



## REPORT/RECOMMENDATION

<b>To:</b>	MAYOR AND COUNCIL	<b>Agenda Item</b>	Item No: <u>IV.F.</u>
<b>From:</b>	Wayne D. Houle, PE Director of Engineering	<input checked="" type="checkbox"/>	<b>Action</b>
<b>Date:</b>	October 2, 2012	<input type="checkbox"/>	<b>Discussion</b>
		<input type="checkbox"/>	<b>Information</b>
<b>Subject:</b>	Resolution No. 2012-134 Approving Encroachment Agreement for 4402 France Avenue.		

**ACTION REQUESTED:**

Approve attached Resolution No. 2012-134 authorizing Mayor and Manager to sign Encroachment Agreement for 4402 France Avenue.

**INFORMATION/BACKGROUND:**

Attached you will find an Encroachment Agreement allowing the property owner of 4402 France Avenue to encroach within the alleyway with a sanitary sewer and water service. The property owner of 4402 France Avenue owns two parcels, see attached sketch. Parcel 1 is located on France Avenue and Parcel 2 is located directly to the west of parcel one, separated by an alley. A storage building exists on the Parcel 2 that currently is not served with water or sanitary sewer. The owner desires sanitary sewer and water service to Parcel 2, which is the most economical option. The owner would be responsible for the construction cost of installing the sanitary sewer and water service.

**ATTACHMENTS:**

- Sketch of properties
- Encroachment Agreement
- Resolution No. 2012-134



## ENCROACHMENT AGREEMENT

**AGREEMENT** made this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between the **CITY OF EDINA**, a Minnesota municipal corporation ("City"), and **4402 FRANCE, INC.**, a Minnesota corporation ("Owner").

1. **BACKGROUND.** Owner is the fee owner of certain real property located in the City of Edina, County of Hennepin, State of Minnesota, legally described as follows:

**Parcel ID No. 07-028-24-44-0055**

Lot 1, Block 1, "Fairbairn's Rearrangement" in Waveland and Waveland Park, according to the recorded plat thereof, Hennepin County, Minnesota.  
(*Abstract Property*)

having a street address of 4402 France Avenue South, Edina, Minnesota ("Parcel 1"),

and

**Parcel ID No. 07-28-24-44-0058**

All that part of the following described tract:

Lot 4 and all that part of Lot 5 lying Northeasterly of a line drawn parallel with and 10 feet Northeasterly at right angles from the Southwesterly line of said Lot 5; Block 1, "Fairbairn's Rearrangement" in Waveland and Waveland Park, according to the recorded plat thereof;

Which lies Northwesterly of a line and its extensions drawn from a point on the Easterly line of the above described tract 44.84 feet Southeasterly of the most Northerly corner of said tract to a point on the Westerly line of said Tract 46.36 feet Southeasterly from the most Westerly corner of said tract.

(*Torrens Property*)

having a street address of 4402 ½ France avenue South, Edina, Minnesota ("Parcel 2") (Parcels 1 and 2 are collectively referred to in as the "Subject Properties"). The City owns a public alley

between the Subject Properties. Owner requires water and sewer service for Parcel 2 to tie into the water and sewer service of Parcel 1 which would extend across the City's alley.

**2. ENCROACHMENT AUTHORIZATION.** The City hereby approves the encroachment for private water and sewer service over that portion of the City's alley legally described on the attached Exhibit "A" and depicted on the attached Exhibit "B" (the "Encroachment Area"). As a condition of this approval, Owner shall be responsible for any damage to the City's alley caused by the construction, repair, replacement, use or maintenance of the private utilities located within the City's alley.

**3. HOLD HARMLESS AND INDEMNITY.** In consideration of being allowed to encroach in the Encroachment Area, Owner, for itself, its successors and assigns, hereby agrees to indemnify and hold the City harmless from any damage caused to the Subject Properties or the private sewer and water lines located within the Encroachment Area, caused in whole or in part by the encroachment onto the Encroachment Area. Further, Owner hereby agrees to defend and indemnify the City for any damage or injury incurred by Owner, its employees, agents, contractors or assigns in connection with the construction, installation, repair, use or maintenance of the private utilities within the City's alley

**4. TERMINATION OF AGREEMENT.** The City may, at its sole discretion, terminate this Agreement at any time by giving the Owner of the Subject Property thirty (30) days advance written notice. The Owner shall, at its own expense, remove the Encroachment. If the Owner fails to remove the Encroachment upon notice by the City, the City may do so and the Owner agrees to promptly reimburse the City for any costs the City incurs.

**5. RECORDING.** This Agreement shall run with the land and shall be recorded against the title to the Subject Property.

**6. BINDING AFFECT.** This Agreement is binding upon the parties, their successors

and assigns.

**IN WITNESS WHEREOF**, this Agreement was executed by the parties the day and year first above written.

**CITY OF EDINA**

(SEAL)

BY: \_\_\_\_\_  
James B. Hovland, Mayor

AND \_\_\_\_\_  
Scott Neal, City Manage

STATE OF MINNESOTA    )  
  )ss.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by James B. Hovland and by Scott Neal, respectively the Mayor and City Manager of the City of Edina, a Minnesota municipal corporation, on behalf of the corporation and pursuant to the authority granted by its City Council.

\_\_\_\_\_  
NOTARY PUBLIC

**PROPERTY OWNER:  
4402 FRANCE, INC.**

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

STATE OF MINNESOTA    )  
  )ss.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by \_\_\_\_\_ the \_\_\_\_\_ of 4402 France, Inc., a Minnesota corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public

DRAFTED BY:  
CAMPBELL KNUTSON  
*Professional Association*  
1380 Corporate Center Curve, Suite #317  
Eagan, Minnesota 55121  
Telephone: 651-452-5000  
AMP/cjh

**EXHIBIT "A"**  
**TO**  
**ENCROACHMENT AGREEMENT**

A 20 foot Encroachment Area for the purposes of private sewer and water utilities across an alley adjacent to Lots 1 and 4, Block 1, FAIRBAIRN'S REARRANGEMENT Waverly and Waverly Park, according to the recorded plat thereof, Hennepin County Minnesota.

The centerline of said Encroachment Area is described as follows:

Commencing at the northwest corner of said Lot 1; thence southeasterly, along the west line of said Lot 1, a distance of 33.00 feet to the beginning of the centerline to be described; thence westerly a distance of 16.24 feet, more or less, to a point on the east line of said Lot 4, said point being a distance of 31.00 feet southeasterly as measured along the west line of said Lot 4 and said centerline there terminating.

**EXHIBIT "B"**

**DEPICTION OF ENCROACHMENT AREA**



**RESOLUTION NO. 2012-134  
APPROVING  
ENCROACHMENT AGREEMENT  
FOR 4402 FRANCE AVENUE**

**WHEREAS**, the Owner requires water and sewer service for 4402½ France Avenue (PID 07-028-24-44-0058) to tie into the water and sewer service at 4402 France Avenue (PID 07-028-24-44-0055) which would extend across the City's alley;

**NOW, THEREFORE, BE IT RESOLVED**, Mayor James B. Hovland and City Manager Scott H. Neal, are hereby authorized and directed for and on behalf of the City to execute and enter into an encroachment agreement with the Owner of 4402 France Avenue, a copy of which said agreement was before the City Council and which is made a part hereof by reference.

ADOPTED this 2<sup>nd</sup> day of October, 2012.

Attest:

\_\_\_\_\_  
Debra A. Mangan, City Clerk

\_\_\_\_\_  
James B. Hovland, Mayor

STATE OF MINNESOTA    )  
COUNTY OF HENNEPIN   ) SS  
CITY OF EDINA            )

**CERTIFICATE OF CITY CLERK**

I, the undersigned duly appointed and acting City Clerk for the City of Edina do hereby certify that the attached and foregoing Resolution was duly adopted by the Edina City Council at its Regular Meeting of October 2, 2012, and as recorded in the Minutes of said Regular Meeting.

WITNESS my hand and seal of said City this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
City Clerk

**ENGINEERING DEPARTMENT**

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