

**INTERGOVERNMENTAL AGREEMENT FOR WATER SERVICE AND SEWER
BILLING BETWEEN THE CITY OF ROSWELL AND FULTON COUNTY**

This INTERGOVERNMENTAL AGREEMENT (“Agreement”) between the CITY OF ROSWELL, a municipal corporation of the State of Georgia (“Roswell”), and FULTON COUNTY, GEORGIA, a political subdivision of the State of Georgia (“Fulton”) (Roswell and Fulton are individually each referred to as a “Party” and collectively referred to as the “Parties”), is effective as of the date the last Party executes the Agreement.

WHEREAS, each of the Parties hereto is a governmental entity of the State of Georgia, having the legal authority and obligation to organize, maintain, and operate systems of water distribution in its respective jurisdiction to serve its citizens; and

WHEREAS, Fulton is a party to the Atlanta Fulton County Water Resources Commission, a joint venture with the City of Atlanta, which owns and operates the Tom Lowe Water Treatment Plant (“Tom Lowe WTP”); and

WHEREAS, the terms of this Agreement are intended to address the long-term Parties’ needs related to water management; and

WHEREAS, the Parties wish to set terms and conditions and to create procedures for the current and future supply of water to Roswell’s Water Service Area through interconnections between the two public water systems; and

WHEREAS, the Parties also wish to be able to provide emergency water supplies through these interconnections and establish the terms and conditions under which the systems can be physically connected and water made available to each other in times of emergency; and

WHEREAS, Roswell has a computerized billing system in operation in Roswell's Water Service Area and has served as the sewer billing collection agent for Fulton County sewer in this region; and

WHEREAS, Fulton would like Roswell to serve as the billing collection agent for sewer services with Fulton County's service area, and Roswell is amenable to doing so pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual rights and obligations set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties do agree as follows:

ARTICLE 1.

DEFINITIONS

- 1.1 **APPLICABLE INTEREST RATE.** The rate of one percent per month.
- 1.2 **AVAILABLE POTABLE WATER.** A surplus of potable water not immediately needed by the Selling Party.
- 1.3 **BUSINESS DAY.** Each day excluding each Saturday, Sunday, and state or federal holiday on which banks in the State of Georgia are authorized to close for purposes of customary banking services.
- 1.4 **CITY ADMINISTRATOR.** The Administrator of Roswell, or his or her designee, for purposes of this Agreement.
- 1.5 **COMMUNITY WATER SYSTEM.** A public water system that supplies water to the same population year-round.
- 1.6 **DATE OF EXECUTION.** The date on which the last party to this Agreement executes this Agreement.

- 1.7 DIRECTOR OF ENVIRONMENTAL / PUBLIC WORKS. The Director of the Department of Environmental / Public Works of Roswell, or his or her designee, for purposes of this Agreement.
- 1.8 DIRECTOR OF PUBLIC WORKS. The Director of the Department of Public Works of Fulton County, or his or her designee, for purposes of this Agreement.
- 1.9 EMERGENCY WATER CONDITION. A shortage of potable water to meet the Essential Water Needs of the Requesting Party's customers that threatens their health, safety, and welfare.
- 1.10 ESSENTIAL WATER NEEDS. The minimum amount of water needed for residential and commercial means for food processing, drinking, toilet flushing, firefighting, hospital use, and critical asset use and a portion of the system's Non-Revenue Water.
- 1.11 GOVERNING AUTHORITY. As applicable, the City Council of Roswell, Georgia, or the Board of Commissioners of Fulton County, Georgia, or any replacement governmental body vested with the power to govern the respective jurisdiction under the laws of the State of Georgia.
- 1.12 INTERCONNECTION. A connection, consisting of meter(s), meter vault(s), valves, backflow preventer(s), backflow preventer vault(s), and piping between two water systems, in this case, between the public water systems of Roswell and Fulton.
- 1.13 MONTHLY OPERATING REPORT. Reports required for public water systems submitted monthly to the state regulatory agency, the Georgia Environmental Protection Division. Monthly Operating Reports include information about the finished water as well as the quantity of purchased water acquired from other public water systems.
- 1.14 NON-REVENUE WATER. Overall water losses, defined as the difference between volume

- of water produced or purchased and the volume of water that was billed to customers.
- 1.15 NORTH FULTON WATER DISTRIBUTION SYSTEM. The system distributing water to most of Fulton County north of the Chattahoochee River, including all of Alpharetta, Johns Creek, and Milton, as well as a majority of Roswell.
- 1.16 RATES. Rates shall be established on the basis of a utility industry standard cost of service study prepared by or on behalf of Fulton. Such study shall serve to establish at least the following three rate categories: (1) retail rates billed to residential/commercial customers, (2) wholesale rates, inclusive of a capital component and operations and maintenance component based on no capital contribution to the System ("Capital/O&M"); and (3) wholesale rates, without a capital component and with operations and maintenance based on that customer's capital contribution to the System ("O&M"). Whenever Fulton deems it necessary to revise its rates, Fulton shall notify Roswell in writing of the pending rate increase not less than ninety (90) days prior to submittal of such revised rates to Fulton's Governing Authority for approval. Upon approval of such rates, Fulton shall notify Roswell in writing by the first to occur: (a) thirty (30) days after such approval by the respective Governing Authority, or (b) at least thirty (30) days prior to the effective date of such rates, which notice shall state each rate and the effective date thereof. Nothing herein is intended to be construed as affecting Fulton's sole authority to revise its rates. All documentation used in cost-of-service studies, if any, shall be provided by Fulton to Roswell within ten (10) Business Days of the date upon which Fulton's Governing Authority revises its rates.
- 1.17 WATER DISTRIBUTION SYSTEM. The physical infrastructure consisting of the water mains, hydrants, valves, meters, fittings, facilities, and pump stations which transport potable water to customers.

1.18 WATER SERVICE AREA. The geographic area that receives drinking water from a given Community Water System.

ARTICLE 2.

INTERCONNECTIONS

- 2.1 CURRENT INTERCONNECTIONS. There are currently seven (7) active Interconnections between the North Fulton Water Distribution System, as shown in EXHIBIT A, and Roswell's Water Service Area, as shown in EXHIBIT B.
- 2.2 NEW INTERCONNECTION PROPOSAL. Should Roswell determine that an Interconnection is necessary, Roswell shall make a proposal in writing to Fulton requesting an interconnection between the two systems. The request should describe the purpose of the interconnect, state whether it will be a general supply interconnection (normally open) or an emergency use interconnection (normally closed) and anticipate connection sizing and expected use amount. Within six (6) months of such a request, if both parties agree to the interconnection installation, the equipment to allow water to flow shall be installed. The current status of each existing interconnection is shown in EXHIBIT B.
- 2.3 INTERCONNECTION COMPONENTS. An interconnection shall consist of, at minimum, the following components: a meter, a meter vault box, a valve owned by Fulton upstream of the meter vault, a backflow preventer, and piping. The meter, the meter vault, and the piping and/or valves within three (3) feet of either side of the meter vault shall be owned by Fulton, and Fulton will be responsible for the maintenance of these components. Roswell shall install and own, at minimum, a backflow preventer and backflow preventer vault outside of three (3) feet of the meter vault and shall be responsible for those component's maintenance. All backflow preventers shall be tested at least annually by

Roswell, and records of those tests shall be submitted to Fulton within thirty (30) days of their completion.

- 2.4 INTERCONNECTIONS COSTS. Costs for establishing interconnections as described above shall be borne by Roswell. The cost of dismantling interconnections shall be shared equally (50/50) between Roswell and Fulton.
- 2.5 METERING. Fulton shall install a meter at the interconnection, and Fulton shall be responsible for maintaining, calibrating, and reading its meter at its own expense. Annually, or upon written notice by Roswell, Fulton shall inspect and test their meter. Testing shall occur within sixty (60) days of such a request. Copies of these inspections and tests shall be available within thirty (30) days of request. No meter shall be allowed to remain in service that has an error in excess of published American Water Works Association ("AWWA") Standards (or such succeeding standards) at the time of the testing. If a party requests a meter inspection in addition to the annual inspection, and the meter conforms to AWWA standards upon testing, the party requesting the inspection shall pay all inspection and testing costs. If the meter is not properly calibrated, the requesting party shall not be liable for the inspection and testing costs which shall be paid by the meter owner, and the meter owner shall immediately (a) restore the meter to an accurate condition or install a new meter, and (b) credit the requesting party for any overpayment based on the information available to the Parties' utility staffs.
- 2.6 VALVE INSTALLATION AND EXERCISE. All valves within three (3) feet of the meter vault box shall be owned and maintained by Fulton County. Any valves outside of three (3) feet of the meter vault box within the service area of Roswell shall be owned and maintained by Roswell. At each interconnection, valves installed will be capable of closing

off flow from one water system to another. Annually, or upon written notice by the other party, each shall exercise their valves. Copies of these results shall be made available upon request. Inoperable valves shall not be allowed to remain in service and must be replaced or repaired at the owner's expense.

2.7 INTERCONNECTION STATUS CHANGE. Should Roswell request that a normally closed (emergency use) interconnection be converted to a normally open (general supply) interconnection, it shall provide Fulton written notice with at least ninety (90) days prior to the requested change. If Fulton agrees that the change is necessary within the ninety (90) days, the Parties' utility staff will coordinate to make any necessary changes as applicable, including but not limited to opening valves, installing water mains, installing meters and meter vaults, and/or installing backflow preventers. If Fulton does not agree to the status change, Fulton will notify Roswell in writing within the same ninety (90) period. In no event will the status of an interconnection change without both Parties' approval.

2.8 WATER QUALITY. Fulton shall provide treated water to Roswell at the point or points of connection to the Interconnections. Treated water must meet the water quality requirements of all applicable regulatory agencies, including the U.S. Environmental Protection Agency and the Environmental Protection Division of the Georgia Department of Natural Resources. Further, if Roswell or Fulton proposes any change to their water treatment process that would affect the water quality chemistry of their finished water while this Agreement is in effect, notice shall be furnished to the other party at least ninety (90) days prior to the effective date of the proposed change.

2.9 WATER CONSERVATION. This Agreement shall be subject to all state and federal water conservation regulations. If the customers of Fulton are at any time under an outdoor water

use restriction while water is being supplied to Roswell, Roswell agrees to impose restrictions at least as strict as those imposed by Fulton. If Fulton requests a variance to any state mandated drought conservation procedures, Fulton will notify Roswell at least ten (10) days prior to submitting such request to the state regulatory authority.

- 2.10 INTERCONNECTION BILLING. Interconnections shall be billed at the Fulton's wholesale rate (inclusive of O&M/Capital), which is subject to the adjustments described in Article 1.16. Bills for flow through Interconnections will be sent to Roswell by the 10th of the month following the month they are assessed and will be included in the Monthly Operating Reports submitted by Roswell to EPD. Bills not paid within forty-five (45) days of receipt shall be assessed at the Applicable Rate of Interest described in Article 1.1.

ARTICLE 3.

EMERGENCY USE OF INTERCONNECTIONS

- 3.1 DISRUPTION OF POTABLE WATER SUPPLY. If Roswell experiences an Emergency Water Condition and desires to purchase Available Potable Water, Roswell shall notify appropriate Fulton staff by phone and in writing via email of the Emergency Water Condition and request Available Potable Water be transferred for a limited period. Fulton shall respond as soon as possible to the request by advising Roswell of the quantity of Available Potable Water.

In addition to the communication by staff described above, the Roswell Environmental / Public Works Director shall immediately notify the Fulton Director of Public Works when Emergency Water Conditions develop and request temporary water service from Fulton. Such notice shall include a description of the emergency and expected duration, if known. Notifications shall be made via phone call and email.

When Roswell experiences Emergency Water Conditions or other conditions that require (a) less than one (1) MG of water to be supplied through the Interconnection(s) or (b) require water for less than three (3) days to be supplied through the Interconnection(s), Available Potable Water can be immediately supplied without first receiving approval or response from Fulton's Director of Public Works, though notification is still required. Requests for Available Potable Water in excess one (1) MG, or for Emergency Water Conditions or other conditions expected to last for more than three (3) days require prior approval by Fulton before valves are opened and operated to transfer water from Fulton's distribution system to Roswell.

- 3.2 UTILITY STAFF RESPONSIBILITIES. In the event that water is needed by Roswell, staff from either Fulton or Roswell may operate the valves necessary to permit water to be sold from Fulton to Roswell. The staff from the Party that operates the valves to open the valves is responsible for returning all valves to the original position once the temporary water service event is completed. Only appropriate staff shall operate components of the interconnections, including valves.
- 3.3 RATE OF SUPPLY. Fulton shall not be required to transfer water to the Roswell in an amount that would violate any of its permits, nor shall Fulton be required to provide more than its Available Potable Water, and Fulton shall not be liable to Roswell or its customers for any interruptions in water service. Fulton shall be obligated to supply water pursuant to this Agreement only to the extent that doing so does not prejudice its ability to fulfill its obligations to its customers and other entities with whom it has contractual obligations.
- 3.4 FORCE MAJEURE. Roswell agrees that Fulton will provide Available Potable Water to Roswell continuously during an Emergency Water Condition, subject to the requirements

above, except that temporary disruption of service at any time caused by an act of God, fire, strikes, casualties, war, terrorist act, natural disaster, accidents, necessary maintenance work, breakdowns of or injuries to machinery, pumps or pipelines, civil or military authority, insurrections, riots, acts or declarations of government or regulatory agencies other than Roswell or Fulton, or any other cause beyond the control of Fulton, shall not constitute a breach of this Agreement; and Fulton shall not be liable to Roswell or to its customers for any damage resulting from such unavoidable disruption of service.

ARTICLE 4.

FINANCE AND PAYMENT FOR SEWER COLLECTION

- 4.1.1 ROS WELL AS BILLING COLLECTION AGENT. Roswell agrees to act as a billing collection agent for sewer services on behalf of Fulton within Fulton's Service Area, as designated in Exhibit A. Roswell will receive a commission of 10% of the billed amount for this collection service, and Roswell shall deduct the total amount it receives for providing the collection service before making payments to Fulton pursuant to this Agreement. Each month Roswell will provide a report which shows, for that month: (a) what was billed; (b) what was collected; (c) how much Roswell received in commission; (d) how much was paid to Fulton; and (e) the date of payment to Fulton.
- 4.2 METER INSTALLATION. At the time of installation, metering equipment provided by Roswell will meet or exceed the industry standards set by the American Water Works Association ("AWWA") for measuring the quantity of water delivered. The City is responsible for the cost of installation of all meters, and associated appurtenances, serving customers in Roswell's Water Service Area and can directly bill the Roswell Water Service Area Customers for these services.

- 4.3 METER ACCURACY. Roswell agrees to inspect, test and, if necessary, repair or replace any non-fire water metering equipment serving Roswell Water Service Area Customers at least every three (3) to four (4) years for meters three (3) inches and over, beginning one (1) year after the effective date of this Agreement. Fulton will have the right to observe the calibration process, test the calibration equipment, and review the calibration records of Roswell upon written request, at Fulton's expense. A meter registering not more or less than 2% above or below 100% of actual flows will be deemed accurate for the purposes of this Agreement and the Parties' obligations under it. In addition, Roswell should have in place a meter replacement program for inaccurate and/or malfunctioning small (2 inches and less) meters based on evaluation of meter readings or test data and for the regular replacement of such meters every ten (10) to fifteen (15) years, or later if based on statistically significant meter test data.
- 4.4 METER ESTIMATES. If any meter fails to measure or appears to have measured inaccurately for any billing period, the amount of water delivered during such billing period will be estimated in accordance with Roswell's then current policies and procedures. In the event that Roswell makes adjustments to Roswell Water Service Area Customers' billable water usage, Roswell will make a corresponding adjustment to the sewer services bill component. Adjustments may be made in the event of malfunctioning meters, leaks, and/or misreading of meters. Adjustments applicable to prior period billings will be deducted from current period payments of billed revenues.
- 4.5 FAILURE TO PAY WHEN DUE. In the event of a failure to pay any amount due under this Agreement, interest shall automatically accrue on the delinquent amount in accordance with Section 1.1, from the date such payment is due until full payment of

such delinquent amount and its accrued interest.

ARTICLE 5.

PROVISIONS OF GENERAL APPLICATION

- 5.1 **RIGHT TO SEEK SPECIFIC PERFORMANCE.** Roswell and Fulton agree that the costs and damages resulting from a breach of the contractual rights to use the Interconnections up to the specified amounts granted by this Agreement may not be susceptible of monetary calculation, and that damages recoverable at law may not be adequate compensation for nonperformance of the covenants of this Agreement. It is therefore agreed that in each instance where money damages are not an adequate remedy the Parties shall have the right to seek specific performance.
- 5.2 **SEVERABILITY.** In case any one or more of the provisions of this Agreement shall for any reason be held to be illegal or invalid by a court of competent jurisdiction, it is the intention of each of the Parties hereto that such illegality or invalidity shall not affect any other provision hereof, but this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein.
- 5.3 **WAIVER.** A failure to initiate action as to any breach shall not be deemed as a waiver of that right of action and all such uninitiated rights of action shall be cumulative.
- 5.4 **TERM OF AGREEMENT.** This Agreement shall be in effect and shall constitute a binding obligation of the Parties hereto from and after its execution by the last Party to execute same and shall continue in effect for fifteen (15) years with a five (5) year extension upon written notice prior to 90 days of term end date by either Party.
- 5.5 **PERIODIC REVIEW OF PROVISIONS.** The Parties shall hold periodic reviews, at least annually, of the provisions of this Agreement in order to provide for the changing needs of

both Parties, and to ensure the Interconnections meet all applicable state and federal requirements, as they may be promulgated or amended. The Parties agree to negotiate diligently and in good faith to accommodate each other's needs and proposed amendments and to use all diligent and good faith efforts to enact by appropriate legislation such amendments as are agreed upon by both Parties to be appropriate. No such amendments to this Agreement shall become effective unless authorized by the respective Governing Authority of both Parties. However, nothing herein shall prevent either Party from proposing amendments to the other at any time during the term of this Agreement.

5.6 RESOLUTION OF DISPUTES. Should there arise any issues or disputes related to this Agreement, the Parties will in good faith attempt to resolve such issues or disputes promptly and amicably and may by mutual agreement submit the same to non-binding mediation.

5.7 DAMAGE OR DESTRUCTION OF FACILITIES. In the event of damage or destruction by fire or other casualty of the Interconnection, Fulton shall, with reasonable diligence and dispatch, repair, or rebuild, or otherwise make provision for restoring functionality to said facilities so as to restore them as nearly as possible to the condition which existed immediately prior to the damage or destruction, subject to such modifications as may be agreed to by the parties. Costs for the repair shall be borne by the owner of the components as described in Article 2.3.

5.8 PERSONAL LIABILITY. No elected official, director, officer, or employee of either Party shall be charged personally or held contractually liable by or to the other Party under any terms or provisions of this Agreement or because of any breach thereof or because of its or their execution or attempted execution thereof.

- 5.9 TIME OF ESSENCE. Time is of the essence for all terms of this Agreement.
- 5.10 HEADINGS. The headings contained herein are for convenience and reference only and are not intended to define or limit the scope of any provisions of this Agreement.
- 5.11 ASSISTANCE. Roswell and Fulton agree to provide each other with assistance in the form of plans and specifications, reports and projections, as may be necessary or appropriate for the efficient operation of the Interconnection.
- 5.12 NUMBER OF ORIGINAL DOCUMENTS. It is agreed between the Parties that this Agreement shall be executed in two or more originals, each of which shall constitute one and the same document, and any one of which may be used for any purpose for which an original executed document may be used.
- 5.13 ASSIGNMENT OF AGREEMENT. This Agreement shall inure to the benefit of and shall be binding upon the respective successors and assigns of the Parties to this Agreement; provided, however, that neither this Agreement nor any interest herein shall be transferred or assigned by any Party hereto except with the consent in writing of the other Party hereto which consent shall not be unreasonably withheld. No assignment or transfer of this Agreement without consent shall relieve a Party hereto of any obligation hereunder.
- 5.14 INTERGOVERNMENTAL AGREEMENT. The parties hereto agree that this Agreement is an intergovernmental contract entered into pursuant to Article IX, Section III, Paragraph I of the Constitution of the State of Georgia of 1983.
- 5.15 PRIOR AGREEMENTS. This Agreement supersedes any and all previous agreements between Fulton and Roswell concerning the same subject matter as this Agreement.
- 5.16 DEFAULT. Failure of Roswell to pay Fulton any of the payments required under this Agreement when due or failure of either Party to comply with any covenant, term, or

obligation of this Agreement shall constitute a material default on the part of such Party. In any such event, and notwithstanding the requirements of Section 5.6, the non-defaulting Party may bring any suit, action, or proceeding in law or in equity, including but not limited to mandamus, injunction and/or action for specific performance, as may be necessary or appropriate to enforce any provision, covenant, term, or obligation of this Agreement against the other Party.

- 5.17 NOTICE. All notices pursuant to this Agreement shall be in writing and delivered in person or transmitted by certified mail, postage prepaid, or by registered overnight mail or delivery service, charges prepaid. All notices to Fulton shall be addressed as follows, unless otherwise directed in writing:

County Manager

Fulton County Government Center
141 Pryor Street, Suite 10061
Atlanta, Georgia 30303

With a copy to:

Director, Fulton County Department of Public Works

Fulton County Government Center
141 Pryor Street, Suite 6001
Atlanta, Georgia 30303

With a copy to:

Office of the County Attorney

Attn: County Attorney
Fulton County Government Center
141 Pryor Street, Suite 4038
Atlanta, Georgia 30303

All notices to City of Roswell shall be addressed as follows, unless otherwise directed in writing:

Mayor

City of Roswell
38 Hill Street, Suite 215
Roswell, Georgia 30075

With a copy to the:
Director, Department of Environmental/Public Works
38 Hill Street, Suite 235
Roswell, Georgia 30075

With a copy to the:
City Administrator
38 Hill Street, Suite 115
Roswell, Georgia 30075

IN WITNESS WHEREOF, the duly authorized officials of Roswell and Fulton have caused the name of Roswell and the name of Fulton and the seals of said political subdivisions and the signatures of their duly authorized executive officers to be affixed hereto below:

(Signatures on following pages)

ATTESTED:

FULTON COUNTY, GEORGIA

Tonya R. Grier
Clerk to the Commission

(SEAL)

Robert L. Pitts, Chairman
Board of Commissioners

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Office of the County Attorney

David Clark, Director
Department of Public Works

ATTESTED:

Nancy Long (SEAL)
Nancy Long
City Clerk

CITY OF Roswell, GEORGIA

Kurt M. Wilson
Kurt M. Wilson
Mayor

APPROVED AS TO FORM:

David Davidson
David Davidson
City Attorney

APPROVED AS TO CONTENT:

Brian Watson
Brian Watson
Director of Environmental / Public Works

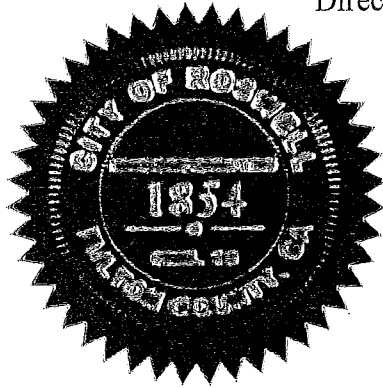


EXHIBIT A.

Map of Roswell and North Fulton's service areas and current inventory of interconnections, both normally closed and normally open.

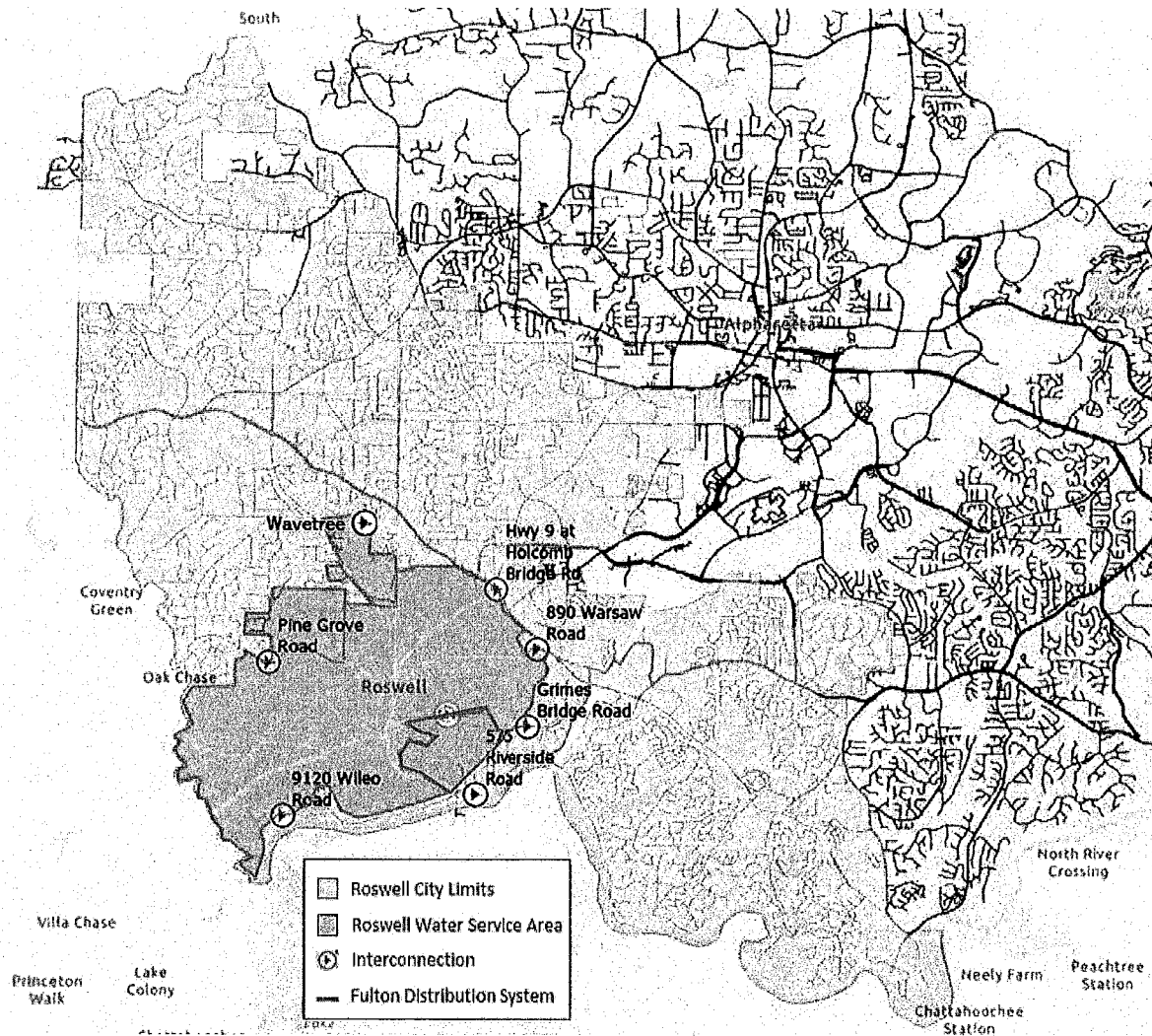


EXHIBIT B

Table detailing the interconnection locations between the City of Roswell water distribution system and the Fulton County water distribution system, as well as the typical valve status (open or closed) and the category of interconnection (general supply or emergency).

Interconnection Name	Address	Fulton Size (in)	Roswell Size (in)	Open/ Closed	General/ Emergency
Hwy 9 at Holcomb Bridge Rd	10489 Alpharetta Hwy	8	8	Closed	Emergency
92120 Willeo Road	9120 Willeo Rd	8	8	Closed	Emergency
575 Riverside Road	575 Riverside Rd	6	8	Closed	Emergency
890 Warsaw Road	890 Warsaw Rd	8	8	Closed	Emergency
Grimes Bridge Road	Grimes Bridge Rd	8	8	Closed	Emergency
Pine Grove Road	800 Pine Grove Rd	8	6	Closed	Emergency
Wavetree	0 Wavetree Dr	8	8	Closed	Emergency

