



Canada Energy  
Regulator

Régie de l'énergie  
du Canada

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File OF-Fac-Oil-T260-2013-03 61  
15 January 2021

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Director, Land  
Trans Mountain Canada Inc.  
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Calgary, AB T2P 5J2  
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Mr. Lars Olthafer  
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Calgary, AB T2P 4J8  
[lars.olthafer@blakes.com](mailto:lars.olthafer@blakes.com)

Ms. May Leung, City Solicitor  
Mr. Deepak Dattani, Director, Corporate Services  
Mr. Imola Fernando, Project Manager  
City of Burnaby  
4949 Canada Way  
Burnaby, BC V5G 1M2  
[May.Leung@burnaby.ca](mailto:May.Leung@burnaby.ca)

Dear Mr. Parisé, Mr. Olthafer, Ms. Leung, Mr. Dattani and Mr. Fernando:

**Trans Mountain Pipeline ULC (Trans Mountain)  
Trans Mountain Expansion Project (Project) and Westridge Delivery  
Line (WDL) Relocation  
Application for Utility Crossings pursuant to section 217 of the  
Canadian Energy Regulator Act (Application)  
City of Burnaby (Utility Owner)  
Utility Crossings shown in Crossing Drawing No. M002-XH12650 (Crossing)**

#### *Application*

On 22 July 2020, the Commission of the Canada Energy Regulator (Commission) received an application from Trans Mountain pursuant to section 217 of the *Canadian Energy Regulator Act* (CER Act) requesting an order granting Trans Mountain an immediate right to construct the Project and the WDL along or under the utilities of the Utility Owner as shown in the drawings attached as Appendix A to this decision ([C07464](#)). The Application indicates the City of Burnaby is the Utility Owner.

Additionally, Trans Mountain requested relief from subparagraph 5(b)(i), subparagraph 5(b)(iii), paragraph 8(1)(a), and subsections 9(2), (4), (5), (6), and (7) of [General Order No. 1 Respecting Standard Conditions for Crossings by Pipelines](#) (General Order No. 1).

#### *Background on existing approvals*

On 19 November 2019, the Commission issued Order OPL-003-2019, which approved the detailed route for the segment of the pipeline ([C03092](#)). On the Plan, Profile and Book of

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Reference (drawing number M002-PM03028-006), the Crossing construction locations are also depicted but do not form part of the approval process for the detailed route.

On 15 May 2020, the Commission issued Order XO-004-2020 to Trans Mountain which approved Trans Mountain's WDL Relocation ([C06322](#)). The WDL Relocation involves replacing an existing delivery line that currently transports oil from the Burnaby Terminal to the Westridge Marine terminal through residential areas of Burnaby. The new delivery line will use the same tunnel through Burnaby Mountain as the two other delivery lines that are part of the Project.

#### *Process for utility crossing applications*

The Commission may, by order, on application, grant a company leave to construct a pipeline on, over, along or under a utility, pursuant to subsection 217(2) of the CER Act. In addition, General Order No. 1 prescribes certain requirements with respect to utility crossings.

The CER prepared an information letter regarding utility crossing applications (CER Information Letter), which Trans Mountain was directed to provide to the affected utility owner in advance of filing an application. The CER decided that the regulatory process to be followed for the utility crossing applications will closely follow the Commission's process for applications under subsection 324(1) of the CER Act (right of entry application). A copy of the CER Information Letter is included in Trans Mountain's Application.

#### *Commission's Decision*

The Commission has reviewed the Application and notes the following:

On 7 July 2020, Trans Mountain served a notice on the Utility Owner indicating its intention to file the Application, and provided a copy of the CER Information Letter.

On 22 July 2020, Trans Mountain served the Utility Owner with the Application.

On 24 July 2020, Trans Mountain filed proof of service of the Application on the Utility Owner ([C07551](#)).

On 31 July 2020, Trans Mountain filed a letter with the CER stating negotiations between Trans Mountain and the Utility Owner relative to the rights sought have progressed. By mutual agreement between Trans Mountain and the Utility Owner, Trans Mountain requested an extension to the Utility Owner's objection period to 6 August 2020 ([C07640-1](#)).

On 5 August 2020, the Commission granted the requested extension to the deadline for the Utility Owner to object to the Application to 6 August 2020 ([C07679-1](#)).

On 6 August 2020, the Utility Owner filed a letter with the CER indicating it will not be objecting to the Application ([C07704-1](#)).

On 7 August 2020, Trans Mountain filed a letter informing the Commission that it has reached an agreement with the Utility Owner to amend the Application by consent and requesting that the Commission stay its review of the Application pending receipt of the amended Application documents on or before 14 August 2020 ([C07732-1](#)).

On 14 August 2020, Trans Mountain filed a request for leave to amend the Schedule attached as Exhibit "C" in the Application, under paragraph 10(1)(b) of the *National Energy Board Rules of Practice and Procedure*, 1995 ([C07894](#)). The request was made with the consent of the Utility Owner. The Commission grants Trans Mountain's request for leave to amend the Application.

General Order No. 1 requires that certain conditions are to be made and adopted before the construction of a pipeline across a utility or highway. Trans Mountain's proposed schedule of terms applicable to the Crossing Order incorporates the General Order No. 1 requirements by reference, subject to certain limited exceptions. Trans Mountain provided an explanation of how it will either fulfill the excepted requirements by another method or how the requirement no longer conforms with current *Canadian Standards Association* standards and Trans Mountain proposes to comply with the current standards instead. The Commission notes that General Order No. 1. was issued in 1988. The Commission finds Trans Mountain's proposed alternatives to the General Order No. 1 requirements acceptable and, therefore, grants Trans Mountain relief from subparagraph 5(b)(i), subparagraph 5(b)(iii), paragraph 8(1)(a) and subsections 9(2), (4), (5), (6), and (7) of General Order No. 1.

The [Canadian Energy Regulator Pipeline Damage Prevention Regulations - Authorizations](#), the [Canadian Energy Regulator Pipeline Damage Prevention Regulations – Obligations of Pipeline Companies](#) and the [International and Interprovincial Power Line Damage Prevention Regulations – Authorizations](#) apply to any CER-regulated pipeline company and to any person planning or undertaking an activity near a CER-regulated pipeline or power line company. The Canadian Standards Association Z247 *Damage Prevention for the Protection of Underground Infrastructure* standard and the Canadian Common Ground Alliance's [Underground Infrastructure Damage Prevention Best Practices Version 3.0](#) provide information for working safely near all buried infrastructure.

The Commission notes that Trans Mountain's Application initially requested an order authorizing the construction of the Project and the relocation of the WDL "on, over, along or under..." the utilities. The consent amendments sought an order "along or under..." the utilities, deleting the request for "on, over." The amendment also requested corresponding changes to the terms of the requested utility crossing order. The Commission considers it appropriate to also change the definition of "Order" in Appendix B, Defined Terms to the Schedule of proposed terms and conditions, as follows:

**"Order"** means the applied-for order of the Commission of the Canada Energy Regulator granting Trans Mountain an immediate right to construct the Pipeline ~~on, over, along or under~~ the Utility of the Utility Owner as shown in the drawings set out in Appendix "A" of this Schedule.

As all the requirements of the CER Act have been met, the CER established process was followed and no objection has been filed, the Commission has decided to grant the crossing order as requested by Trans Mountain in its Application, including the amendments and the change noted above.

Pursuant to subsection 217(2) of the CER Act, the Commission has issued Order OP-001-2021(Order).

A certified copy of the Order and Schedule attached to and forming part of the Order is enclosed.

Should you have any questions, please contact a Process Advisor by phone at 1-800-899-1265 (toll free) or by e-mail at [TMX.ProcessHelp@cer-rec.gc.ca](mailto:TMX.ProcessHelp@cer-rec.gc.ca).

Yours sincerely,

*Signed by*

Jean-Denis Charlebois  
Secretary of the Commission

Attachment



## ORDER OP-001-2021

**IN THE MATTER OF** the *Canadian Energy Regulator Act* (CER Act) and the regulations made thereunder; and

**IN THE MATTER OF** an application made by Trans Mountain Pipeline ULC (Trans Mountain) as General Partner of Trans Mountain Pipeline L.P., for a Certificate of Public Convenience and Necessity and other related approvals pursuant to Part III of the *National Energy Board Act*; and,

**IN THE MATTER OF** an application made by Trans Mountain dated 22 July 2020 for an order pursuant to subsection 217(2) of the CER Act granting the right to construct along or under certain utilities in British Columbia filed with the Commission of the Canada Energy Regulator (Commission) under File OF-Fac-Oil-T260-2013-03 61, Crossing Drawing No. M002-XH12650 (Application).

**BEFORE** the Commission on 8 January 2021.

**WHEREAS** on 21 June 2019, the National Energy Board issued Certificate of Public Convenience and Necessity OC-065 to Trans Mountain in respect of the Trans Mountain Expansion Project (Project) which included the construction and operation of two new delivery lines within the Burnaby Mountain Tunnel;

**AND WHEREAS** the CER Act came into force on 28 August 2019;

**AND WHEREAS** on 19 November 2019, the Commission issued Order OPL-003-2019 approving the relevant Plan, Profile and Book of Reference for the lands traversed by the pipelines;

**AND WHEREAS** on 15 May 2020, the Commission issued Order XO-004-2020 to Trans Mountain in respect of Trans Mountain's application for the Westridge Delivery Line Relocation which included the construction and operation of a third delivery line within the Burnaby Mountain Tunnel;

**AND WHEREAS** on 22 July 2020, Trans Mountain filed the Application for leave authorizing the immediate construction of the Project and the relocation of the Westridge Delivery Line along or under the utilities identified in the drawings attached as Appendix A to this Order;

**AND WHEREAS** the owner of the utilities is the City of Burnaby (Utility Owner);

**AND WHEREAS** the Commission is satisfied that the Utility Owner was properly served with a notice of Trans Mountain's intention to file the Application on 7 July 2020;

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**AND WHEREAS** the Commission is satisfied the Application was properly served on the Utility Owner on 22 July 2020;

**AND WHEREAS** on 14 August 2020, Trans Mountain filed a request for leave to amend the Schedule attached as Exhibit “C” to the Application, with the Utility Owner’s consent;

**AND WHEREAS** a written objection with respect to the Application was not filed;

**AND WHEREAS** the Commission grants Trans Mountain leave to amend the Application;

**AND WHEREAS** the Commission grants Trans Mountain relief from subparagraph 5(b)(i), subparagraph 5(b)(iii), paragraph 8(1)(a), and subsections 9(2), (4), (5), (6), and (7) of the National Energy Board’s *General Order No. 1 Respecting Standard Conditions for Crossings by Pipelines* dated 28 July 1988;

**AND WHEREAS** the Commission has all of the information it considers necessary to deal with the Application;

**IT IS ORDERED THAT** Trans Mountain is granted leave to construct along or under the utilities described in the Schedule attached to and forming part of this Order, subject to the terms set out in that Schedule.

THE COMMISSION OF THE CANADA ENERGY REGULATOR

*Signed by*

Jean-Denis Charlebois  
Secretary of the Commission

**SCHEDULE  
OP-001-2021**

**1. LOCATION OF UTILITY IN RESPECT OF WHICH ORDER IS SOUGHT**

**LEGAL DESCRIPTION**

Between: Rem Lot 145 Plan 27774  
[PID: 003-211-649 / Tract: 7887]  
&  
Lot 1 Plan LMP24406  
[PID: 023-189-045 / Tract: 7888]

(**"Lands"**)

- (a) That portion of the Lands where the Pipeline crosses the Utility shown as Pipeline Crossing Area on the drawing attached as Appendix "A" and forming part of this Schedule

(**"Crossing Area"**).

**2. DEFINED TERMS**

The words and phrases defined in Appendix "B" hereto shall have the respective meanings set out in Appendix "B" when used in this Schedule.

**3. RIGHTS AND INTERESTS APPLIED FOR IN RESPECT OF THE CROSSING AREA**

Trans Mountain requires the right and interest along and under the Crossing Area to:

- (i) survey and carry out tests and examinations for, lay down, construct, operate, maintain, inspect, patrol, alter, remove, replace, reconstruct and repair the Pipeline within the Crossing Area; and
- (ii) generally to do all things necessary for or incidental to the exercise of the foregoing rights and interests;

(referred to herein as the **"Crossing Rights"**)

for Trans Mountain, its successors and assigns, and its and their respective employees, agents, contractors, and subcontractors, on foot and/or with vehicles, supplies, machinery and equipment at any and all times, by day and by night, for so long as Trans Mountain may desire to exercise them.

For greater certainty, in exercising the rights under Section 3, Trans Mountain shall not be permitted to cause any ground disturbance on or remove any trees from the surface of the Lands without consent of the Utility Owner unless otherwise required by the Canada Energy Regulator, its successors, or applicable law.

Without limiting any other obligation of Trans Mountain under this Order, Trans Mountain, in exercising its rights under this Order, shall comply with the terms and conditions of any

regulatory approval, order or certificate issued or imposed by the Canada Energy Regulator or its predecessor, the National Energy Board, as well as any legislation or regulation applicable to Trans Mountain.

#### 4. RIGHTS, OBLIGATIONS, RESTRICTIONS AND TERMS

- (a) **Use of the Crossing Area:** Trans Mountain's use of the Crossing Area pursuant to the Crossing Rights shall be restricted to use in connection with the Pipeline. The Pipeline shall be installed in the Crossing Area in the locations depicted in the drawings attached as Appendix "A" and forming part of this Schedule.
- (b) **Engineering and Construction Practices:** Trans Mountain shall carry out all work in the Crossing Area in a proper and diligent manner and in accordance with good engineering and construction practices.
- (c) **General Order No. 1 Conditions Incorporated by Reference:** The requirements and general conditions for drawings and crossings set out in sections 5, 8 and 9 of General Order No. 1 are incorporated by reference as terms and conditions applicable to the Crossing Area and Trans Mountain's exercise of the Crossing Rights, subject to the following limited exceptions, as approved by the Commission:
  - (i) the General Order No. 1, subparagraph 5(b)(i) requirement to show the angle of each crossing and the distance from the crossing to the nearest lot or section line measured along the centre line of the Pipeline on the 1:10000 scale location plan. Such angle and distance measurements are instead shown on the detailed plan referenced in General Order No. 1, subsection 5(b)(ii) having a scale of 1:1000 or less in Appendix "A";
  - (ii) the General Order No. 1, subparagraph 5(b)(iii) requirement to provide detailed and dimensioned drawings of the longitudinal profile along the centre line of the highway or utility. A detailed and dimensioned drawing of the longitudinal profile along the centre line of the Pipeline is provided along with a detailed plan in accordance with section 5(b)(ii) in Appendix "A";
  - (iii) the General Order No. 1, subparagraph 5(b)(iii) requirement to provide a detailed and dimensioned drawing of the longitudinal profile along the centre line of the pipeline at 1:200 vertical and 1:100 horizontal scales. The subject longitudinal profile is instead drawn at a 1:200 scale in Appendix "A";
  - (iv) the General Order No. 1, paragraph 8(1)(a) general condition that the pipeline conform with the respective specifications and requirements of the current Canadian Standards Association ("CSA") standard Z183 and CSA standard Z184. The pipeline shall instead conform to the current applicable CSA standard Z662; and
  - (v) the General Order No. 1, subsections 9(2), (4), (5), (6), and (7) general conditions premised on the Pipeline being encased in a metal casing pipe extending the full width of the highway right-of-way. Such casing is not required under the current version of CSA standard Z662.
- (d) **Indemnify Utility Owner:** Trans Mountain shall indemnify the Utility Owner in accordance with and subject to section 10 of General Order No. 1.
- (e) **Damage Prevention:** The Damage Prevention Regime established under the CER Act shall apply in the event the Utility Owner seeks to undertake any ground disturbance in the vicinity of the Pipeline, including within the prescribed area as defined by the Damage Prevention Regime. However, subject to the Damage Prevention Regime, and provided that there is no interference with the Crossing

Rights, the Utility Owner shall have the right to use and enjoy the Crossing Area.

- (f) **Quiet Enjoyment:** Trans Mountain, in performing and observing the covenants and conditions on its part to be observed and performed, shall and may peaceably hold and enjoy the Crossing Rights hereby granted without hindrance, molestation or interruption on the part of the Utility Owner or of any person, firm or corporation claiming by, through, under or in trust for the Utility Owner.
- (g) **Successors and Assigns:** The Crossing Rights and all rights, obligations, restrictions, terms and conditions set forth in this Schedule shall extend to, be binding upon, and enure to the benefit of the heirs, executors, administrators, successors-in-title, successors and assigns of the Utility Owner and Trans Mountain, respectively.
- (h) **Interpretation:** Wherever the singular or masculine or neuter gender is used in this Schedule, it shall be construed as if the plural or other appropriate gender, as the case may be, had been used where the context so requires. If the Utility Owner is comprised of more than one person, the obligations and liabilities of the persons included in the Utility Owner hereunder shall be joint and several.
- (i) **Notices:** Any notice or other communication or delivery required or permitted to be given by one party to the other shall be in writing and may be given by either:
  - (i) delivery by hand, in which case it shall be deemed to have been received on delivery; or
  - (ii) sent by prepaid registered post mailed at a post office in Canada, in which case it shall be deemed to have been received on the third (3rd) business day following the day of mailing;

provided that any notice delivered by hand that is delivered after 4:00 p.m. local time at the address of the addressee on a business day shall be deemed to be received on the following business day.

The address of Trans Mountain for such purpose shall be:

Trans Mountain Pipeline ULC  
Suite 2700, Stock Exchange Tower  
300 – 5th Avenue SW  
Calgary, AB T2P 5J2  
Attention Land Department

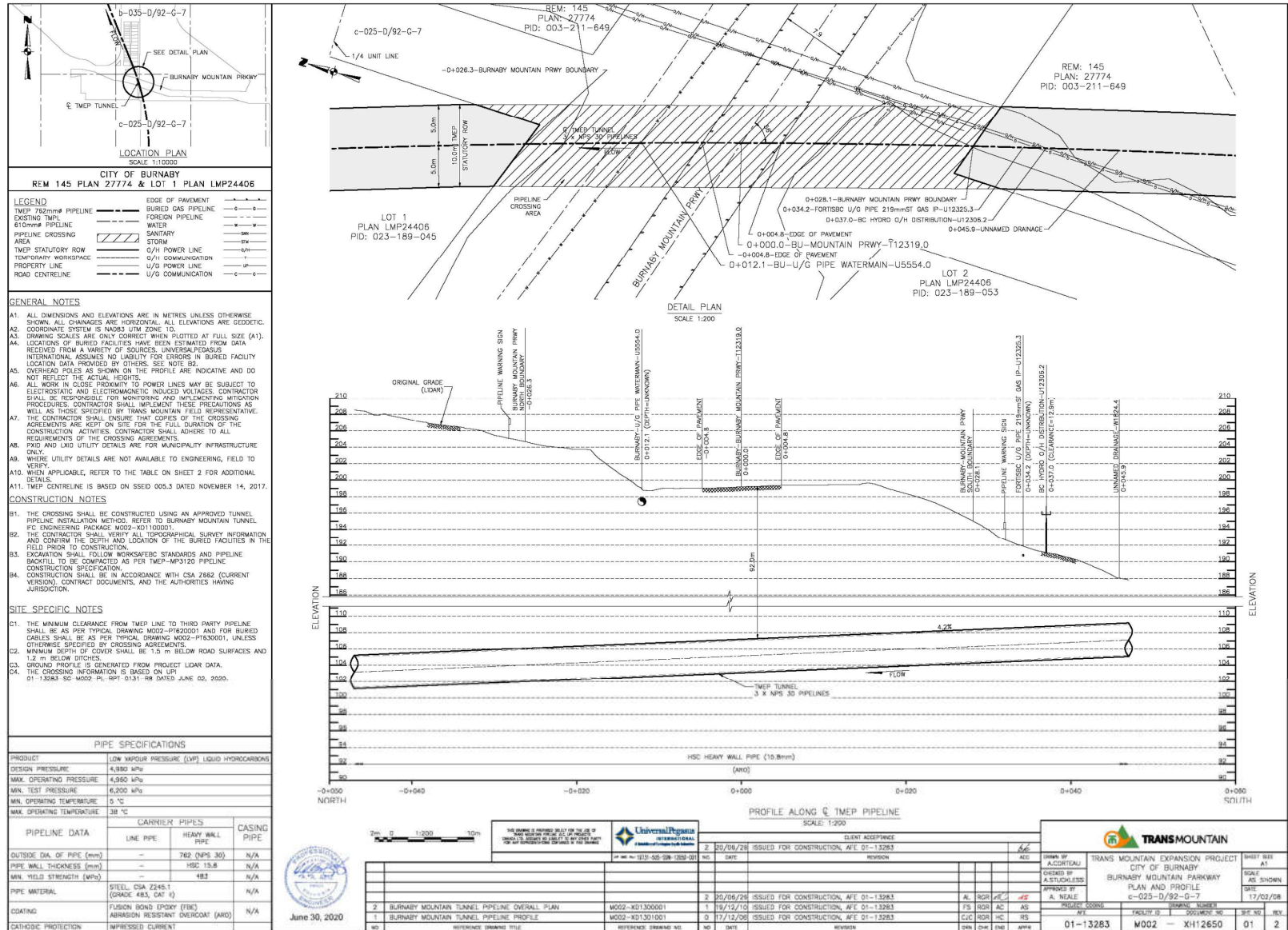
The address of the Utility Owner for such purpose shall be:

City of Burnaby  
4949 Canada Way  
Burnaby, BC V5G 1M2  
Attention Director, Corporate Services

A party may from time to time notify the other party of a change of address to another address inside Canada.

Notwithstanding anything contained herein to the contrary, if a strike, lockout or other labour disruption involving postal employees is in effect or generally known to be impending, every notice or other communication or delivery given under this provision must be given by personal delivery.

# APPENDIX A CROSSING DRAWING



**MATERIAL LEGEND**

AP	ALUMINUM PIPE
AC	ASBESTOS CEMENT
CI	CAST IRON
CL	CLAY PIPE
CP	CONCRETE PIPE
CMP	CORRUGATED METAL PIPE
CU	COPPER
DI	DUCTILE IRON
NRC	NON-REINFORCED CONCRETE
PE	POLYETHYLENE PIPE
PVC	POLYVINYL CHLORIDE
RC	REINFORCED CONCRETE
RPVC	RIGID POLYVINYL CHLORIDE
ST	STEEL
VCP	VITRIFIED CLAY PIPE

PXID	OWNER	SERVICE	DIAMETER (mm)	MATERIAL	STATION	EASTING	NORTHING
US554.0	BURNABY	U/G PIPE WATERMAIN	-	-	0+012.1	504586.8	5457870.7



June 30, 2020

		<b>CLIENT ACCEPTANCE</b> 1 06/06/20 ISSUED FOR CONSTRUCTION, A/E 01-13283 REVISION		DATE 06/06/20		SIGNATURE 		DRAWN BY P. SULTMOLLER		TRANS MOUNTAIN EXPANSION PROJECT CITY OF BURNABY BURNABY MOUNTAIN PARKWAY PXID TABLE C-005-D/02-Q-7		SHEET 002 A1	
APPROVED BY R. SULTER		APPROVED BY R. SULTER		DATE 06/06/20		DATE 06/06/20		PROJECT NUMBER 01-13283		PROJECT TITLE BURNABY MOUNTAIN PARKWAY		SHEET NO. 02	
NO.		REFERENCE DRAWING TITLE		REFERENCE DRAWING NO.		NO.		DATE		REVISION		APPR.	
1		06/06/20		ISSUED FOR CONSTRUCTION, A/E 01-13283		AL		RGR		06/06/20		01-13283	
2		06/12/20		ISSUED FOR CONSTRUCTION, A/E 01-13283		TS		RGR		06/12/20		01-13283	

C:\Users\paul\OneDrive\Documents\Drawings\01-13283\02-A1.dwg, 06/06/2020 11:16:20 AM, paul.sultmoller

## APPENDIX B

### DEFINED TERMS

**“CER Act”** means the *Canadian Energy Regulator Act* (Canada), and regulations thereunder, all as amended or replaced from time to time.

**“Damage Prevention Regime”** means sections 271 to 276, 335 and all other provisions of the CER Act and the regulations thereunder relating to ground disturbances or the prevention of damage to pipelines, including the *National Energy Board Pipeline Damage Prevention Regulations – Authorizations* (Canada), and the *National Energy Board Pipeline Damage Prevention Regulations – Obligations of Pipeline Companies* (Canada), as amended or replaced from time to time.

**“General Order No. 1”** means *General Order No. 1 Respecting Standard Conditions for Crossings by Pipelines*, issued by the National Energy Board on 28 July 1988.

**“including”** means including without limitation.

**“Order”** means the applied-for order of the Commission of the Canada Energy Regulator granting Trans Mountain an immediate right to construct the Pipeline along or under the Utility of the Utility Owner as shown in the drawings set out in Appendix “A” of this Schedule.

**“Utility Owner”** means the owner of the Utility in respect of which the Order is sought.

**“Pipeline”** means the three delivery pipelines in the Burnaby Mountain Tunnel for which Trans Mountain has approval under the CER Act for the transportation, storage and handling of oil, other liquid or gaseous hydrocarbons, and any products or by-products thereof together with all tunnel infrastructure, installations, equipment, fittings and facilities included in, associated with, appurtenant, affixed or incidental thereto, including all such pipes, drips, valves, fittings, connections, meters and cathodic protection equipment, and all fibre optic, telecommunication, electrical and rail facilities used for or in the operation and maintenance of the pipelines, whether below or above ground.

**“Trans Mountain”** means Trans Mountain Pipeline ULC.

**“Utility”** means the utility or utilities (as defined in the CER Act) of the Utility Owner shown in the drawings set out in Appendix “A” of this Schedule.

**“within”** means under and along.