

09R-84

MOTION TO AMEND NO. 1

I hereby move to amend Bill No. 09R-84 by substituting the attached Amendment to Annexation Agreement marked as Attachment "A" for the existing Amendment to Annexation Agreement.

Introduced by:

Approved as to Form & Legality:

City Attorney

Requested by: Public Works & Utilities and Firethorn Utility Service Company.

Reason for Request: Paragraph 2 of the Amendment and Exhibit B-1 of Attachment "B" thereto have been revised to clarify that the proposed 8" water main in Calvert will not be constructed until the water main in 98th Street is constructed notwithstanding other language in the Amendment to Annexation Agreement which require all work to be completed by October 1, 2009.

AMENDMENT TO ANNEXATION AGREEMENT

THIS AMENDMENT TO ANNEXATION AGREEMENT (the "Amendment") is made and entered into as of the ___ day of _____, 2009 by and between by and between the **CITY OF LINCOLN, NEBRASKA**, a municipal corporation (the "City"); **FIRETHORN GOLF COMPANY, L.L.C.**, a Nebraska limited liability company; and **FIRETHORN UTILITY SERVICE COMPANY** (hereinafter "FUSC"). Firethorn Golf Company, L.L.C. and FUSC are hereinafter collectively referred to as "Firethorn."

RECITALS

WHEREAS, the City and Firethorn entered into an Annexation Agreement dated June 13, 2007 (the "Agreement"), with respect to the real property legally described therein (the "Property"); and

WHEREAS, the City and Firethorn desire to amend the Agreement to revise the terms set forth therein with respect to the water distribution system, subject to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the foregoing Recitals and the mutual promises and agreements set forth in the Agreement, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties agree as follows:

1. Defined Terms. All capitalized terms not otherwise defined herein shall have the meaning ascribed to such term(s) in the Agreement.

2. Water. Section 5(a) of the Agreement is hereby deleted in its entirety and replaced with the following:

(a) Water System. Firethorn shall construct the water distribution system to serve the Property as shown on Attachment B attached hereto and incorporated herein by this reference, including a 16-inch water main in Pioneers Boulevard from 85th Street to 95th Street adequate to loop all parts of the system serving the Property. Attachment B reflects (i) the new water mains to be constructed (Attachment B-1), (ii) the existing water mains to remain (Attachment B-2), and (iii) the existing water mains to be abandoned (Attachment B-3). At such time as City water begins to flow through such existing water mains, FUSC shall be deemed to have transferred ownership thereof to the City. The City agrees to accept ownership of the existing water mains to remain as shown on Attachment B-2 and incorporate such mains into the City's water distribution system. The City agrees to permit branched service lines for Lots 9 through 24, Block 2, Firethorn 2nd Addition and Lots 5, 6 and 7, Block 1, Firethorn 15th Addition. Notwithstanding the forgoing, all service connections to the water main which do not conform to City standards shall be required to be replaced by the homeowner. Firethorn shall cause all service connections to be inspected by excavating at the curb stop to determine the type of material of the service line. In the event the water service pipe is copper the connection will be deemed to

meet City standards. If the water service pipe is not copper, Firethorn shall excavate further to confirm whether the connection to the water main meets City standards. If the connection does not meet City standards the water service shall be reconstructed from the water main to the curb stop.

The design, including a street grade study in Pioneers Boulevard to determine an acceptable location for installation of the 16" main with respect to future street alignment and grades, shall be performed under design contracts approved by Public Works Engineering Services. The construction shall be performed under the City's Executive Order process for Public Facilities. All costs to construct the water distribution system and connect the Property to the City water system shall be borne by Firethorn, except that the City agrees to subsidize Firethorn for the costs of the 12-inch water main in the amount of \$67,639.30 for Phase I (88th Street) and \$89,910.70 for Phase II (Firethorn) within sixty (60) days following completion of construction of the 12-inch water mains (except for the City's fixed fee for engineering services). The City also agrees to reimburse Firethorn for the cost of the street grade study in the amount of \$47,000 and construction of the 16-inch water main in the amount of \$199,084 from Directed Water Distribution and/or Arterial Street Impact Fees, as appropriate, from existing and new residences within the Property, and any additional property developed which is served by such 16-inch water main. Reimbursement with respect to the cost of the street grade study and the 16-inch water main shall be subject to the following conditions:

- (i) The reimbursement shall be paid quarterly from the Water Distribution Impact Fees and/or Arterial Street Impact Fees, as appropriate, collected from the Property;
- (ii) Firethorn shall not be entitled to any reimbursement of said costs in excess of the Water Distribution Impact Fees and/or Arterial Street Impact Fees, as appropriate, actually received; and
- (iii) Any reimbursement to be paid from such Impact Fees shall not constitute a general obligation of the City.

Notwithstanding the foregoing, the City agrees to use its best efforts to reimburse Firethorn for the cost of the street grade study and 16-inch water main within seven (7) years from the date the Property is annexed if funding for such improvements is included in the City's Six-Year Capital Improvement Program. Firethorn understands and agrees that if the amount of construction of any portion of the water mains performed under the City's Executive Order process for Public Facilities exceeds \$100,000, the contract for the construction of that portion of the water mains shall be awarded only after competitive bidding in accordance with City procedures. Firethorn agrees to complete said work on or before October 1, 2009, with the exception of construction of the new 8" water main in Calvert Street (as reflected on Attachment B-1) which shall be completed at the time the City extends water service in 98th Street to Calvert Street.

3. Private Water Distribution System. Section 5(d) of the Agreement is hereby deleted in its entirety and replaced with the following:

(d) Private Water Distribution System. FUSC may convert the existing heat pump return main system into a private water distribution system to be owned, maintained and operated by FUSC, but only for irrigation (including the use thereof as a supply source for the irrigation pond located on the golf course), restrooms, swimming pool, and heat pump use; provided, however, that the use of such private water distribution system for residential purposes shall be discontinued not later than October 1, 2029. Every property connected to the private water systems for either irrigation or heat pump purposes shall have a backflow preventer installed behind the new water meter at no cost to the City. A backflow preventer shall also be required for any property served by a private well, in addition to the City's public water system. After the use of the private system for residential purposes is discontinued, Firethorn shall be permitted to continue to use the private water distribution system for irrigation of the golf course (including as a supply source for the irrigation pond), restrooms, swimming pool, and heat pump use associated with the clubhouse. Until such time as the use of the private system for residential purposes is discontinued, Firethorn shall indemnify and hold the City harmless from and against all claims, liabilities, and expenses relating to accidents, injuries, loss, or damage to any person or property arising from or in any manner relating to the use of such private water distribution system, except as may result from the negligence or intentional misconduct of the City.

4. Easements. Section 5(e) of the Agreement is hereby amended to provide that Firethorn shall grant easements to the City, without cost, for the public water distribution system as reflected on Attachments B-1 and B-2.

5. Sanitary Sewer. The last sentence of Section 4(b) of the Agreement is revised to provide that the change in billing is estimated to occur in Fall 2009 with wastewater fees based on the 2008-09 winter water usage.

6. Roads. Section 6(a) of the Agreement is hereby amended to provide that Firethorn shall complete construction of the intersection improvements described therein by November 30, 2009.

7. Full Force and Effect. Except as amended by this Amendment, the Agreement is and shall remain in full force and effect.

8. Counterparts. This Amendment may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed on the date first written above.

CITY OF LINCOLN, NEBRASKA,
a municipal corporation

By: _____
Chris Beutler, Mayor of Lincoln

FIRETHORN GOLF COMPANY, L.L.C.,
a Nebraska limited liability company

By: 
Mark A. Wible, Manager

FIRETHORN UTILITY SERVICE COMPANY,
a Nebraska corporation

By: 
Mark A. Wible, President

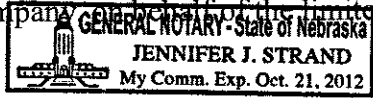
STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ___ day of _____, 2009, by Chris Beutler, Mayor of the City of Lincoln, Nebraska, a municipal corporation.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 21st day of May, 2009, by Mark A. Wible, Manager of Firethorn Golf Company, L.L.C., a Nebraska limited liability company, on behalf of the limited liability company.

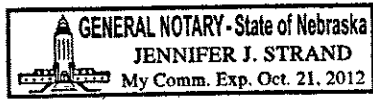


Jennifer Strand

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 21st day of May, 2009, by Mark A. Wible, President of Firethorn Utility Service Co., a Nebraska corporation, on behalf of the corporation.

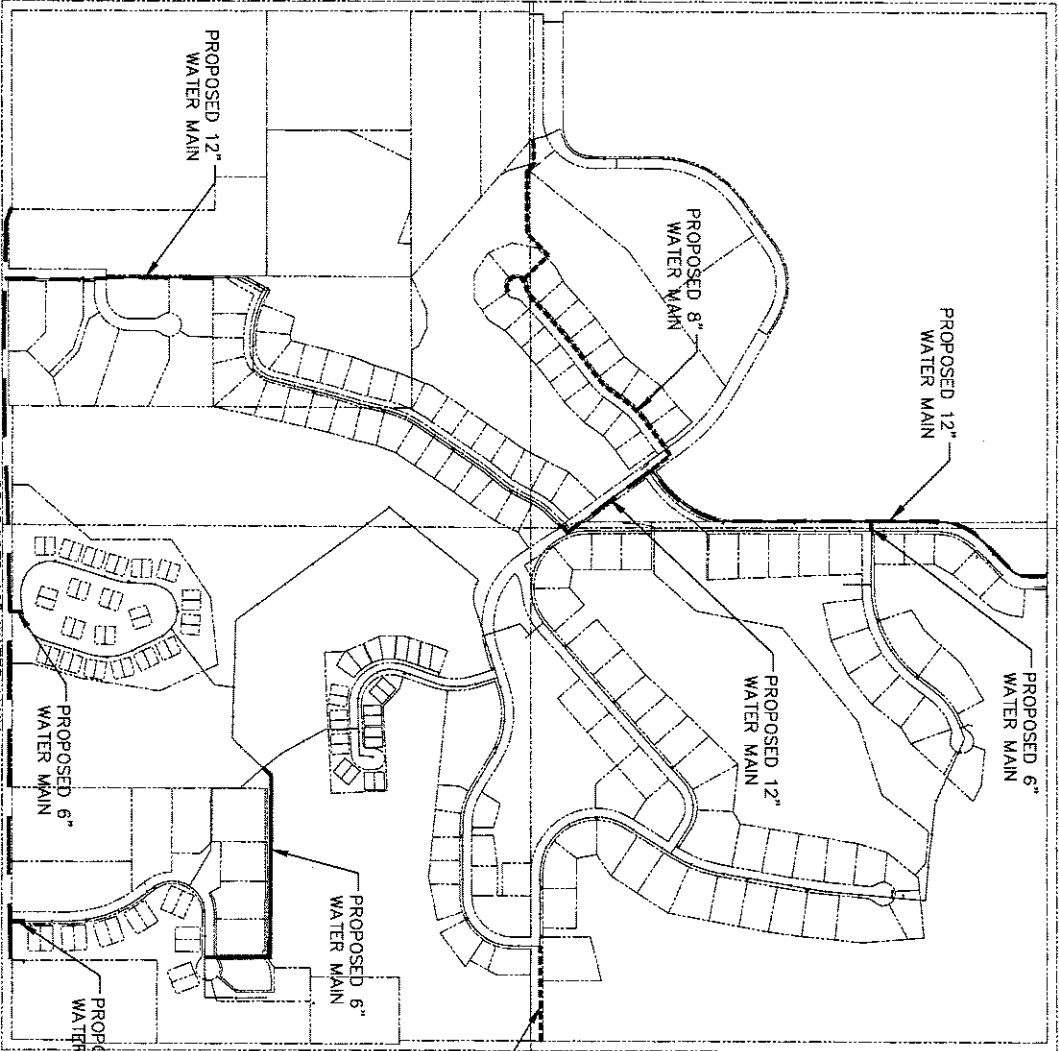


Jennifer Strand

Notary Public

PROJECT NO: 008-0230
 DRAWN BY: BAL
 DATE: 3.3.09

**FIRETHORN PROPOSED WATER MAINS
 ATTACHMENT B-1**



PROPOSED 8" WATER MAIN
 (NOT TO BE CONSTRUCTED
 UNTIL CITY CONSTRUCTS
 98TH STREET WATER MAIN.)

LEGEND

—————	16" WATER MAIN	3,800 LF
—————	12" WATER MAIN	3,800 LF
—————	8" WATER MAIN	2,900 LF
—————	6" WATER MAIN	1,500 LF

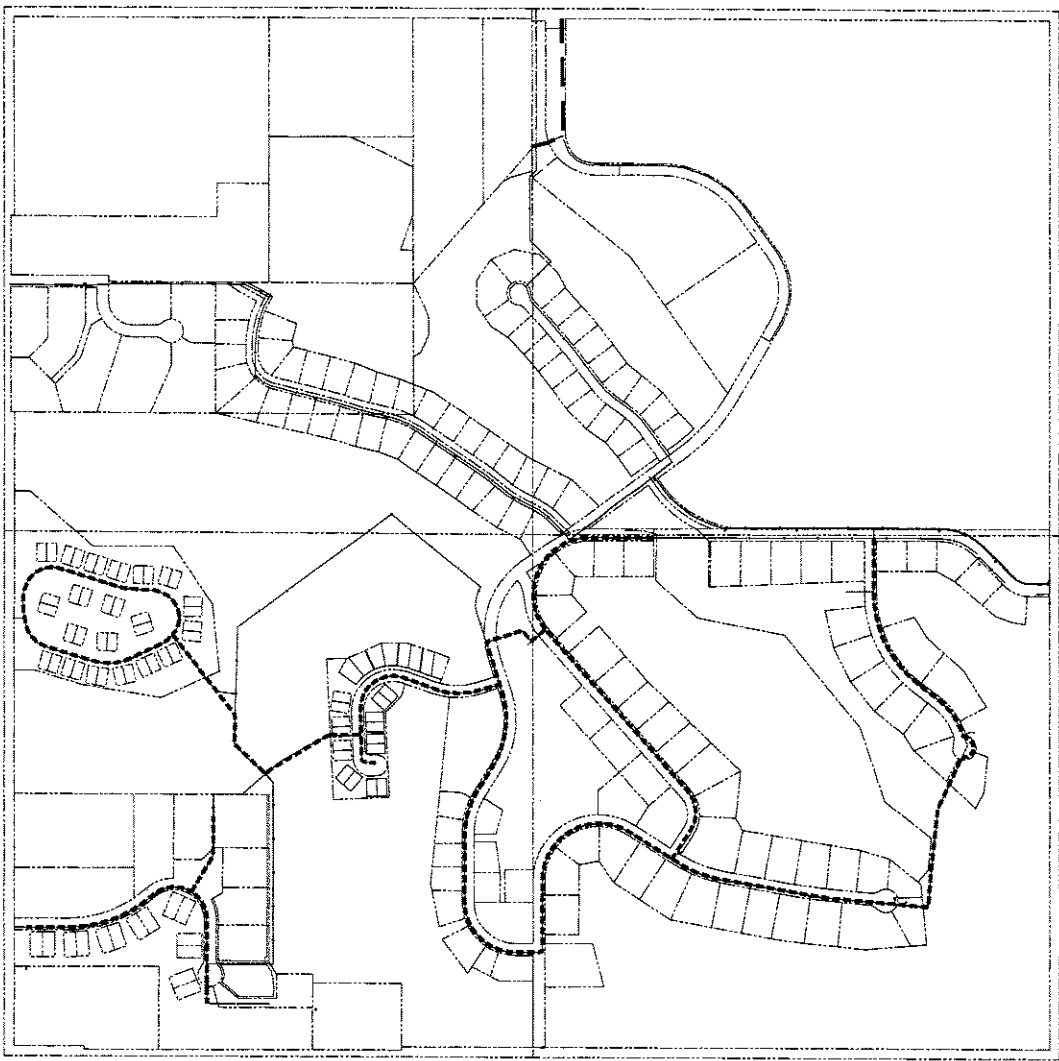
MOJLSSON
 ASSOCIATES

15111 Linderoth Lane, Suite 111
 P.O. Box 6006
 Denver, CO 80216-0006
 TEL: 303.474.8311
 FAX: 303.474.8380

EXHIBIT
B-1

PROJECT NO: 008-0230
DRAWN BY: BAL
DATE: 3.3.09

EXISTING FIREHORN WATER MAINS
ATTACHMENT B-2



LEGEND

- EXISTING 6" WATER MAIN TO REMAIN
- EXISTING 8" WATER MAIN TO REMAIN

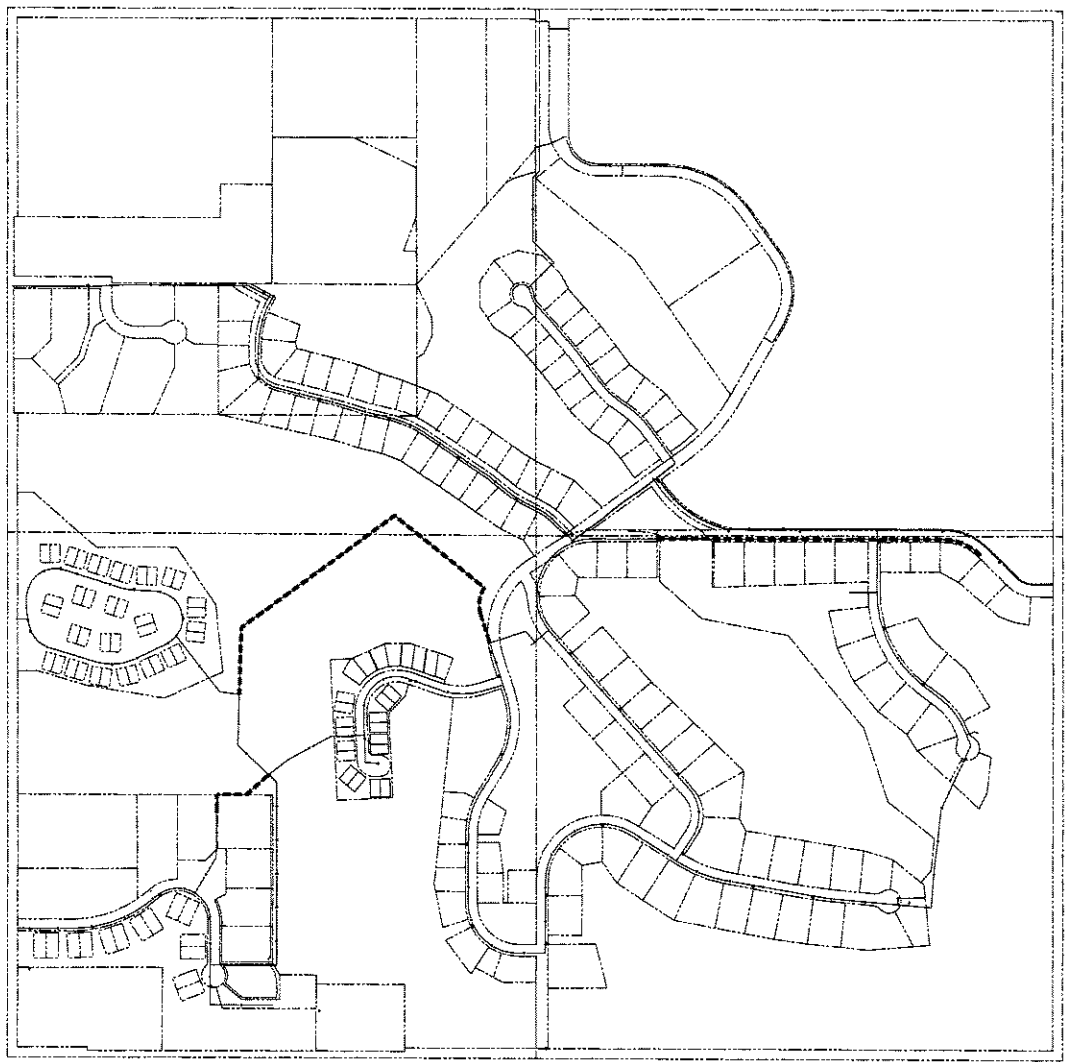
OLSSON
ASSOCIATES

1111 Lincoln Way, Suite 111
P.O. Box 6006
Lincoln, NE 68501-4009
Tel: 402/442-1111
Fax: 402/442-1100

EXHIBIT
B-2

PROJECT NO: 009-0230
DRAWN BY: BAL
DATE: 3.3.09

ABANDONED FIREHORN WATER MAINS
ATTACHMENT B-3



LEGEND

EXISTING WATER MAINS TO BE
ABANDONED

OLSSON
ASSOCIATES

1111 Lincoln Way, Suite 111
P.O. Box 6606
Lynch, NE 68501-6606
TEL: 402.474.5100
FAX: 402.474.5100

EXHIBIT
B-3