

RESOLUTION NO. R16-06

A RESOLUTION OF THE CITY COUNCIL AUTHORIZING THE MAYOR TO EXECUTE AN EASEMENT DEED FROM CHS INC. FOR THE PURPOSE OF CONSTRUCTING, OPERATING, MAINTAINING, REPLACING AND REPAIRING OF UNDERGROUND UTILITIES.

WHEREAS, an "Easement Deed" between CHS Inc. as Grantor and the City of Laurel as Grantee has been 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 water pipelines and associated underground utilities in the Yellowstone River; and

WHEREAS, acceptance of the easement is in the best interests of the City, as it is necessary to maintain existing water service to the City's citizens and businesses.

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby accepts the attached Easement Deed and authorizes the Mayor to execute the same.

INTRODUCED at a special meeting of the City Council on January 12, 2016, by Council Member Eaton.

PASSED and APPROVED by the City Council of the City of Laurel this 12th day of January, 2016.

APPROVED by the Mayor this 12th day of January, 2016.

CITY OF LAUREL



Mark A. Mace, Mayor

ATTEST:



Shirley Ewan, Clerk/Treasurer

Approved as to Form:



Sam S. Painter, Civil City Attorney

SPACE ABOVE THIS LINE FOR RECORDER'S USE

EASEMENT AGREEMENT

For valuable consideration, CHS Inc., 5500 Cenex Drive, Inver Grove Heights, MN 55077 ("CHS") and the CITY OF LAUREL, of 115 W 1st Street, Laurel, MT 59044 ("CITY") agree that CHS will provide the CITY with an easement deed dated _____, 2015 on the terms and conditions set forth herein ("Easement Deed").

Recitals

Whereas, the CITY has requested that CHS provide the CITY with an easement (as defined below) for the CITY's water pipelines (as defined below); and

Whereas, in consideration of the Easement Deed, the CITY will include within the final plans and specifications for the new intake project reserved space for a future casing installation by CHS and shall require the selected contractor for the intake project to coordinate with CHS to ensure the space for the future casing installation is properly reserved; and

Whereas, CHS is willing to provide the CITY with an easement across the property of CHS for CITY's two (2) thirty-inch (30") diameter water intake pipelines and appurtenances (referred to hereafter as, collectively, the "pipelines") on the terms and conditions set forth herein.

Now, therefore, in consideration of the promises, covenants, restrictions, and agreements set forth herein, the parties agree as follows:

Agreement

1. Grant of Easement. CHS shall grant an Easement Deed to the CITY in the form of Exhibit "A" attached hereto (referred to hereinafter as the "easement").
2. The CITY's Obligations. In addition to the provisions set forth in the Easement Deed, the CITY agrees to the following terms, conditions, and obligations which are material to CHS in granting the Easement Deed:

a. The CITY will include within the final plans and specifications for the new intake project reserved space for a future casing installation by CHS and shall require the selected contractor for the intake project to coordinate with CHS to ensure the space for the future casing installation is properly reserved

b. In connection with the construction, operating, inspecting, repairing, substituting, removing, replacing and maintaining of the pipelines, the CITY will repair or replace, at its sole expense, any existing fences, roads, ditches, and appurtenances of the property that may be disturbed by its construction of the pipelines and maintenance of such pipelines. If any fencing is removed or replaced while CITY is doing construction, CITY will install gates or temporary fencing as necessary or appropriate in order to protect and secure the property of CHS as well as protect and secure any livestock of lessees. CITY shall also compensate any lessees if crops are damaged or otherwise affected by CITY's work. CITY is also responsible for any ditch crossings and associated permits required for such crossings and will coordinate its work with the ditch companies and provide any necessary repairs to the ditches or compensation to the ditch companies that are impacted by CITY's work.

c. During operations involving excavation, the CITY will remove from the site any large rocks or surplus excavated material or any debris that may have been exposed by the excavation. CITY will leave the finished surface in substantially the same condition as existed prior to construction. For purposes of this paragraph, the term "substantially" shall be defined to require that the restored landscape meet existing grade and that the area is seeded to match surrounding vegetation. If any area that is disturbed by CITY subsequently moves, sinks, or changes after initial restoration, CITY shall return to the site and further restore the area to preexisting grade with an appropriate seeding to match surrounding vegetation.

d. If there is any change in the course of the Yellowstone River or damage caused by the Yellowstone River after construction within the easement, the CITY will be responsible for restoring the river bank, and protecting the easement and pipelines. In the event of a change in course of the Yellowstone River, or other damage caused by the Yellowstone River, which CHS believes impacts this provision of the Agreement, CHS will notify the CITY in writing of the problem and the CITY shall address the problem within a reasonable time and in a manner that is satisfactory to CHS. The CITY shall propose a plan for remedying the problem to CHS and CHS shall provide the CITY with written approval or rejection of the CITY's plan. If CHS rejects the CITY's plan, CHS shall provide specific reasons for the rejection and requirements for a satisfactory plan, and the CITY will re-submit a plan that complies with the requirements of CHS.

e. At no time shall any of the work by the CITY interfere with the refinery operations of CHS. In the event that CITY believes that it cannot do its work without interfering with the refinery operations of CHS, CITY shall immediately contact CHS in writing, explain the situation, and propose how it can do its work to minimize the impact to CHS. After receiving the CITY's proposal, CHS shall respond to the CITY in writing with its decision whether to permit CITY to proceed with work proposed by CITY. CHS may also propose alternative means for CITY to accomplish its work without impacting the refinery operations of CHS. In any event, the decision of whether to permit CITY to do work that interferes with the refinery operations of CHS shall be decided by CHS in its sole and absolute discretion.

f. The CITY shall indemnify, defend, and hold harmless CHS from any and all liability, damage, claims, actions, or harm, including reasonable attorney fees and costs, related in any manner to the work to be done by CITY pursuant to this Agreement.

g. CITY shall use the easement solely for the pipelines and not for any other purpose. The CITY will specifically not use the easement for sewer or the transport of refuse.

h. The CITY shall be solely responsible for remediating any hazardous or non-hazardous waste or other condition that might be encountered within the easement only if the waste or condition is created or caused by the CITY's possession or use of the property.

3. The Obligations of CHS. In addition to the provisions set forth in the Easement Deed, CHS agrees to the following terms, conditions, and obligations which are material to the CITY:

a. At no time will CHS build, construct, erect, or maintain any permanent structure within the boundaries of the easement without the prior written consent of CITY, except as set forth in paragraph 4 below.

b. Should CHS choose to relocate the Canyon Creek Ditch, the northern edge of the ditch may be located no closer than 10 feet to the nearest of the pipelines to be located within this easement. At the potential ditch crossings CITY will ensure that the top of the pipelines is located a minimum of 10 feet below the existing ground surface to facilitate the possible ditch relocation. The locations are shown on Sheet 2 of the maps attached to the Easement Deed as *Intake Water Transmission Main Easement Across CHS Inc. Property*.

c. CHS shall provide the City with the right to enter, with 24 hour written notice to CHS (except in emergency situations, such as a break in the pipelines when immediate access is required), upon CHS's real property by using existing roads, trails or other routes on CHS's real property causing the least damage and inconvenience to CHS or its lessees in order to survey and establish the route and location of the easement and pipelines and to:

- i. Construct, inspect, operate, repair, substitute, remove, replace and maintain the pipelines and related services, connections, accessories and appurtenances; and
- ii. Trim, remove or otherwise control any trees and brush inside the boundaries of the easement, after notification to CHS, which may, in the opinion of the CITY, interfere or threaten to interfere with or be hazardous to the construction, operation and maintenance of the pipelines.

d. CHS warrants that it is lawfully seized and possessed of the real property described in the Easement Deed, that it has a lawful right to convey the property and any interests therein, and that it will forever defend the title to this property against the claim of all persons.

e. The CITY may peaceably hold and enjoy the rights and privileges herein granted as limited herein without interruption by CHS.

4. Reservation of Rights. CHS reserves the right for it and its tenants to use the real property described in the Easement Deed for any purposes that will not interfere with the CITY'S full enjoyment of rights granted by this instrument. As an example, and not by way of limitation, the tenants of CHS may use the real property described in the Easement Deed for the growing of crops, pasturing of livestock, and any other activity that does not directly interfere with the CITY'S rights. CHS also specifically reserves the right to construct roads or rails over or along the easement area.

5. Arbitration of Disputes. The law of Montana applies to this Agreement. If a dispute arises between the parties, such dispute shall be resolved by binding arbitration. The arbitration must take place in the county in which the property is located. The parties to the arbitration will be entitled to conduct discovery in accordance with the Federal Rules of Civil Procedure, subject to limitation by the arbitrator to secure just and efficient resolution of the dispute. The arbitration shall be done before a single arbitrator chosen by the parties. If the parties cannot agree on an arbitrator, then they shall each choose a representative and the two representatives shall select an arbitrator. If the amount in controversy exceeds \$10,000, the arbitrator's decision must include a statement specifying in reasonable detail the basis for and computation of the amount of the award, if any. The written award of such arbitrator shall be final and conclusive with respect to all present and future damages.

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

7. Expenses. Except as otherwise provided in this Agreement, each of the respective parties to this Agreement shall bear their own costs and expenses (including, without limitation, legal and accounting fees and costs) relating to this Agreement, the negotiations leading to this Agreement and the transactions contemplated by this Agreement.

8. Amendment. This Agreement shall not be amended or modified except in writing executed by all parties to this Agreement, and approval by Resolution of the City Council.

9. Entire Agreement. This Agreement, including any schedules and exhibits hereto, contain all the terms, conditions, agreements, representations and warranties agreed upon by the parties to this Agreement relating to the subject of this Agreement and supersede all prior agreements, negotiations, correspondence, understandings, undertakings and communications of the parties, whether oral or written, respecting such subject matter. All parties acknowledge that he, she or it has an opportunity to assist in the drafting of this Agreement. Accordingly, the Agreement should not be interpreted against any one party or draftsman.

10. Notices. All notices, consents, offers, requests, demands, instructions or other communications pursuant or related to this Agreement shall be given in writing by personal delivery, by 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, and 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 above. With respect to CHS, notice shall be sent to 803 US Highway 212 South, Laurel, MT 59044, with a copy to 5500 Cenex Drive, Inver Grove Heights, MN 55077, Attn: Legal Department. Such addresses may be changed from time to time by means of a notice given in the manner provided in this Section.

11. Severability. If any term, condition, agreement or other provision of this Agreement, or the application thereof to any party or circumstances, shall be held to be invalid or unenforceable to any extent in any jurisdiction, then the remainder of this Agreement and the application of such term, condition, agreement or other provision in any other jurisdiction or to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term, condition, agreement and other provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

12. Further Assurances. After execution of this Agreement each party shall from time to time at the reasonable request and sole expense of the requesting party execute and deliver to the requesting party, or cause to be executed and delivered to the requesting party, such documents, and take such other actions, as the requesting party may reasonably request in order to more effectively consummate the transactions contemplated by this Agreement.

13. Assignment. The rights and obligations of the parties to this Agreement shall run with the land and bind, inure to the benefit of and be enforceable by the parties and their respective heirs, devisees, legal representatives, successors and assigns.

STATE OF _____)
 : ss
County of _____)

The foregoing instrument was acknowledged before me on this _____ day of _____, 2015, by _____, the _____ of CHS Inc., and he/she has executed said instrument on behalf of the corporation.

Notary Public for the State of _____

(NOTARIAL SEAL)

Acknowledgement and Acceptance of Easement Agreement:

The Mayor for the City of Laurel, Yellowstone County Montana, on behalf of the City Council, acknowledges and accepts the Easement Agreement pursuant to City Council Resolution # _____.

This _____ day of _____, 2015.

Mark A. Mace
Mayor

Attest:

Shirley Ewan
City Clerk/Treasurer

STATE OF MONTANA)
 : ss
County of Yellowstone)

This instrument was acknowledged before me on _____, 2015, by Mark A. Mace, as Mayor of the City of Laurel and Shirley Ewan, City Clerk/Treasurer of the City of Laurel.

Notary Public for the State of Montana

(NOTARIAL SEAL)

After recording please return to:
City of Laurel
P.O. Box 10
Laurel, MT 59044

SPACE ABOVE THIS LINE FOR RECORDER'S USE

EXHIBIT A

EASEMENT

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, CHS INC., 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, Montana, with a mailing address of 115 W 1st Street, Laurel, MT 59044 ("City"), a non-exclusive easement with the right from time to time to survey, install, lay, construct, operate, protect, inspect, test, maintain, replace with the same or similar size pipes, abandon in place, repair, and remove two (2) thirty-inch (30") diameter water intake pipelines and appurtenances thereto (collectively, the "pipelines") under, upon, over and through the tract of land more particularly described on Exhibit 1 attached hereto ("Property"), for the transportation of water from the Yellowstone River to the City's water facilities.

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

1. Construction, Maintenance and Operation of Pipeline. The City shall repair or replace, at its sole expense, any existing fences, roads, ditches, and appurtenances on the Property that may be disturbed by the City's construction, operation, inspection, repair, removal, replacement and maintenance of the pipelines. If any fence is removed or replaced during construction, maintenance, repair or replacement of the pipelines, the City shall install gates or temporary fencing, as necessary or appropriate, in order to protect and secure the property of CHS and any livestock of CHS's lessees. The City shall also compensate any lessees if crops are damaged or otherwise affected by the City's work relating to the pipelines. The City shall leave the finished surface of the Property in substantially the same condition as existed prior to any construction, maintenance or replacement of the pipeline. For purposes of this Easement, the term "substantially" shall be defined to require that the restored landscape meet existing grade, that the area is seeded to match surrounding vegetation, and that the City has implemented proper noxious weed control measures.

2. Excavation. During operations involving excavation, the City shall remove from the Property any large rocks, surplus excavated material and debris exposed by the excavation. The City shall leave the finished surface of the Property in substantially the same condition as existed prior to the excavation. If any area that is excavated by the City subsequently moves, sinks, or changes after initial restoration, the City shall return to the site and further restore the area to preexisting grade with an appropriate seeding to match surrounding vegetation.

3. Changes in Course of or Damages Caused by the Yellowstone River. If there is any change in the course of the Yellowstone River or damage caused by the Yellowstone River, the City shall be responsible for restoring the river bank and protecting the easement and pipelines, at its sole cost and expense. In the event of a change in course of or other damage caused the Yellowstone River which CHS believes has or will cause damage to the Easement or the pipelines, CHS shall notify the City in writing of the issue, and the City shall address the problem within a reasonable time and in a manner that is satisfactory to CHS. The City shall propose a plan for remedying the issue to CHS, and CHS shall provide the City with written approval or rejection of the City's plan. If CHS rejects the City's plan, CHS shall provide specific reasons for the rejection and requirements for a satisfactory plan. The City shall then re-submit a plan that complies with the requirements of CHS. After approval, the City shall execute the plan as soon as practical.

4. No Interference with Refinery Operations. At no time shall the construction, maintenance, operation or repair of the pipelines interfere with the refinery operations of CHS. In the event that the City determines that that it cannot maintain, repair or otherwise operate the pipelines without interfering with the refinery operations of CHS, the City shall immediately contact CHS in writing, setting forth, in detail, the interference issues, and propose the manner in which the City will minimize the impact to CHS. After receiving the City's proposal, CHS shall respond to the City in writing with its decision whether to permit the City to proceed with the maintenance, repair or operation proposed by the City. CHS may propose alternative means for City to accomplish its work without impacting the refinery operations of CHS. The decision of whether to permit the City to proceed with maintenance, operation or repair to the pipeline in a manner that interferes with the refinery operations of CHS shall be made by CHS in its sole and absolute discretion.

5. Indemnification. The 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.

6. Use of Easement. The City shall use the Easement solely for the pipelines and the conveyance of water and not for any other purpose. The City will specifically not use the Easement for sewer or the transport of refuse.

7. Hazardous and Non-Hazardous Substances. The City shall be solely responsible for remediating any hazardous or non-hazardous waste or other condition that might be encountered within the Easement.

8. Reservation of Rights. CHS reserves the right for it and its tenants to use the Property for any purposes that will not interfere with the City's full enjoyment of rights granted hereunder. Specifically, and not by way of limitation, the tenants of CHS may use the Property for the growing of crops, pasturing of livestock, and any other activity that does not directly interfere with the City's rights. CHS also specifically reserves the right to construct roads or rails over or along the Easement area.

9. Entrance onto the Property. CHS hereby grants to the City and its agents the right to enter the Property, with at least twenty-four (24) hours written notice to CHS for the following purposes:

- a. Constructing, inspecting, operating, repairing, removing, replacing and maintaining the pipelines and related services, connections, accessories and appurtenances thereto; and
- b. Trimming, removing or otherwise controlling any trees and brush inside the boundaries of the Easement, after notification to CHS of the intent to trim, remove or control trees or brush, which may, in the opinion of the City, interfere or threaten to interfere with or be hazardous to the construction, operation and maintenance of the pipelines.

When accessing the Property, the City and its agents shall use existing roads, trails or other routes which will cause the least damage and inconvenience to CHS or its lessee. Twenty-four hours written notice to CHS is not required if, in the City's sole judgment, reasonably exercised, such entry is necessary to prevent damage to or destruction of the pipelines or in other emergency situation.

10. 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.

11. Right to Grant Easement. CHS warrants that it is lawfully seized and possessed of the Property, that it has a lawful right to convey this Easement, and that it will forever defend title to the Easement against the claim of all persons.

12. 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 13 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.

13. Arbitration of Disputes. If a dispute arises under the terms and conditions of this Easement, such dispute shall be resolved by binding arbitration. The arbitration shall take place Yellowstone County, Montana. The parties to the arbitration will be entitled to conduct discovery in accordance with the Federal Rules of Civil Procedure, subject to limitation by the

arbitrator to secure just and efficient resolution of the dispute. The arbitration shall be completed before a single arbitrator chosen by the parties. If the parties cannot agree on an arbitrator, then they shall each choose a representative and the two representatives shall select the arbitrator. If the amount in controversy exceeds \$10,000, the arbitrator's decision must include a statement specifying in reasonable detail the basis for and computation of the amount of the award, if any. The written award of such arbitrator shall be final and conclusive with respect to all present and future damages.

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

15. Governing Law. This Easement has been made and entered into in the State of Montana and shall be governed by the laws of the State of Montana.

16. 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.

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

18. Entire Agreement. This Easement, including the exhibits hereto, and the Easement Agreement between the parties, dated the _____ day of December, 2015, contain 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.

19. 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 shall be sent to 803 US Highway 212 South, Laurel, MT 59044, with a copy to 5500 Cenex Drive, Inver Grove Heights, MN 55077, Attn: Legal Department. Such addresses may be changed from time to time by means of a notice given in the manner provided in this paragraph.

20. Severability. If any term, condition, agreement or other provision of this Easement, or the application thereof to any party or circumstances, shall be held to be invalid or unenforceable to any extent, then the remainder of this Easement and the application of such term, condition, agreement or other provision in any other jurisdiction or to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and

each term, condition, agreement and other provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

21. Perpetual Easement. Subject to paragraph 14 hereof, the rights and obligations of the parties to this Easement shall be perpetual and run with the land and shall bind, inure to the benefit of and be enforceable by the parties and their respective legal representatives, successors and assigns.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands this _____ day of December, 2015.

CHS INC.:

By: _____
Its _____

Attest:
By: _____
Its _____

STATE OF _____)
: ss
County of _____)

The foregoing instrument was acknowledged before me on this _____ day of December, 2015, by _____, the _____ of CHS Inc., and he/she has executed said instrument on behalf of the corporation.

Notary Public for the State of _____

(NOTARIAL SEAL)

STATE OF _____)
: ss
County of _____)

The foregoing instrument was acknowledged before me on this _____ day of December, 2015, by _____, the _____ of CHS Inc., and he/she has executed said instrument on behalf of the corporation.

Notary Public for the State of _____

(NOTARIAL SEAL)

Acknowledgement and Acceptance of Easement Agreement:

The Mayor for the City of Laurel, Yellowstone County Montana, on behalf of the City Council, acknowledges and accepts the Easement Agreement pursuant to City Council Resolution # _____.

This _____ day of Decemer, 2015.

Mark A. Mace
Mayor

Attest:

Shirley Ewan
City Clerk/Treasurer

STATE OF MONTANA)
 : ss
County of Yellowstone)

This instrument was acknowledged before me on this ____ day of December, 2015, by Mark A. Mace, as Mayor of the City of Laurel and Shirley Ewan, City Clerk/Treasurer of the City of Laurel.

Notary Public for the State of Montana

(NOTARIAL SEAL)

EXHIBIT 1

Intake Water Transmission Main Easement Across CHS Inc. Property