

RESOLUTION 2017-028
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE CITY MANAGER TO EXECUTE AGREEMENTS
WITH THE HOLDERS OF WATER CERTIFICATES ISSUED
PURSUANT TO AN AGREEMENT DATED MAY 10, 1971

WHEREAS, the City entered into an Agreement with the Josh Ames Ditch Company, dated May 10, 1971, pursuant to which certain water certificates ("Josh Ames Certificates") were created and pursuant to which the owners of a such certificates are entitled to use them, upon the annexation of land into the City, to fulfill the City's water furnishing requirement for one-eighth acre of land; and

WHEREAS, the acre-foot value of each Josh Ames Certificate has historically varied significantly depending on the type of use for each development using such certificates to fulfill the City's water furnishing requirement; and

WHEREAS, in Ordinance No. 123, 1983, and Ordinance No. 012, 1984, the City Code was amended to base the requirements for furnishing raw water for City water service on factors other than the acreage of the subject land; and

WHEREAS, the use of Josh Ames Certificates has created various challenges for the Water Utility including, but not limited to: (1) a lack of clarity regarding how Josh Ames Certificates are to be used to meet City's raw water furnishing requirements under City Code, and (2) a lack of certainty regarding the amount of water supplies that the City's Water Utility needs in order to deliver treated water to developments using Josh Ames Certificates to fulfill the City's water furnishing requirement including related financial questions; and

WHEREAS, said challenges would be significantly reduced if the City were to treat the outstanding Josh Ames Certificates as equivalent to a defined number of acre-foot rights; and

WHEREAS, Water Utility staff has performed various and extensive analyses and investigations regarding Josh Ames Certificates and what number of acre-foot rights the outstanding Josh Ames Certificates are equivalent to; and

WHEREAS, it has been concluded that, for the purposes of the form of agreement discussed below, a ratio of three acre-foot rights per Josh Ames Certificate is an appropriate and reasonable equivalency, based on numerous factors including, but not limited to, the fact that it addresses certain risks to the Water Utility, is based on reasonable predications of future land and water use in the Water Utility water service area, and meets the reasonable expectations of the holders of Josh Ames Certificates; and

WHEREAS, City staff has negotiated the form of agreement attached hereto as Exhibit A, pursuant to which the City and a holder of Josh Ames Certificates would treat the holders' Josh Ames Certificates as equivalent to three acre-foot rights per Josh Ames Certificate, subject to the terms and conditions of the attached form of agreement; and

WHEREAS, certain proposed changes to Sections 26-149 and 26-150 of City Code concerning Josh Ames Certificates are also pending before City Council in proposed Ordinance No, 042, 2017 for the general purpose of clarifying City Code regarding how Josh Ames Certificates are to be used to meet City's raw water furnishing requirements under City Code; and

WHEREAS, authorizing the City Manager to enter into the attached form of agreement should be contingent upon the effective date of said Ordinance, pursuant to Article II, Section 7 of the City Charter, in order to, among others things, orderly enact a comprehensive clarification of the matter of Josh Ames Certificates; and

WHEREAS, authorizing the City Manager to enter into the attached form of agreement for one year from the effective date of said Ordinance would provide the Water Utility with the benefits of the attached form of agreement and provide the holders of Josh Ames Certificates with adequate time to execute the attached form of agreement if they so desire; and

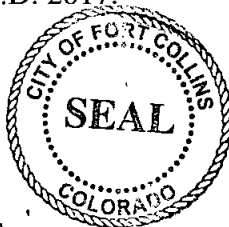
WHEREAS, the City Manager and City staff have recommended to the City Council that this Resolution be adopted.

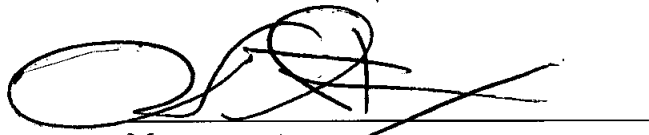
NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That contingent upon the final adoption of Ordinance No. 042, 2017, and upon its effective date, the City Manager is hereby authorized to enter into an agreement with any holder of one or more Josh Ames Certificates using the form of agreement attached hereto as Exhibit "A," provided he do so within one year of the effective date of Ordinance No. 042, 2017.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 21st day of March, A.D. 2017.




Mayor

ATTEST:


City Clerk

**AGREEMENT BETWEEN THE CITY OF FORT COLLINS AND
THE OWNER OF CERTAIN JOSH AMES CERTIFICATES**

This Agreement is entered into by and between the following Parties: the City of Fort Collins, Colorado, a Colorado municipal corporation (“City”); and _____ (“Owner”).

RECITALS

- A. The City is a home rule municipality that owns and operates Fort Collins Utilities (“Utilities”).
- B. The City entered into an Agreement with the Josh Ames Ditch Company, dated May 10, 1971 (“Josh Ames Agreement”), pursuant to which certain water certificates were created (“Josh Ames Certificates”).
- C. In Ordinance No. 123, 1983, and Ordinance No. 12, 1984, City Code was amended to base the requirements for furnishing raw water for City water service on factors other than the acreage of the subject land.
- D. The Josh Ames Agreement, Josh Ames Certificates, and the above-referenced amendments to City Code have created various uncertainties for the City and the owners of Josh Ames Certificates. The resolution of these issues with respect to Owner’s Josh Ames Certificates will be to the benefit of the City and Owner.
- E. Owner’s Josh Ames Certificates which are subject to this Agreement are set forth in Exhibit A (“Subject Josh Ames Certificates”).
- F. As set forth in this Agreement, the City and the Owner have agreed that the Subject Josh Ames Certificates shall continue to be recognized as City-issued water certificates, except as amended pursuant to the terms and conditions of this Agreement.

AGREEMENT AND UNDERSTANDING

- 1. **INCORPORATION OF RECITALS.** The foregoing recitals are hereby incorporated as if fully restated in their entirety.
- 2. **TREATMENT OF THE SUBJECT JOSH AMES CERTIFICATES.** Each of the Subject Josh Ames Certificates shall continue to be treated as a City-issued water certificate pursuant to the terms and conditions of the Josh Ames Agreement and Josh Ames Certificates as amended herein, except that with each Subject Josh Ames Certificate being equivalent to three (3) acre foot rights, as opposed to the ONE-EIGHTH OF ONE ACRE of land so annexed. None of the Subject Josh Ames Certificates shall be used to fulfill the City’s water furnishing requirement for one-eighth acre of land, but rather shall be equivalent to three (3) acre feet, or such pro-rata amount for a fractional certificate, pursuant to the Josh Ames Agreement and the text of the Subject Josh Ames Certificates as amended herein. The terms and conditions of this

Agreement shall apply to the Subject Josh Ames Agreement regardless of whether they are transferred by Owner to others.

3. **MARKING THE SUBJECT JOSH AMES CERTIFICATES.** Simultaneously with the execution of this Agreement, each of the Subject Josh Ames Certificates has been marked with a stamp or printed language on the certificate indicating that they are subject to this Agreement.

4. **USE OF THE SUBJECT JOSH AMES CERTIFICATES AND FREE TRANSFERABILITY.** The owner(s) of the Subject Josh Ames Certificates shall be entitled to use them to fulfill any and all requirement for the furnishing of water rights imposed by the City and each acre foot right shall be accepted as fulfilling one acre foot of water rights required for providing water service. By way of reference and not by way of limitation, the City requirements for the furnishing of water rights are currently set forth in Chapter 26, Division 5 of City Code. The Subject Josh Ames Certificates shall be turned over to Utilities staff when used for this purpose pursuant to City Code. Owner shall be entitled to transfer the ownership of the Josh Ames Certificates and the acre foot value they represent, in all or in part, by assignment or such other transfer instruments as may be appropriate.

5. **OWNER'S WARRANTY OF OWNERSHIP.** Owner hereby warrants that it/he/she is the lawful owner of the Subject Josh Ames Certificates and has the authority to enter into this Agreement.

6. **CITY'S REPRESENTATION OF AUTHORITY.** The City represents to Owner that it has the power and authority to enter into this Agreement and the individual signing below on behalf of the City has the authority to execute this Agreement on its behalf and legally bind the City.

7. **JOSH AMES AGREEMENT.** Except as expressly modified in this Agreement, the relevant terms and conditions of the Josh Ames Agreement are not modified.

8. **NO THIRD-PARTY BENEFICIARIES.** This Agreement is entered into between the Parties for the purposes set forth herein. It is the intent of the Parties that they are the only beneficiaries of this Agreement and the Parties are only benefitted to the extent provided under the express terms and conditions of this Agreement.

9. **GOVERNING LAW AND ENFORCEABILITY.** This Agreement shall be construed in accordance with the laws of the State of Colorado, insofar as any matter is not regulated by applicable laws of the United States. The Parties recognize that the constitutions, statutes, and rules and regulations of the State of Colorado and of the United States, as well as the parties respective bylaws, city charters and codes, and rules and regulations, impose certain legal constraints on each Party and that the Parties intend to carry out the terms and conditions of this Agreement subject to those constraints. Whenever possible, each provision of this Agreement shall be interpreted in such a manner so as to be effective and valid under applicable law.

10. **WAIVER.** A waiver of a breach of any of the provisions of this Agreement shall not constitute a waiver of any subsequent breach of the same or another provision of this Agreement.

11. **CONSTRUCTION.** This Agreement shall be construed according to its fair meaning as it was prepared by the Parties. Headings in this Agreement are for convenience and reference only and shall in no way define, limit, or prescribe the scope or intent of any provision of this Agreement.

12. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement of the Parties regarding the matters addressed herein. This Agreement binds and benefits the Parties and their respective successors. Covenants or representations not contained in this Agreement regarding the matters addressed herein shall not bind the Parties.

**CITY OF FORT COLLINS, COLORADO, a
Colorado home rule city**

DATE: _____

By: _____
Darin A. Atteberry, City Manager

ATTEST:

By: _____
City Clerk

APPROVED AS TO LEGAL FORM:

By: _____
City Attorney's Office

DATE: _____

OWNER:

BY: _____

Print Name

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this _____ day of _____,
20____, by _____.

Notary Public

My Commission Expires: _____

EXHIBIT A
Subject Josh Ames Certificates

The following are the Subject Josh Ames Certificates that are the subject of this Agreement: