



# REQUEST FOR COUNCIL ACTION

## City of Greenville, South Carolina

Agenda Item No.

11c

**TO:** Honorable Mayor and Members of City Council  
**FROM:** John F. McDonough, City Manager

Ordinance/First Reading  Ordinance/Second & Final Reading  Resolution/First & Final Reading  Information Only

**AGENDA DATE REQUESTED:** March 23, 2020

**ORDINANCE/RESOLUTION CAPTION:**

ORDINANCE TO APPROVE A RECIPROCAL EASEMENT AGREEMENT BETWEEN RENEWABLE WATER RESOURCES AND THE CITY OF GREENVILLE FOR PURPOSES OF ACCESS, PARKING, AND TEMPORARY IMPROVEMENTS (TAX MAP NUMBERS M014010100200 AND M014010100300)

**SUMMARY BACKGROUND:**

ReWa owns property on Mauldin Road, Tax Map Number M014010100200. The City owns adjoining property located on Mauldin Road, Tax Map Number M014010100300. This Ordinance formalizes an agreement between the City and ReWa pursuant to which each party would be allowed to use a portion of the other party's property for limited purposes, i.e. access, parking, and temporary improvements.

**IMPACT IF DENIED:**

The City will neither accept nor grant an easement to ReWa.

**FINANCIAL IMPACT:**

None.

**REQUIRED SIGNATURES**

Department Director Mike Murphy  
DocuSigned by:  
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OMB Director \_\_\_\_\_

City Attorney Michael Pitts  
DocuSigned by:  
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City Manager John McDonough  
DocuSigned by:  
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A N O R D I N A N C E

TO APPROVE A RECIPROCAL EASEMENT AGREEMENT BETWEEN RENEWABLE WATER RESOURCES AND THE CITY OF GREENVILLE FOR PURPOSES OF ACCESS, PARKING, AND TEMPORARY IMPROVEMENTS (TAX MAP NUMBERS M014010100200 AND M014010100300)

WHEREAS, Renewable Water Resources (“ReWa”) is the owner of that certain parcel of real property located on Mauldin Road in Greenville County, South Carolina, Tax Map Number M014010100200; and

WHEREAS, the City of Greenville (“City”) is the owner of a certain adjacent parcel of real property located on Mauldin Road in Greenville County, South Carolina, Tax Map Number M014010100300; and

WHEREAS, the City and ReWa desire to enter into a reciprocal easement agreement pursuant to which each party would be allowed to use a portion of the other party’s property for the limited purpose of ingress, egress, parking, construction, and maintenance of temporary improvements;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GREENVILLE, SOUTH CAROLINA, City Council hereby approves the grant of an easement to the ReWa, approves acceptance of an easement from ReWa, and authorizes a reciprocal easement agreement between the City and ReWa in substantially the same form as that which is attached hereto and incorporated herein as Attachment 1 (“Reciprocal Easement”). The City Manager, in consultation with the City Attorney, may make or accept minor modifications to the wording and designations of the Reciprocal Easement and the exhibit thereto as may be necessary and appropriate, provided there is no compromise of the substantive purposes of this Council action. Should the City Manager or City Attorney, or both, determine that any modification of previously negotiated terms is significant and warrants further action by City Council, then the matter shall be presented to Council for further review before the final execution.

DONE, RATIFIED AND PASSED THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2020.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

REVIEWED:

\_\_\_\_\_  
CITY MANAGER

ATTACHMENT 1

Upon recording return to:  
Nelson, Mullins, Riley & Scarborough LLP  
104 S. Main Street, Suite 900  
Greenville, South Carolina 29601  
Attn: Eric J. Smith

**RECIPROCAL EASEMENT AGREEMENT**

THIS RECIPROCAL EASEMENT AGREEMENT (this "Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 2019 (the "Effective Date") by and between RENEWABLE WATER RESOURCES, a body corporate and politic and a special purpose district organized under the laws of the State of South Carolina ("ReWa") and THE CITY OF GREENVILLE, a political subdivision of the State of South Carolina (collectively, the "City"), and their respective successors and assigns (ReWa and City may each be referred to herein as a "Party" or collectively, the "Parties").

**WITNESSETH:**

WHEREAS, ReWa is the owner of certain real property lying and being in Greenville County, South Carolina and more particularly described as approximately 74.1 acres identified as tax map # M014010100200 (the "ReWa Property");

WHEREAS, City is the owner of certain adjacent real property lying and being in Greenville County, South Carolina and more particularly described as approximately 55.525 acres identified as tax map # M014010100300 (the "City Property");

WHEREAS, the Parties desire to enter into and grant certain easements to one another on and subject to the terms and conditions set forth herein, for the limited purpose of allowing the City, its agents, employees, contractors and invitees, the right to enter upon a portion of the ReWa Property and to utilize a portion of the ReWa Property for the purposes of ingress, egress, parking, construction, and maintenance of temporary improvements, and for allowing ReWa, its agents, employees, contractors and invitees, the right to enter upon a portion of the City Property and to utilize a portion of the City Property for the purposes of ingress, egress, parking, construction, and maintenance of temporary improvements; and

NOW, THEREFORE, in consideration of the sum of Ten and No/100 Dollars (\$10.00) in hand paid by the Parties one to the other, the covenants contained herein and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, ReWa and the City hereby agree as follows:

1. Reciprocal Easements.

(a) ReWa hereby grants to the City for the benefit of the City Property a perpetual, exclusive easement over, on, upon, and across that portion of the ReWa Property described and/or depicted as Easement "B" on Exhibit "A" attached hereto and by this reference made a part hereof for the purposes of vehicular and pedestrian access, ingress, and egress, parking of vehicles, and the construction and maintenance of temporary improvements all at the City's sole cost and expense (the "City Easements").

(b) City hereby grants to ReWa for the benefit of the ReWa Property a perpetual, exclusive easement over, on, upon, and across that portion of the City Property described and/or depicted as Easement "A" on Exhibit "A" attached hereto and by this reference made a part hereof for the purposes of vehicular and pedestrian access, ingress, and egress, parking of vehicles, and the construction and maintenance of temporary improvements all at ReWa's sole cost and expense (the "ReWa Easements").

2. Reservation of Rights.

(a) ReWa Reservation of Rights. ReWa hereby reserves all right, title and interest in and to the ReWa Property incident to the fee simple estate thereof and for any and all purposes not inconsistent with the easements granted herein.

(b) City Reservation of Rights. The City hereby reserves all right, title and interest in and to the City Property incident to the fee simple estate thereof and for any and all purposes not inconsistent with the easements granted herein.

3. Condition of Easement Areas. Each Party shall ensure that in its use of the other Party's property, the Party and its agents, employees, invitees and licensees keep the other Party's property in a neat, clean and safe condition, free from trash and debris.

4. Maintenance and Repair. Except as otherwise provided herein, each Party shall maintain and repair its own improvements, whether located on its own parcel or the other Party's parcel, and such maintenance and repair shall be conducted in a good and workmanlike manner. Any taxes that may be assessed against either parcel now or in the future shall be paid by the fee simple owner of such parcel.

5. Damage. To the extent that a Party causes damage to the other Party's parcel or improvements (beyond ordinary wear and tear), then the Party causing such damage shall be responsible for one hundred percent (100%) of the costs of repair or replacement related to such damage. The owner of the parcel or improvements damaged thereby may provide an invoice to the Party that caused such damage for the reasonable costs to repair such damage that is actually incurred by the owner of the damaged parcel or improvements, with appropriate back-up supporting said costs, and the Party causing such damage shall pay such invoice within thirty (30) days of receipt of such invoice.

6. Hazardous Materials. Neither Party shall bring or store, or allow to be brought or stored on the other Party's property, any Hazardous Materials (as defined below). A Party shall be solely responsible for any and all claims, costs, losses, expenses, demands, actions, or causes of action, and all liabilities, including attorney's fees and costs, arising out of or in connection with the cleanup or restoration of the other Party's parcel arising from the use, handling, storage or other management of Hazardous Materials (as defined below) by such Party or its employees, agents, contractors, licensees or

invitees on the other Party's parcel. The liability contemplated by this paragraph specifically includes costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental authority having jurisdiction over such Parcel or the use and occupation thereof. No Party shall conduct any intrusive or invasive testing of its granted easement area on the other Party's parcel, such as a Phase II environmental site assessment, without the express written consent of the owner of that parcel, which consent may be withheld by such owner in its sole discretion. "Hazardous Material" means asbestos, petroleum products, or any toxic or hazardous substance, waste, or materials as defined in any federal, state, or local environmental or safety law or regulation including, but not limited to, CERCLA and RCRA. This Section shall survive any termination of this Agreement.

7. Default Remedies.

(a) Right to Cure. If a Party defaults in the performance of any of the obligations imposed on such Party by this Agreement (a "Defaulting Party"), the non-defaulting Party (a "Non-Defaulting Party") shall have the right, but not the obligation, upon the expiration of thirty (30) days' written notice to the Defaulting Party and to any mortgagee of the Defaulting Party of whom the Non-Defaulting Party has received written notice, to cure such default for the account of and at the expense of the Defaulting Party, provided that the Defaulting Party or its mortgagee has not, prior to the expiration of such thirty (30) day period, cured the default or commenced to cure the default and thereafter diligently and continuously pursues such efforts to cure to completion. Notwithstanding the provisions of the preceding sentence, in the event of emergency conditions constituting default, any Non-Defaulting Party, acting in good faith, shall have the right to cure such default upon such advance notice as is reasonably possible under the circumstances or, if necessary, without any advance notice, so long as notice is given as soon as reasonably practicable thereafter. Any default notice hereunder shall specify with particularity the nature of the default claimed and shall set forth in reasonable detail the action which the Non-Defaulting Party giving such notice proposes to take in order to cure the claimed default.

(b) Legal and Equitable Relief. A Non-Defaulting Party shall have the right to prosecute any proceedings at law or in equity against any Defaulting Party (provided that such Non-Defaulting Party has theretofore complied with the notice and cure provisions of Section 7(a), above), or against any other person violating or attempting to violate any of the provisions contained in this Agreement, in order to prevent the violating or Defaulting Party or any such other person from violating or attempting to violate or defaulting under the provisions of this Agreement, and to recover damages for any such violation or default. The remedies available under this subsection (b) shall include suits for damages, ex parte applications for temporary restraining orders, preliminary injunctions, and permanent injunctions enjoining any such violation or attempted violation or default, and actions for specific performance of this Agreement.

(c) Costs to Cure. All costs and expenses reasonably incurred by any Non-Defaulting Party to cure a default of a Defaulting Party under the provisions of Section 7(a), above, and all costs and expenses of any proceedings at law or in equity for collection of such amount, including reasonable attorneys' fees awarded to any Party by an order of court pursuant to this Agreement, shall be assessed against and paid by the Defaulting Party (the "Cost to Cure").

(d) Remedies Cumulative. All remedies permitted or available to the Parties under this Agreement at law or in equity shall be cumulative and not alternative, and the invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.



8. Notices. All notices required or permitted herein shall be in writing and delivered to the intended recipient at its address set forth herein by: (a) registered or certified U.S. mail, return receipt requested; (b) personal delivery; or (c) overnight delivery with a nationally recognized overnight courier. If sent by registered or certified mail, notice shall be deemed received three (3) business days following deposit of such notice in the mail. If delivered personally, the notice shall be deemed received on the date of delivery or refusal to accept delivery. If sent by overnight delivery, such notice shall be deemed received one (1) business day following the deposit of such notice with the overnight courier for delivery. All notices shall be deemed effective if properly addressed and delivered according to this Section, whether or not a notice is actually accepted or received. Either party may specify a different notice address by written notice to the other party in accordance with this Section. Each Party's address for notice is as follows:

To ReWa:	Renewable Water Resources 561 Mauldin Rd Greenville, SC 29607 Attn: Director of Business Continuity Services
With a copy to:	Nelson Mullins Riley & Scarborough LLP Attn: Rivers Stilwell 104 S. Main Street, Suite 900 Greenville, South Carolina 29601
To City:	Office of the City Attorney 206 South Main Street (29601) Post Office Box 2207 Greenville, South Carolina 29602

9. Miscellaneous.

(a) Recitals. All recitals in the opening paragraphs of this Agreement are incorporated herein by this reference and made a part of this Agreement.

(b) Time of the Essence. Time is of the essence in the performance of this Agreement and all covenants and provisions contained herein.

(c) Force Majeure. Each party hereto shall be excused from the performance of any of its obligations under this Agreement for the period of any delay resulting from any cause beyond its control, including, without limitation, labor disputes, governmental regulations or controls, fires or other casualties, natural disasters, acts of God, or any inability to obtain supplies or other difficulties beyond the reasonable control of such party.

(d) Successors and Assigns. This Agreement may not be assigned by either Party without the express prior written consent of the other Party. The ReWa Easements shall encumber and run with title to the City Property and shall run with and be appurtenant to the ReWa Property, and shall be binding upon and inure to the benefit of and be enforceable by the legal representatives, successors and permitted assigns of ReWa. The City Easements shall encumber and run with title to the ReWa Property and shall run with and be appurtenant to the City Property, and shall be binding upon and inure to the benefit of and be enforceable by the legal representatives, successors and permitted assigns of the City.

(e) Entire Agreement. This Agreement constitutes the entire agreement and understanding between ReWa and the City relating to the subject matter hereof and may not be amended or modified except by an instrument in writing executed by the Parties.

(f) Severability. The invalidity of any one of the covenants, agreements, conditions or provisions of this Agreement, or any portion thereof, shall not affect the remaining portions thereof, or any part of such remaining portions, which shall remain in full force and effect.

(g) No Waiver. No failure of a Party to exercise any power given to such Party hereunder, or to insist upon strict compliance by the other Party of that other Party's obligations hereunder, and no custom or practice of the Parties at variance with the terms hereof, will constitute a waiver of a Party's right to demand strict compliance with the terms hereof.

(h) Headings. The section headings in this Agreement are inserted only as a matter of convenience and are not to be given any effect whatsoever in construing this Agreement.

(i) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina. The parties agree to submit to the jurisdiction of, and that venue is proper in, the state or federal courts in Greenville County, South Carolina, in any dispute arising out of this Agreement.

(j) Authorized Representative. Each individual signing on behalf of a Party to this Agreement states that he or she is the duly authorized representative of the signing Party and that his or her signature on this Agreement has been duly authorized by, and creates the binding and enforceable obligation of, the Party on whose behalf the representative is signing.

(k) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall together constitute one and the same document.

*[Signatures begin on following page]*

IN WITNESS WHEREOF, each of ReWa and the City has caused its authorized representatives to execute this Agreement on the day first above written.

Signed, sealed and delivered in the presence of:

ReWa:

**RENEWABLE WATER RESOURCES**

\_\_\_\_\_  
Unofficial Witness

By: \_\_\_\_\_  
Graham W. Rich, Chief Executive Officer

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

STATE OF SOUTH CAROLINA     )  
  )     **ACKNOWLEDGEMENT**  
COUNTY OF GREENVILLE     )

I, the undersigned notary public, do hereby certify that **Renewable Water Resources**, by Graham W. Rich, its Chief Executive Officer, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: \_\_\_\_\_  
Print Name of Notary Public: \_\_\_\_\_

*[Signatures continue on following page]*



Signed, sealed and delivered in  
the presence of:

CITY:

THE CITY OF GREENVILLE

\_\_\_\_\_  
Unofficial Witness

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

STATE OF SOUTH CAROLINA    )  
  )  
COUNTY OF GREENVILLE    )    ACKNOWLEDGEMENT

I, the undersigned notary public, do hereby certify that The City Of Greenville, by \_\_\_\_\_, its \_\_\_\_\_, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: \_\_\_\_\_  
Print Name of Notary Public: \_\_\_\_\_

*[end of signatures; exhibit on following page]*

**EXHIBIT "A"**  
**Easement Areas**

