

**STATE OF MINNESOTA
DEPARTMENT OF TRANSPORTATION
AND
CITY OF SHAKOPEE
COOPERATIVE CONSTRUCTION
AGREEMENT**

State Project Number:	<u>7005-138</u>
Trunk Highway Number:	<u>169=005</u>
State Aid Project Number:	<u>166-594-001</u>
Bridge Number:	<u>70054</u>
Lighting System Feed Point:	<u>City</u>

This Agreement is between the State of Minnesota, acting through its Commissioner of Transportation (State) and the City of Shakopee, acting through its City Council (City).

Recitals

1. The City will perform grading, bituminous trail, retaining walls, and pedestrian trail Bridge 70054 construction, and other associated construction upon, along, and adjacent to Trunk Highway (TH) 169 on the Quarry Lake Park Trail from Wakefield Circle to 550 feet north of TH 169 according to City-prepared plans, specifications, and special provisions designated by the City as State Aid Project (SAP) 166-594-001 and by the State as State Project (SP) 7005-138 (TH 169=005) (Project); and
2. The City requests the State allow the construction of pedestrian trail Bridge 70054 and the State is willing to allow said construction; and
3. The City will maintain the storm sewer, trails, retaining walls, pedestrian trail Bridge 70054, and lighting construction as described in Article 4. Maintenance by the City; and
4. Minnesota Statutes § 161.20, subdivision 2 authorizes the Commissioner of Transportation to make arrangements with and cooperate with any governmental authority for the purposes of constructing, maintaining, and improving the trunk highway system, and local road improvements connecting to the trunk highway system.

Agreement

1. Term of Agreement; Survival of Terms; Plans; Incorporation of Exhibits

- 1.1. **Effective Date.** This Agreement will be effective on the date the State obtains all signatures required by Minnesota Statutes § 16C.05, subdivision 2.
- 1.2. **Expiration Date.** This Agreement will expire when all obligations have been satisfactorily fulfilled.
- 1.3. **Survival of Terms.** All clauses which impose obligations continuing in their nature and which must survive in order to give effect to their meaning will survive the expiration or termination of this Agreement, including, without limitation, the following clauses: 2.4. State Ownership of Improvements; 4. Maintenance by the City; 7. Liability; Worker Compensation Claims; Insurance; 9. State Audits; 10. Government Data Practices; 11. Governing Law; Jurisdiction; Venue; 13. Force Majeure; and 14. State Bond Financed Property Restrictions.
- 1.4. **Plans, Specifications, and Special Provisions.** State-approved City plans, specifications, and special provisions designated by the City as SAP 166-594-001 and by the State as SP 7005-138 (TH 169=005) are on file in the office of the City's Engineer and incorporated into this Agreement by reference (Project Plans).

- 1.5. **Exhibits.** Exhibit A – Funding Area and Trail and Retaining Wall Maintenance is attached and incorporated into this Agreement.
- 1.6. **Recitals.** Recitals 1 through 4 above are hereby incorporated into this Agreement.

2. Right-of-Way Use

- 2.1. **Limited Right to Occupy.** The State grants to the City (and its contractors and consultants) the right to occupy Trunk Highway Right-of-Way as necessary to perform the work described in the Project Plans. This right is limited to the purpose of constructing the project, and administering such construction, and may be revoked by the State at any time, with or without cause. Cause for revoking this right of occupancy includes, but is not limited to, breaching the terms of this or any other agreement (relevant to this project) with the State, failing to provide adequate traffic control or other safety measures, failing to perform the construction properly and in a timely manner, and failing to observe applicable environmental laws or terms of applicable permits. The State will have no liability to the City (or its contractors or consultants) for revoking this right of occupancy.
- 2.2. **State Access; Suspension of Work; Remedial Measures.** The State's District Engineer or assigned representative retains the right to enter and inspect the Trunk Highway Right-of-Way (including the construction being performed on such right-of-way) at any time and without notice to the City or its contractor. If the State determines (in its sole discretion) that the construction is not being performed in a proper or timely manner, or that environmental laws (or the terms of permits) are not being complied with, or that traffic control or other necessary safety measures are not being properly implemented, then the State may notify and require the City (and its contractors and consultants) to suspend their operations until the City (and its contractors and consultants) take all necessary actions to rectify the situation to the satisfaction of the State. The State will have no liability to the City (or its contractors or consultants) for exercising or failing to exercise its rights under this provision.
- 2.3. **Traffic Control; Worker Safety.** While the City (and its contractors and consultants) are occupying the State's Trunk Highway Right-of-Way, they must comply with the approved traffic control plan, and with applicable provisions of the Work Zone Field Handbook (<http://www.dot.state.mn.us/trafficeng/workzone/index.html>). All City, contractor, and consultant personnel occupying the State's Trunk Highway Right-of-Way must be provided with required reflective clothing and hats.
- 2.4. **State Ownership of Improvements.** The State will retain ownership of its Trunk Highway Right-of-Way, including any improvements made to such right-of-way under this Agreement, unless otherwise noted. The warranties and guarantees made by the City's contractor with respect to such improvements (if any) will flow to the State. The City will assist the State, as necessary, to enforce such warranties and guarantees, and to obtain recovery from the City's consultants, and contractor (including its sureties) for non-performance of contract work, for design errors and omissions, and for defects in materials and workmanship. Upon request of the State, the City will undertake such actions as are reasonably necessary to transfer or assign contract rights to the State and to permit subrogation by the State with respect to claims against the City's consultants and contractors.
- 2.5. **Direction, Supervision, and Inspection of Construction.**
- A. The contract construction will be under the direction of the City and under the supervision of a registered professional engineer; however, the State participation construction covered under this Agreement will be open to inspection by the State District Engineer's authorized representatives. The City will give the State Aid Agreements Engineer at Roseville five days' notice of its intention to start the contract construction.

- B. Responsibility for the control of materials for the contract construction will be on the City and its contractor and will be carried out according to Specifications No. 1601 through and including No. 1609 in the State's current "Standard Specifications for Construction".

2.6. Completion of Construction. The City will cause the contract construction to be started and completed according to the time schedule in the construction contract special provisions. The completion date for the contract construction may be extended, by an exchange of letters between the appropriate City official and the State District Engineer's authorized representative, for unavoidable delays encountered in the performance of the contract construction.

2.7. Compliance with Laws, Ordinances, and Regulations. The City will comply and cause its contractor to comply with all Federal, State, and Local laws, and all applicable ordinances and regulations. With respect only to that portion of work performed on the State's Trunk Highway Right-of-Way, the City will not require the contractor to follow local ordinances or to obtain local permits.

3. Right-of-Way; Easements; Permits

- 3.1.** The City will, without cost or expense to the State, obtain all rights-of-way, easements, construction permits, and any other permits and sanctions that may be required in connection with the local and trunk highway portions of the contract construction.
- 3.2.** The City will convey to the State by quit claim deed, all newly acquired rights needed for the continuing operation and maintenance of the Trunk Highway, if any, upon completion of the Project, at no cost or expense to the State.
- 3.3.** The City will comply with Minnesota Statutes § 216D.04, subdivision 1(a), for identification, notification, design meetings, and depiction of utilities affected by the contract construction.

4. Maintenance by the City

Upon completion of the project, the City will provide the following without cost or expense to the State:

- 4.1. Quarry Lake Park Trails 1 and 2.** Maintenance of Quarry Lake Park Trails 1 and 2 construction (see Exhibit A). Maintenance includes, but is not limited to, snow and ice control/removal, sweeping and debris removal, patching, crack repair, pavement replacement, vegetation control, signing, pavement markings, and any other maintenance activities necessary to perpetuate the trails in a safe and usable condition.
- 4.2. Retaining Walls.** Maintenance and ownership of any retaining walls construction (see Exhibit A). Maintenance includes graffiti removal and any other maintenance activities necessary to perpetuate the walls in a safe, usable, and aesthetically acceptable condition.
- 4.3. Pedestrian Trail Bridge 70054 Over TH 169.** The State will share ownership responsibilities with the City. The City will be listed as the owner of pedestrian trail Bridge 70054 in the National Bridge Inspection Standards database. The State will perform or contract bridge inspections and will invoice the City for 100 percent of the cost of these activities, including administrative costs. The City will be responsible for all major and minor maintenance, except those items identified below that are the State's responsibility.
 - A. City Responsibilities.** The City will be responsible for major and minor maintenance. Major maintenance includes all structural related maintenance, including expansion joint flushing, deck crack sealing, painting, overlays, redecking and rehabilitation of the bridge, concrete bridge approach panels, and structurally-supported signing on the bridge. Minor maintenance includes all nonstructural maintenance activities on the bridge. The City will keep the trail and bridge reasonably clear from ice, snow, litter, and debris and undertake proper and timely cleaning and ice and snow control measures when necessary; and keep the trail free and clear from ice, snow, litter and debris in accordance with ADA standards. Ice, snow, litter, and debris removal will cover the entire bridge width without pushing

ice or snow onto any roadway, railroad, multi-use trail or walkway below the bridge. The City will be responsible for pavement markings, guardrail on the local trail, graffiti removal that is visible from the local trail, and non-structurally supported signing. The City will be responsible for oversize, overweight and special use permits.

Future replacement of the bridge will be in accordance with the Cost Participation Policy.

- B. *State Responsibilities.*** The State will perform or contract structural inspections of the bridge and invoice the City for the cost of those activities at the cost sharing percentage defined above.

The State is responsible for the following: Maintenance of all guardrails on TH 169 below the bridge. Maintenance of any roadway signing that is attached to the bridge for the purpose of the roadway traffic on TH 169. Maintenance of all nonornamental fencing on the Trunk Highway Right-of-Way. Maintenance of graffiti removal within the control of access below the bridge. The State will determine the safe load rating for the bridge. The State will provide emergency response for traffic hits and restitution from insurance companies or private parties who have damaged the bridge.

The State retains its authority to administer, issue, and regulate access permits, sign advertising permits, drainage permits, flag installation, and permits to install utilities on Trunk Highway Right-of-Way.

- 4.4. *Lighting on Pedestrian Trail Bridge 70054.*** Maintenance and ownership of the lighting system on pedestrian trail Bridge 70054. Maintenance of the electrical lighting system includes everything within the system, from the point of attachment to the power source or utility, to the last light on the feed point. The City will be responsible for the hook up cost and application to secure an adequate power supply to the service pad or pole and will pay all monthly electrical service expenses necessary to operate the lighting facility.
- 4.5. *Additional Drainage.*** No party to this Agreement will drain any additional drainage volume into the storm sewer facilities constructed under the construction contract that was not included in the drainage for which the storm sewer facilities were designed, without first obtaining written permission to do so from the other party.

5. Authorized Representatives

Each party's Authorized Representative is responsible for administering this Agreement and is authorized to give and receive any notice or demand required or permitted by this Agreement.

5.1. The State's Authorized Representative will be:

Name, Title: Phillip Bergem, Metro Cooperative Agreements Engineer (or successor)
 Address: 1500 West County Road B-2, Roseville, MN 55113
 Telephone: (651) 234-7776
 Email: phillip.bergem@state.mn.us

5.2. The City's Authorized Representative will be:

Name, Title: Steve Lillehaug, City Engineer (or successor)
 Address: 485 Gorman Street, Shakopee, MN 55379
 Telephone: (952) 233-9361
 Email: slillehaug@shakopeemn.gov

6. Assignment; Amendments; Waiver; Contract Complete

- 6.1. *Assignment.*** No party may assign or transfer any rights or obligations under this Agreement without the prior consent of the other party and a written assignment agreement, executed and approved by the same

parties who executed and approved this Agreement, or their successors in office. The foregoing does not prohibit the City from contracting with a third party to perform City maintenance responsibilities covered under this Agreement.

- 6.2. Amendments.** Any amendment to this Agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original Agreement, or their successors in office.
- 6.3. Waiver.** If a party fails to enforce any provision of this Agreement, that failure does not waive the provision or the party's right to subsequently enforce it.
- 6.4. Contract Complete.** This Agreement contains all prior negotiations and agreements between the State and the City. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party.

7. Liability; Worker Compensation Claims; Insurance

- 7.1.** Each party is responsible for its own acts, omissions, and the results thereof to the extent authorized by law and will not be responsible for the acts, omissions of others, and the results thereof. Minnesota Statutes § 3.736 and other applicable law govern liability of the State. Minnesota Statutes Chapter 466 and other applicable law govern liability of the City. Notwithstanding the foregoing, the City will indemnify, hold harmless, and defend (to the extent permitted by the Minnesota Attorney General) the State against any claims, causes of actions, damages, costs (including reasonable attorneys fees), and expenses arising in connection with the project covered by this Agreement, regardless of whether such claims are asserted by the City's contractor(s) or consultant(s) or by a third party because of an act or omission by the City or its contractor(s) or consultant(s).
- 7.2.** Each party is responsible for its own employees for any claims arising under the Workers Compensation Act.
- 7.3.** The City may require its contractor to carry insurance to cover claims for damages asserted against the City's contractor.

8. Nondiscrimination

Provisions of Minnesota Statutes § 181.59 and of any applicable law relating to civil rights and discrimination are considered part of this Agreement.

9. State Audits

Under Minnesota Statutes § 16C.05, subdivision 5, the City's books, records, documents, accounting procedures, and practices relevant to this Agreement are subject to examination by the State and the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Agreement.

10. Government Data Practices

The City and State must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the City under this Agreement. The civil remedies of Minnesota Statutes §13.08 apply to the release of the data referred to in this clause by either the City or the State.

11. Governing Law; Jurisdiction; Venue

Minnesota law governs the validity, interpretation, and enforcement of this Agreement. Venue for all legal proceedings arising out of this Agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

12. Termination; Suspension

12.1. *By Mutual Agreement.* This Agreement may be terminated by mutual agreement of the parties or by the State for insufficient funding as described below.

12.2. *Termination for Insufficient Funding.* The State may immediately terminate this Agreement if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment or the provision of the services covered here. Termination must be by written or fax notice to the City. The State will not be assessed any penalty if this Agreement is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds.

12.3. *Suspension.* In the event of a total or partial government shutdown, the State may suspend this Agreement and all work, activities, performance, and payments authorized through this Agreement.

13. Force Majeure

No party will be responsible to the other for a failure to perform under this Agreement (or a delay in performance), if such failure or delay is due to a force majeure event. A force majeure event is an event beyond a party's reasonable control, including but not limited to, unusually severe weather, fire, floods, other acts of God, labor disputes, acts of war or terrorism, or public health emergencies.

14. State Bond Financed Property Restrictions

14.1. *State Grant Agreement Relationship to Project.* Pursuant to a General Obligation Bond Proceeds Grant Agreement - Construction Grant (Grant Agreement) to be entered into between the City and State, authorized by Minnesota Laws 2020, 5th Spec. Sess. chapter 3, article 1, section 16, subdivision 28, the City is providing funding for the Project within the area as shown in Exhibit A – Funding Area and Trail and Retaining Wall Maintenance (Area), using State of Minnesota general obligation bond proceeds issued under Article XI, Section 5 (a) of the Minnesota Constitution (G.O. Bonds). The use of the G.O. Bonds proceeds and the City's use of the Project are further subject to the restrictions, obligations, and terms imposed under the Grant Agreement. Portions of the Project are funded by G.O. Bonds, are not needed for the trunk highway, and are therefore not part of the State's trunk highway system. City and State acknowledge that due to the use of G.O. Bonds to fund the Project, the Commissioner of Minnesota Management and Budget (MMB) has certain rights in the Project as set forth in the Grant Agreement. The State's interest under the Grant Agreement extends for 37.5 years, as measured from the date of substantial completion of the Project.

The City will own the non-trunk highway portions of the Project pursuant to Minnesota Statutes Chapter 160.

14.2. *Modifications, Amendment, Termination.* Notwithstanding anything to the contrary in this Agreement, the State agrees to provide at least ninety days' notice to the Commissioner of MMB, consult with MMB, and make a good faith effort to obtain the Commissioner of MMB's consent before modifying, restating, amending, changing in any way, prematurely terminating, revoking, or cancelling this Agreement, except in the case of: (1) an emergency as determined in the State's sole discretion; or (2) a routine amendment to update Project costs or cost participation as construction proceeds. Notwithstanding anything to the contrary in this Agreement, before the State terminates or cancels this Agreement due to the City's failure to perform any requirements or obligations under this Agreement, the State will give written notice of such failure to the City and will allow the City thirty days to cure such default to the State's satisfaction. Notwithstanding anything to the contrary in this Agreement, the State will first demand specific performance by the City in the event of the City's failure to perform any requirements or obligations under this Agreement (for the avoidance of doubt, this provision does not require the State to obtain a court

order for specific performance). In the event the Agreement is terminated pursuant to Article 12, the City will pay MMB the bond financed share of the Project as required by the Grant Agreement.

The State acknowledges that it has no current plans in the (i) Minnesota State Highway Investment Plan, (ii) Minnesota Capital Highway Investment Plan, and (iii) Minnesota State Transportation Investment Plan that would affect the intended long-term use of the Project or require the cancellation of this Agreement.

The State will give the City and MMB notice of any foreclosure by a third party of a voluntary or involuntary lien or encumbrance relating to the Project for which the State has knowledge. The State shall make a good faith effort to obtain the Commissioner of MMB's consent to any mortgage or voluntary lien on its interest in this Agreement before creating such an interest.

14.3. *Transfer of Property by the State; Cancellation of Agreement by the City.* If the State sells or transfers the Area within 37.5 years of the date of substantial completion of the Project, the City will pay MMB the bond financed share of the Project sale as required by the Grant Agreement.

If the City determines that the Project no longer serves a government purpose, the City will notify MMB and pay to MMB the bond financed share of the Project as required by the Grant Agreement.

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CITY OF SHAKOPEE

The undersigned certify that they have lawfully executed this contract on behalf of the Governmental Unit as required by applicable charter provisions, resolutions, or ordinances.

By: _____
(Mayor)

Date: _____

By: _____

Title: _____

Date: _____

Attest:

By: _____

Title: _____

DEPARTMENT OF TRANSPORTATION

Recommended for Approval:

By: _____
(District Engineer)

Date: _____

Approved:

By: _____
(State Design Engineer)

Date: _____

COMMISSIONER OF ADMINISTRATION

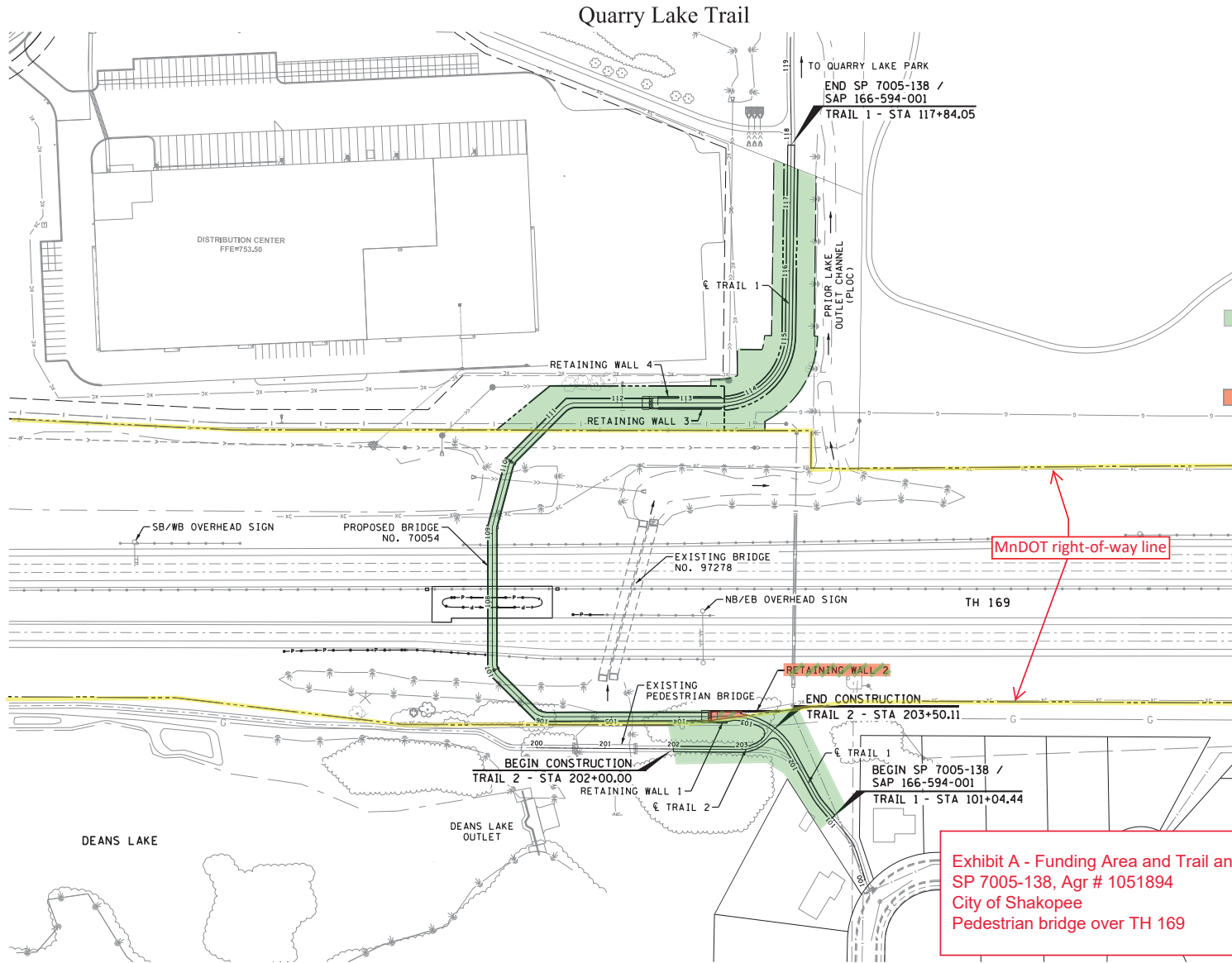
By: _____
(With Delegated Authority)

Date: _____

INCLUDE COPY OF RESOLUTION APPROVING THE AGREEMENT AND AUTHORIZING ITS EXECUTION.

PLOTTED/REVISED: 10/20/2022

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- Areas of trail construction on which General Obligation Bonds will be spent.
- Section of trail and retaining wall within MnDOT right-of-way to be maintained by City of Shakopee.

Exhibit A - Funding Area and Trail and Retaining Wall Maintenance
SP 7005-138, Agr # 1051894
City of Shakopee
Pedestrian bridge over TH 169

NO.	DATE	BY	CHK	REVISIONS

Design By:	MKV	I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION, OR REPORT WAS PREPARED BY OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.
Plan By:	CWK	
Checked By:	AJP	
Approved By:	AJP	
DATE	10/20/2022	

PRINT NAME:	ANDREW J. PLOWMAN, PE
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Quarry Lake Trail and
Pedestrian Bridge
City of Shakopee, Minnesota

CITY OF SHAKOPEE, MINNESOTA
GENERAL LAYOUT
SP 7005-138 (TH 169) / SAP 166-594-001

SHEET
2
OF
71
SHEETS