



**Title:** Authority to Execute Joint Powers Agreement for Permitting of Vernon Avenue/Highway 100 Interchange Project

**Resolution number:** 24-014

**Prepared by:** Name: Maggie Menden  
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**Reviewed by:** Name/Title: Chuck Holtman/District Attorney

**Recommended action:** Authorize MCWD Administrator to execute the proposed Joint Powers Agreement with Nine Mile Creek Watershed District for the permitting of the Vernon Avenue/Highway 100 Interchange Project

**Summary:**

The City of Edina is seeking regulatory approval associated with the road reconstruction at the intersection of Vernon Avenue and Highway 100 (Project). The proposed Project occurs within both the Minnehaha Creek Watershed District (MCWD) and the Nine Mile Creek Watershed District (NMCWD) boundaries, and both watershed districts have implemented rules requiring a permit for land disturbing activities. The Project will disturb approximately 12.7 acres, of which 11.5 acres occurs within MCWD's legal boundary and the remaining 1.2 acres within NMCWD. The entire area of disturbance occurs solely within MCWD's hydrologic boundary.

MCWD staff met with the City of Edina and NMCWD staff, and all parties agreed to have MCWD oversee the permitting for the Project in its entirety in the interest of administrative efficiency and consistency. Based on this meeting, NMCWD and MCWD drafted a Joint Powers Agreement (JPA) that outlines MCWD's power to exercise its regulatory authority over the NMCWD boundary for the Project. On February 21, 2024, the NMCWD Board of Managers approved the JPA.

**Recommendation:**

Staff recommends the MCWD Board of Managers authorize the Administrator to execute the proposed Joint Powers Agreement with Nine Mile Creek Watershed District for the permitting of the Vernon Avenue/Highway 100 Interchange Project.

**Supporting documents:**

- Attachment 1: Location Map
- Attachment 2: Joint Powers Agreement (JPA) between NMCWD and MCWD



**RESOLUTION**

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WHEREAS Minnehaha Creek Watershed District (MCWD) and Nine Mile Creek Watershed District (NMCWD) share a boundary and each, pursuant to Minnesota Statutes §103D.341, has adopted and implements rules requiring permits for land disturbing activities;

WHEREAS the City of Edina is seeking regulatory approval for reconstruction work associated with the Vernon Avenue/Highway 100 intersection;

WHEREAS of the 12.7 acres to be disturbed by the project, 11.5 acres lie within the legal boundary of MCWD, and 1.2 acres lie within the legal boundary of NMCWD, and the entirety lies within the MCWD hydrologic boundary;

WHEREAS the City of Edina, by its engineering director, concurs that in the interest of administrative efficiency and consistency, the MCWD should be responsible for permitting and post-permit oversight for the project in its entirety;

WHEREAS NMCWD and MCWD have drafted a joint powers agreement by which MCWD is conferred the power to exercise its regulatory authority over that part of the project within the NMCWD boundary; and

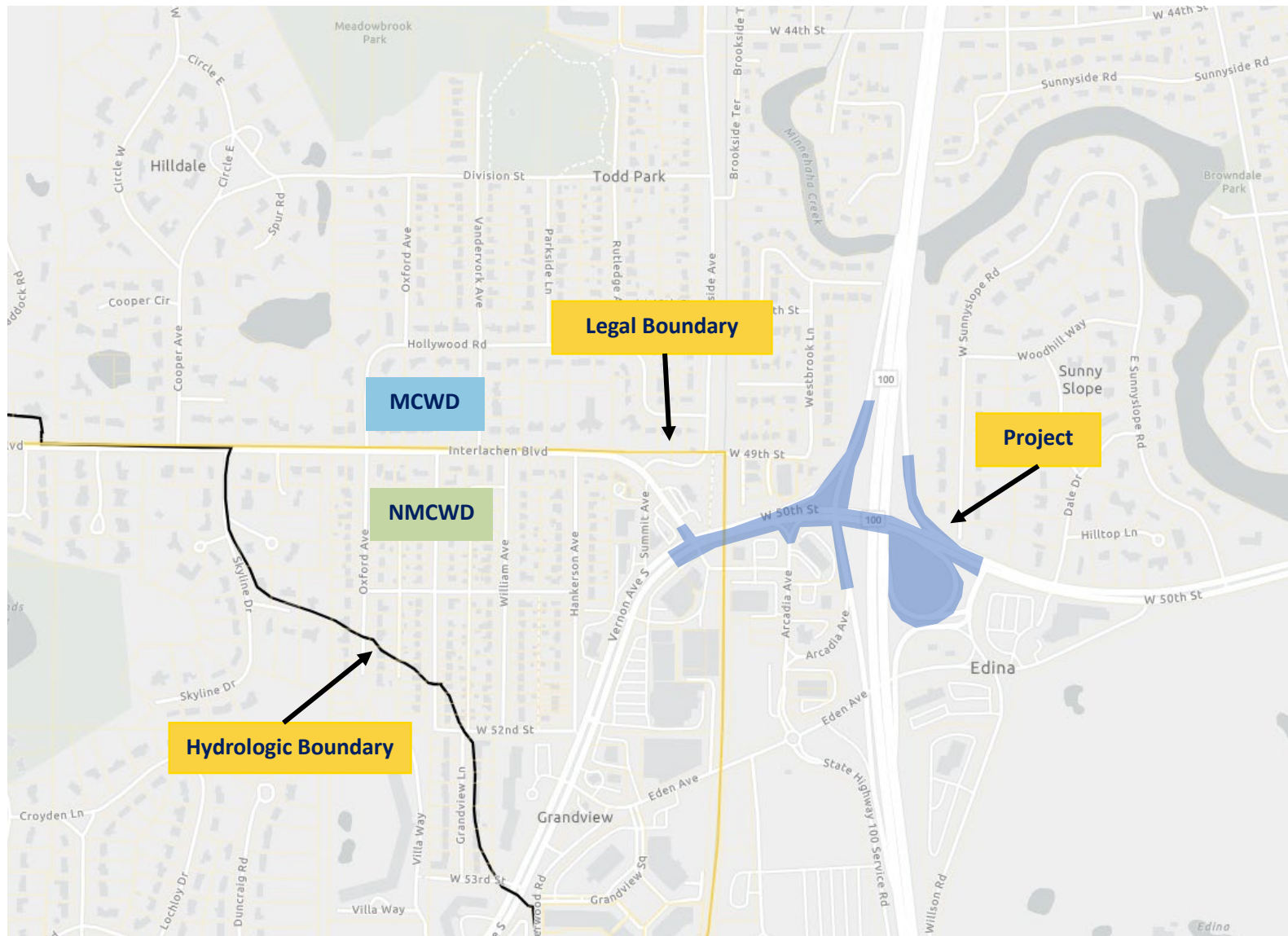
WHEREAS on February 21, 2024, the NMCWD Board of Managers approved the joint powers agreement;

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers authorizes the MCWD administrator to execute the proposed joint powers agreement, with any further non-substantive changes and on advice of counsel.

Resolution Number 24-014 was moved by Manager \_\_\_\_\_, seconded by Manager \_\_\_\_\_. Motion to adopt the resolution \_\_\_ ayes, \_\_\_ nays, \_\_\_ abstentions. Date: 3/14/24.

\_\_\_\_\_  
 Secretary Date: \_\_\_\_\_

Attachment 1



## JOINT POWERS AGREEMENT

### **Between Nine Mile Creek Watershed District and Minnehaha Creek Watershed District**

#### **Concerning exercise of regulatory authority over Vernon Ave and Highway 100 Interchange project in the City of Edina**

This agreement is made by and between Nine Mile Creek Watershed District (Nine Mile) and Minnehaha Creek Watershed District (Minnehaha), each of which is a political subdivision of the State of Minnesota with purposes and powers as set forth in Minnesota Statutes chapters 103B and 103D. This agreement is executed under authority of Minnesota Statutes section 471.59, which permits two or more governmental units to jointly and cooperatively exercise any power common to each of them.

#### **Recitals and Statement of Purpose**

**Whereas**, pursuant to Minnesota Statutes sections 103D.341 and 103D.345, Nine Mile and Minnehaha both have adopted and implement rules and permitting requirements for the protection of water resources and mitigation of flood risk applicable to activities occurring within their legal boundaries;

**Whereas** Nine Mile and Minnehaha share a legal boundary, a portion of which is within the City of Edina;

**Whereas** watershed-district legal boundaries are drawn to coincide with parcel boundaries to facilitate administration, and therefore sometimes do not conform precisely to hydrologic boundaries;

**Whereas** the City of Edina has indicated an intention to apply to Nine Mile for a permit for reconstruction of the intersection of Vernon Avenue and Highway 100 (the Project) and to be constructed on right-of-way in the City of Edina lying partially within the jurisdiction of Nine Mile and partially within the jurisdiction of Minnehaha (hereinafter collectively referred to as “the Property” and shown in Exhibit A, attached hereto and incorporated herein as a term of this agreement);

**Whereas** 11.5 acres of the 12.7 acres of disturbance planned for the Project will be within the legal boundary of Minnehaha, with the remainder within Nine Mile’s legal jurisdiction, and surface runoff from the Property flows into the Minnehaha Creek subwatershed within Minnehaha’s legal jurisdiction; and

**Whereas** (a) Nine Mile professional staff have reviewed Minnehaha’s rules and permit requirements, and determined that the Minnehaha rules and requirements provide equivalent or greater water-resource protection and flood-risk mitigation for the Project than would be provided under the Nine Mile rules; (b) Nine Mile and Minnehaha agree that for administrative reasons, a single watershed district should exercise regulatory authority over the Project; and (c) the property owner, by email attached hereto and

incorporated herein as Exhibit B, requests permitting and compliance oversight by a single watershed district.

**Therefore** it is mutually agreed by and between the parties as follows:

1. Minnehaha will exercise its regulatory and permitting authority over the Project on behalf of Nine Mile and in lieu of Nine Mile's exercise of its regulatory authority as to the land-altering activities for the Project that lie within Nine Mile's boundary;
2. The authority assumed by Minnehaha includes all regulatory and permitting authority under law for the Project, including but not limited to the authority to impose and enforce conditions that create ongoing obligations relating to the Project, as may be applicable;
3. Minnehaha may consult with Nine Mile with respect to the Project, but Minnehaha exercise all regulatory and permitting authority. No party to this agreement agrees to be responsible for the acts or omissions of another, its agents, officials, contractors or employees within the meaning of Minnesota Statutes section 471.59, subdivision 1a. Minnehaha and Nine Mile each agree to hold harmless, defend and indemnify the other party to this agreement, its officers, managers, employees and agents for any and all damage, liability, cost or claim (including reasonable attorney's fees) to the extent it is the result of its negligent act or of another action or inaction that is the basis for its liability in law or equity. Minnehaha and Nine Mile agree to provide proof of contractual liability insurance upon request. This paragraph does not constitute a waiver or otherwise diminish any statutory or common law defense, immunity or limit on liability Minnehaha or Nine Mile may enjoy as against any third party.
4. With 10 days' written notice to the other party, this agreement may be terminated at any time with or without cause by either Nine Mile or Minnehaha. The parties recognize that if the Project is substantially altered in a manner that, in the judgment of Nine Mile, materially increases the potential water-resource impacts or risk of flooding within Nine Mile's jurisdiction, the agreement may be revised or terminated. Authority exercised before termination by Minnehaha in accordance with this agreement, including but not limited to issuance of a permit and imposition of conditions therein, will survive termination and will not in any respect limit Minnehaha's authority to oversee and enforce continuing obligations under an issued permit.
5. In the event of termination, the parties will cooperate to both protect water resources and mitigates flood risk in a manner that, in their judgment, is fair and reasonable to the property owner.

*{Signature page follows.}*

**In witness whereof**, intending to be legally bound, the parties hereto execute and deliver this agreement.

**Nine Mile Creek Watershed District**

\_\_\_\_\_  
Erica Sniegowski  
Its Administrator

Date:

*Approved as to form and execution:*

\_\_\_\_\_  
Nine Mile Creek Watershed District counsel

**Minnehaha Creek Watershed District**

\_\_\_\_\_  
\_\_\_\_\_  
Its \_\_\_\_\_

Date:

*Approved as to form and execution:*

\_\_\_\_\_  
Minnehaha Creek Watershed District counsel