20, 2023, at 3:30 p.m.  
Response Deadline: Friday, September 29, 2023, at 3:30 p.m.

## Notice to Consulting Firms Tri-County Comprehensive Safety Action Plan

Tri-County Regional Planning Commission (TCRPC or Tri-County), a regional planning agency serving Peoria, Tazewell, and Woodford counties in Illinois, seeks to collaborate with a qualified firm to provide professional services to assist Peoria, Tazewell, and Woodford counties with the development of the Tri-County Comprehensive Safety Action Plan. TCRPC seeks Statements of Qualifications (SOQs) from interested and qualified firms to provide these services. To submit questions related to this RFQ, contact Tri-County staff in writing at [rfp-rfq@tricityrpc.org](mailto:rfp-rfq@tricityrpc.org); or 456 Fulton Street, Suite 401, Peoria, IL 61602.

SOQs are due to the Tri-County Regional Planning Commission office located at 456 Fulton Street, Suite 401, Peoria, Illinois 61602, no later than 3:30 p.m. on Friday, **September 29, 2023**. Submissions received after that date and time will not be considered. SOQs should be no more than 20 pages in length and include **two hard copies** and **one digital copy**. All SOQs should be sealed and identified on the outside as *Tri-County Comprehensive Safety Action Plan*.

## **Project Background**

Tri-County Regional Planning Commission (TCRPC or Tri-County) of Peoria, Illinois proudly serves Peoria, Tazewell, and Woodford counties as the “Steward of the Regional Vision.” TCRPC studies the needs and conditions of the region and develops strategies that enhance the area's communities. Tri-County offers a forum for leaders of area government to define regional issues, set regional goals, and cooperatively implement plans.

Tri-County is the Metropolitan Planning Organization (MPO) for the Peoria-Pekin urbanized area. As the MPO, TCRPC conducts the continuing, cooperative, and comprehensive (3-C) transportation planning process required by law. Tri-County carries out this process by preparing regional plans and programs with the assistance of an MPO Technical Committee.

The MPO applied for and received \$400,000 in federal funding from the U.S. Department of Transportation. The funding comes from the Infrastructure Investment and Jobs Act (IIJA) FY 2022 Safe Streets and Roads for All (SS4A) discretionary program. A portion of the FY 2024 membership dues have been allocated to match the required 20 percent non-federal cost share. Therefore, the proposed compensation for this project is \$500,000, including all service fees and expenses. Due to guidelines set by the grant funding source, all work related to the project must be completed and invoiced by June 30, 2025.

## **Project Description**

Tri-County is requesting assistance with the development of a Comprehensive Safety Action Plan (CSAP) for Peoria, Tazewell, and Woodford counties. The purpose of this CSAP is to develop a holistic, well-defined strategy to prevent roadway fatalities and serious injuries in the tri-county region of Peoria, Tazewell, and Woodford counties. Furthermore, the CSAP will aid in the prioritization of safety improvements and justification of investment decisions that assist in meeting the goal of zero fatalities on Tri-County roadways. As such, the CSAP shall identify projects and strategies that may be implemented to address roadway safety problems. A thorough and rigorous safety assessment shall be conducted in accordance with Federal Highway Administration methods. This assessment shall be the basis by which projects and strategies are identified.

The CSAP shall give special consideration to the latest data pertaining to the disparities which exist between urban and rural roadway fatalities and serious injuries. Additionally, to support efforts to improve racial equity and reduce barriers to opportunity, the CSAP shall contain a racial equity impact analysis which aims to identify correlations between minority communities, underserved communities, and crash data. Further, the CSAP shall

adhere to Tri-County's adopted Title VI with Environmental Justice Considerations and Limited English Proficiency Plan and Public Participation Plan.

The MPO and region recognizes the need for a safe roadway and seeks a consultant to assist with the development of the Tri-County CSAP and include the following components:

- **Safety Committee**
  - Form a Safety Committee comprised of Technical Committee members, subject matter experts, and stakeholders charged with oversight of the Tri-County CSAP development, and the eventual implementation and monitoring of the adopted CSAP.
  - Develop bylaws and tools for the Committee to use during the planning process and eventually in the implementation and monitoring stage.
    - Recommend items as needed to the MPO Technical Committee.
    - Develop subcommittees as necessary on specific safety concerns and issues, such as a bike and pedestrian safety subcommittee.
- **Safety Analysis**
  - Review existing plans, such as the Long-Range Transportation Plan, Congestion Management Process, Comprehensive Plans, and other governmental plans and processes to ensure the CSAP is coordinated and aligned to the extent practical.
  - Obtain available and pertinent information related to region-wide transportation safety.
  - Research previous traffic fatalities, injuries, and collisions on all roadways within Peoria, Tazewell, and Woodford counties, regardless of ownership.
  - Examine existing conditions and historical trends to understand the magnitude of collisions resulting in fatalities and severe injuries across the tri-county region.
  - Evaluate crash sites based on the severity of crashes, identify contributing factors, and categorize the types of crashes by road users (e.g., motorists, pedestrians, bicyclists, transit user, etc.) across the tri-county region.
  - Assess that overarching and specific safety requirements (e.g., hazardous road features, unique safety needs of pertinent road users, strategies aligned with public health, land use, demographic and structural considerations, etc.) are carried out across the tri-county region as necessary.
  - Develop a geospatial database of high-risk locations (e.g., a High-Injury Network or equivalent.) and other pertinent information gathered through the safety analysis.

- Outreach, Meetings, and Collaboration
  - Organize and moderate involvement with the public and pertinent stakeholders, including the private sector and local community organizations, enabling both community inclusivity and input.
    - Ensure the public involvement process is as all-encompassing and representative of the tri-county region as possible.
    - Establish an advocacy group with representation from vulnerable users, such as bicyclists, pedestrians, and transit users, along with accessibility advocates.
  - Organize and facilitate Safety Committee, Vulnerable Users Advocacy Group, and any necessary subcommittee meetings.
  - Prepare summaries and minutes from all engagement activities.
  - Coordinate with the MPO member jurisdictions, Illinois Department of Transportation (IDOT or State DOT), and other interested governmental jurisdictions as appropriate.
  - Incorporate information and input garnered from public participation and cooperative efforts into the final CSAP.
  - Participate in the 30-day public comment period required before adoption.
    - Assist with the mailing of the draft plan to the 20 public review sites.
    - Record all public comments and make any necessary revisions or incorporate the input in the Appendices.
    - Present the planning process and document at the required public meeting(s).
    - Present the planning process and document at the Full Commission, TCRPC's governing board, before officially adopted.
- Racial Equity Impact Analysis
  - Identify underserved and marginalized communities through demographic data and other analyses in collaboration with appropriate partners.
  - Evaluate the impact of the various projects and strategies on the identified underserved and marginalized communities.
    - Assess the relationship between highways and neighborhood connectivity in the region.
  - Research historical crash data and events to determine if a disproportionate impact on underserved and marginalized communities exists.
- Review of Best Management Practices
  - Review current State and Federal DOT policies, guidelines, standards, and case studies to identify best management practices for identifying and prioritizing transportation safety.
  - Include a "Safety Toolbox" in the final document that provides a listing of available state and federal best practices identified from the review.

- Evaluate existing regional policies, plans, and guidelines to recommend improvements for prioritizing transportation safety based on the “Safety Toolbox.”
  - Provide an action plan for the execution of these enhancements.
  - Provide recommendations for incorporating safety in MPO planning documents such as the Long-Range Transportation Plan and Transportation Improvement Plan.
- Project Selection, Strategies, and Next Steps
  - Identify a comprehensive listing of safety projects, preventative measures, and strategies crafted using pertinent data, public input, and best practices centered around Safe System Approach, effective interventions, and multidisciplinary activities.
    - This compilation should encompass interventions concentrated on infrastructure, behavioral, and/or operational safety.
  - Prepare and utilize a prioritization matrix for the identified projects, preventative measures, and strategies that provide time ranges for deployment (e.g., short-, mid-, and long-term timeframes).
  - Create an informational summary page of each prioritized location that presents the project in a way that would facilitate an easy incorporation into an SS4A implementation grant.
  - Develop an action plan for implementing projects, preventative measures, and strategies prioritized for the short-term and outline steps to prepare for those in the mid- and long-term timeframes.
    - Identify potential funding sources for implementation.
- Safety Target Plan and Progress Reporting
  - Work with the Safety Committee to develop a Safety Target Plan to reduce the percentage of road-related fatalities and serious injuries by a set date, with the long-term goal of eradicating such occurrences.
  - Develop an adoption resolution for the Full Commission to use for adopting the Tri-County CSAP, Safety Target Plan, and showcase Tri-County’s commitment to Vision Zero.
    - Incorporate the fully executed resolution in the final Tri-County CSAP document.
  - Create a resolution for participating local public agencies (LPAs) to support the Tri-County CSAP and showcase their commitment to Vision Zero.
  - Establish mechanisms for gauging and reporting on annual progress and link with the MPO Annual Safety Transportation Performance Measure requirement established by the 2012 legislation, Moving Ahead for Progress in the 21st Century Act (MAP-21) and continued with the IIJA.
    - Provide metrics easily gauged for measuring progress annually.

- Develop a template for calculating and reporting annual progress towards diminishing road-related fatalities and serious injuries as it relates to the CSAP and federally-required Transportation Performance Measures – Safety (PM1).

The proposed deliverables for this study are as follows:

- Baseline Safety Assessment Report
- Monthly invoices and progress reports
- Public outreach and meeting summaries
- Geospatial database of high-risk locations and other pertinent GIS data
- Prioritization matrix
- Template for annual progress reporting
- Project files (electronic and hard copies)
- Comprehensive Safety Action Plan (draft and final)
  - Twenty hard copies and one electronic copy of the final plan with fully executed adoption resolution
- Presentation to the MPO Technical Committee and Full Commission during the public comment period and adoption process to give an overview of the CSAP.

### **Submittal Procedure**

All SOQs shall be sealed and identified as **Tri-County Comprehensive Safety Action Plan** and submitted to:

Michael Bruner, Senior Planner  
Tri-County Regional Planning Commission  
456 Fulton Street, Suite 401  
Peoria, IL 61602

SOQs are due no later than 3:30 p.m. on Friday, September 29, 2023. No submissions received after that date and time are eligible for consideration by TCRPC. Please include two hard copies and one digital copy. Emailed copies will not be accepted.

### **SOQ Contents**

Tri-County requests that interested respondents submit SOQs discussing the scope of services as described in the above section titled *Project Description*. Tri-County reserves the right to reject any or all SOQs or portions of SOQs, if it is deemed to be in the best interest of TCRPC or its partners. Tri-County will only consider submissions limited to 20 pages, not including resumes. The submittal should include the following content:

**1. Transmittal Letter**

The transmittal letter should be placed on the firm’s letterhead and signed by a signatory that is authorized to contractually obligate the respondent. The letter shall describe the SOQ’s contents, provide a point of contact for questions, and any other information deemed appropriate. Lastly, please supply the location, telephone number, email address, and website of the respondent’s office(s) providing professional services and their federal tax identification number.

**2. Project Work Program (Approach)**

This section should be devoted to discussing the respondent’s project understanding of the Comprehensive Safety Action Plan for Peoria, Tazewell, and Woodford counties. Clearly describe your unique approach, methodologies, knowledge, and capabilities to be employed in the performance of the proposed CSAP for Peoria, Tazewell, and Woodford counties. The respondent should provide a list of anticipated obstacles, a statement of their understanding of the required work, and confirmation that they and, if applicable, their subconsultant are licensed to practice in Illinois.

**3. Project Capacity and Schedule**

The submission should provide evidence that the recommended team is committed to and has the capacity to complete the Tri-County Comprehensive Safety Action Plan. Please include a general project schedule and estimated completion date with the understanding that the region is eager to move forward with the project as quickly as possible.

This is a time-specific project, and if the selected firm cannot meet set timeframes for the project, then Tri-County has the right to negotiate with a subsequent firm. The selected consultant must complete all project work and invoicing no later than June 30, 2025. Therefore, the consultant must submit the final draft for approval and adoption no later than March 31, 2025, to ensure sufficient time for review and approval.

**4. Background and Prior Experience**

This section should describe the respondent’s firm by providing its full legal name, date of establishment, type of entity and business expertise, brief history, any business current ownership structure, and any recent or materially significant proposed change in ownership. Please include any business certifications, such as Minority Business Enterprise (MBE), Women Business Enterprise (WBE), Disadvantaged Business Enterprise (DBE), Small Business Enterprise (SBE), etc., with the certifying grantor information. Additionally, this section should describe a **minimum of three work experiences** that are similar to the Tri-County CSAP as

described in the Project Description. The respondent should provide the names and roles of the individuals who worked on each identified project and distinguish those individuals who would also be assigned to work on this proposed project.

A **minimum of three references** from projects outlined above are required. The respondent should provide contact information, including names, phone numbers, and emails of all references. The work experience and references should be listed in the same order, or references should be included on their associated project page. Please describe any relevant specialized knowledge or any issue the characteristics of which would be uniquely applicable in evaluating the experience of the respondent's firm to oversee the proposed project. Lastly, identify any proposed subconsultant, provide their firm's information (i.e., full legal name, date of establishment, type of entity, brief history, business certification with grantor information, and ownership structure), and outline their background, experiences, proposed project role(s), and their percentage of the total scope of work.

#### **5. Project Management and Team**

Respondents should identify staff members, including those of any proposed subconsultant, who would be assigned to act for the respondent's firm in key positions. Provide project roles and functions to be performed by each individual and indicate if they worked on any of the projects detailed under the Background and Prior Experience section.

This section should also include the resumes of each staff member assigned to the project team identified above, including name, position, telephone number, email address, education, and years and type of experience. Describe, for each such person, the relevant planning projects on which they have worked. If using a subconsultant, include this information for each subconsultant. Lastly, provide confirmation that the respondent and assigned project staff have not had a record of substandard work or engaged in any unethical practices within the last five years.

#### **6. Additional Strategies (Optional)**

Additional services, ideas, innovation, or products, such as graphic design, cost-saving measures, safety measures, outreach methods, accessibility, DBE/WBE/MBE usage, etc. will be considered in the evaluation process. Up to five extra points are available to respondents that deploy strategies that exceed the established requirements detailed in this procurement opportunity that positively benefit TCRPC and its partners. This section is not required for successful completion of this procurement opportunity.

**Selection Criteria**

Tri-County and its partners reserve the right to accept or reject any or all proposals. All submittals become the property of TCRPC and its partners upon receipt. A Project Review Subcommittee comprised of representatives from Tri-County and its partners will evaluate each proposal according to the following factors and 100-point scale:

<b>Criteria</b>	<b>Weights</b>	<b>Max Points</b>
Project Work Program (Approach)	30%	30
Project Capacity and Schedule	15%	15
Background and Prior Experience	25%	25
Project Management and Team	30%	30
Additional Strategies (Optional)	0%	5
<b>Total</b>	<b>100%</b>	<b>100*</b>

\*Please note that 100 points is the maximum allowable.

**Selection Process**

Tri-County and its partners will form a Project Review Subcommittee with a minimum of three members to review, score, and rank all SOQs received by the deadline. Before holding the Selection Committee meeting, each member will provide their scores for each proposal using the above criteria. The subcommittee will then average their scores and rank the proposals. If necessary, the top two or three scoring respondents will be placed on a shortlist and invited to participate in an interview. Based on the interviews, the committee will adjust the average score to reflect the group's consensus and information gained from the presentations.

Tri-County and its partners retain the right to select from the consultants responding to this procurement opportunity. Any or all submissions may be rejected if they do not meet the Project Review Subcommittee's criteria or fail to comply with procurement specifications. Tri-County and its partners ARE NOT bound to select the highest-scoring submission. Tri-County and its partners reserve the sole right to invite one firm to the contract development stage or to reject any and all candidates that submit. Tri-County also retains the right to withdraw this procurement opportunity at any time.

Contract negotiations will follow with the selected respondent to establish a detailed scope of services, budget, and schedule. If a mutually agreeable contract is not reached, Tri-County will terminate negotiations with that respondent and open negotiations with the second-choice firm. This process will continue until a firm that meets the basic qualifications has entered into an acceptable contract with TCRPC.

**Contract Negotiations**

Contract negotiations will follow award selection. Respondents must be amenable to inclusion, in a contract, of any information provided, whether herein or in response to this

RFQ or developed subsequently during the selection process. As part of the selection process, Tri-County will invite the selected respondent to submit a written Scope of Work with a fee proposal and, if accepted, ask them to enter into contract negotiations. Tri-County expects to use a fixed-price contract with negotiated payment terms. The contract shall not be considered executed unless signed by the authorizing representative of TCRPC.

### **Compliance with Laws**

The selected firm agrees to be bound by all applicable federal, state, and local laws, regulations, and directives as they pertain to the performance of the contract.

### **Schedule**

RFP Issued	Friday, September 1, 2023
Question Deadline for RFP	Wednesday, September 20, 2023, at 3:30 p.m.
Response Deadline for RFP	Friday, September 29, 2023, at 3:30 p.m.
Subcommittee reviews submissions	October 2 – 13, 2023
Interviews	Wednesday, October 25, 2023
Contract Negotiations	November 6 – 10, 2023

### **Posting**

This procurement opportunity is advertised in local newspapers (Peoria Journal Star & Pekin Daily Times), the American Planning Association National Website, and the American Planning Association Illinois State Chapter Website. Additionally, this solicitation will be sent to consultants that subscribe to Tri-County's procurement email list. The procurement packet, along with any questions received regarding this procurement opportunity, is available on the TCRPC website: <https://tricityrpc.org/rfp-rfq/>

### **Questions**

Inquiries may be submitted via email to [rfp-rfq@tricityrpc.org](mailto:rfp-rfq@tricityrpc.org) no later than 3:30 p.m. on Wednesday, September 20, 2023. Questions should be addressed in writing to the above email address; telephone calls will not be accepted. All questions and answers are posted publicly at <https://tricityrpc.org/rfp-rfq/>.

### **Appendix A**

The following pages include a sample contract. Please note that compensation and scope of services will be negotiated during the contract development phase of this project. Additionally, the contract will include an Exhibit A that outlines the Scope of Work, and Exhibit B that includes a copy of the grant agreement between the U.S. Department of Transportation and Tri-County for the FY 2022 SS4A grant program.

# Contract Agreement

This Contract Agreement ("Agreement") is made this [ ] Day of [ ] MONTH YEAR, between the Tri-County Regional Planning Commission, 456 Fulton Street, Suite 401, Peoria, Illinois 61602, hereinafter referred to as the "Commission," and [ ] CONSULTANT NAME, [ ] CONSULTANT ADDRESS, hereinafter referred to as the "Consultant."

**WHEREAS**, the Commission desires to engage Consultant to develop the Comprehensive Safety Action Plan for Peoria, Tazewell, and Woodford Counties in Central Illinois, hereinafter referred to as the "Tri-County CSAP", and

**WHEREAS**, the Consultant desires to render those services as described in Section 1: Scope of Services.

**NOW, THEREFORE**, the Commission and Consultant in consideration of the mutual covenants contained herein agree as follows.

## Section 1: Scope of Services

The Consultant will provide the Commission services for the development of the Tri-County CSAP. The services to be performed are more specifically described in Exhibit A, attached hereto.

## Section 2: Responsibilities of the Commission

The Commission will assign a Project Manager with the authority to review and approve invoices, progress reports, and deliverables submitted by Consultant, and to act as a liaison between Consultant and the Commission.

## Section 3: Responsibilities of the Consultant

- A. Consultant agrees to perform in a professional manner all of the services outlined in Section 1: Scope of Services and as further described in Exhibit A.
- B. Consultant agrees that no changes shall be made in the services outlined in Section 1: Scope of Services and/or Exhibit A without the express written prior consent and agreement of the Commission.
- C. Consultant shall assign a Project Manager whose duties will be to oversee and coordinate the work and make regular status reports to the Commission.
- D. Consultant shall begin to perform the services upon the execution of this Agreement by both parties and shall complete such Work as outlined in Section 4: Time of Completion.

## Section 4: Time of Completion

Consultant agrees to complete the Work no later than [ ] PROJECT END DATE.

Notwithstanding anything to the contrary contained herein, neither party shall be liable for any delays or failures in performance resulting from acts beyond its reasonable control including, without limitation, acts of God, acts of war or terrorism, shortage of supply, breakdowns or malfunctions, interruptions or malfunction of computer facilities, or loss of data due to power failures or mechanical difficulties with information storage or retrieval systems, labor difficulties, any pandemic event, including but not limited to the ongoing COVID-19 outbreak, or civil unrest. In the event of any such excused delay, the time for performance of such obligations shall be extended for a period equal to the time lost by reason of the delay. A party claiming the benefit of this provision shall, as soon as reasonably practicable after the occurrence of any such event, provide notice to the other party of the nature and extent of any such force majeure condition, and use commercially reasonable efforts to resume performance hereunder as soon as reasonably practicable.

### **Section 5: Compensation for Consultant’s Services**

In consideration of the services performed hereunder, Consultant shall be paid as work progresses using the following outline. Complete bill out of a task shall occur following the completion of deliverables for that task.

Item	Fee
TO BE NEGOTIATED DURING THE CONTRACT DEVELOPMENT PHASE	
<b>Total Budget</b>	

The fees listed above include all ancillary services/products required for each cost item as defined in Exhibit A. Optional services will only be performed by the Consultant with written authorization of Commission at mutually agreed cost.

### **Section 6: Invoicing**

Consultant’s invoices shall be submitted not more often than monthly over the course of the Agreement and reflect Work completed and delivered and/or documented by percentage of Task as indicated in Section 5: Compensation for Consultant’s Services. Commission agrees to review and pay Consultant’s invoice within sixty (60) days of receipt. If an invoice is validly disputed by Commission or otherwise found to be in error, the invoice will be voided and a new invoice submitted at the agreed amount with a new sixty (60) day payment period.

Consultant shall submit reports of progress as part of the invoicing process, or at least monthly, whichever is shorter.

## **Section 7: Audits**

For a minimum of three (3) years after expiration or termination of this Agreement, Consultant shall maintain adequate books, records, and supporting documents to verify the amounts, recipients, and uses of all funds paid to Consultant under this Agreement. Upon notice from Commission or the Illinois Department of Transportation (IDOT) of an audit, Consultant shall make such books, records, and supporting documents available for review by the IDOT, Commission, and/or their designee(s).

## **Section 8: Insurance**

Consultant shall maintain appropriate errors and omissions insurance covering all employees that perform Services during the term of this Agreement, and insurance of the kinds required of Commission in the underlying agreement between Commission and the Illinois Department of Transportation and with the limits set forth therein, but in no event insurance less than the amounts and kinds listed below:

- **Worker's Compensation Insurance** as required by statute, including Employer's Liability, with limits of \$100,000 each accident; \$500,000 disease - policy limit; \$100,000 disease - each employee.
- **Commercial General Liability Insurance** with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate.
- **Business Automobile Liability Insurance** with limits of \$1,000,000 per occurrence, combined single limits (owned, hired & non-owned).

Commission shall be named as an additional insured under the Commercial General Liability Insurance Policy and certificates of insurance evidencing these minimum coverages shall be submitted by Consultant to Commission at the commencement of the Services. Failure to submit the certificates or endorsements, or failure of the Commission to insist upon submission shall not relieve Consultant of its duty to maintain the required insurance.

## **Section 9: Relationship**

Consultant's relationship to Commission hereunder is one of independent contractor and nothing contained in this Agreement shall be construed to imply that Consultant or any of Consultant's personnel is an employee or agent of Commission for any purpose. Consultant shall have no right, power or authority to create any obligation, expressed or implied, or to make any representation on behalf of Commission, except as may be expressly authorized from time to time by Commission in writing and then only to the extent of such authorization. Nothing herein is to imply an agency, joint venture or partner relationship between the parties.

## **Section 10: Warranty**

Consultant, by signing this Agreement, acknowledges and represents that:

- A. It shall perform the Services with a degree of skill, care, and judgment which is in accordance with the professional standards ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time and in the same or similar locality;
- B. For any good or deliverable provided by Consultant to Commission under this Agreement, Consultant has full power and authority to transfer title or grant any license herein granted without the consent of any other party, and any and all goods or deliverables are delivered free of any rightful claim of any third party by way of infringement or otherwise arising from or related to the claimed rights in any good or deliverable or Commission's exercise of its rights under the Agreement;
- C. It will perform the Services in full compliance with all applicable laws, regulations, orders, and other governmental requirements;
- D. It has obtained or will obtain all permits necessary to perform the Services and it will perform the Services in compliance with all necessary and applicable permits; and
- E. It will comply with those assurances, certifications, reporting provisions, and any other grant requirements set forth in the underlying FY 2022 Grant Agreement for Safe Streets and Roads for All funding between the U.S. Department of Transportation and the Commission, which is incorporated herein as Exhibit B.

## **Section 11: Indemnification**

Consultant shall indemnify and hold harmless Commission and its directors, officers, employees and agents from and against all suits, claims, demands, losses, and damages, including litigation expenses, reasonable attorney's fees and liabilities incurred in connection therewith of: (i) injury to, or death of, any person whatsoever or damage to property of any kind by whomever owned, to the extent caused by the negligent acts or omissions of Consultant or any of its personnel or other persons employed by or engaged by Consultant; or (ii) any claim, to the extent caused by any breach by Consultant of a representation, warranty or covenant contained herein.

Commission shall indemnify, defend, and hold harmless Consultant and its directors, officers, employees and agents from and against all suits, claims, demands, losses, and damages, including, litigation expenses, reasonable attorney's fees and liabilities incurred in connection therewith of: (i) injury to, or death of, any person whatsoever or damage to property of any kind by whomever owned, to the extent caused by the negligent acts or omissions of Commission or any of its personnel or other persons employed by or

engaged by Commission; or (ii) any claim, to the extent caused by any breach by Commission of a representation, warranty or covenant contained herein.

This Section 11 shall survive the termination or expiration of this Agreement.

## **Section 12: Limitation of Liability**

WITH THE EXPRESS EXCEPTION OF CONSULTANT'S OBLIGATIONS UNDER SECTION 11 (INDEMNIFICATION), IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR RELIANCE DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST OR ANTICIPATED REVENUES OR PROFITS) ARISING OUT OF THE AGREEMENT OR COMMISSION'S USE OF THE DELIVERABLES, ON ANY THEORY OF LIABILITY EVEN IF SUCH PARTY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

In recognition of the relative risks and benefits of the project to both the Commission and Consultant, the risks have been allocated such that the Commission agrees, to the fullest extent permitted by law, to limit the liability of the Consultant and Consultant's officers, directors, partners, employees, shareholders, owners and subconsultants for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert-witness fees and costs, so that the total aggregate liability of the Consultant and Consultants officers, directors, partners, employees, shareholders, owners and subconsultants shall not exceed \$50,000. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

## **Section 13: Disclosure of Information**

The Consultant may receive or create information for Commission under this Agreement, all of which is and shall be owned by Commission. Commission information may include, without limitation, research, development, patents, computer software, designs, technical information including know-how, and proprietary or other commercial information. Consultant shall not disclose Commission information unless pursuant to a third-party request under the Freedom of Information Act, 5 ILCS 140/1 et. seq. ("FOIA"), and in such event, shall exercise to the fullest extent possible all exemptions and exclusions available under FOIA and applicable to the FOIA request, at Consultant's sole cost and expense. Furthermore, Consultant shall immediately notify Commission of any FOIA request Consultant receives of which Commission information may be subject to and Commission may, in its sole discretion, assume control of any response to the FOIA request solely with respect to Commission information. Failure by Commission to assume control with respect to any FOIA request sent to Consultant shall not diminish Commission's rights and remedies and Consultant's obligations under this Agreement.

Consultant acknowledges that Commission may similarly be subject to FOIA and also may receive requests for records from third parties. Upon notice from Commission of a

FOIA request Commission receives implicating correspondence, documents, or other records provided to or created by Consultant pursuant to this Agreement, Consultant shall within 7 (seven) business days of such notice search for and provide to Commission a copy of any such records so requested at Consultant's sole cost and expense.

## **Section 14: Intellectual Property/Deliverables**

- A. Consultant reserves all right, title and interest in and to any of the Prior Works that Consultant shall use in the performance of Services for Commission. Consultant hereby grants Commission a non-exclusive, worldwide, royalty-free, perpetual license (with right to sublicense) to use, make, sell, offer for sale, import, reproduce, distribute, display and create derivative works of its Prior Works utilized during the performance of Services or incorporated into any deliverable. "Prior Works" as used herein means Consultant's prior knowledge, including works of authorship, background software, ideas, concepts, methodologies, and processes developed or acquired without Commission's assistance before the Effective Date. Nothing contained herein shall prohibit Consultant from using any of Consultant's general knowledge to perform similar services for others.
- B. Consultant expressly acknowledges that any and all deliverables created under the Agreement shall constitute a "work made for hire" as defined by Section 101 of the Copyright Act. Commission shall own right, title and interest in works of authorship created under the Agreement that constitute a "work made for hire."
- C. For any deliverable created hereunder that does not qualify as a "work made for hire," Consultant hereby irrevocably assigns to Commission all right, title and interest in the deliverable, in whatever stage of completion, and warrants waiver of all moral rights therein.
- D. For any software constituting a deliverable under the Agreement, Consultant shall provide to Commission: (i) the machine readable object code version of the software; (ii) the software source code in both human and machine readable format; (iii) full documentation and annotations associated with the software; and (iv) any and all programmer notes, documentation, and software tools which are helpful or necessary to maintain, debug, modify, alter, or otherwise build, decompile, use and support the software.
- E. Any materials provided by the Commission to Consultant in connection with the performance of the Services will remain the sole and exclusive property of Commission, or its licensors, as applicable. After the termination of the Agreement, Consultant shall promptly return all such materials to Commission.
- F. The Commission agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless the Consultant, its officers, directors, employees and subconsultants (collectively, Consultant) against any damages, liabilities or costs,

including reasonable attorneys' fees and defense costs, arising from or allegedly arising from or in any way related to or connected with the unauthorized reuse or modification of Consultant's derivative works of its Prior Works and all deliverables created under the Agreement by Commission or any person or entity that acquires or obtains Consultant's derivative works of Prior Works and deliverables from or through the Commission without the written authorization of the Consultant.

Consultant shall execute all papers and perform such other proper acts as Commission may deem necessary to perfect the rights, interests and titles in deliverables granted under the Agreement without any additional fee, charge, or compensation to Commission but at the expense of Commission.

### **Section 15: Assignments/Subcontracts**

Consultant may not assign or transfer its rights or obligations under this Agreement without the express written consent of Commission.

### **Section 16: Severability**

If any provision of this Agreement is deemed to be illegal, invalid or unenforceable for any reason, it shall not affect the legality, validity or enforceability of any other provision herein.

### **Section 17: Governing Law; Disputes**

This Agreement shall be governed by and construed in accordance with the laws of the state of Illinois, and the parties agree to resolve any disputes which arise hereunder solely in a federal or state court in Peoria County, Illinois. The parties agree that in the event any dispute arises in any way related to arising out of this Agreement, the prevailing party shall be entitled to recover an award of its reasonable attorney's fees, costs, and expenses.

### **Section 18: Termination**

This Agreement shall terminate upon Commission's acceptance of and payment for all authorized Deliverables and Services.

The Commission may terminate this Agreement with thirty (30) days written notice to the Consultant for reasons unrelated to the Consultant's performance (e.g., lack of adequate funding for continuation). In the event of such termination, Commission shall be liable for the payment of all Work properly performed prior to the effective date of termination, including all portions of Work which were partially completed, in which case Consultant shall provide to Commission all fully and partially completed Work.

If for any cause Consultant or Commission shall default in the performance of this Agreement or any part thereof and has failed to address such default within sixty (60) days after receipt of written notice sent by certified mail, return receipt requested,

specifying such default, by the non-defaulting party, the non-defaulting party may terminate this Agreement at its option.

Either party may terminate this Agreement for cause upon giving the other party not less than seven (7) calendar days written notice for any of the following reasons:

- Substantial failure by the other party to perform in accordance with the terms of this Agreement and through no fault of the terminating party;
- Suspension of the Project or the Consultant's services by the Client for more than ninety (90) calendar days, consecutive or in the aggregate;
- Material changes in the conditions under which this Agreement was entered into, the Scope of Services or the nature of the Project, and the failure of the parties to reach agreement on the compensation and schedule adjustments necessitated by such changes.

## **Section 19: Amendments**

No amendment to this Agreement shall be effective unless it is in writing and signed by duly authorized representatives of each party hereto.

## **Section 20: Interpretation**

This Agreement shall be construed according to its fair meaning as if prepared by all parties hereto and no provision shall be interpreted for or against either party because a provision may have been drafted by that party or a single representative.

## **Section 21: Notices**

Any notice or other communications required or permitted hereunder shall be sufficiently given if in writing and delivered personally or sent electronically, via Federal Express (or other similar reputable third-party delivery service), registered mail or certified mail, postage prepaid and addressed as noted in the preamble of this Agreement.

## **Section 22: Entire Agreement/Modifications**

This Agreement constitutes the entire agreement and understanding of the parties and supersedes all prior and contemporaneous agreements, understandings, negotiations, and proposals, oral or written. The parties acknowledge that they have not relied on any prior or contemporaneous oral or written representations or statements by the other party in connection with the subject matter of this Agreement except as expressly set forth herein. This Agreement may be amended or modified only by a subsequent agreement in writing signed by each of the parties and may not be modified by course of conduct. Any of the terms or conditions of this Agreement may be waived at any time by the party which is entitled to the benefit thereof but only by a written notice signed by the party waiving such terms or conditions. The waiver of any term or condition shall not be construed as a waiver of any other term or condition of this Agreement.

## Section 23: Counterparts

This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the date hereinabove first written.

**Tri-County Regional Planning Commission**

**CONSULTANT NAME**

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Eric Miller

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**SIGNATORY NAME**

Executive Director

**SIGNATORY TITLE**

Date:

Date:

Exhibit A  
Scope of Work

THIS SECTION IS TO BE NEGOTIATED DURING THE CONTRACT DEVELOPMENT PHASE

Exhibit B

Grant Agreement between the U.S. Department of Transportation and  
Tri-County Regional Planning Commission for FY 2022 Safe Streets and  
Roads for All Grant Program