

**RESOLUTION NO. R18-76**

**A RESOLUTION OF THE CITY COUNCIL ACCEPTING AN EASEMENT FROM CHS, INC. FOR THE PURPOSE OF THE CONSTRUCTION AND MAINTENANCE OF AN ACCESS ROAD FOR CITY FACILITIES AND AUTHORIZING THE MAYOR TO ACCEPT THE EASEMENT ON THE CITY'S BEHALF.**

WHEREAS, an "Easement Agreement" between CHS Inc. as Grantor and the City of Laurel as Grantee has been negotiated and prepared; and

WHEREAS, said easement will allow the City access across certain portions of real property owned by the Grantor in order to maintain the City's facilities near the Yellowstone River; and

WHEREAS, acceptance of the easement is in the best interests of the City, as it is necessary to access and maintain the existing City facilities which is in the best interest of the City's citizens and businesses.

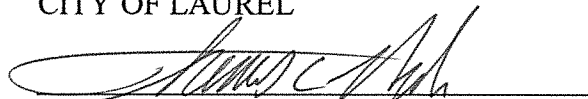
NOW, THEREFORE, BE IT RESOLVED that the City Council hereby accepts the attached Easement Agreement and authorizes the Mayor to execute the same on the City's behalf.

INTRODUCED at a regular meeting of the City Council on October 16, 2018 by Council Member Wilke.

PASSED and APPROVED by the City Council of the City of Laurel this 16<sup>th</sup> day of October 2018.

APPROVED by the Mayor this 16<sup>th</sup> day of October, 2018.

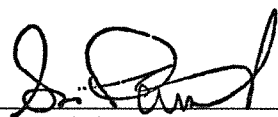
CITY OF LAUREL

  
\_\_\_\_\_  
Thomas C. Nelson, Mayor

ATTEST:

  
\_\_\_\_\_  
Bethany Langve, Clerk-Treasurer

Approved as to Form:

  
\_\_\_\_\_  
Sam Painter, Civil City Attorney

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SPACE ABOVE THIS LINE FOR RECORDER'S USE

## EASEMENT AGREEMENT

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, CHS INC., a Minnesota corporation, with a mailing address of 5500 Cenex Drive, Inver Grove Heights, MN 55077 ("CHS") does hereby sell, assign, convey, and warrant to the City of Laurel, a Montana governmental entity, with an address of 115 W 1st Street, Laurel, MT 59044 ("CITY"), a non-exclusive easement concerning that certain roadway as more particularly shown and described on Exhibit A attached hereto (the "Easement").

TO HAVE AND TO HOLD the Easement unto CITY and its successors and allowed assigns, subject to the following conditions, covenants and agreements:

1. Term Length. This agreement will have an initial term of ten (10) years from effective date, and shall renew automatically for additional 10 year terms after the end of the initial term. If either party desires to renegotiate the agreement, written notice must be sent to the other party, at least six (6) months prior to the expiration date of the agreements current term.

2. Construction, Maintenance and Operation of Roadway. CITY shall repair or replace, at its sole expense, any harm done to the Easement resulting from the CITY's use thereof.

3. Indemnification. CITY shall indemnify, defend, and hold harmless CHS from any and all liability, expenses, charges, damages, claims, actions, or harm, including reasonable attorney fees and costs, related in any manner to the Easement and the actions or inactions relating thereto by CITY. CHS shall indemnify, defend, and hold harmless the CITY from any and all liability, expenses, charges, damages, claims, actions, or harm, including reasonable attorney fees and costs, related to CHS' use of the Easement and the actions or inactions relating thereto by CHS.

4. Hazardous and Non-Hazardous Substances. CITY shall be solely responsible for remediating any hazardous or non-hazardous waste or other condition caused or created by the CITY that might be encountered within the Easement.

5. Reservation of Rights. CHS reserves the right to use the Easement for its purposes.

6. No Public Rights. The grant of this Easement is not intended to benefit any third party nor is it intended to grant any rights to the public.

7. Right to Grant Easement. If CHS owns less than the entire and undivided fee simple title to the property underlying said Easement, then this Easement applies only to the interest it has.

8. Default; Waiver. If a party fails or refuses to perform its obligations under this Easement, and such default continues for a period of ten (10) days after written notice specifying such default is given to such defaulting party, then the non-defaulting party may demand arbitration as set forth in paragraph 9 below. The failure of either party to insist in any one or more instances upon strict performance of any of the terms or conditions of this Easement shall not be construed as a waiver or relinquishment for the future of such term or condition, but the same shall continue and remain in full force and effect.

9. Disputes. CHS and the City agree the laws of the State of Montana govern this Agreement. The Parties agree that venue is proper within the State District Court of Yellowstone County, Montana. If a dispute arises, CHS and the City, through a representative(s) with full authority to settle a dispute, shall meet and attempt to negotiate a resolution of the dispute in good faith no later than ten business days after the dispute arises. If negotiations fail, the parties may utilize a third-party mediator and equally share the costs of the mediator or file suit.

10. Material Breach Shall Invalidate Easement Deed. A material breach of this Agreement by CITY shall be grounds for litigation to invalidate and terminate the Easement Deed.

11. Governing Law. This Easement shall be governed by the laws of the State of Montana.

12. Attorney Fees. If either party is forced to hire an attorney to enforce or interpret this Easement, the prevailing party in such dispute shall be entitled to recover its reasonable attorney fees and costs incurred for such enforcement or interpretation.

13. Amendment. This Easement shall not be amended or modified except in writing executed by both parties to this Easement.

14. Entire Agreement. This document contains all the terms, conditions, agreements, representations and warranties agreed upon by the parties relating to this Easement and supersede all prior agreements, negotiations, correspondence, understandings, undertakings and communications of the parties, whether oral or written, relating to this Easement. The parties acknowledge that each has an opportunity to assist in the drafting of this Easement. Accordingly, the Easement should not be interpreted against any one party or draftsman.

15. Notices. All notices, consents, offers, requests, demands, instructions or other communications pursuant or related to this Easement shall be given in writing by personal delivery; prepaid first class registered or certified mail, properly addressed with appropriate postage paid thereon; or by UPS, FedEx or other recognized and reputable overnight courier. Notice shall be deemed duly given and received on the date of delivery if delivered personally, on the second day after deposit in the United States mail if mailed, or upon delivery if sent by UPS, FedEx or other recognized and reputable overnight courier. Notices shall be delivered, mailed or otherwise sent to the CITY at the address set forth in the opening paragraph hereof. Notice to CHS







6011 Cabell Road  
P.O. Box 60383  
Billings, MT 59108

# EXHIBIT A - ACCESS EASEMENT

LOCATED IN GOV'T LOT 3, SECTION 15, TOWNSHIP 2 SOUTH, RANGE 24 EAST, P.M.M.,  
YELLOWSTONE COUNTY, MONTANA

## LEGAL DESCRIPTION

An access easement for the construction and maintenance of an access road, situated in Gov't Lot 3 of Section 15, T.2S., R.24E., P.M.M., Yellowstone County, Montana, said tract being more particularly described as follows:

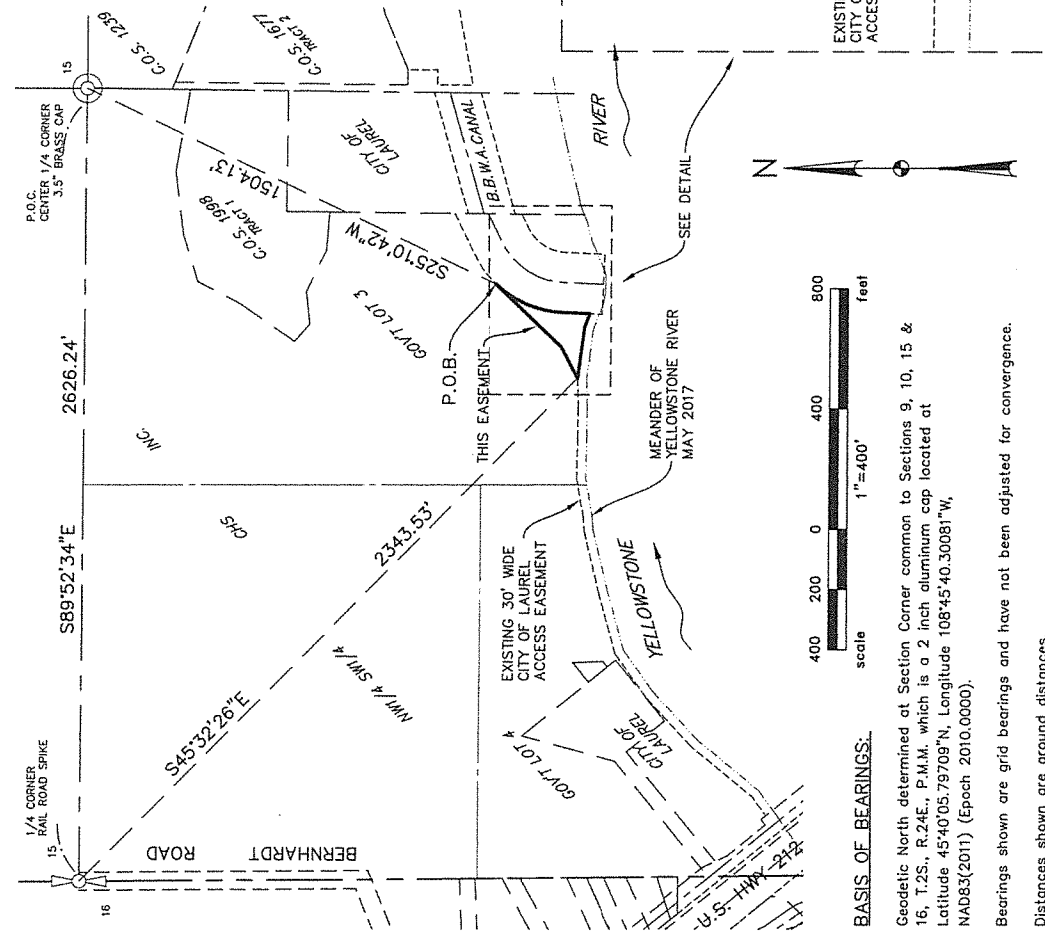
COMMENCING at the Center 1/4 Corner of Sections 15 T.2S., R.24E., P.M.M.; thence S25°10'42"W, a distance of 1,504.13 feet to a point on the West line of B.B.W.A. Canal Right Of Way and the POINT OF BEGINNING; thence S43°54'14"W, a distance of 304.58 feet, thence S61°44'15"W, a distance of 116.28 to a point on the North line of an existing 30' wide access easement, said point bears S45°32'26"E, a distance of 2343.53 feet from the West 1/4 Corner of said Section 15; thence along said access easement the following courses; S92°38'16"E a distance of 169.42 feet and S69°00'58"E a distance of 50.07 feet to a point on the West line of said B.B.W.A. Canal Right Of Way, thence along said canal right of way the following courses; N02°28'23"E, a distance of 92.82 feet to a point of curve; thence Northeasterly along a curve to the right having a radius of 340.50 feet with a central angle of 41°25'51" an arc length of 246.22 feet, said curve having a chord bearing and distance of N23°11'18"E, 240.89 feet to the POINT OF BEGINNING.

Said described tract containing a gross area of 21,761 square feet or 0.499 acres, more or less.

I, Darryl E. Magnuson, Professional Land Surveyor, MT No. PLS 17791, do hereby certify that the survey plot shown herein was made by me, or under my direction, from notes made by me and the same is true and correct to the best of my knowledge and belief.

*Darryl E. Magnuson*  
Darryl E. Magnuson  
Date 5/1/2018

Montana Registration No. 17791 PLS



## BASIS OF BEARINGS.

Geodetic North determined at Section Corner common to Sections 9, 10, 15 & 16, T.2S., R.24E., P.M.M. which is a 2 inch aluminum cap located at Latitude 45°40'05.79709"N, Longitude 108°45'40.30081"W, NAD83(2011) (Epoch 2010.0000).

Bearings shown are grid bearings and have not been adjusted for convergence. Distances shown are ground distances.

May 1, 2018 - 10:48 AM - F:\Projects\MTA\City\Laurel\4617111 GIS Outfall Boundary\Survey\CADD\GIS OUTFALL City Road Easement.dwg