

## **AGREEMENT to CONSTRUCT and MAINTAIN STORMWATER MANAGEMENT FACILITY**

### **Edina Public School District, City of Edina and Minnehaha Creek Watershed District MCWD Permit No. 25-106**

#### ***Recitals***

A. The Minnehaha Creek Watershed District (MCWD), pursuant to Minnesota Statutes §103D.341, has adopted and maintains rules to protect water resources from land use and development impact.

B. The Edina Public School District (EPSD) has applied to MCWD for a permit (Permit No. 25-106) to remove and replace tennis courts and concrete walkways, with associated site grading and utilities installation (the "Project"), on its property located at 5701 Normandale Road, Edina (the "Property").

C. MCWD rules require, as a condition of the permit, that EPSD install and maintain, indefinitely, facilities to manage stormwater generated from new and reconstructed hard surface associated with the Project.

D. The City of Edina ("City"), pursuant to its Water Resources Management Plan, Appendix A (December 2022), has identified the potential to create 10 to 19 acre-ft of regional stormwater volume storage on the Property upgradient of the City's main trunk storm sewer along West 58th Street, which outlets into Minnehaha Creek (the "Facility"). The Facility catchment would encompass approximately 100 acres of developed land within the City, including the Project hard surface footprint.

E. MCWD rules require that stormwater be treated by infiltration or another volume reduction method, if infiltration is feasible at the site of the permitted work. MCWD has determined that infiltration is not feasible at the EPSD Project site, and that stormwater filtration is an acceptable practice. Permit No. 25-106 requires that EPSD supply a stormwater infiltration water quality volume of at least 8,385 cubic feet or, for a practice other than infiltration, a volume that provides for an equivalent annual Total Phosphorus (TP) removal of 0.59 pounds/yr.

F. While the City has not yet determined the water quality treatment design for the Facility, it is included in the City's 2025-2030 capital improvement program. The City has budgeted \$10 million for the Facility, and has programmed feasibility work for 2026 and construction for 2028.

G. EPSD and the City propose that EPSD use the Facility to meet its requirements under Permit No. 25-106. However, the EPSD plans to begin Project construction in Summer 2025, and the MCWD stormwater management rule, at paragraph 10.a, requires that facilities required to treat constructed hard surface must be functional within 24 months of the start of construction of the regulated surface. The MCWD Board of Managers, under the MCWD variances and exceptions rule, has approved an exception to this requirement on the finding that the Facility, over time, will provide water quality volume treatment of a wider area of developed land, and be subject to City maintenance by agreement with MCWD. To account for the delay in stormwater water quality treatment associated with approval of this exception, this agreement requires the Facility to be designed to remove at least 0.83 pounds/yr of TP. A condition of approval is this agreement among EPSD, the City, and MCWD.

Accordingly, the parties, intending to be legally bound, agree to the following terms for construction and maintenance of the Facility. EPSD and the City, separately, have exchanged valuable consideration to support the obligations of each as set forth herein.

#### ***Terms***

1. The City will contract for feasibility review by March 31, 2026 and the City's consultant will submit the feasibility report by December 31, 2026. On submittal, the City will transmit a copy to EPSD and MCWD. If the City Council finds that the Facility is feasible, the City will retain a design consultant and advance the design. In doing so, the City will inform EPSD and MCWD of the progress of design.

2. Within 30 days of its receipt of the City's feasibility study for the Facility, EPSD, in writing to the City and MCWD, may elect to identify and design one or more stormwater management practices that meet water quality volume and rate control standards under Permit No. 25-106, and as outlined in Term 8 of the Agreement. In this case, EPSD must provide MCWD such design materials as MCWD reasonably may request, and must obtain MCWD concurrence that the proposed practices will achieve at least 0.83 lb/year of total phosphorus load reduction, and otherwise meet rate control and flood separation standards of the MCWD stormwater management rule.

3. EPSD agrees that the City may occupy the Property as necessary or convenient to construct and maintain the Facility. EPSD and the City may enter into an easement or other agreement to give more detail to this relationship. The City will issue a notice to proceed for Facility construction tentatively planned for the 2028 construction year. The Facility will be constructed and functional by January 1, 2030.

4. If the City constructs the Facility on the Property, the City shall, at its sole cost and promptly following completion of construction activities, restore and reconstruct all portions of the Property disturbed, damaged, or removed in connection with the Facility to a condition at least equal to, and in no event materially worse than, the condition existing immediately prior to commencement of construction, as determined by EPSD in its reasonable discretion. Restoration shall include all grading, paving, turf, landscaping, hardscape, utilities, and other site improvements affected by the construction. The City's restoration obligations shall survive completion of the Facility and any termination or expiration of this Agreement.

5. On the City consultant's certification of completion, the consultant will provide as-built plans to EPSD and MCWD and affirm that the Facility as constructed conforms to plans, provides an annual total phosphorus load reduction of at least 0.83 lbs/year, and allows for rate control and flood separation standards of the MCWD stormwater management rule to be met under Permit 25-106. MCWD, on the basis of its engineer's advice, will provide its written concurrence that the Facility fulfills the City's construction obligation under this agreement.

6. The City will maintain the Facility in accordance with the terms of its NPDES MS4 permit, as well as the following standard MCWD maintenance terms, as applicable:

**a. Raingardens, infiltration basins and filtration basins.** Raingardens, infiltration basins and filtration basins will be inspected annually to ensure continued live storage capacity at or above the design volume. Invasive vegetation, excess sediment and debris will be removed as needed and healthy plant growth will be maintained to ensure that the facilities continue to perform per design.

**b. Underground storage facilities.** Underground storage facilities will be inspected at least annually to ensure continuing performance per design. Capacity will be considered inadequate if sediment has decreased the storage volume by 50 percent of the original design volume. Accumulated debris and sediment will be removed, and inlet and outlet structures will be kept clear of any flow impediments.

**c. Grit chambers, sump catch basins and sump manholes.** Grit chambers, sump catch basins and sump manholes will be inspected in the spring, summer and fall of each year. All sediment and debris will be removed as needed such that the stormwater facilities operate as designed and permitted.

**d. Reporting.** The Declarant will submit to the MCWD annually a brief written report that describes stormwater facility maintenance activities performed under this declaration, including dates, locations of inspections and the maintenance activities performed.

If the Facility is of an atypical design that, in MCWD's judgment, requires other maintenance terms, the parties will execute an amendment to this agreement to incorporate those terms. EPSD will not take any action that would render the City unable to fulfill its maintenance obligations.

7. Until MCWD has provided its concurrence under paragraph 3, EPSD will take no action that would impede its ability to site, within the area delineated on Attachment A hereto, incorporated herein, a Project-specific stormwater management practice meeting the requirements of paragraph 6.

8. If the City determines under paragraph 1 that the Facility is not feasible, or if the ESPD elects to construct the stormwater practices under paragraph 2, EPSD will proceed, diligently and in consultation with MCWD and the City, to identify and design one or more stormwater management practices that meet water quality volume and rate control standards under Permit No. 25-106. The practices may be sited in the area referenced on Attachment A, or may be sited elsewhere, provided they capture the runoff from the new and reconstructed hard surface under the permit and otherwise conform to section 8 of the MCWD stormwater management rule, as it may be amended. The practices will be constructed and functional by January 1, 2030. Thereafter, EPSD will maintain the practices in accordance with the terms of paragraph 4, above.

9. If the City has determined under paragraph 1 that the Facility is feasible, MCWD finds that the Facility will not be constructed and functional by January 1, 2030, and that determination is not unreasonable, the City will proceed to construct Project-specific practices and they will be functional by June 30, 2031. If and when MCWD has concurred that the Facility is constructed and functional, the City may decommission the Project-specific practices. The City will maintain the practices until decommissioned, in accordance with maintenance terms specified by MCWD. Such terms will accord with MCWD's standard maintenance terms for the type of practices.

10. EPSD may perform any obligations of the City under paragraph 7, pursuant to such terms as those two parties may agree. The City will remain responsible to MCWD to fulfill the obligations.

11. If the annual TP reduction of the Facility exceeds 0.83 pounds, the City may use the excess reduction for compliance with MCWD and other permit requirements as follows:

- a. MCWD will recognize that part of excess capacity that provides treatment for existing hard surface under any permit to redevelop that existing hard surface.
- b. The City may use the remaining capacity for development within the Facility catchment.

(SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

Edina Public School District

By: \_\_\_\_\_  
Its Chair, School Board

Date:

City of Edina

By: \_\_\_\_\_  
Its Mayor

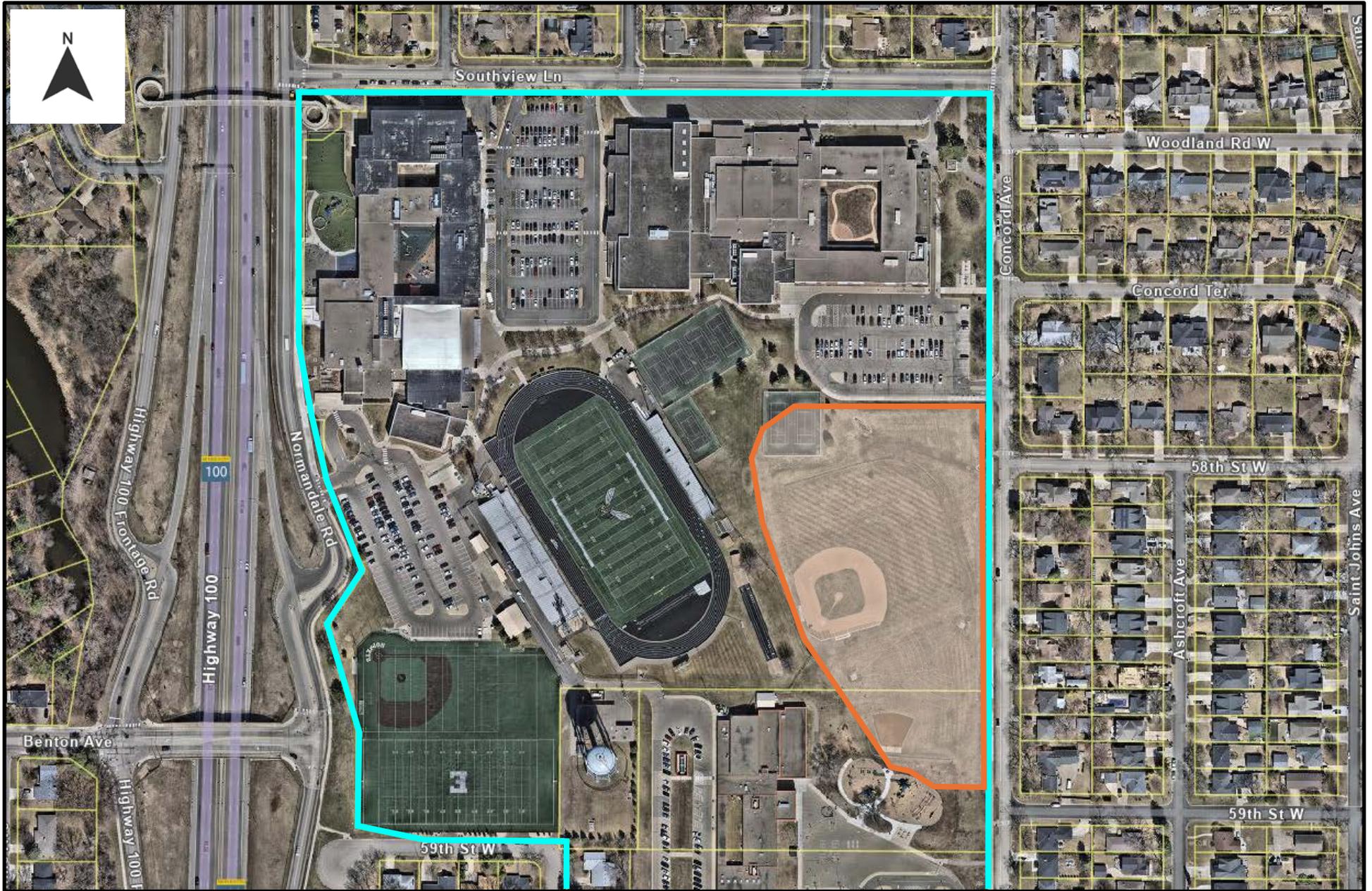
Date:

Minnehaha Creek Watershed District

By: \_\_\_\_\_  
Its President, Board of Managers

Date:

# Attachment A



-  Edina Public School District Owned Parcel Boundary
-  Potential Facility Siting Location