



# Objection to an Application for Right of Entry

**Your objection must be filed with the Canada Energy Regulator (CER) within 10 calendar days of your receipt of the right of entry application**

You can complete this form online, save it on your computer, and e-file (along with any attachments) through the CER's Regulatory Documents e-filing tool (<http://www.cer-rec.gc.ca/pplctnflng/sbmt/index-eng.html>) on the CER website ([www.cer-rec.gc.ca](http://www.cer-rec.gc.ca)). Step-by-step instructions are provided. If unable to e-file a document, it may be filed by email to [Secretary@cer-rec.gc.ca](mailto:Secretary@cer-rec.gc.ca). You must also copy the company in your e-filing/email using the email address provided in the right-of-entry application.

During the pandemic, CER staff are not in the office to process filings received by mail or fax.

The requirement to file a hard copy within three business days is postponed until further notice. Hard copies should be prepared, along with a signed receipt, and provided to the CER at a later date.

More information about the CER's response to the COVID-19 pandemic is available in its March 16 update (<http://www.cer-rec.gc.ca/bts/nws/whtnw/2020/2020-03-16-eng.html>).

If you have process questions, contact the CER toll free at 1-800-899-1265 and ask to speak to somebody about your objection to an application for a right of entry.

## **Alternative Dispute Resolution**

Alternative Dispute Resolution (ADR) services such as facilitation and mediation are available from the CER at any time to help parties resolve disputes outside the CER's regulatory processes. To seek additional information, please contact the CER's ADR staff at 1-800-899-1265 or [ADR-RED@cer-rec.gc.ca](mailto:ADR-RED@cer-rec.gc.ca).

**The Form starts on the next page**



## Project Information

<b>Company Name:</b> Trans Mountain Pipeline ULC	<b>Project Name (if known):</b> Trans Mountain Expansion Project OF-Fac-Oil-T260-2013-03 63
<b>Company Representative and Title (if known):</b> Alain Parise, Director, Land	

## Land Information

<b>Legal description of lands this objection pertains to:</b> LOT 2 DISTRICT 124 GROUP 2 NEW WESTMINSTER DISTRICT PLAN LMP32823 (LOT A EXCEPT: PART SUBDIVIDED BY PLAN LMP32823
<b>Are you a registered landowner?</b> Yes                      No
<b>If not, please describe your interest in the lands (e.g., tenant, lease holder, occupier, other):</b>

The form continues on the next page



## Your Contact Information

<b>Name:</b>	<b>Title:</b>
<b>Residential Address:</b>	
<b>City:</b>	<b>Province:</b>
<b>Postal Code:</b>	<b>Facsimile:</b>
<b>Telephone 1:</b>	<b>Telephone 2:</b>
<b>Email:</b>	
<b>Mailing or Personal/Courier Service Address (if different from above)</b>	
<b>Address:</b>	
<b>Telephone:</b>	

## Authorized Representative Contact Information

If you do not have an authorized representative, please leave blank

<b>Name:</b>	<b>Title:</b>
<b>Organization:</b>	<b>Address:</b>
<b>City:</b>	<b>Province:</b>
<b>Postal Code:</b>	<b>Facsimile:</b>
<b>Telephone:</b>	<b>Email:</b>
<b>Mailing or Personal/Courier Service Address (if different from above)</b>	
<b>Address:</b>	
<b>Telephone:</b>	



## Details of your Objection

Please describe your reason(s) for objecting to the right of entry application and provide supporting documents where possible. You can attach additional pages to this form.

You may provide comments on the order terms and conditions that the company proposed, or submit your own proposed terms or conditions to be included in the order, should the CER decide to grant the company's right of entry application.

**Print Name:**

**Signature:**

**Date of this Objection (DD MM YYYY):**

The company has up to 7 calendar days to reply to your written objection. The company must file its response to your objection with the CER and provide you with a copy.

**SCHEDULE “A”**  
**OBJECTION TO AN APPLICATION FOR RIGHT OF ENTRY**  
**COSTCO WHOLESALE CANADA LTD AND TRANS MOUNTAIN PIPELINE ULC**  
**TRANS MOUNTAIN EXPANSION PROJECT**

**Overview**

On June 21, 2019, the National Energy Board issued Certificate OC-065, granting Trans Mountain Pipeline ULC (“**Trans Mountain**”) approval to construct and operate the Trans Mountain Expansion Project OF-Fac-Oil-T260-2013-03 63 (the “**Project**”).

Trans Mountain requires land owned by Costco Wholesale Canada Ltd. (“**Costco**”) in relation to the construction and operation of the Project.

On December 20, 2019, Trans Mountain served notice on the Owner, Costco, pursuant to subsection 322(1) of the *Canadian Energy Regulator Act* (the “**Act**”) in relation to the lands required for the Project.

On August 21, 2020, Trans Mountain served notice on Costco pursuant to section 34 of the *National Energy Board Act* in relation to the detailed route of the Project.

On July 13, 2021, Trans Mountain served notice on Costco pursuant to subsection 324(4) of the Act in relation to the right of entry.

The parties have been and are continuing to negotiate an agreement that balances the need for Trans Mountain to access the Lands to complete the Project with Costco’s business, and security and safety requirements.

Costco does not dispute Trans Mountain’s Project in general. Rather, Costco objects to the Applications (defined below), which fail to consider, or reasonably minimize, the impact of the Project on Costco’s ongoing business operations and security and safety issues that arise as a result of Trans Mountain’s proposed use of the Lands. The Applications as drafted ought to be denied as they fail, among other things, to address the timing of the construction work, and to identify appropriate mitigation measures to minimize the impact and damage to the Lands and the operation of Costco’s distribution centre.

Further, Costco objects to the Applications on the basis that they are unnecessary and premature given that the parties are continuing to work towards a negotiated agreement.

**The Parties**

Trans Mountain is a corporation incorporated under the laws of Alberta. It is extra-provincially registered as a corporation in British Columbia. Trans Mountain operates the only Canadian pipeline system transporting crude oil to the west coast (the “**Pipeline**”) and has applied and received approval for the Project in relation to the Pipeline.

Costco Wholesale is a global retailer with warehouse club operations in eight countries.

**The Lands**

Costco is the owner and operator of a secured distribution facility located in Langley, British Columbia (the “**Facility**”) on lands legally described as:

LOT A EXCEPT: PART SUBDIVIDED BY PLAN LMP32823

DISTRICT LOT 124 GROUP 2 NEW WESTMINSTER DISTRICT PLAN LMP19123

LOT 2 DISTRICT LOT 124 GROUP 2 NEW WESTMINSTER DISTRICT PLAN LMP32823

(the “**Lands**”).

The Facility is a critical distribution hub for Costco’s western Canadian business operations. Like all distribution centres, the Facility is gated and secured by guardhouse to allow Costco to monitor all incoming and outgoing traffic through its one entry and exit point. The Facility, shown below, must be accessed through the guardhouse off of 100a Avenue. This access point is continuously utilized by semitrailers that need to load and unload products at the Facility.



Trans Mountain has received approval for the detailed route of the Project and an Order approving the Plan, Profile and Book of Reference relevant to the Lands. The approved pipeline route runs the length of the south side of the Lands. In order to reach the south portion of the Lands, Trans

Mountain would need to gain access to the Lands through the secured guardhouse and travel down the east wall of the property.

## **Background to the Applications**

Costco and Trans Mountain have, for months, been negotiating an agreement that would allow Trans Mountain access to the Lands for the purposes of the Project while recognizing and respecting the business and security interests of Costco.

Notwithstanding the parties' ongoing and productive negotiations, Trans Mountain filed, pursuant to subsection 324(1) of the Act two related applications for right of entry: (i) Application C14419 Tract PC7537 for Right of Entry Application for Temporary Workspace Area Rights, Pipeline ROW Area Rights and Easement Rights (the **"Pipeline ROW Area Application"**); and (ii) Application C14420-1 Tract PC7537.01 for Right of Entry Application for Temporary Access Road (the **"Temporary Workspace Area Application"**, and together with the Pipeline ROW Area Application, the **"Applications"**).

The Pipeline ROW Area Application requests access be granted to Trans Mountain for a "Pipeline ROW Area" which spans the entire south side of the Lands and will contain the Trans Mountain Pipeline itself. Further, Trans Mountain seeks an additional portion of land to be designated as a "Temporary Workspace Area" and "Temporary Access Road" to allow Trans Mountain to carry out any construction activities and staging required for the Project.

Similarly, the Temporary Workspace Area Application requests land to be designated as a "Temporary Workspace Area" and "Temporary Access Road" to allow Trans Mountain to carry out any construction activities and staging required for the Project. Additionally, Trans Mountain seeks for itself and its successors, at any and all times, by day and by night, the right to access the Temporary Workspace Area through the remainder of the Lands, "from and to neighbouring lands (including public roads), for all purposes necessary or incidental to the exercise and enjoyment of the Workspace Area Rights; provided, however, that Trans Mountain shall not use or exercise such right of access or egress for the purpose of Pipeline Construction" (the **"Easement Rights"**).<sup>1</sup>

Although Costco understood the parties to have reached final agreement in late July 2021, Trans Mountain seeks, at the eleventh hour, additional concessions from Costco. The parties are in the process of negotiating an agreement. To date, Costco has negotiated in good faith and with the intention of resolving the matter of access amicably between the parties. To that end, Costco intends to continue to negotiate the agreement with Trans Mountain.

## **The Objections**

Costco objects to the Applications for the following reasons:

### **1. Negotiations are ongoing between Costco and Trans Mountain**

Trans Mountain states in its Applications that it has been unable to negotiate a voluntary agreement with Costco, with reference to Exhibit "F" to the Applications.<sup>2</sup>

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<sup>1</sup> Application [C14420-1](#), Exhibit "A".

<sup>2</sup> Application [C14419](#) and [C14420-1](#) page 1, para 8.



The Commission's December 16, 2020 Information Letter regarding applications by Trans Mountain pursuant to Section 324 of the Act sets out the Commission's clear expectation that the Section 324 process only be used by Trans Mountain where the parties have been unable to reach agreement after making every reasonable effort to do so:

"If a company requires the use of private lands for its CER-regulated project, it must first acquire the necessary rights through a land acquisition agreement. If the company and a landowner are unable to finalize a land acquisition agreement, the company can file with the CER a right of entry application for an order to enable the company to enter the lands. The Commission expects that the company and the landowner have made every reasonable attempt to finalize a land acquisition agreement".<sup>3</sup>

Negotiations between Costco and Trans Mountain remain ongoing. Following months of negotiations, Costco believed they had reached an agreement where Trans Mountain would be provided access to the Lands to complete all necessary construction in relation to the Project in two 45-day construction phases (the "**Access Periods**") in exchange for reasonable compensation being paid to Costco.

The Agreement for Temporary Use of Land For Access Road (the "**Temporary Access Licence**"), attached hereto and marked as Exhibit "A", and the Agreement for the Grant of Statutory Right of Way (the "**Grant Agreement**" and together with the Temporary Access Licence, the "**Agreements**") attached hereto as Exhibit "B", as negotiated, would ensure that Trans Mountain could complete the construction of the Project and ensure that Costco could remain open and operational. As the Agreements were being prepared for execution, Trans Mountain declared that it required access to the Lands not only for construction on the Lands but also with respect to construction on adjacent properties. Trans Mountain failed to provide sufficient particulars to Costco regarding this additional request before filing the Application.

Costco believes that the Agreements are close to being finalized. As recently as September 1, 2021, Trans Mountain sent a revised version of the proposed Agreements. Costco submits that it would be unnecessary and premature to grant a Right of Entry Order as requested by Trans Mountain. Costco is committed to expeditiously resolving any outstanding matters by negotiation and sufficient time should be allowed in order for the parties to come to a voluntary agreement.

## **2. Any delay in reaching a voluntary agreement rests on Trans Mountain**

Any delay in reaching a voluntary agreement rests with Trans Mountain. Costco has been negotiating in good faith and believed an agreement had been reached. Trans Mountain has provided no explanation or reasonable justification for such last minute changes to the previously agreed upon terms of access. Exhibit "F" provides no description whatsoever of the issues that "Trans Mountain believes remain outstanding" or why the parties have been unable to reach a voluntary agreement. Similarly, rather than addressing outstanding issues, in Exhibit "F" Trans Mountain deflects any description or discussion of these issues by simply asserting that "no issues remain outstanding that are relevant to or should inform the Commission's decision on the Application".<sup>4</sup> Moreover, the table included with Exhibit "F", entitled "Summary of Discussions", is

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<sup>3</sup> [Emphasis added].

<sup>4</sup> Application [C14419](#) and [C14420-1](#), Exhibit "F", page 1.



simply a log of communications between Trans Mountain and Costco with no discussion (or summary) of outstanding issues.

3. *Trans Mountain has been unable to secure alternative access to adjacent lands*

As stated above, the Applications are an attempt by Trans Mountain to extend the agreed upon Access Periods in the Agreement to allow Trans Mountain to utilize the Lands as an access point and staging area for construction on other lands where Trans Mountain has been unable to secure alternative access. Trans Mountain should prepare and provide a viable plan for its use of the Lands as an access point and staging area for adjacent lands. Costco submits that access should be limited to the construction of the Pipeline on the Lands.

4. *The Applications fail to take into account Costco's ongoing business*

Unlimited access over a three year period, as requested by the Applications, to the entirety of the Pipeline ROW Area and the Temporary Workspace Area would be debilitating for the Facility. The Facility requires vast amounts of parking space to ensure the necessary semitrailer traffic can load and unload at the Facility. Trans Mountain's access should be restricted to the 8 month term originally agreed upon by the parties, with not less than 60 days written notice to the Owner before the start date.

The proposed "Temporary Access Road" in the Pipeline ROW Area Application, suggests an access road which travels through a wall located on the west side of the Lands. This proposed road would unduly interfere with and cause harm to Costco's ongoing business. In addition to the Temporary Access Road being assessed by Trans Mountain's construction team as physically impossible, the Temporary Access Road fails to take into account that the Lands have been purposefully designed as a secured parcel of land (operating with a guardhouse) in order to effectively operate the Facility. Any creation of a secondary entry point to the Lands would create significant security risks and safety issues. Additionally, a secondary entry point would negate the purpose of a premise that is gated, locked and secured.

To ensure that Costco's business can continue to operate while construction is ongoing, Trans Mountain should be required to use the guardhouse for all access to the Lands. The proposal for the Temporary Access Road, as described in the Pipeline ROW Area Application, is not feasible and would risk the security and safety of Costco's employees and product. Costco submits that Trans Mountain should utilize the existing access on the Lands, through the guardhouse for the purposes of the Project.

5. *Schedule for Construction*

The Applications seek access to the Lands over a three year period without any restrictions or timetable limitations. Costco submits that Trans Mountain should be required to cease all construction in relation to, and refrain from accessing, the Lands through Costco's busy season of November and December (the "**Blackout Restriction**"). The Blackout Restriction would allow Costco to operate at full capacity during its busiest season.

Additionally, Costco submits that Trans Mountain should be required to prepare and provide a construction schedule which would outline more restricted timelines for Trans Mountain's access requirements to the Lands. As is evident from the above google maps photo showing the Lands, the Facility has hundreds of semitrailers parked on its land on any given day. In order for Trans Mountain to access the Pipeline, Costco will need to relocate those semitrailers. As a form of

compromise, Costco suggests that Trans Mountain divide the Pipeline ROW Area in half to allow the construction to be completed in two separate phases and allow Costco to only move half of the trailers at any one time. More specifically, Costco submits that Trans Mountain should follow the phasing plan as originally agreed to by the parties, attached hereto as Exhibit "C".

The Temporary Workspace Area Application is overly broad. Trans Mountain seeks a temporary access road and staging area for the construction of the Pipeline. The road proposed – 100a Avenue – is the only access road to the Lands. Given the fact that 100a Avenue is the only access and egress point from the Lands, it must be kept clear at all times. The Right of Entry order, should one be granted, must make clear that Trans Mountain cannot stop along this access road for any reason and must not block traffic for any period of time. The access road must be kept clear to ensure that traffic can freely travel on the road daily.

## **Summary**

Based on the foregoing, Costco respectfully submits that the Applications are unnecessary and premature as "every reasonable attempt" has not been made to finalize an agreement between the parties. Moreover, the Applications do not consider or reasonably minimize the disruptions to Costco's business operations, nor address Costco's security and safety concerns. Accordingly, Costco respectfully requests that the Commission:

1. Deny the Applications and allow the parties to continue with and complete their negotiations;
2. In the alternative, any Right of Entry Order that is granted to Trans Mountain should be modified to ensure minimal disruption to Costco's ongoing business operations and adequate security and safety measures. Specifically, the following limitations should be placed on Trans Mountain's many requests within the Applications:
  - a. Access to the Lands should be limited to 8 months, not 3 years;
  - b. The Blackout Restriction should be applied;
  - c. Access to the Lands should only be granted through the guardhouse and no temporary access road should be built through the Lands;
  - d. Construction of the Pipeline should be completed in two stages to ensure the business operations of Costco can continue during construction and to ensure that some semi-truck parking remains available for Costco's use; and
  - e. Trans Mountain should not be allowed to stop along or obstruct 100a Avenue and should only be allowed to use the road to travel to and from the Lands; and
  - f. Such other relief as Costco may advise and the Commission may deem appropriate.

**Exhibit "A"**

**The Agreement for Temporary Use of Land For Access Road**

# AGREEMENT FOR TEMPORARY USE OF LAND FOR ACCESS ROAD

Date: \_\_\_\_\_

## Parties:

Costco Wholesale Canada Ltd., Per: Legal Dept./Property Management, of 415 West Hunt Club Road, Ottawa, ON K2E 1C5 (the "Owner") and Trans Mountain Pipeline ULC (the "Company").

## Background:

A. The Owner owns land in the Province of British Columbia located at The Corporation of the District of Langley and legally described as:

Lot A Except: Part Subdivided by Plan LMP32823 District Lot 124 Group 2 New Westminster District Plan LMP19123 (PID: 019-046-219)

("Lot A")

and

Lot 2 District Lot 124 Group 2 New Westminster District Plan LMP32823 (PID: 023-738-073)

(collectively with Lot A, the "**Lands**").


B. The Owner has agreed to grant to the Company the right to use that part of the Lands shown shaded in yellow/orange (but not red or green) on the plan attached to this Agreement as Schedule A (the "**Access Area**") for and in connection with the construction of a pipeline and ancillary works on Lot A.

## Agreement:

In consideration of the sum of the sum of Ten Dollars (\$10.00) (the "**Initial Payment**") paid by each party to the other, the receipt of which is acknowledged, and the covenants and agreements on the part of the parties hereinafter set out and contained, the parties do grant, covenant and agree as follows:

1. **Term:** The Company and its employees, agents, contractors and subcontractors shall be entitled to use the Access Area under this Agreement for the term of 8 months commencing on the date set out in a written notice given by the Company to the Owner (the "**Start Date**") not less than 60 days before the Start Date (the "**Initial Term**" and the Initial Term as extended or renewed is the "**Term**"), provided that such notice must be given to the Owner no later than April 30, 2022. If the Company has not given the Owner such notice by such date, then all of the Company's rights under this Agreement will terminate and be null and void.

Notwithstanding anything to the contrary in this Agreement, the Company shall not be entitled to use the Access Area in the months of November and December (the "**Holiday Period**"). If any portion of the Holiday Period occurs during the Term (the "**Holiday Interruption**"), the Term shall

 TRANSMOUNTAIN	
INITIAL	INITIAL
Owner(s)	Company

be extended at no additional fee for the duration of the Holiday Interruption and no longer and, for greater certainty, in no event shall the Initial Term extend beyond April 30, 2023.

2. **Payment:** Within 30 days of this Agreement being executed by the Company and the Owner, the Company will pay the Owner the sum of [REDACTED] for the use of the Access Area under this Agreement for the Initial Term together with Goods and Services Tax (if applicable).

2.1 **Renewal:** The Company shall have 12 options to renew the Term of this Agreement granted in Section 1 for a period of one month each (and each such renewal shall, once exercised, be included in the definition of Term). For each month that this Agreement is renewed, the Company shall pay the Owner an additional payment of [REDACTED] plus Goods and Services Taxes. Other than the additional payment as aforesaid, each monthly renewal of the Term of this Agreement shall be on the same terms and conditions as are herein set out and contained. Each monthly renewal shall be exercised by notice in writing to the Owner given not less than 15 days prior to the end of the Term (as renewed from time to time). In the event that the Company exercises a renewal right then the maximum outside date of April 30, 2023 set out in Section 1 shall be extended by the length of such renewal term(s).

If any portion of the Holiday Period occurs during a renewal Term (the “**Holiday Interruption**”), the renewal Term shall be extended at no additional fee for the duration of the Holiday Interruption and no longer, and the maximum outside date of April 30, 2023 set out in Section 1 shall be extended by the duration of the Holiday Interruption.


3. **Owner Resident of Canada:** The Owner hereby represents and warrants that the Owner is not a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).

4. **Permitted Work:** The only purpose or purposes for which the Access Area may be used under this Agreement shall be those specified in Schedule B and related and ancillary purposes (the “**Permitted Uses**”). Except as limited in Schedule B the Company shall be entitled to:

- (a) bring onto the Access Area materials, supplies, workers, vehicles, machinery and equipment; and
- (b) make changes to the Access Area that have been previously approved in writing by the Owner, including without limitation by (i) removing any improvement, soil or vegetation now on the Access Area; (ii) carrying out of any excavation, and (iii) construction of fencing,

as reasonably necessary or desirable for the Permitted Uses, and to restrict entry into the Access Area for the safety and security of persons and goods on or about the Access Area from time to time.

5. **Minimal Interference:** The use of the Access Area and the municipal road allowance known as 100A Avenue (as shown on the far left of the first sketch in Schedule “A”) (the “**Existing Road**”) under this Agreement shall be carried out in a manner that minimizes, to the extent practicable in the circumstances, interference with the Owner’s ordinary use of and enjoyment of the Access Area and that portion of the Lands outside of the Access Area. In particular, the Company will use commercially reasonable efforts to ensure that it does not interfere in any

 TRANSMOUNTAIN	
INITIAL Owner(s)	INITIAL Company

unreasonable way or for any unreasonable length of time with the Owner's access to the Access Area and along the Existing Road.

6. **Restoration:** Prior to the end of the Term the Company shall, as to any part of the Access Area that was damaged or disturbed or altered in any way by the use of the Access Area under this Agreement, except as otherwise agreed to by the Owner:

- (a) cause all construction debris and all improvements to the Access Area made by the Company (including all fencing and gates) to be removed;
- (b) replace all topsoil removed from, and grade and contour, the Access Area and replace any landscaping removed by the Company so it is suitable for any prior use thereof; and
- (c) restore pre-existing improvements (including cement and asphalt surfaces) in accordance with the Owner's paving specifications as set out in Schedule C and otherwise leave the Access Area in a condition suitable for any use prior to the Start Date (including the parking thereon by the Owner of its trucks).

7. **Indemnity:** The Company will indemnify and save harmless the Owner from and against all liabilities, damages, claims, suits and actions arising out of the use of the Access Area under this Agreement other than liabilities, damages, claims, suits and actions resulting from the gross negligence or willful misconduct of the Owner.


8. **Compensation for Damages:** The Company shall compensate the Owner for any damages resulting from the use of the Access Area under this Agreement.

9. **For Certainty:** Subject at all times to Sections 1 and 5, during the Term the Owner shall not make, do, install or construct or permit or suffer to be made, done, installed or constructed any use of the Access Area that in any manner interferes with the use of the Access Area under this Agreement or the Company's rights in respect of the Access Area under this Agreement. If the Company shall fail to perform or observe any of its obligations under this Agreement, the sole remedy the Owner shall have is to recover from the Company damages for its default, and in no event shall the Owner interfere with, hinder, molest or interrupt the Company in its use and enjoyment of the rights under this Agreement.

10. **Sale of Lands:** Until expiry of the Term pursuant to Section 1, the Owner shall require any purchaser or transferee of the Lands to assume this Agreement and deliver an assumption in favour of the Company documenting same.

11. **Notices:** Notices under this Agreement shall be in writing and may be given to the Owner at the address set out under the description of the Parties above and to the Company at: Suite 2700, 300 — 5<sup>th</sup> Avenue SW, Calgary, Alberta T2P 5J2 Attention: Land Department.

12. **Interpretation:** This Agreement shall inure to the benefit of and be binding upon the Owner and the Company and their respective heirs, executors, administrator, successors and assigns. Wherever the singular or the masculine or neuter gender is used in this Agreement, 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 Owner is comprised of more than one person the obligations and liabilities of the persons included in the Owner hereunder shall be joint and several.

 TRANS MOUNTAIN	
INITIAL	INITIAL
Owner(s)	Company


13. **Additional Terms:** This Agreement includes the any additional terms and conditions in Schedule B.

14. **Headings:** The division of this Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect its interpretation.

15. **Arbitration:** In the event of any dispute between the parties in relation to this Agreement, unless the same shall be determinable under the mediation and arbitration provisions of the *Canadian Energy Regulator Act* the same shall be decided by a single arbitrator pursuant to the provisions of the applicable provincial arbitration legislation then in force. The decision of the arbitrator shall be final and binding upon the parties. The arbitrator shall be authorized to make a determination of and assess responsibility for the costs of the arbitration.

16. **Compliance with Laws:** The Company shall comply with laws applicable to the Company in connection with the exercise of its rights under to this Agreement and the performance of its obligations hereunder.

17. **Counterparts:** The Agreement may be executed in any number of counterparts with the same effect as if all parties had all signed the same document.

 TRANS MOUNTAIN	
INITIAL	INITIAL
Owner(s)	Company



18. **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws in force in the province in which the lands are situated and the laws of Canada applicable therein.

**EXECUTION:**

**WITNESS**

**COSTCO WHOLESALE CANADA LTD.**

\_\_\_\_\_  
Name:

Per: \_\_\_\_\_


\_\_\_\_\_  
Name:

Per: \_\_\_\_\_


**TRANS MOUNTAIN PIPELINE ULC in its  
capacity as general partner of TRANS  
MOUNTAIN PIPELINE L.P.**

Per: \_\_\_\_\_

Per: \_\_\_\_\_

 <b>TRANS MOUNTAIN</b>	
INITIAL	INITIAL
Owner(s)	Company

SCHEDULE A — ACCESS AREA

 TRANSMOUNTAIN	
INITIAL	INITIAL
Owner(s)	Company


## **SCHEDULE B**

### **Permitted Uses:**

1. The Access Area for access to the Right of Way and Temporary Workspace areas (being the areas shown coloured green, blue and red on Schedule A) shall be gated and manned by the Company at all times at the point where such Access Road meets the Existing Road (or such other point as the parties may agree to). Flag personnel of the Company shall be used at all times so that traffic to and from the Access Area to the Existing Road is controlled, subject to section 5 of this Agreement.

### **Additional Terms and Conditions:**

1. The Company is solely responsible for obtaining all permits and third-party consents which may be required in connection with the exercise by it of any of its rights under this Agreement.
2. Nothing in that right of way agreement to be registered in favour of the Company against Lot A in respect of the installation of a pipeline shall affect the rights and obligations of the parties set forth in this Agreement, and this Agreement shall take effect despite any provision to the contrary contained in such right of way agreement.

 TRANS MOUNTAIN	
INITIAL	INITIAL
Owner(s)	Company

## SCHEDULE C

### Paving Specifications

#### 7.0 ON-GRADE PAVEMENT

For the paved yard areas, a pavement grade elevation ranging from about 4.2 to 4.8 m would be expected. This results in about 1.1 m of sand fill below the design pavement subgrade. It is judged acceptable to leave the topsoil/peat organic soil in place beneath the pavement areas where there will be at least 0.5 m of sand under the pavement structure. In order to enhance pavement performance in the south west corner of the site where peat depths are large, preloading is recommended prior to pavement construction.


To minimize future settlements in the southwest corner parking areas, preloading should be carried out to a "yard standard", as indicated on the attached plan Figure 6. This preload should be constructed to at least 1.5 m above final pavement grade, and left in place for 2 to 3 months.

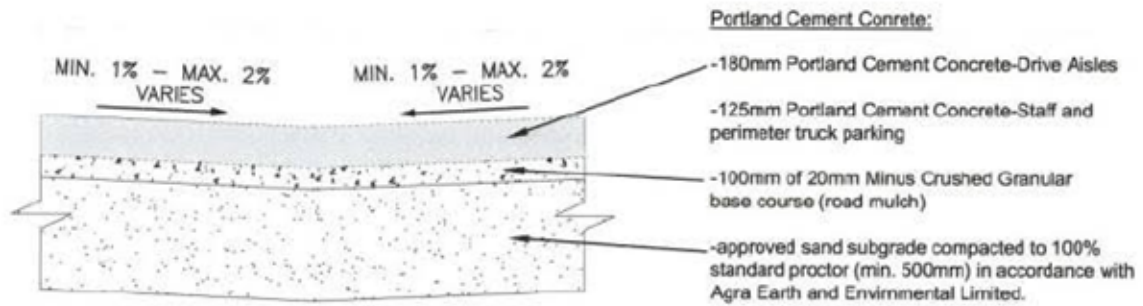
The river sand fill is considered suitable as a subgrade for the road and parking areas if recompacted at subgrade level to at least 95% of SPD.

For on-grade asphalt paved areas, it is recommended that the pavement structure be constructed with a minimum section of:

- 100 mm of asphaltic concrete surface coarse (50 mm lower coarse + 50 mm upper coarse,
- 150 mm of 19 mm minus crushed granular base coarse,
- 500 mm of 75 mm minus pitrun sand and gravel subbase coarse on a sand fill subgrade.

The base and subbase materials should be compacted to a minimum of 100% of SPD. In areas where light vehicles will be parked, asphalt thickness can be decreased to 65 mm and the pit run subbase thickness reduced to 300 mm.

 TRANSMOUNTAIN	
INITIAL	INITIAL
Owner(s)	Company



**TYPICAL PAVEMENT STRUCTURE  
PARKING LOT**

N.T.S.

Portland Cement Concrete:

-180mm Portland Cement Concrete-Drive Aisles


-125mm Portland Cement Concrete-Staff and perimeter truck parking

-100mm of 20mm Minus Crushed Granular base course (road mulch)

-approved sand subgrade compacted to 100% standard proctor (min. 500mm) in accordance with Agra Earth and Environmental Limited.

Notes:

See Structural Drawings for pavement structure and reinforcing at loading bay parking/building apron.

 <b>TRANSMOUNTAIN</b>	
INITIAL	INITIAL
Owner(s)	Company

**Exhibit "B"**

**The Agreement for the Grant of Statutory Right of Way**

THIS AGREEMENT FOR GRANT OF STATUTORY RIGHT OF WAY is made the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ (the “**Agreement Date**”)

– between –

**Costco Wholesale Canada Ltd.**

(the “**Owner**”)

– and –

**Trans Mountain Pipeline ULC**  
in its capacity as general partner of  
Trans Mountain Pipeline L.P.  
(the “**Company**”).

**BACKGROUND:**


- A. The Owner is the registered owner of an estate in fee simple in that land described in Schedule “A” (the “**Lands**”);
- B. The Owner has agreed to sell to the Company, and the Company has agreed to purchase from the Owner, a statutory right of way over the Lands, and for such purposes the parties have agreed to execute and deliver and be bound by the provisions of a registerable document in the form and having the contents of Schedule “B” (the “**ROW Document**”); and
- C. Words and phrases that are defined in the ROW Document and not defined in this Agreement shall have the same meanings in this Agreement as in the ROW Document.

**AGREEMENT:**

The Owner and the Company agree as follows:

**PART 1. KEY TERMS**

- 1.1 Transaction:** The Owner agrees to give and grant to the Company the rights and the interests in the Lands under the ROW Document (the “**Right of Way**”) and the Company agrees to take such grant. For such purposes the Owner and the Company agree to execute and deliver the ROW Document in accordance with this Agreement.
- 1.2 Initial Payment:** The Owner shall be paid the sum of [REDACTED] on entry into this Agreement and delivery of copies of the ROW Document executed by the Owner in accordance with this Agreement. Such payment shall not form part of the compensation for the Right of Way to be given and granted under this Agreement (the “**Compensation**”).
- 1.3 Compensation:** The Compensation will be calculated in accordance with this Agreement based on a per acre payment of [REDACTED] for that part of the Lands required for permanent pipeline right of way, and a per acre payment of [REDACTED] for that part of the Lands required for temporary work space.

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The Compensation based on the per acre payments under this section 1.3 and the areas shown in the sketch plan found in this Agreement (the “**Sketch Plan**”) shall be as follows:

**Table**  
**Purchase Price based on Sketch Plan**

Area	Per Acre	Number of Acres	Payment
Permanent Pipeline Right of Way		1.00 Area of “right of way” on Sketch Plan	
			+
Temporary Work Space		0.91 Area of “workspace” on Sketch Plan	
			=

In this Agreement, “Proposed ROW Area” means that area shown as “right of way” on the Sketch Plan (being the area coloured red or blue on the Sketch Plan).

In this Agreement, the “Temporary Work Space Area” is the area coloured green on the Sketch Plan.

## **PART 2. COMPENSATION PAYMENT OPTIONS**

**2.1 Owner to Choose:** Compensation for the part of the Lands required for Temporary Work Space Area (as defined in Section 4.2) shall be paid as one lump sum. The Owner has the option of requiring Compensation for that part of the Lands required for the Proposed ROW Area to be paid in accordance with one of the following sections in this Part 2 and has selected Compensation being paid under the section shown as chosen below.  
**[Choose either 2.2 or 2.3]**

### **2.2 One Lump Sum Payment:**

<input type="checkbox"/> Check if Owner chooses 2.2	Initial here if Owner chooses 2.2	INITIALS
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If the Owner selects payment under this section then the Owner shall be paid the total Compensation calculated under section 1.3 in one lump sum.

### **2.3 Periodic Payments:**

<input type="checkbox"/> Check if Owner chooses 2.3	Initial here if Owner chooses 2.3	INITIALS
---	-----------------------------------	----------

If the Owner selects payment under this section then the Owner will be paid the Compensation as follows:

- (a) the Owner shall be paid the Compensation for the part of the Lands required for Proposed ROW Area in periodic payments. The aggregate amount of the periodic

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payments shall equal the Compensation for the permanent pipeline right of way calculated under section 1.3;

- (b) the Owner shall be paid the Compensation for the part of the Lands required for Temporary Work Space Area (as calculated under section 1.3) in one lump sum concurrently with the first periodic payment for Compensation for the part of the Lands required for the Proposed ROW Area;
- (c) the first periodic payment for Compensation for the part of the Lands required for the Proposed ROW Area shall be in the amount of \$\_\_\_\_\_; and
- (d) subsequent periodic payments for Compensation for the part of the Lands required for the Proposed ROW Area shall be in the following amounts and shall be paid on the following dates: \_\_\_\_\_

_____
_____
_____
_____


The Compensation payable by the Company under this section 2.3 for the part of the Lands required for the Proposed ROW Area shall be reviewed every five (5) years if the payment period extends beyond five (5) years or any subsequent five (5) year period.

### PART 3. OTHER PAYMENT PROVISIONS

**3.1 Method of Payment:** Any payment to be made by the Company to the Owner under this Agreement shall be made by delivery to the Owner of a cheque payable to the Owner in the amount of the payment.

**3.2 Compensation Includes:** The Owner acknowledges and agrees that the Compensation payable by the Company to the Owner for the Right of Way under this Agreement shall be full compensation for:

- (a) all changes to that part of the Lands included in the Proposed ROW Area and final Temporary Work Space Area by virtue of the exercise of the Pipeline Rights;
- (b) any decrease in the value of the Lands as a result of the grant to the Company of the Right of Way as modified by this Agreement; and
- (c) the restrictions on the Owner's use of the Lands (or any part thereof) and on any nearby parcels of land that are owned by the Owner under or by virtue of the ROW Document as modified by this Agreement, including, without limitation:
  - (i) any restriction on the Owner's use of the ROW Area by the operation of Section 335 of the CER Act, provided that the Company expressly consents to, and acknowledges that, the ROW Area shall continuously be used as an industrial parking lot for various vehicles ancillary to the distribution facility located on the Lands; and

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- (ii) any adverse effect on the portion of the Lands outside of the ROW Area and on any nearby parcels of land that are owned by the Owner, including the restriction of their use by the operation of Section 335 of the CER Act,

in each case subject to the Company's obligations to restore and compensate under the ROW Document and this Agreement, but does not include compensation for above ground works as provided for in the ROW Document.

**3.3 GST on Purchase Price:** The monies payable to the Owner under this Agreement do not include goods and services tax ("GST"). Trans Mountain Pipeline L.P.'s GST number is 85332 7591 RT0001 and such limited partnership will, where applicable, self-assess GST payable on such monies and remit it directly to Canada Revenue Agency.

**3.4 Owner Resident of Canada:** The Owner hereby represents and warrants that the Owner is not a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).

**3.5 GST Registration:** The Owner hereby represents and warrants that ☒ it is or ☐ is not **[choose one]** duly registered under Subdivision (d) of Division V of Part IX of the *Excise Tax Act* (Canada) with respect to GST and if so registered its GST registration number is: 121 476 329 RT0001. **If the Owner is an individual and is not registered with respect to GST under the *Excise Tax Act*, the Owner represents and warrants it is not required be registered with respect to GST under that Act.**


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#### PART 4. PIPELINE RIGHTS LIMITED BY SKETCH PLAN UNTIL PARTIAL DISCHARGE

**4.1 Permanent Right of Way:** Save as provided in section 4.2 hereof, and despite the provisions of the ROW Document (the "**ROW Provisions**"), until the Pipeline Rights are limited to that part of the Lands included in the ROW Plan under the ROW Provisions (the "**Partial Discharge**") THE COMPANY SHALL NOT in any manner exercise the Pipeline Rights across, over, under, in, through and on any part of the Lands except the Proposed ROW Area.

**4.2 Temporary Workspace:** Until the completion of the construction and installation of the Permitted Pipeline within the Proposed ROW Area, but not thereafter, the Company shall also be at liberty to exercise those of the Pipeline Rights set out in Section 3 of the ROW Provisions across, over, through and on that part of the Lands shown coloured green (the "**Temporary Work Space Area**") on the Sketch Plan, PROVIDED HOWEVER that:

- (a) such exercise shall extend only to use required as a staging area for the construction and installation of the Permitted Pipeline within the Proposed ROW Area. The Company and the Owner have attached an outline of planned timelines and phases of construction in Schedule D. Such timelines and phases of construction are attached for illustration purposes only and are subject to change by the Company, as may be required for the Company's construction needs, on such notice to the Owner as may be reasonable in the circumstances;

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- (b) shall not include the permanent construction or installation of the Permitted Pipeline or any other permanent works within the Temporary Work Space Area; and
- (c) the Owner shall not exercise any Pipeline Rights during the months of November and December in any calendar year, if to do so would in any way hinder, prevent or impede the Owner's access to the surface of the Lands comprising the Proposed ROW Area and the Temporary Work Space.

Subject to Section 4.2(c), the Owner agrees that on request by the Company and with its approval in writing, not to be unreasonably refused, the boundaries of the Temporary Work Space Area may be altered in a non-material way from those shown on the Sketch Plan to facilitate the construction and installation of the Permitted Pipeline within the Proposed ROW Area in accordance with the requirements of the Company, including to accommodate conditions within the Proposed ROW Area and Temporary Work Space Area, including topographical and/or soil conditions. The Owner's obligation in this section concerning the alteration of the boundaries of the Temporary Work Space Area shall lapse on the Owner ceasing to be the registered owner of an estate in fee simple in the Lands. The Company's right to access the Proposed ROW Area and the Temporary Work Space Area through the Lands will be restricted to a right to access such areas by way of the "Access Area" as defined in that Agreement for Temporary Use of Land for Access Road entered into from time to time between the Company and the Owner.

**4.3 Payment on Adjustment:** If any modification of the boundaries of the Temporary Work Space Area on the Sketch Plan is made under section 4.2 the Company shall make a payment to the Owner for additional Temporary Work Space Area equal to the product of the increase in the Temporary Work Space Area (in acres) times the per acre compensation for temporary work space under section 1.3. Payment of that amount shall be made in one lump sum at the same time that payment is made under subsection 6.3, or within 30 days of modification under section 4.2 if payment has already been made under subsection 6.3.

**4.4 ROW Area until Partial Discharge:** For, during and in respect of the period of time up to the Partial Discharge and anything done during that period, the rights and obligations of the parties concerning the ROW Area under the ROW Provisions shall be exercised, performed and observed only in respect of the Proposed ROW Area together with Temporary Work Space Area, and in accordance with this Agreement.

**4.5 Preparation of ROW Plan:** The boundaries of the ROW Plan that is prepared and deposited in the land title office for the Lands (the "LTO") under the ROW Provisions (for the purpose of limiting the Pipeline Rights to the area of the Lands included in such plan) shall be located and determined by the British Columbia Land Surveyor who carries out the survey represented by the ROW Plan, based on the boundaries of the Proposed ROW Area shown in the Sketch Plan. If the area of the ROW Area according to the ROW Plan is greater than the area of the Proposed ROW Area the Company shall make an adjustment payment to the Owner in the amount equal to the product of the difference in the areas (in acres) times the per acre compensation for permanent pipeline right of way under section 1.3. If the Owner has selected payment under section 2.2 then payment of that amount shall be made in one lump sum within 30 days of the deposit of the ROW Plan in the LTO. If the Owner has selected payment under section 2.3 then payment of

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that amount shall be included in the periodic payments that remain to be made 30 days after the deposit of the ROW Plan in proportion to the amounts of such payments specified in section 2.3.

**4.6 Restoration of Temporary Workspace:** Despite anything to the contrary in the ROW Provisions, within 180 days after the construction and installation of the Permitted Pipeline within the Proposed ROW Area, but in any event no later than the date of the expiry of the term (as extended or renewed) of the Agreement for Temporary Use of Land for Access Road dated on or about the date hereof between the Company and the Owner, the Company shall, except as otherwise agreed to by the Owner, restore the Temporary Work Space Area or anything on it disturbed under section 4.2 in accordance with the following, if and to the extent applicable:

- (a) cause all construction debris to be removed from the Temporary Work Space Area;
- (b) replace all topsoil removed from and grade and contour the Temporary Work Space Area and replace any landscaping removed by the Company so it is suitable for any prior use; and
- (c) restore pre-existing Improvements (including cement and asphalt surfaces) on the Temporary Work Space Area in accordance with the Owner's paving specifications as set out in Schedule "E" and otherwise restore the Temporary Work Space Area to a condition suitable for any prior use (including the parking thereon by the Owner of its trucks).

## **PART 5. SALE OF LANDS BY OWNER**


**5.1 Payment of Compensation Following Sale:** Despite any sale of the Lands the Company shall continue to make payments under this Agreement to the Owner named herein unless the Company becomes obligated to make such payments, or any of them, to a person other than the Owner named herein, including without limitation, as a result of the right to receive such payments, or any of them, having been assigned.

**5.2 Modification of Areas Following Sale:** If the Owner ceases to be the registered owner of an estate in fee simple in of the Lands, the obligations of the Company under the provisions of Part 4 shall enure to the benefit of the Owner's successors in title to the Lands, provided that those obligations may be amended by agreement in writing between the Company and the Owner's then successor in title to the Lands, including without limitation, by agreement under which a new sketch plan is agreed to be the sketch plan found in this Agreement.

## **PART 6. COMPLETION OF TRANSACTION**

**6.1 Execution of ROW Document:** If execution and delivery of the ROW Document by the Owner and the Company is not completed concurrently with their execution of this Agreement, it shall be completed as follows:

- (a) immediately following this Agreement being entered into the Owner will deliver to the Company all copies of the ROW Document provided to it by the Company executed in registrable form by the Owner; and

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- (b) following that delivery by the Owner the Company shall execute such copies and deliver one fully executed copy to the Owner.


If the Owner includes more than one person and the ROW Document is executed by the Owner in counterparts then two copies of each counterpart executed in registrable form by the Owner signing it shall be delivered to the Company and the Company shall execute all counterparts and deliver one copy of each counterpart so executed by it to the Owner.

**6.2 Owner Shall not Grant Encumbrances:** The Company acknowledges and agrees that the Lands are currently subject to the charges and encumbrances as shown on the indefeasible title to the Lands attached hereto as Schedule "A" and any subsisting conditions, provisos, restrictions, exceptions and reservations, including royalties, contained in the original grant or contained in any other grant or disposition from the Crown (collectively, the "**Permitted Encumbrances**") and that the Right of Way shall be granted by the Owner to the Company and registered subject only to the Permitted Encumbrances and any other encumbrances other than those referred to in the last sentence of this Section 6.2. The Owner agrees that it shall not grant any lease, easement, right of way or similar encumbrance over any part of the Proposed ROW Area or the Temporary Work Space Area or any other encumbrance over the Lands which would defeat the Company's interests under this Agreement until the Right of Way has been registered against the indefeasible title to the Lands.

**6.3 Satisfactory Registration and Payment:** After the completion of the execution and delivery of the ROW Document the Company shall, within 20 business days of receiving the fully executed ROW Document, make application for registration of the Right of Way to the LTO. Within 30 days after the completion of the registration of the Right of Way against the title to the Lands maintained in the LTO subject only to the Permitted Encumbrances and any other encumbrances other than those referred to in the last sentence of section 6.2 the Company shall pay to the Owner:

- (a) if the Owner has selected payment by one lump sum under section 2.2 - the total Compensation calculated under section 1.3; or
- (b) if the Owner has selected payment by periodic payments under section 2.3 - the first periodic payment for the part of the Lands required for the Proposed ROW Area specified in subsection 2.3(b) PLUS the portion of the Compensation related to the part of the Lands required for Temporary Work Space Area as one lump sum.

**6.4 No Satisfactory Registration:** If following the Company making application for registration of the Right of Way to the LTO under section 6.3 the Right of Way is not registered against the title to the Lands maintained in the LTO subject only to the Permitted Encumbrances and any other encumbrances other than those referred to in the last sentence of Section 6.2 in the ordinary course of the operation of the LTO the Company shall be at liberty to, at its option and discretion, register such document as may be necessary to discharge the Right of Way from the title to the Lands maintained in the LTO. Upon the completion of such discharge this Agreement and the Right of Way shall terminate, and the rights and obligations of the parties hereunder and under the ROW Provisions shall be of no further force or effect.

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## **PART 7. ACKNOWLEDGEMENT OF RECEIPT OF ROW DOCUMENT**

The Owner acknowledges and agrees that prior to the execution of the ROW Document by the Owner the Company gave to the Owner, and the Owner was in possession of, a copy of this Agreement, including of the ROW Document attached as a Schedule "B" to this Agreement.

## **PART 8. OTHER PROVISIONS**

**8.1 Additional Terms and Conditions:** This Agreement is subject to any additional terms and conditions set out in Schedule "C" hereto. If there is any conflict between the provisions of Schedule "C" and the other provisions of this Agreement, the provisions of Schedule "C" shall govern.

**8.2 Notices:** Save as otherwise provided herein, any notice or other communication or delivery given under this Agreement may be:

- (a) delivered by hand, in which case it shall be deemed to have been received on delivery; or
- (b) 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 business day following the day of mailing;


PROVIDED THAT any notice delivered by hand that is delivered other than prior to 4:00 p.m. local time at the address of the addressee on a business day, shall be deemed to be received on the next following business day. The addresses of the Company and the Owner for such purpose shall be in accordance with the following contact information:

FOR THE OWNER:

Name: c/o Costco Wholesale Canada Ltd.  
Address: 415 West Hunt Club Road, Ottawa, ON K2E 1C5  
Attention: Legal Department  
  
Fax Number: 613.221.2281

WITH A COPY (NOT CONSTITUTING NOTICE) TO:

Name: Kahn Zack Ehrlich Lithwick LLP  
Address: Suite 300-10991 Shellbridge Way, Richmond, BC V6X 3C6  
Attention: Perry S. Ehrlich and Elizabeth M. Khean  
Phone Number: 604.270.9571  
Email Address: [ehrllich@kzellaw.com](mailto:ehrllich@kzellaw.com) and [ekhean@kzellaw.com](mailto:ekhean@kzellaw.com)  
Fax Number: 604.270.8282

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FOR THE COMPANY:

Address: Suite 2700, 300 – 5th Avenue SW, Calgary, AB T2P 5J2  
Attention: Land Department  
Phone Number: 403.514.6400, Toll Free: 1.866.514.6700  
Email Address: [info@transmountain.com](mailto:info@transmountain.com)  
Fax Number: 403.514.6401


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.

**8.3 Acknowledgement of Section 87/Section 322 Notice:** The Owner acknowledges receipt of a notice given pursuant to section 87(1) of the *National Energy Board Act* (the “**NEB Act**”) and/or pursuant to section 322(1) of the *Canadian Energy Regulator Act* (the “**CER Act**”) given prior to the entering into of this Agreement, setting out or accompanied by:

- (a) a description of the lands of the Owner required by the Company for a section or part of a pipeline;
- (b) details of the compensation offered by the Company for the lands required;
- (c) a detailed statement made by the Company of the value of the lands required in respect of which compensation was offered;
- (d) a description of the procedure for approval of the detailed route of the pipeline; and
- (e) a description of the procedure available under Part V of the NEB Act and/or Part 6 of the CER Act, as applicable, in the event that the Owner and the Company are unable to agree on any matter respecting the compensation payable.

**8.4 Merger:** None of the provisions of this Agreement, including but not limited to the Schedules attached hereto, shall merge on the closing of the transaction contemplated herein and the provisions of this Agreement shall be and remain in full force and effect despite any provision to the contrary contained in the ROW Provisions

**8.5 Representations & Warranties:** There are no representations, warranties, guarantees, promises or agreements concerning the subject matter of this Agreement other than those set out in this document.

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- 8.6 Interpretation:** Wherever the singular or masculine or neuter is used in this Agreement, it shall be construed as if the plural or feminine or neuter, as the case may be, had been used where the context so requires. If the Owner is comprised of more than one person the obligations and liabilities of the persons included in the Owner hereunder shall be joint and several.
- 8.7 Headings:** The division of this Instrument into sections and the insertion of headings are for convenience of reference only and shall not affect the interpretation of this Agreement.
- 8.8 Binding Effect.** This Agreement shall run with and bind the Owner's interest in the Lands. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective, heirs, executors, administrators, successors and assigns.
- 8.9 Counterparts:** This Agreement may be executed in any number of counterparts with the same effect as if all parties had all signed the same document.
- 8.10 Governing Law:** This Agreement shall be governed by and construed in accordance with the laws in force in the Province of British Columbia and the laws of Canada applicable therein.


IN WITNESS WHEREOF the parties have executed this Agreement.

WITNESS:

_____	)	<b>Costco Wholesale Canada Ltd.</b>
	)	
	)	
	)	
_____	)	_____
Name:	)	<b>Per:</b>
	)	
	)	
_____	)	_____
Name:	)	<b>Per:</b>
	)	
	)	

**TRANS MOUNTAIN PIPELINE ULC**  
**in its capacity as general partner of**  
**TRANS MOUNTAIN PIPELINE L.P.**  
**Per:**

\_\_\_\_\_  
**Name:**  
**Title:**


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Owner(s)	Company

## SCHEDULE C

### Additional Terms and Conditions


The Owner and the Company agree to the following additional terms and conditions, which shall be read and construed along with the terms and conditions of that certain Agreement made between the Company and the Owner dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to which this Schedule C is attached.

1. The following terms have the following meanings:
  - (a) **“Environmental Laws”** means any law, by-law, order, ordinance, ruling, regulation, certificate, approval, policy, guideline, consent or directive of any applicable federal, provincial or municipal government, governmental department, agency or regulatory authority or any court of competent jurisdiction, as well as any common-law obligations or requirements, relating to environmental or health and safety matters and/or regulating the generation, import, storage, distribution, labeling, sale, use, handling, transport or disposal of any Hazardous Substances which may be in force from time to time;
  - (b) **“Governmental Authority”** means any government, regulatory authority, governmental department, agency, commission, bureau, official, minister, crown corporation, court, board, tribunal, dispute settlement panel or body or other law, rule or regulation-making entity: (i) having jurisdiction on behalf of any nation, province, state or other geographic or political subdivision thereof; or (ii) exercising, or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; and
  - (c) **“Hazardous Substances”** means any pollutants, contaminants, wastes of any nature, hazardous substances, hazardous materials, toxic substances, prohibited substances, dangerous substances or dangerous goods as defined, judicially interpreted or identified in any Environmental Laws including any oils, asbestos, asbestos containing materials or substances related thereto.
2. The Company is solely responsible for obtaining all permits and third-party consents which may be required in connection with the exercise by it of any of its rights under this Agreement or under the ROW Document.
3. Nothing in the ROW Document shall affect the rights and obligations of the parties set forth in this Agreement, and this Agreement shall take effect despite any provision to the contrary contained in the ROW Document. The indemnity provisions set forth in this Agreement shall survive expiration or termination of this Agreement and shall in no way be limited.
4. The Company covenants and agrees:
  - (a) to strictly comply, and cause any person for whom it is in law responsible to comply, with all Environmental Laws regarding the use of the Lands by the Company. If the Company is in violation of any Environmental Laws related to the Lands, it

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undertakes to remedy such violation to the extent so required and within the time period set out in such Environmental Laws;

- (b) to promptly notify the Owner in writing of any release of a Hazardous Substance caused or related to the Pipeline or the exercise of the Pipeline Rights or any other occurrence or condition on the Lands or any adjacent property that could contaminate the Lands or subject the Owner or the Company to any fines, penalties, orders, investigations, or proceedings under Environmental Laws;
- (c) promptly notify the Owner of any charges laid by any Governmental Authority or notice by any Governmental Authority alleging or concerning violation of any Environmental Laws relating to the Lands or the operations therein by the Company or any person for whom it is in law responsible, and of any order made by any Governmental Authority against the Company or any person for whom it is in law responsible for which relates to the Lands. The Company shall also promptly notify the Owner of any notice received by it from any other third party concerning any release or alleged release of any Hazardous Substances from the Lands arising from the Pipeline or the Company's exercise of its rights pursuant to this Agreement;
- (d) at any time if ordered by any Governmental Authority under Environmental Laws, to investigate, monitor or remove from the Lands all Hazardous Substances, and/or to remediate by removal any contamination of the Lands or any adjacent property resulting from Hazardous Substances, in any such case used, held, released, discharged, abandoned or placed upon, onto, at and/or from the Lands or released into the environment by the Company or any person for whom the Company is in law responsible. The Company shall perform these obligations promptly at its own cost and in accordance with Environmental Laws. The Company shall use a qualified environmental consultant to perform the remediation. The Company shall, at its own cost, obtain such approvals and certificates from all applicable Governmental Authorities in respect of the remediation as are required under Environmental Laws. All such Hazardous Substances shall remain the property of the Company, notwithstanding any rule of law to the contrary and notwithstanding the degree of their affixation to the Lands;
- (e) to indemnify the Owner and its directors, officers, employees, agents, successors, and assigns from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties, and expenses whatsoever (including any and all environmental or statutory liability for remediation, all legal and consultants' fees and expenses and the cost of remediation of the Lands and any adjacent property) arising from or in connection with:
  - (i) any breach of or non compliance with the provisions of Agreement by the Company; or
  - (ii) any release of any Hazardous Substances at or from the Lands relating to the Pipeline.
- (f) For certainty, the Company shall not have any liability for pre-existing Hazardous Substances in, on or under the Lands.

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Owner(s)	Company


**SCHEDULE D**

**Timelines and Phases of Construction**

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**SCHEDULE E**

**Paving Specifications**

 <b>TRANSMOUNTAIN</b>	
INITIAL	INITIAL
Owner(s)	Company

## TERMS OF INSTRUMENT – PART 2

### WHEREAS:

- A. The Owner is the registered owner of an estate in fee simple in those lands and premises situated in the Province of British Columbia, legally described in Item 2 of the Form C (the "**Lands**");
- B. The Company has been designated under the *Land Title Act* (British Columbia) to be the grantee of the statutory right of way herein granted; and
- C. The statutory right of way herein granted is necessary for the operation and maintenance of the Company's undertaking.

**IN CONSIDERATION OF** the sum of Ten Dollars (\$10) paid by each party to the other, the receipt of which is acknowledged, and in consideration of the covenants and agreements on the part of the parties hereinafter set forth, the parties do grant, covenant and agree as follows:

1. **Defined Terms:** The words and phrases defined in Schedule "A" hereto shall have the respective meanings set out in that Schedule when used in this Instrument.
2. **Limit Area of Pipeline Rights:** Within 180 days after the Company having constructed and installed the Permitted Pipeline it shall cause the boundaries of a permanent right of way through the Lands for the Permitted Pipeline to be surveyed by a British Columbia Land Surveyor, and shall cause a statutory right of way plan of that part of the Lands included in those boundaries based on that survey to be prepared (the "**ROW Plan**") and deposited in the LTO. Following deposit of the ROW Plan in the LTO the Pipeline Rights shall be restricted to that part of the Lands included in the ROW Plan, and the Company shall cause the Pipeline Rights to be partially discharged as to that part of the Lands not included in the ROW Plan and provide the Owner with a copy of the ROW Plan and evidence of such partial discharge, such partial discharge to be completed within 210 days after the date on which the Company has constructed and installed the Permitted Pipeline.
3. **Pipeline Rights:** The Owner grants, conveys, sets over and transfers to the Company a statutory right of way on, over, upon, across, along, in, under and through the ROW Area for the Company, its employees, agents, contractors, subcontractors, successors and assigns, with or without materials, supplies, workers, vehicles, machinery and equipment, at all times hereafter and by day and by night, and at their will and pleasure, to:
  - (a) survey, construct, operate, maintain, inspect, patrol (including by aerial patrol), alter, remove, replace, reconstruct and repair a Pipeline within the ROW Area and for such purposes remove from the ROW Area any Improvements, Soil, Placed Soil or Vegetation on the ROW Area, and to carry out surveys, tests and examinations within the ROW Area and to place Soil on the ROW Area;
  - (b) remove from the ROW Area any Incompatible Use on the ROW Area from time to time, including any Improvement, Soil, Placed Soil or Vegetation from time to time on the ROW Area that is an Incompatible Use, and to place Soil on the ROW Area to fill in any Excavation thereon;
  - (c) enter, labour, go, be, return, pass and repass within the ROW Area for the foregoing purposes and to travel over the ROW Area for the purposes of the construction, installation, use, operation and maintenance of the Company's undertaking; and



- (d) generally to do all things necessary or incidental to the undertaking of the Company in connection with the foregoing.

4. **Restoration and Compensation following Work:** Following any exercise of the Pipeline Rights that results in the disturbance of any part of the ROW Area or anything on it, as soon as weather and soil conditions permit, and to the extent it is practicable to do so, the Company shall, except as otherwise agreed to by the Owner, if and to the extent applicable:

- (a) cause all construction debris to be removed from that part of the ROW Area;
- (b) replace all topsoil removed from and grade and contour that part of the ROW Area so it is suitable for its use as a pipeline right of way under this Instrument and any prior use thereof that is not an Incompatible Use; and
- (c) restore Permitted Improvements on that part of the ROW Area, and otherwise leave that part of the ROW Area in a condition suitable for its use as a pipeline right of way under this Instrument and any prior use of it that is not an Incompatible Use.

5. **Compensate Owner:** The Company shall compensate the Owner for damages caused by the Company's operations, pipelines or abandoned pipelines to the extent contemplated by the provisions of the CER Act governing compensation. For certainty the Company's obligation to compensate the Owner for damages suffered by the Owner under this section shall not extend to any damages for which the Owner has been or will be otherwise compensated by the Company including by payment for the rights and interests hereby granted, or has been or will be otherwise compensated by the Company as a result of the entry into this Instrument (including, without limitation, restrictions on the use of land arising by the operation of Section 335 of the CER Act). In this section 5 and in section 6 "pipelines" and "abandoned pipelines" have the meanings given in the CER Act.

6. **Indemnify Owner:** The Company shall be liable for and shall indemnify and save harmless the Owner and its directors, officers, employees, agents, contractors, licensees and invitees from all liabilities, damages, costs (including legal, consulting and professional fees), claims, suits and actions resulting from or arising in connection with the Company's operations, pipelines or abandoned pipelines, any exercise of the Pipeline Rights or any breach by the Company of any term or condition of this Agreement, other than liabilities, damages, claims, suits and actions resulting from the gross negligence or willful misconduct of the Owner.

7. **Incompatible Use:** The Owner shall not make, do, install or construct or permit or suffer to be made, done, installed or constructed any Incompatible Use within the ROW Area.

8. **Ownership of Pipeline:** Notwithstanding that in constructing, operating, maintaining, inspecting, altering, removing, replacing, reconstructing and repairing a Pipeline within the ROW Area the Company may install pipe and installations, equipment, fittings and facilities included in, associated with, appurtenant, affixed or incidental thereto, within the ROW Area in such a manner that it or they become affixed to the Lands, the title to such pipe and installations, equipment, fittings and facilities included in, associated with, appurtenant, affixed or incidental thereto shall until surrendered or abandoned remain in the Company and the Company may at any time remove the whole or any part of the Permitted Pipeline.

9. **Quiet Enjoyment:** The Company shall peaceably hold and enjoy the rights and statutory right of way hereby granted and given without hindrance, molestation or interruption on the part of the Owner or on the part of a person, firm or corporation claiming by, through, under or in trust for the Owner. If the Company shall fail to perform or observe any of its obligations under this Instrument the sole remedy the Owner or any other person having an interest in the Lands shall have is to recover from the Company damages for its default, and in no event shall the Owner or any other person having an interest in the Lands interfere with, hinder, molest or interrupt the Company in its use and enjoyment of the rights and the statutory right of way herein granted.

10. **Other Rights Preserved:** Nothing in this Instrument shall affect or prejudice the Company's rights in respect of the Lands under the provisions of any other statutory right of way

held by the Company that encumbers the Lands or under applicable laws.

11. **Additional Compensation for Above Ground Works:** Where the Company requires any part of the Permitted Pipeline to be installed above ground (other than pipeline markers and cathodic protection test leads) or requires any part of the ROW Area to be fenced, the Owner shall be entitled to additional compensation to be agreed upon between the parties, or failing agreement, pursuant to the procedure available under Part 6 of the CER Act.

12. **Successors and Assigns:** The provisions of this Instrument shall extend to, be binding upon, and enure to the benefit of the heirs, executors, administrators, successors and assigns of the Owner and the Company, respectively.

13. **Interpretation:** Wherever the singular or the masculine or neuter gender is used in this Agreement, 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 Owner is comprised of more than one person the obligations and liabilities of the persons included in the Owner hereunder shall be joint and several.

14. **Headings:** The division of this Instrument into sections and the insertion of headings are for convenience of reference only and shall not affect the interpretation of this Instrument.

15. **Severability:** If any provision of this Instrument or any part thereof is determined to be void or invalid, it shall be severed, and the remainder of this Instrument shall be and remain in force and effect and shall be construed as if such void or invalid provision or part had been deleted from it.

16. **No Waiver:** No failure or delay on the part of the Company in exercising the Pipeline Rights or any other right, power or privilege under this Instrument shall operate as a waiver thereof, nor shall any single or partial exercise of the Pipeline Rights or any other right, power or privilege under this Instrument preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

17. **Entire Agreement:** This Instrument sets forth the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings between the parties with respect thereto, whether written or oral, and there are no promises, covenants, agreements, conditions, representations, warranties or collateral agreements whatsoever, express or implied, between the parties with respect to the subject matter hereof, other than those contained in this Instrument; Provided, however, that nothing in this section shall affect the rights and obligations of the parties set forth in any agreement in writing concerning the Lands, or any part thereof, that is expressed to take effect despite any provision to the contrary contained in this Instrument. No modification or amendment of this Instrument shall be binding unless executed in writing by the parties.

18. **Notices:** Save as otherwise provided herein, any notice or other communication or delivery given under this Instrument may be:

- (a) delivered by hand, in which case it shall be deemed to have been received on delivery; or
- (b) 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 business day following the day of mailing;

PROVIDED THAT any notice delivered by hand that is delivered other than prior to 4:00 p.m. local time at the address of the addressee on a business day shall be deemed to be received on the next following business day. The address of the Company for such purpose shall be Suite 2700, Stock Exchange Tower 300 - 5th Avenue S.W., Calgary, Alberta, T2P 5J2 Attention: Legal Department, and the address of the Owner shall be the address that appears on the indefeasible title for the Lands maintained by the LTO at the time the notice is given. 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.

19. **Arbitration:** In the event of any dispute between the parties arising under or in relation to this Instrument, or the rights and obligations of the parties or either of them under it, unless the same shall be determinable under the provisions of the CER Act the same shall be decided by a single arbitrator pursuant to the provisions of the applicable provincial arbitration legislation then in force in British Columbia, as amended or replaced from time to time. The decision of the arbitrator shall be final and binding upon the parties. The arbitrator shall be authorized to make a determination of and assess responsibility for the costs of the arbitration.

20. **Compliance with Laws:** The Company shall comply with laws applicable to the Company in connection with the Pipeline, the exercise of its rights pursuant to this Agreement and the performance of its obligations hereunder, including but not limited to all applicable Environmental Laws.

21. **Permits/Consents:** The Company shall be solely responsible for obtaining all permits and third-party consents which may be required in connection with the exercise by it of any of its rights under this Agreement.

22. **Counterparts:** This Instrument may be executed in any number of counterparts with the same effect as if all parties had all signed the same document.

23. **Governing Law:** This Instrument shall be governed by and construed in accordance with the laws in force in the Province of British Columbia and the laws of Canada applicable therein.

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#### **Schedule "A" - Defined Terms**

1. **"Approval"** means an approval in writing by the Company under this Instrument or otherwise, including any conditions of approval;

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

3. **"Company"** shall mean the person or persons named in Item 6 of the Form C as the Transferee(s) and the successors and assigns thereof;

4. **"Excavation"** means a mine, quarry, well, pit, hole, trench, ditch, foundation or other excavation of any kind or nature of, on or under land;

5. **"Environmental Laws"** means any law, by-law, order, ordinance, ruling, regulation, certificate, approval, policy, guideline, consent or directive of any applicable federal, provincial or municipal government, governmental department, agency or regulatory authority or any court of competent jurisdiction, as well as any common-law obligations or requirements, relating to environmental or health and safety matters and/or regulating the generation, import, storage, distribution, labeling, sale, use, handling, transport or disposal of any Hazardous Substances which may be in force from time to time;

6. **"Form C"** means Part 1 of a General Instrument that incorporates these charge terms as Part 2 and all schedules and addenda to it;

7. **"Hazardous Substances"** means any pollutants, contaminants, wastes of any nature, hazardous substances, hazardous materials, toxic substances, prohibited substances, dangerous substances or dangerous goods as defined, judicially interpreted or identified in any

Environmental Laws including any oils, asbestos, asbestos containing materials or substances related thereto;

8. **"Improvement"** means a building, structure, erection, pipe, pole, tower, road, pavement, foundation, improvement or thing of any kind or nature constructed or installed within land;

9. **"including"** means including without limitation;

10. **"Incompatible Use"** means any use, activity or thing within the ROW Area that would materially interfere with, disrupt or delay the exercise of the statutory right of way granted herein or that imperils the safety or security of the Permitted Pipeline as constructed and installed within the ROW Area under this Instrument, or any part thereof, or any person or property in relation to such Pipeline or any part thereof, and includes the use of any part of the ROW Area for, the carrying out within the ROW Area of, or the existence within the ROW Area of, any Excavation, dumping or removing Soil, or any Improvement that is not a Permitted Improvement;

11. **"LTO"** means the land title office for the Lands under the *Land Title Act* (British Columbia);

12. **"Owner"** means the person or persons named in Item 5 of the Form C as the Transferor(s) and the heirs, executors, administrators, successors and assigns thereof;

13. **"Permitted Improvement"** means an Improvement for which there is an Approval and for which there has been compliance with any conditions that are part of that Approval;

14. **"Permitted Pipeline"** means the Pipeline constructed and installed by the Company within the ROW Area under this Instrument and replacements and renewals thereof;

15. **"Pipeline"** means a pipeline for the transportation, storage and handling of oil, other liquid and gaseous hydrocarbons, and products thereof and all installations, equipment, fittings and facilities included in, associated with, appurtenant, affixed or incidental thereto, including pipes, drips, valves, fittings, connections, meters and cathodic protection equipment, and telecommunication and electrical facilities used for or in the operation and maintenance of the pipeline;

16. **"Pipeline Rights"** means the statutory right of way granted over the ROW Area by and under section 3 of this Instrument;

17. **"Placed Soil"** means Soil that has been deposited, dumped or placed on land;

18. **"ROW Area"** means the Lands prior to the partial discharge of the Pipeline Rights under section 2 of this Instrument, and following that partial discharge means that part of the Lands included in the ROW Plan;

19. **"ROW Plan"** has the meaning given in section 2 of this Instrument;

20. **"Soil"** means soil, fill, earth, sand, gravel, and other material of any kind or nature of which land is composed;

21. **"Vegetation"** means trees, shrubs, nursery stock and other vegetation and includes the limbs or growth of any Vegetation; and

22. **"within"** means across, over, under, in, through and on.

In Witness Whereof the parties acknowledge that this Instrument has been duly executed and delivered by the parties executing the Form C attached to and forming part of this Instrument.

**END OF DOCUMENT**

## **Exhibit "C"**

### **The Phasing Plan**

# Costco Wholesale Canada Ltd

Draft Execution Plan - September 23, 2020

Proposed access to construction site

100a Ave

**CONSTRUCTION STAGE 1**  
DURATION - 45 Working Days

Proposed access to construction site

## LEGEND

- Construction Work Space
- Trench Box Construction
- Trenchless Construction
- Access Road Workspace

**Important Note:** Tractor trailers parked along the south side of the property will need to be moved North to allow construction work space. Work area to be fenced off from Costco operations.

**Stage 1 (GHAB Construction)**  
- Construction dur = 45 working days (est.)

### Stage 1 (Trench Box Construction)

- Construction dur = 45 working days (est.)
- Trench will be shored utilizing sheetpiles or trench boxes
- Full site remediation to exist. Conditions or better after completion of construction

18 LM

215 LM

25 LM

CWP 23

CWP 22



# Costco Wholesale Canada Ltd

Draft Execution Plan - September 23, 2020

**CONSTRUCTION STAGE 2**  
**DURATION - 45 Working Days**

Proposed access to construction site

100a Ave

Proposed access to construction site

## LEGEND

- Construction Work Space
- Trench Box Construction
- Trenchless Construction
- Access Road Workspace

**Important Note:** Tractor trailers parked along the south side of the property will need to be moved North to allow construction work space. Work area to be fenced off from Costco operations.

### Stage 2 (Trench Box Construction)

- Construction dur = 45 working days (est.)
- Trench will be shored utilizing sheetpiles or trench boxes
- Full site remediation to exist. Conditions or better after completion of construction

CWP 23

210 LM

18 LM

CWP 22