INTERGOVERNMENTAL AGREEMENT CONCERNING CUSTOMER TRANSFER AND INTERCONNECT OPERATIONS

	This INTERGOV	ERNMENTAL A	AGREEMENT (CONC	ERNING	CUS	TOMER	TRANSF	ER
AND	INTERCONNECT	OPERATIONS	("Agreement")) is	entered	into	this	day	of
	2022, t	by and between T	HE CITY OF G	REEL	EY, COL	ORA	DO, a Co	olorado ho	ome
rule municipal corporation acting by and through its Water Enterprise ("City" or "Greeley") and WEST									
FORT	COLLINS WATER 1	DISTRICT, a Cole	orado special dis	strict ("WFCWI) ").			

Recitals

WHEREAS, the City has for many years provided extraterritorial potable water service to several customers within Larimer County via taps connected directly to its Bellvue Transmission Line; and

WHEREAS, the WFCWD developed and expanded over the course of time that such water service was being provided by the City, such that thirty-five of such customers in Larimer County served extraterritorially by the City are now located within the service area of WFCWD; and

WHEREAS, the City and WFCWD accordingly desire to facilitate a transfer of these thirty-five customers from the City to WFCWD; and

WHEREAS, the City and WFCWD also have a common and continuing interest in ensuring that their respective customers have access to a safe and reliable supply of potable water into the future; and

WHEREAS, the City and WFCWD accordingly desire to construct and operate interconnect infrastructure between their respective water supply systems to facilitate the future lease or trade of water between the parties as may be convenient or necessary in the event of planned or unplanned water system shut down; and

WHEREAS, WFCWD desires to complete in 2023 repairs to a water pipeline owned by WFCWD and located along Larimer County Road 54E, which pipeline provides water service to WFCWD customers located south and west of the Cache la Poudre River; and

WHEREAS, the City and WFCWD have reached a comprehensive understanding regarding the transfer of customers currently served via the City's Bellvue Transmission Line, and regarding the construction and operation of interconnect infrastructure between the City and WFCWD water systems, and desire to reduce that understanding to writing;

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the City and WFCWD agree as follows.

Agreement

- 1. <u>Term of Agreement</u>. The term of this Agreement commences on the date it is mutually executed by the City and WFCWD, and shall continue for a period of twenty five (25) years from its commencement unless and until terminated by either the City or WFCWD in accordance with Section 8 below.
- 2. <u>Transfer of Transmission Tap Customers.</u> In accordance with the schedule set forth more particularly below, Greeley hereby agrees to transfer the obligation to provide water service, and WFCWD hereby agrees to accept the transfer and assume such obligation, to the parcels of real property and

associated landowner customers described on Exhibit A ("Transmission Tap Customers"). All transfers of Transmission Tap Customers from the City to WFCWD completed pursuant to this Agreement shall be permanent. The City shall not be required under any circumstances to reverse a transfer or reassume the obligation to provide water service to a Transmission Tap Customer if this Agreement expires or is properly terminated after such transfer of the Transmission Tap Customer is completed.

- 2.1 <u>Plant Investment Fees</u>. WFCWD shall not charge the City nor any of the Transmission Tap Customers any tap or plant investment fees that would otherwise be due and payable by a customer requesting the initiation of water service from WFCWD.
- 2.2 <u>Costs of Customer Transfer to WFCWD System.</u> WFCWD shall facilitate and bear all of the costs and expenses associated with physically disconnecting the Transmission Tap Customers from the Bellvue Transmission Line and for subsequently connecting such customers to the WFCWD water system.
- 2.3 Process for Customer Transfer to WFCWD System. WFCWD shall disconnect the Transmission Tap Customers from the Bellvue Transmission Line to the specifications and standards of the City. WFCWD shall notify the City no less than 14 days prior to each instance of disconnecting a tap from the Bellvue Transmission Line, and provide the City with the opportunity to inspect all infrastructure associated with the point of disconnection to the Bellvue Transmission Line before, during, and after WFCWD performs such transfer (i.e., disconnection from the Bellvue Transmission Line and connection to the WFCWD system). WFCWD shall notify all Transmission Tap Customers prior to disconnection and receive all Transmission Tap Customer concerns arising from the transfers. The City and WFCWD shall cooperate and work together in good faith to resolve any such concerns. If WFCWD hires a third-party contractor to complete any work associated with the transfer of Transmission Tap Customers, it shall require that third-party contractor to comply with the obligations of this Section 2.3.
- 2.4 <u>Raw Water Dedication</u>. In satisfaction of the WFCWD raw water dedication requirements associated with providing water service to the Transmission Tap Customers transferred, the City agrees to convey nine (9) shares of capital stock in the North Poudre Irrigation Company to WFCWD in accordance with the schedule set forth more particularly below. The City shall effect such transfers by (i) execution of a quitclaim deed, and a stock assignment in a form acceptable to the North Poudre Irrigation Company, and (ii) delivery of an original stock certificate representing the shares to be transferred. The City shall pay for any standard fees assessed by the North Poudre Irrigation Company to effect such transfers.
- 2.5 Schedule of Customer and Raw Water Transfers. WFCWD agrees to complete the transfer of all Transmission Tap Customers no later than December 31, 2023. The City agrees to provide the raw water described in paragraph 2.4 above to WFCWD in two transfers: i) upon, and in exchange for, the completed transfer of the first fifteen (15) Transmission Tap Customers, the City shall transfer four (4) shares of capital stock in the North Poudre Irrigation Company; and ii) upon, and in exchange for, the completed transfer of the remaining twenty (20) Transmission Tap Customers, the City shall transfer an additional five (5) shares of capital stock in the North Poudre Irrigation Company. WFCWD shall notify the City upon completion of such transfers and provide the City with an opportunity to inspect the infrastructure associated with the transfers. Upon verification by the City that the first fifteen (15) transfers have been completed to the to the specifications and standards of the City, the City shall promptly affect the transfer of four (4) shares of capital stock in the North Poudre Irrigation Company to WFCWD. Upon verification by the City that the remaining twenty (20) transfers have been completed to the to the specifications and

standards of the City, the City shall promptly effect the transfer of an additional five (5) shares of capital stock in the North Poudre Irrigation Company to WFCWD.

- Construction of Interconnect Infrastructure. The City shall design and construct a pump station and the necessary associated facilities to establish an interconnect between the Greeley and WFCWD water supply systems ("Interconnect Infrastructure"), which the parties anticipate to be located immediately along Larimer County Road 54E, approximately 1,700 feet southwest of the intersection of Larimer County Road 54E and Highway 287 and used for the purposes described in this Agreement. It is the intent of the parties that Greeley design all components of the Interconnect Infrastructure and construct all components of the Interconnect Infrastructure, except for that portion of the Interconnect Infrastructure that connects the pump station to the WFCWD water pipelines along Larimer County Road 54E. Thus, the Interconnect Infrastructure may be described as consisting of three parts: i) a pump station facility, which may include, but is not limited to a pump enclosure, pump skid, vault, controls, power facilities, valves, and associated infrastructure ("Pump Station Facility"), ii) infrastructure that connects the City's Bellvue Transmission Line to the Pump Station Facility ("Greeley Interconnect Infrastructure"), and iii) infrastructure that connects WFCWD's water pipeline(s) to the Pump Station Facility ("WFCWD Interconnect Infrastructure"). The City shall be solely responsible for the costs of: i) the design of the Interconnect Infrastructure and ii) construction and real property acquisition for the Pump Station Facility, up to a total maximum cost of five hundred and fifty thousand dollars (\$550,000). The City shall also be solely responsible for the costs of construction for the Greeley Interconnect Infrastructure. WFCWD shall be solely responsible for the costs of construction for its WFCWD Interconnect Infrastructure. Costs for the design of the Interconnect Infrastructure and construction of the Pump Station Facility in excess of fivehundred and fifty thousand dollars (\$550,000) shall be divided equally between the City and WFCWD. The City and WFCWD agree to cooperate in good faith, and pursuant to any separate written agreement as necessary, in obtaining any licenses and permits necessary for the construction and installation of the Interconnect Infrastructure. The City shall give WFCWD a reasonable opportunity to review and approve the final design and construction plans for the Interconnect Infrastructure in advance of commencing construction, and shall use reasonable and good faith efforts to complete construction of the Pump Station Facility and Greeley Interconnect Infrastructure by March 31, 2023. The City shall retain sole ownership of the Pump Station Facility and Greeley Interconnect Infrastructure after it is constructed and operational, and WFCWD shall retain sole ownership of the WFCWD Interconnect Infrastructure after it is constructed and operational. The City and WFCWD shall each bear one-half of any ongoing costs and expenses associated with operating, maintaining, and repairing the Pump Station Facility. The City will invoice WFCWD for its share of ongoing costs and expenses associated with the Pump Station Facility on an annual basis, and all such invoices shall be paid by WFCWD within thirty (30) days of receipt.
- 4. <u>Operation of Interconnect</u>. After the Interconnect Infrastructure is constructed and operational, and subject to the terms and conditions of this Section 4, the City and WFCWD agree to provide each other with a backup supply of potable water in the event of a service disruption, whether such disruption is due to planned maintenance or an unanticipated emergency ("Interconnect Water").
 - 4.1 Request for Interconnect Water; Anticipated Service Disruption. In the event that either the City of WFCWD needs Interconnect Water during an anticipated service disruption due to maintenance, repairs, or other reasonably foreseeable operational reason, the City or WFCWD shall request the delivery of Interconnect Water from the other party in writing no less than thirty (30) days in advance of the date upon which delivery of such water would commence. The request shall include (i) the desired date upon which deliveries of Interconnect Water would commence, (ii) the volume of Interconnect Water needed daily and any anticipated fluctuations in such daily volume, and (iii) the anticipated period of time that Interconnect Water will be needed. Upon receipt of a request for Interconnect Water due to an anticipated service disruption, the providing party shall confirm within ten (10) days whether it can/will fulfill the request. The City and WFCWD

agree to consider in good faith all requests for delivery of Interconnect Water, but the providing party may grant or deny any such request in its sole discretion.

- 4.2 Request for Interconnect Water; Emergency Service Disruption. In the event that either the City or WFCWD needs Interconnect Water during an unanticipated service disruption due to emergency, the City or WFCWD may request the delivery of Interconnect Water from the other party either verbally or in writing. The request shall include (i) the desired date on which deliveries of Interconnect Water would commence, (ii) the volume of Interconnect Water needed daily and any anticipated fluctuations in such daily volume, (iii) the anticipated period of time that Interconnect Water will be needed, and (iv) the source of raw water to be made available by the requesting party. Upon the receipt of a request for Interconnect Water due to an emergency service disruption, the providing party shall confirm either verbally or in writing as soon as reasonably practical whether it can and will fulfill the request. The City and WFCWD agree to consider in good faith all requests for delivery of Interconnect Water, but the providing party may grant or deny any such request in its sole discretion. In the event that a request for Interconnect Water during an unanticipated service disruption due to emergency is made and approved verbally pursuant to Section 4.2 above, the City and WFCWD shall work together to create a written retroactive accounting of the raw water requirements for the measured volume of Interconnect Water delivered and the total payment due to the party providing Interconnect Water under Section 4.5 below.
- A.3 Raw Water Supplies for Interconnect Water Deliveries. Subject to any required consents or approvals from, and in accordance with the Rules and Regulations of the Northern Colorado Water Conservancy District, a party requesting Interconnect Water shall make available to the party providing Interconnect Water raw water in the form of project units of the Colorado-Big Thompson Project ("C-BT Units"), in the amount of one hundred and ten percent (110%) of the total volume of Interconnect Water to be delivered to the requesting party. This requirement is equal to one hundred percent (100%) of the Interconnect Water delivered, plus an additional allowance of ten percent (10%) to account for treatment and system delivery losses. The provision of C-BT Units by either party in exchange for the delivery of Interconnect Water under this Agreement shall not be considered, nor constitute, a Section 131 Contract, a Temporary Use Permit, a permanent transfer of C-BT Units, or a permanent transfer of any other interest under an allotment contract with the Northern Colorado Water Conservancy District. Any fees related to making C-BT Units available to a party providing Interconnect Water under this Agreement shall be the responsibility of the party requesting Interconnect Water.
- 4.4 Measurement and Accounting Requirements. The Interconnect Infrastructure shall be equipped with water meters that may be operated and maintained to record both cumulative flow and, as needed, maximum hourly and maximum daily flow rates within the accuracy prescribed by current American Water Works Standards. The City and WFCWD shall respectively measure and account for raw water transferred and Interconnect Water delivered pursuant to this Agreement, and make such data available to the other party upon request.
- 4.5 Rates for Interconnect Water; Billing and Payment. A party receiving delivery of Interconnect Water pursuant to this Section 4 shall pay a rate per one thousand (1,000) gallons equal to one hundred and five percent (105%) of the actual costs of treating the water at that party's treatment plant, based upon that party's reasonable good faith determination of the cost per one thousand (1,000) gallons of water treated during the six (6)-month period immediately preceding the delivery of Interconnect Water. The party providing Interconnect Water shall issue invoice(s) on a monthly basis, and all such invoices shall be paid within thirty (30) days of receipt.
 - 4.6 Water Quality. Any Interconnect Water delivered by the City or by WFCWD

through the Interconnect Infrastructure as contemplated by this Agreement shall at all times be treated and suitable for human consumption, and of a water quality that complies with the provisions of any lawful statue, regulation, or ordinance of general applicability limiting, regulating, or prescribing the quality of potable water.

- 4.7 <u>Restriction on Backflow.</u> Unless specifically authorized in writing by a party providing Interconnect Water, a party requesting Interconnect Water pursuant to this Section 4 shall not cause nor allow any water from its own system to flow into the system of the party providing Interconnect Water.
- 5. No Vested Interest or Modification of Ownership Interests. Nothing in this Agreement is intended or shall be construed to modify the existing ownership interests of either the City or WFCWD in their respective water rights portfolios, water supply infrastructure, treatment and transmission systems, or equipment and facilities of any kind. Neither the City nor WFCWD shall make any claim, whether in law or equity, to the existing ownership interests of the other party by virtue of the operations contemplated by this Agreement.
- 6. <u>No Integrated System.</u> Nothing in this Agreement is intended or shall be construed to create between the City and WFCWD systems an integrated system within the meaning of the Colorado Primary Drinking Water Regulations, 5 C.C.R. § 1002-11, *et seq.*, or within the meaning of the Water Right Determination and Administration Act of 1969, C.R.S. § 37-92-101, *et seq.*
- 7. <u>Notice</u>. The City and WFCWD shall give any notice required under this Agreement using the contact information listed below. Such notice is adequate if (a) hand-delivered, (b) provided by certified or registered mail, return receipt requested, or (c) sent via email, if receipt is acknowledged or no bounce back or other notice of delivery disruption is received. The City and WFCWD shall promptly notify the other party if the appropriate contact information for notice changes.

For the City of Greeley: City of Greeley Water and Sewer Department

Attn: Director of Water and Sewer 1001 11th Avenue, Second Floor

Greeley, Colorado 80631

Email: sean.chambers@greeleygov.com;

water@greeleygov.com

With copy to: City of Greeley City Attorney's Office

Attn: Environmental and Water Resources

1100 10th Street, Suite 401 Greeley, Colorado 80631

Email: daniel.biwer@greeleygov.com; cityattorney@greeleygov.com

For WFCWD: West Fort Collins Water District

Attn: General Manager

PO Box 426

Laporte, Colorado 80535 Email: doug@wfcwdist.com

With copy to: Anderson Consulting Engineers

Attn: Scott Parker

375 E Horsetooth Rd #5101

Fort Collins, Colorado 80525 Email: scott.parker@acewater.com

Merrick & Company Attn: Christine Sednek 2480 W 26th Ave Unit B225 Denver, Colorado 80211

Email: christine.sednek@merrik.com

- 8. <u>Default and Termination; Waiver</u>. In the event either the City or WFCWD fails to comply with the terms and conditions of this Agreement, such failure constitutes a default of this Agreement and the non-defaulting party may give notice of the perceived default in accordance with Section 7 above. The defaulting party is then entitled to a period of ninety (90) days from receipt of the notice within which to cure the default. Upon the cure of any such default during this period, this Agreement will remain in full force and effect.
 - 8.1 If any declared default remains uncured after the ninety-day cure period described above, or after any extension of the cure period mutually agreed to by the parties, the non-defaulting party may immediately terminate this Agreement with written notice to the defaulting party. Nothing in this Agreement should be construed to limit either party from seeking damages or pursuing available remedies upon the termination of this Agreement for default. The prevailing party in any legal action arising out of a default of this Agreement shall be entitled to the recovery of reasonable costs and attorneys' fees.
 - 8.2 The failure of either the City or WFCWD to declare a default does not establish a precedent nor constitute an implied waiver of any subsequent breach of the terms and conditions in this Agreement. Any such waiver of breach must be made explicitly in writing.
- 9. Governmental Immunity; Indemnification and Liability. The City and WFCWD are public entities, as that term is defined pursuant to the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq. Nothing in this Agreement should be construed to limit or alter the benefits and responsibilities to which the City and WFCWD are entitled pursuant to the Colorado Governmental Immunity Act. The City and WFCWD respectively shall defend any and all claims for injuries or damages, in accordance with the requirements and limitations of the Colorado Governmental Immunity Act, that occur as a result of the negligent or intentional acts or omissions of their own officers, agents, employees, or assigns. The City and WFCWD respectively shall be responsible for any and all claims for injuries or damages caused by any negligent acts or omissions of their own officers, employees, agents, and assignees performing functions or activities upon the property of the other party.
- 10. <u>No Public Utilities Commission Control</u>. The City and WFCWD, including their employees and elected or appointed officials, shall not assert nor support any statement, policy, petition, rule-making, or legislative attempt to place the City or WFCWD water supply systems under the authority or jurisdiction of the Colorado Public Utilities Commission, whether by virtue of this Agreement or otherwise.
- 11. <u>Restriction on Assignment</u>. The rights and obligations set forth in this Agreement are particular to and vested solely in the City and WFCWD. Neither the City nor WFCWD shall assign any of its interest in this Agreement, and any purported assignment of this Agreement by either the City or WFCWD shall be considered null and void.

- 12. <u>Jurisdiction and Venue</u>. This Agreement shall be governed by and enforced in accordance with the laws of the State of Colorado. Proper venue for any dispute arising out of this Agreement is the Larimer County District Court.
- 13. <u>No Third-Party Beneficiaries</u>. The terms and conditions of this Agreement, and all rights of action related thereto, are strictly reserved to the City and WFCWD. Nothing in this Agreement should be construed to allow any claim, right, or cause of action by any person or entity not a party to this Agreement, including, without limitation, any of the Transmission Tap Customers. Any person or entity other than the City or WFCWD that realizes a service or benefit under this Agreement is an incidental beneficiary only.
- 14. <u>Severability</u>. In the event one or more clauses in this Agreement are found invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement will nevertheless be valid and binding upon the City and WFCWD, unless the absence of such clause(s) would destroy the intent and purpose of this Agreement.
- 15. <u>Review by Legal Counsel</u>. The City and WFCWD acknowledge that each party had the opportunity to review this Agreement with its respective legal counsel, and that this Agreement should not be construed nor interpreted against a drafting party.
- 16. <u>Integration and Amendment</u>. This Agreement constitutes a complete integration of the understandings and agreement between the City and WFCWD. No representations, negotiations, or warranties, express or implied, exist between the City and WFCWD except as explicitly set forth in this Agreement. This Agreement may only be amended in a writing duly authorized and executed by the City and WFCWD.
- 17. <u>Counterparts</u>. The parties may execute this Agreement in counterparts, each of which and the combination of which when signed by both the City and WFCWD may be deemed original and together constitute a single contract.

IN WITNESS WHEREOF, the City of Greeley and West Fort Collins Water District have authorized and executed this Intergovernmental Agreement concerning Customer Transfer and Interconnect Operations on the dates set forth below.

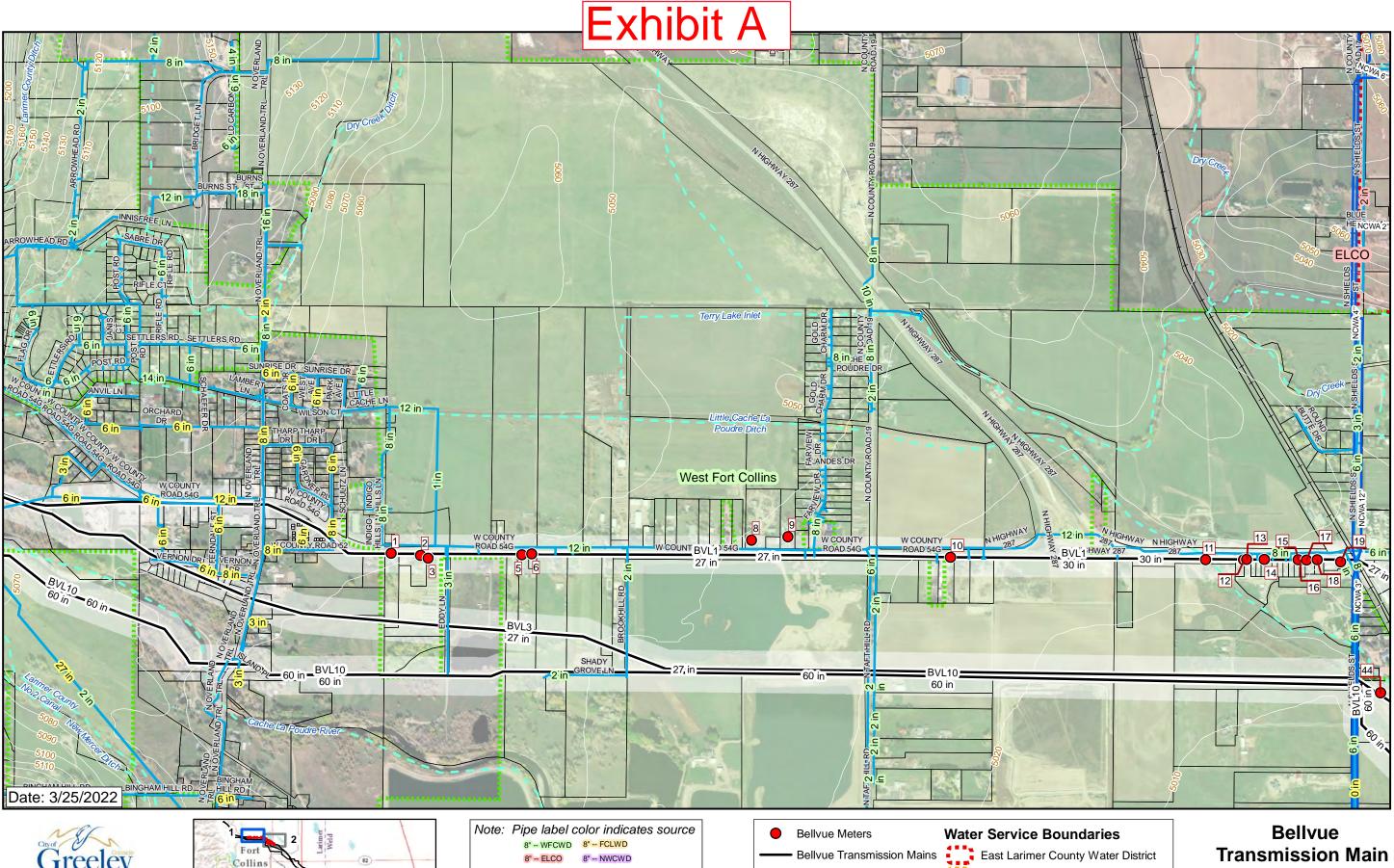
[Signature Page Follows]

THE CITY OF GREELEY,

a Colorado home rule municipal corporation acting by and through its Water Enterprise

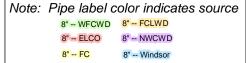
Title: General Manager West Fort Collins Water District

By:	Date:
By: City Manager	
As to Legal Form:	
By:	
As to Availability of Funds:	
By: Director of Finance	
WEST FORT COLLINS WATER DISTRICT a Colorado special district	
By: Kal Hoff	Date: 6/4/2017
Title: President, Board of Directors West Fort Collins Water District	
By: Rigge	Date: 6/4/2022
Name: Doug Bigge	



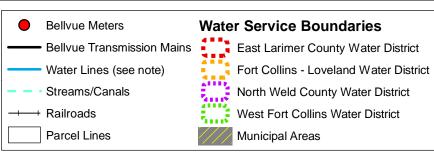






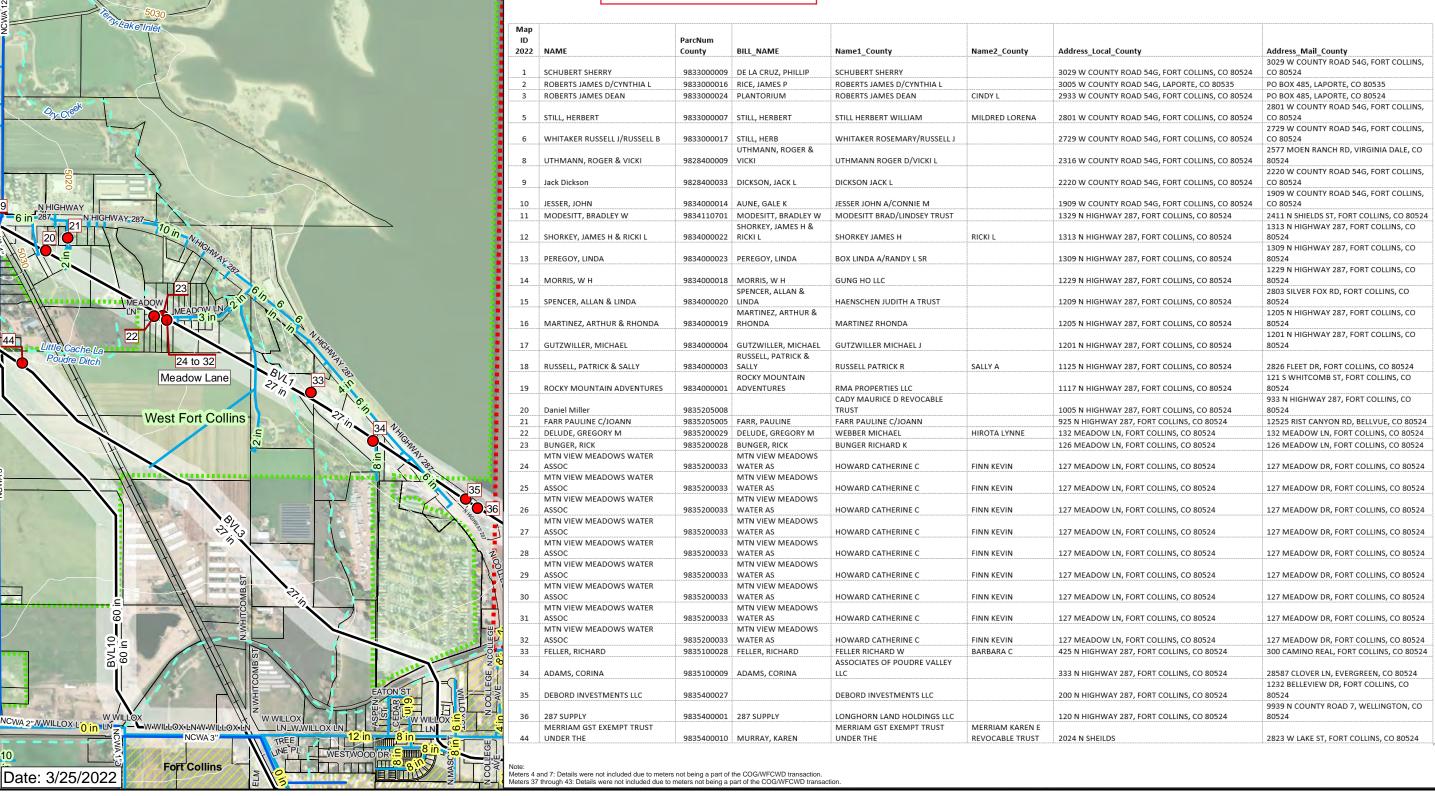






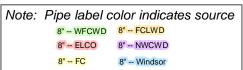
Meters

Exhibit A



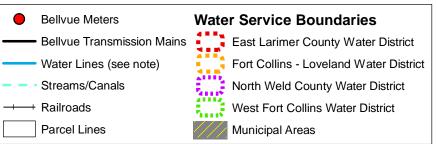












Bellvue Transmission Main Meters