

ORDINANCE NO. 2010-05-032

**AN ORDINANCE GRANTING , TRANS MOUNTAIN PIPELINE (PUGET SOUND) LLC, A WASHINGTON LIMITED LIABILITY COMPANY, ITS SUCCESSORS, GRANTEES AND ASSIGNS, THE NONEXCLUSIVE RIGHT, PRIVILEGE, AUTHORITY AND FRANCHISE TO CONSTRUCT, OPERATE, MAINTAIN, REMOVE, REPLACE, AND REPAIR EXISTING PIPELINE FACILITIES, TOGETHER WITH EQUIPMENT AND APPURTENANCES THERETO, FOR THE TRANSPORTATION OF PETROLEUM PRODUCTS AND BYPRODUCTS WITHIN AND THROUGH THE CITY OF BELLINGHAM.**

WHEREAS, Trans Mountain Pipeline (Puget Sound) LLC (hereinafter "Grantee") has applied for a nonexclusive Franchise to operate and maintain a petroleum pipeline within and through the City of Bellingham (hereinafter the "City" or "Grantor"); and,

WHEREAS, the state statutes and City ordinances authorize the City to grant nonexclusive Franchises;

**NOW, THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:**

**Section 1. Definitions.**

For the purposes of this Franchise and all exhibits attached hereto, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning.

1.1 Construct or Construction shall mean removing, replacing, and repairing Facilities and may include, but is not limited to, digging and/or excavating for the purposes of removing, replacing, and repairing Facilities.

1.2 Effective Date shall mean the date designated herein, after passage, approval and legal publication of this Ordinance and acceptance by Grantee, upon which the rights, duties and obligations shall come into effect and the date from which the time requirement for any notice, extension and/or renewal will be measured.

1.3 Facilities shall mean the Grantee's existing pipeline system including, without limitation, all pipelines, valves, mains, markers, cathodic protection systems, test caps and appurtenances used to transport or distribute Grantee's petroleum product(s).

1.4 Franchise shall mean this Franchise and any amendments, exhibits, or appendices to this Franchise.

1.5 Franchise Area shall mean the area within the jurisdictional boundaries of the Grantor, including any areas annexed by Grantor during the term of this Franchise, in which case the annexed area shall become subject to the terms of this Franchise.

1.6 Hazardous Substance shall mean any hazardous, toxic, or dangerous substance, material, waste, pollutant, or contaminant. The term shall specifically include petroleum and petroleum products and their by-products, residue, and remainder in whatever form or state. The term shall also be interpreted to include any substance which, after release into the environment, will or may reasonably be anticipated to cause death, disease, injury, illness, behavior abnormalities or, genetic abnormalities.

1.7 Maintenance or Maintain shall mean examining, testing, inspecting, repairing, maintaining and replacing the Facilities or any part thereof as required or as necessary for safe operation.

1.8 Pipeline Corridor shall mean the pipeline pathway through the Franchise Area in which the Facilities of the Grantee are located, including any Rights-of-Way, Public Property, and/or easement over and through private property.

1.9 Public Properties shall mean the present and/or future property owned or leased by Grantor within the present and/or future corporate limits or jurisdictional boundaries of the Grantor.

1.10 Operate or Operations shall mean the use of Grantee's Facilities for the transportation, distribution and handling of petroleum products or byproducts within and through the Franchise Area.

1.11 Rights-of-Way shall mean the surface and the space above and below streets, roadways, highways, avenues, courts, lanes, alleys, sidewalks, easements, rights-of-way, parks and similar Public Properties located within the Franchise Area.

1.12 Encroachment shall mean any third party activity within the Pipeline Corridor which is not authorized by Grantee.

1.13 Crossing shall mean any third party activity within the Pipeline Corridor which is authorized by Grantee, whether or not Grantee's facilities are actually crossed or bisected.

## **Section 2. Grant of Authority.**

2.1 Grantor hereby grants to Grantee, a corporation organized and existing under and by virtue of the laws of the State of Washington, and which is authorized to transact business within the State of Washington, its successors and assigns (as provided in Section 4), the right, privilege, authority and Franchise to Construct, Operate and Maintain its Facilities necessary for the transportation, distribution and handling of any petroleum product or byproduct thereof, within the existing Pipeline Corridor passing through the Franchise Area.

2.2 This Franchise is non-exclusive. Grantor reserves all rights to its property, including, without limitation, the right to grant additional franchises, easements, licenses and permits to others, provided that the Grantor shall not grant any other franchise, license, easement or permit that would unreasonably interfere with or materially increase risk of Grantee's permitted use under this Franchise. This Franchise shall in no manner prohibit the Grantor or limit its power to perform work upon its Rights-of-Way, Public Properties or make all necessary changes, relocations, repairs, maintenance, establishment, improvement thereto, or from using any of the Rights-of-Way and Public Properties, or any part of them, as the Grantor may deem fit from time to time, including the dedication, establishment, maintenance and improvement of all new Rights-of-Way

and other Public Properties of every type and description.

2.3 This Franchise is conditioned upon the terms and conditions contained herein, Article 11 of the Bellingham City Charter, and Grantee's compliance with all applicable federal, state or other regulatory requirements that currently exist or may hereafter be enacted by any regulatory agencies with jurisdiction over the Grantee.

2.4 By granting this Franchise, the Grantor is not assuming any risks or liabilities, which shall be solely and separately borne by Grantee. Grantee agrees and covenants to, at its sole cost and expense, take all necessary and prudent steps to protect, support, and keep safe from harm its Facilities, or any part thereof, when necessary to protect the public health and safety.

2.5 This Franchise is intended to convey only a limited right and interest. It is not a warranty of title or interest in Grantor's Rights-of Way or other Public Property. None of the rights granted herein shall affect the Grantor's jurisdiction over its property, streets or Rights-of-Way.

2.6 This Franchise does not and shall not convey any right to Grantee to install its Facilities on, under, over, across, or to otherwise use city owned or leased properties of any kind, either within or outside the Pipeline Corridor, other than existing Rights-of-Way.

2.6 The limited rights and privileges granted under this Franchise shall not convey any right to Grantee to install any new pipeline(s) and/ or Facilities without the express written consent of Grantor.

**Section 3. Term.** Each of the provisions of this Franchise shall become effective upon the Effective Date, subject to Grantee's acceptance of the terms and conditions of this Franchise and shall remain in effect for ten (10) years thereafter. Subsequently, and in accordance with Article 11 of the Bellingham City Charter, the Bellingham City Council will consider renewing this Franchise, at the written request of Grantee, for an additional ten (10) year renewal period at any time within two (2) years before the end of the Franchise's original ten (10) year term, unless either party expresses its intention in writing to terminate this Franchise at the conclusion of the original ten (10) year term. Renewal must be requested no less than six months before expiration of this Franchise.

**Section 4. Assignment and Transfer of Franchise; Transfer of Control .**

4.1 Per Bellingham City Charter Article XI, Section 11.06, this Franchise shall not be leased, assigned or otherwise alienated without the express consent of the Grantor by ordinance, which approval shall not be unreasonably withheld.

4.2 No transfer shall be approved unless the assignee or transferee has at least the legal, technical, financial, and other requisite qualifications to carry on the activities of the Grantee.

4.2.1 Grantee and any proposed assignee or transferee shall provide to the City not less than 120 days prior to the proposed date of transfer (a) information setting forth the nature of the proposed assignment or transfer; and, (b) such reasonable information regarding the proposed assignee or transferee (including that information required of a franchise applicant under Bellingham Municipal Code Chapter 13.15) to enable the City to adequately assess the legal,

technical, financial and other relevant qualifications of the assignee or transferee.

4.2.2 Grantee and/or the assignee or transferee will reimburse the City for its actual and reasonably incurred costs for processing and investigating the proposed assignment or transfer.

4.3 Any transfer or assignment of this Franchise without the prior written consent of the City shall be void and result in revocation of the Franchise.

4.4 If Grantee intends to enter into a transaction that would result in a change of the operational control of Grantee, Grantee will notify the City in writing and provide at least 90 days for the City to provide Grantee with written comments and issues of concern the City may have with the proposed transfer of control. Grantee agrees to provide a written response to the City's comments within 60 days of receiving the City's comments.

#### **Section 5. Compliance with Laws and Standards.**

5.1 In carrying out any authorized activities under the privileges granted herein, Grantee shall meet accepted industry standards and comply with all applicable laws of any governmental entity with jurisdiction over the pipeline and its operation. This shall include all applicable laws, rules and regulations existing at the Effective Date of this Franchise or that may be subsequently enacted by any governmental entity with jurisdiction over Grantee and/or the pipeline(s) and Facilities.

5.2 In the case of any conflict between the terms of this Franchise and the terms of Grantor's ordinances, codes, regulations, standards and procedures, this Franchise shall govern.

#### **Section 6. Construction and Maintenance.**

6.1 All Construction, Maintenance or Operation undertaken by Grantee, upon Grantee's direction or on Grantee's behalf shall be completed in a workmanlike manner.

6.2 Except in the case of an emergency, at least forty five (45) calendar days prior to commencing any substantial Construction and/or Maintenance work in the Franchise Area, the Grantee shall notify Grantor in writing and file with the Grantor such detailed plans, specifications and profiles of the intended work as may be required by the Grantor. Grantor may require such additional information, plans and/or specifications as are in Grantor's opinion necessary to protect the public health and safety during the Construction and/or Maintenance work and for the remaining term of this Franchise. This requirement shall not apply to routine inspections and maintenance of Grantee's Facilities within the Franchise Area undertaken by Grantee, its agents, employees or contractors, except when the work occurs on Public Properties in which case Grantee will follow normal City right of way permitting requirements.

6.3 All Construction and/or Maintenance work shall be performed in substantial conformity with the plans, maps and specifications filed with the Grantor, except in instances in which deviation may be allowed thereafter in writing pursuant to an application by the Grantee.

6.4 Construction or Maintenance work shall only commence upon the issuance of applicable permits by Grantor, which permits shall not be unreasonably withheld or delayed. However, in the event of an emergency requiring immediate action by Grantee for the protection of the Facilities,

Grantor's property or other persons or property, Grantee may proceed without first obtaining the normally required permits. In such event Grantee must (1) take all necessary and prudent steps to protect, support, and keep safe from harm its Facilities, or any part thereof; Grantor's property; or other persons or property, and to protect the public health and safety; and (2) as soon as possible thereafter, must obtain the required permits and comply with any mitigation requirements or other conditions in the after-the-fact permit.

6.5 Unless such condition or regulation is in conflict with a federal requirement, the Grantor may condition the granting of any permit or other approval that is required under this Franchise, in any manner reasonably necessary for the safe use and management of any public Right-of-Way or the Grantor's property including, by way of example and not limitation, bonding, maintaining proper distance from other utilities, protecting the continuity of pedestrian and vehicular traffic and protecting any Rights-of-Way improvements, private facilities and public safety.

6.6 Whenever necessary, after Constructing or Maintaining any of Grantee's Facilities within the Franchise Area, the Grantee shall, without delay, and at Grantee's sole expense, remove all debris and restore the surface as nearly as possible to the same condition as it was in before the work began. Grantee shall replace any property corner monuments, survey reference or hubs that were disturbed or destroyed during Grantee's work in the areas covered by this Franchise. Such restoration shall be done in a manner consistent with applicable codes and laws, under the supervision of the Grantor and to the Grantor's satisfaction and specifications. If requested by Grantor, the restoration shall be done under a bond in an amount appropriate to guarantee adequate restoration.

6.7 Grantee shall continuously be a member of the State of Washington one number locator service under RCW 19.122, or an approved equivalent, and shall comply with all such applicable rules and regulations. In addition to the notice to Grantor required under Section 6.2, Grantee shall provide reasonable notice prior to commencing any Maintenance or Construction under this Franchise to those owners or other persons in control of property in the Franchise Area when the Maintenance or Construction will affect access or otherwise materially impact the property.

6.8 Markers demarcating the Pipeline Corridor shall be placed on the surface permitting line of sight at any location on the pipeline Right-of-Way and in each side of any road or water crossing so as to provide clear warning of the presence of the pipeline but in a manner that does not interfere with trails or other public uses in that area.

6.9 Upon acceptance of this Franchise by Grantee, the Grantee shall file and thereafter maintain at all times with the Grantor any surveys, maps or roll drawings in its possession depicting the location of the Pipeline Corridor within the Franchise Area as well as the approximate location of Grantee's Facilities within the Pipeline Corridor along with all other known utilities, landmarks, and physical features. When the city or third parties are engaged in work in the Pipeline Corridor, or within fifty (50) feet of the Pipeline Corridor, Grantee shall within two (2) business days respond to requests to surface locate and mark the position of its Facilities. If the project is a city project, Grantee shall bear any costs associated with locating its Facilities, otherwise the cost shall be borne by the party making the request. In situations where the work in the Pipeline Corridor requires that the depth of the pipeline be accurately known as determined by Grantee, prior to work commencing, Grantee shall pothole or take other action as

Grantee deems necessary to ascertain the depth and exact location of the pipeline in the area of the work.

6.10 Nothing in this Franchise shall be deemed to impose any duty or obligation upon Grantor to determine the adequacy or sufficiency of Grantee's plans and designs or to ascertain whether Grantee's proposed or actual construction, testing, maintenance, repairs, replacement or removal is adequate or sufficient or in conformance with the plans and specifications reviewed by Grantor.

6.11 Grantee shall be solely and completely responsible for workplace safety and safe working practices on its job sites within the Franchise area, including safety of all persons and property during the performance of any work.

#### **Section 7. Operations, Maintenance, Inspection, Testing.**

7.1 Grantee shall operate, maintain, inspect and test its Facilities in the Franchise Area in full compliance with the applicable provisions of all federal, state and local laws, regulations and standards, as now enacted or hereafter amended, and any other future laws or regulations that are applicable to Grantee's Facilities, products and business operations.

7.2 If the federal office of pipeline safety or the state regulatory agency significantly decrease their staffs, or if any congressional or legislative study indicates that federal or state regulatory oversight has significantly decreased in effectiveness during the term of this Franchise, then Grantee and Grantor agree to expeditiously negotiate new franchise provisions that will provide Grantor with access to detailed information regarding testing and inspection such as would have been routinely submitted to the federal or state regulatory agencies under the regulations in effect at the time of the Effective Date. Grantee agrees to cover all costs reasonably incurred by Grantor for expert assistance in interpreting the testing and inspection data. If Grantor and Grantee fail to agree upon new franchise provisions, the issues shall be resolved through the Dispute Resolution provisions of Section 13.

#### **Section 8. Encroachment and Crossing Management.**

8.1 Within ninety (90) days of entering into this Franchise, and on an annual basis thereafter, Grantee shall provide a written Encroachment and Crossing management plan that demonstrates how Grantee's Facilities are and will be protected against Encroachments and Crossings. This plan shall include at least the following: 1) education and one-call involvement as defined in Federal Regulations; 2) an Encroachment management processes demonstrating: a) Grantee's process for monitoring unauthorized activity in or near the Pipeline Corridor; b) Grantee's field verification of the location of Facilities within the Pipeline Corridor; c) Grantee's Encroachment tracking system; d) control center notification of existing or active encroachments; and e) assertive protection of the pipeline Rights-of-Way and; 3) Grantee's process for approving Crossings, and its policies and procedures with respect thereto.

8.2 Upon notification to Grantee of planned construction involving excavation or any activity that could abnormally load the pipeline, by either Grantor or any third party, within fifty (50) feet of Grantee's Pipeline Corridor, Grantee shall flag the location of its Facilities before the construction or activity commences, provide a representative to inspect the construction when it

commences, and periodically inspect thereafter to ensure that Grantee's Pipeline is not damaged by the construction or activity. In situations where the work in the Pipeline Corridor requires that the depth of the pipeline be accurately known as determined by Grantee, prior to work commencing, Grantee shall pothole or take other action as Grantee deems necessary to ascertain the depth and exact location of the pipeline in the area of the work.

8.3 Upon Grantor's reasonable request, in connection with the design of any city project, Grantee will verify the exact location of its underground Facilities within the Pipeline Corridor by excavating (pot holing) at no expense to Grantor. In the event Grantee performs such excavation, Grantor shall not require any restoration of the disturbed area in excess of restoration to the same condition as existed immediately prior to the excavation.

### **Section 9. Leaks, Spills, Ruptures and Emergency Response.**

9.1 Grantee shall have in place, at all times during the term of this Franchise, a system for remotely monitoring pressures and flows across the Franchise Area. The remote monitoring must be able to accurately detect pipeline ruptures.

9.2 During the term of this Franchise, Grantee shall have a written emergency response plan and procedure for locating leaks, spills, and ruptures and for shutting down valves as rapidly as possible.

9.3 Grantee has provided Grantor with a copy of its state approved emergency response plans and procedures, including, but not limited to, emergency response for spills or leaks. Grantee will provide Grantor an updated copy of its emergency response plans and procedures after they are adopted and approved.

9.4 Grantee's emergency plans and procedures shall designate Grantee's responsible local emergency response officials and a direct 24-hour emergency contact number for control center operator. Grantee shall, after being notified of an emergency, cooperate with the Grantor and make every effort to respond as soon as possible to protect the public's health, safety and welfare.

9.5 Upon prior written request of Grantor, Grantee agrees to meet annually to review its emergency response plans and procedures.

9.6 Grantee shall be solely responsible for all necessary costs incurred by city, county, special district or state agencies in responding to any rupture, spill, or leak from Grantee's Facilities, including, but not limited to, detection and removal of any contaminants from air, earth or water, and all actual remediation costs. This section shall not limit Grantees rights or causes of action against any third party or parties who may be responsible for a leak, spill or other release of hazardous liquid from Grantees pipeline, including such third party's insurers.

9.7 In addition to the notification requirements in the emergency response plan, Grantee shall notify Grantor of any uncontained leak, spill or rupture, outside of a vault or pump station, of petroleum product from its Facilities within or affecting the Franchise Area totaling one (1) barrel or more within one (1) business day of its observation or detection.

9.8 If requested by Grantor in writing, Grantee shall follow-up this notice within thirty (30) days

with a written summary of the event, including, but not limited to, the leak, spill, or rupture's date, time, amount, location, response, remediation and other agencies Grantee has notified.

9.9 In the event of an uncontained leak, spill or rupture from Grantee's pipeline(s) and/or Facilities affecting the Franchise Area of ten (10) barrels or more, where the cause is not reasonably apparent, and where federal or state regulators do not investigate, the Grantor may demand that the occurrence be investigated by an independent pipeline consultant selected by Grantor. Grantee shall be solely responsible for paying all of the consultant's costs and expenses incurred in investigating the occurrence and reporting the findings. Grantee shall meet and confer with the independent consultant following the consultant's investigation to address whether any modifications or additions to Grantee's pipeline(s) and/or Facilities may be warranted. In cases where federal or state regulators do perform an investigation, Grantee agrees to share the results of that investigation with the city within sixty (60) days from receipt of the same.

9.10 If the consultant recommends that Grantee make modifications or additions to Grantee's Facilities, Grantee covenants to consider said recommendations in good faith. If Grantee declines to follow the consultant's recommendations, Grantee shall provide a written report to the Grantor explaining its reasoning for not following said recommendations. The parties agree to comply with the dispute resolution provisions contained herein to resolve any dispute over the whether to follow the consultant's recommendations.

#### **Section 10. Relocation.**

10.1 In the event that Grantor undertakes or approves the construction of or changes to the grade or location of any water, sewer or storm drainage line, street, sidewalk or improvement project or any governmental agency or any person or entity acting in a governmental capacity, or on the behalf of, under the authority of, or at the request of the Grantor or any other governmental agency, undertakes any improvement project and the Grantor determines that the project might reasonably require the relocation of Grantee's Facilities, Grantor shall provide the Grantee at least one hundred and twenty (120) calendar days prior written notice or such additional time as may reasonably be required, of such project requiring relocation of Grantee's Facilities.

10.2 Grantor shall provide Grantee with copies of pertinent portions of the plans and specifications for the improvement project. Upon request, Grantee shall, at its cost and expense, determine and identify for Grantor the exact location of its Facilities potentially affected by the improvement project.

10.3 Grantee may, after receipt of written notice requesting a relocation of its Facilities, submit to Grantor written alternatives to the relocation within forty five (45) calendar days of receiving the plans and specifications. Grantor shall evaluate the alternatives and advise Grantee in writing if one or more of the alternatives are suitable to accommodate the work that would otherwise necessitate relocation of the Facilities. If requested by Grantor, Grantee shall submit additional information to assist Grantor in making the evaluation. Grantor shall give each alternative proposed by Grantee full and fair consideration but retains full discretion to decide for itself whether to utilize its original plan or an alternative proposed by Grantee. In the event Grantor ultimately determines that there is no other reasonable alternative, Grantee shall relocate its Facilities as proposed by Grantor.

10.4 If any improvement project under Section 10.1 is required in the interest of public health, safety, welfare, necessity or convenience, as adjudged in the sole discretion of the Grantor acting reasonably, the Grantee shall make such changes as required herein at Grantee's sole cost, expense and risk.

10.5 Grantor shall work cooperatively with Grantee in determining a viable and practical route within which Grantee may relocate its Facilities, in order to minimize costs while meeting Grantor's project objectives.

10.6 Grantee shall complete relocation of its Facilities so as to accommodate the improvement project at least ten (10) calendar days prior to commencement of the improvement project or such other time as the parties may agree in writing.

#### **Section 11. Decommissioning.**

11.1 In the event of Grantee's permanent cessation of use of its Facilities within the Franchise Area, the Grantee shall, within one hundred and eighty (180) days after receipt of written notification from Grantor, remove the Facilities from Public Properties.

11.2 In the event of the removal of all or a portion of the Facilities, Grantee shall restore the Public Properties to as good or better condition as they were in before the work began.

11.3 Removal and/or Decommissioning and restoration work shall be done at Grantee's sole cost and expense in accordance with all applicable regulations and standards. Grantee shall be responsible for any environmental review required for removal and/or decommissioning of any Facilities and the payment of any costs of the environmental review.

11.4 If Grantee is required to remove its Facilities and fails to do so and/or fails to adequately restore the Public Properties or other mutually agreed upon action(s), Grantor may, after reasonable notice to Grantee, remove the Facilities, restore the Public Properties and/or take other action as is reasonably necessary at Grantee's expense. This remedy shall not be deemed to be exclusive and shall not prevent Grantor from seeking a judicial order directing that the Facilities be removed.

11.5 If permitted by applicable regulations and with the express written consent of the Grantor, Grantee may purge its Facilities located on Public Properties and abandon them in place. Grantee shall be responsible for any environmental review required for the abandonment of any Facilities and the payment of any costs of such environmental review. Grantor's consent to the abandonment of Facilities on Public Properties in place shall not relieve the Grantee of the obligation and/or costs to remove or to alter such Facilities in the future in the event it is reasonably determined that removal or alterations is necessary or advisable for the health and safety of the public, in which case the Grantee shall perform such work at no cost to the Grantor. This provision shall survive the expiration, revocation or termination of this Franchise.

11.6 The parties expressly agree that this provision of this Section shall survive the expiration, revocation or termination of this Franchise.

#### **Section 12. Violations, Remedies and Termination.**

12.1 In addition to any rights set out elsewhere in this Franchise, or other rights it may possess at

law or equity, the Grantor reserves the right to apply any of the following remedies, alone or in combination, in the event Grantee violates any material provision of this Franchise. The remedies provided for in this Franchise are cumulative and not exclusive; the exercise of one remedy shall not prevent the exercise of another, or any rights of the Grantor at law or equity.

12.2 Grantor may terminate this Franchise if Grantee materially breaches or otherwise fails to perform, comply with or otherwise observe any of the terms and conditions of this Franchise, or fails to maintain all required licenses and approvals from federal, state, and local jurisdictions, and fails to cure such breach or default within thirty (30) calendar days of Grantor's providing Grantee written notice thereof, or, if not reasonably capable of being cured within thirty (30) calendar days, within such other reasonable period of time as the parties may agree upon.

12.3 This Franchise shall not be terminated except upon a majority vote of the full membership of the City Council, after reasonable notice to Grantee and an opportunity to be heard, provided that if exigent circumstances necessitate immediate termination, the hearing may be held as soon as possible after the termination.

12.4 In the event of termination under this Franchise, Grantee shall immediately discontinue operation of the Facilities within the Franchise Area. Either party may in such case invoke the dispute resolution provisions herein. Alternatively, Grantor may elect to seek relief directly in Superior Court, in which case the dispute resolution requirements shall not be applicable in this limited situation. Once the Grantee's rights to Operate in the Franchise Area have terminated, Grantee shall comply with Franchise provision regarding removal and/or abandonment of Facilities.

12.5 Grantor's failure to exercise a particular remedy at any time shall not waive Grantor's right to terminate, assess penalties, or assert any other remedy at law or equity for any future breach or default of Grantee.

12.6 Termination of this Franchise shall not release Grantee from any liability or obligation with respect to any matter occurring prior to such termination, nor shall such termination release Grantee from any obligation to remove or secure the Facilities pursuant to this Franchise and to restore the Franchise Area.

12.7 The parties acknowledge that the covenants set forth herein are essential to this Franchise, and, but for the mutual agreements of the parties to comply with such covenants, the parties would not have entered into this Franchise. The parties further acknowledge that they may not have an adequate remedy at law if the other party violates such covenant. Therefore, the parties shall have the right, in addition to any other rights they may have, to obtain in any court of competent jurisdiction injunctive relief to restrain any breach or threatened breach or otherwise to specifically enforce any of the covenants contained herein should the other party fail to perform them.

### **Section 13. Dispute Resolution.**

13.1 In the event of a dispute between Grantor and Grantee arising by reason of this Franchise, the dispute shall first be referred to the operational officers or representatives designated by Grantor and Grantee to have oversight over the administration of this Franchise. The officers or

representatives shall meet within thirty (30) calendar days of either party's request for a meeting, whichever request is first, and the parties shall make a good faith effort to attempt to achieve a resolution of the dispute.

13.2 In the event that the parties are unable to resolve the dispute under the procedure set forth in this section, then the parties hereby agree that the matter shall be referred to mediation. The parties shall mutually agree upon a mediator to assist them in resolving their differences. If the parties are unable to agree upon a mediator, the parties shall jointly obtain a list of seven (7) mediators from a reputable dispute resolution organization and alternate striking mediators on that list until one remains. A coin toss shall determine who may strike the first name. If a party fails to notify the other party of which mediator it has stricken within two (2) business days, the other party shall have the option of selecting the mediator from those mediators remaining on the list. Any expenses incidental to mediation shall be borne equally by the parties.

13.3 If the parties fail to achieve a resolution of the dispute through mediation, either party may then pursue any available judicial remedies, provided that if the party seeking judicial redress does not substantially prevail in the judicial action, it shall pay the other party's reasonable legal fees and costs incurred in the judicial action.

#### **Section 14. Indemnification.**

14.1 General Indemnification. Except to the extent caused by the actions or omissions of Grantor, its employees, agents, contractors and subcontractors ("Grantor's Actions"), Grantee shall indemnify, defend and hold harmless Grantor from any and all liability, loss, damage, cost, expense, and claim of any kind, including reasonable attorneys' and experts' fees incurred by Grantor in defense thereof, arising out of or related to, directly or indirectly, the installation, construction, operation, use, location, testing, repair, maintenance, removal, or abandonment of Grantee's Facilities, or from the existence of Grantee's Facilities, and the products contained in, transferred through, released or escaped from said Facilities, including the reasonable costs of assessing such damages and any liability for costs of investigation, abatement, correction, cleanup, fines, penalties, or other damages arising under any environmental laws. Except to the extent caused by Grantor's Actions, if any action or proceeding is brought against Grantor by reason of the Facilities, Grantee shall defend the Grantor at the Grantee's complete expense, provided that, for uninsured actions or proceedings, defense attorneys shall be approved by Grantor, which approval shall not be unreasonably withheld.

14.2 Environmental Indemnification. Except to the extent caused by Grantor's Actions, Grantee shall indemnify, defend and save Grantor harmless from and against any and all liability, loss, damage, expense, actions and claims, either at law or in equity, including, but not limited to, costs and reasonable attorneys' and experts' fees incurred by Grantor in defense thereof, arising directly or indirectly from (a) Grantee's breach of any environmental laws applicable to the Facilities or (b) from any release of a hazardous substance on or from the pipeline or (c) other activity related to this Franchise by Grantee, its agents, contractors or subcontractors. This indemnity includes but is not limited to (a) liability for a governmental agency's costs of removal or remedial action for hazardous substances; (b) damages to natural resources caused by hazardous substances, including the reasonable costs of assessing such damages; (c) liability for any other person's costs of responding to hazardous substances; (d) liability for any costs of investigation, abatement, correction, cleanup, fines, penalties, or other damages arising under any

environmental laws; and (e) liability for personal injury, property damage, or economic loss arising under any statutory or common-law theory.

**Section 15. Insurance and Bond Requirements.**

15.1 During this Franchise, Grantee shall provide and maintain, at its own cost, insurance in the minimum amount of ONE HUNDRED MILLION UNITED STATES DOLLARS (\$100,000,000.00) in the aggregate, in a form and with a carrier reasonably acceptable to the Grantor, naming Grantor as an additional insured and solely to the extent of Grantee's indemnity obligations hereunder, to cover any and all insurable liability, damage, claims and loss to the extent such coverage is reasonably available in the commercial marketplace, excepting at all times liability for fines and penalties for violation of environmental laws and punitive damages. Insurance coverage shall include, but is not limited to, defense costs. Such insurance shall include, but is not limited to, pollution liability coverage, at a minimum covering liability from sudden and accidental occurrences, subject to time element reporting requirements as is reasonably available in the commercial marketplace.

15.2 Proof of insurance naming Grantor as an additional insured, including any endorsement that may be required, shall be provided to the Grantor prior to the beginning of any substantial work, testing or construction or reconstruction on the Pipeline. Said insurance shall contain a provision that it shall not be canceled without a minimum of thirty (30) days prior written notice to the Grantor.

15.3 The indemnity and insurance provisions contained herein shall survive the termination of this Franchise and shall continue for as long as the Grantee's Facilities shall remain in use on Public Properties or until the parties execute a new Franchise Agreement which modifies or terminates these indemnity and insurance provisions.

**Section 16. Receivership and Foreclosure.**

16.1 Grantee shall immediately notify the Grantor in writing if it: files a voluntary petition in bankruptcy, a voluntary petition to reorganize its business, or a voluntary petition to effect a plan or other arrangement with creditors; files an answer admitting the jurisdiction of the Court and the material allegations of an involuntary petition filed pursuant to the Bankruptcy Code, as amended; or is adjudicated bankrupt, makes an assignment for the benefit of creditors, or applies for or consents to the appointment of any receiver or trustee of all or any part of its property including all or any parts of its business operations, pipeline(s) or Facilities within or affecting the Franchise Area.

16.2 Upon the foreclosure or other judicial sale of all or a substantial part of Grantee's business operations, or Facilities within or affecting the Franchise Area, or upon the termination of any lease covering all or a substantial part of the Facilities within or affecting the Franchise Area, or upon the occasion of additional events which effectively cause termination of Grantee's rights or ability to operate the Facilities within or affecting the Franchise Area, Grantee shall notify the Grantor of such fact, and such notification or the occurrence of such terminating events shall be treated as a notification that a change in control of the Grantee has taken place, and the provisions of this Franchise Agreement governing the consent of the Grantor to such change in control of the Grantee shall apply.

16.3 The Grantor shall have the right to cancel this Franchise one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of a Grantee, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless: a) Within one hundred twenty (120) days after the election or appointment, such receiver or trustee shall have fully complied with all of the provisions of this Franchise Agreement and remedied any existing violations and/or defaults; and b) Within said one hundred twenty (120) days, such receiver or trustee shall have executed an agreement, duly approved by the court having jurisdiction, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Franchise Agreement granted to the Grantee except where expressly prohibited by Washington law.

#### **Section 17. Franchise Fee and Costs.**

17.1 In consideration for granting this Franchise and for the use of the Public Properties in the Franchise Area, there is hereby established an annual fee equal to Fifteen Thousand Dollars (\$15,000.00). The parties agree that the foregoing fee is proportional to the municipal services provided.

17.2 The first annual payment shall be paid at the time Grantee accepts this Franchise and shall cover the next twelve (12) months. Each succeeding installment shall cover the next twelve (12) month period and shall be paid not later than the anniversary date of the Effective Date of this Franchise.

17.3 Interest shall accrue on any late payment at the rate of twelve percent (12%) per annum. The annual fee shall remain constant for the first three (3) years of this Franchise and shall then subsequently increase at a rate of one and a half percent (1 1/2%) every year thereafter beginning with year four (4) for the Franchise's remaining term.

17.4 Grantee agrees to pay a fee or a charge so that Grantor recovers its actual, reasonable, administrative expenses directly related to preparing and approving this Franchise. Nothing herein shall preclude Grantor from charging administrative fees or recovering administrative costs incurred by Grantor in the approval of permits or in the reasonable supervision, inspection or examination of all work by Grantee in the Franchise Area to ensure compliance with the terms of this Franchise and the applicable permits, as required by the applicable provisions of Grantor's municipal code.

#### **Section 18. Legal Relations.**

18.1 Nothing contained in this Franchise shall be construed to create an association, trust, partnership, agency relationship, or joint venture or to impose a trust, partnership, or agency duty, obligation or liability on or with regard to any party. Each party shall be individually and severally liable for its own duties, obligations, and liabilities under this Franchise.

18.2 Grantee accepts any privileges granted by Grantor to the Franchise Area, public Rights-of-Way and other Public Property in an "as is" condition. Grantee agrees that Grantor has never made any representations, implied or express warranties or guarantees as to the suitability, security or safety of Grantee's location of facilities or the facilities themselves in Public Property

or Rights-of-Way or possible hazards or dangers arising from other uses of the public Rights-of-Way or other Public Property by Grantor or the general public. Grantee shall remain solely and separately liable for the function, testing, maintenance, replacement and/or repair of the pipeline or other activities permitted under this Franchise.

18.3 Grantee waives immunity under Title 51 RCW in any cases involving the Grantor and affirms that the Grantor and Grantee have specifically negotiated this provision, to the extent it may apply.

18.4 This Franchise shall not create any duty of Grantor or any of its officials, employees or agents and no liability shall arise from any action or failure to act by Grantor or any of its officials, employees or agents in the exercise of powers reserved to the Grantor. Further, this ordinance is not intended to acknowledge, create, imply or expand any duty or liability of the Grantor with respect to any function in the exercise of its police power or for any other purpose. Any duty that may be deemed to be created in Grantor shall be deemed a duty to the general public and not to any specific party, group or entity.

18.5 This Franchise shall be governed by, and construed in accordance with, the laws of the State of Washington and the parties agree that in any action, except actions based on federal questions, venue shall lie exclusively in Whatcom County, Washington.

**Section 19: Miscellaneous.**

19.1 In the event that a court or agency of competent jurisdiction declares a material provision of this Franchise to be invalid, illegal or unenforceable, the parties shall negotiate in good faith and agree, to the maximum extent practicable in light of such determination, to such amendments or modifications as are appropriate actions so as to give effect to the intentions of the parties as reflected herein. If severance from this Franchise of the particular provision(s) determined to be invalid, illegal or unenforceable will fundamentally impair the value of this Franchise, either party may apply to a court of competent jurisdiction to reform or reconstitute the Franchise so as to recapture the original intent of said particular provision(s). All other provisions of the Franchise shall remain in effect at all times during which negotiations or a judicial action remains pending.

19.2 Whenever this Franchise sets forth a time for any act to be performed, such time shall be deemed to be of the essence, and any failure to perform within the allotted time may be considered a material violation of this Franchise.

19.3 In the event that Grantee is prevented or delayed in the performance of any of its obligations under this Franchise by reason(s) beyond the reasonable control of Grantee, then Grantee's performance shall be excused during the Force Majeure occurrence. Upon removal or termination of the Force Majeure occurrence the Grantee shall promptly perform the affected obligations in an orderly and expedited manner under this Franchise or procure a substitute for such obligation or performance that is satisfactory to Grantor. Grantee shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its directors, officers or employees.

19.4 The Section headings in this Franchise are for convenience only, and do not purport to and shall not be deemed to define, limit, or extend the scope or intent of the Section to which they pertain.

19.5 By entering into this Franchise, the parties expressly do not intend to create any obligation or liability, or promise any performance to, any third party, nor have the parties created for any third party any right to enforce this Franchise.

19.6 This Franchise and all of the terms and provisions shall be binding upon and inure to the benefit of the respective successors and assignees of the parties.

19.7 Whenever this Franchise calls for notice to or notification by any party, the same (unless otherwise specifically provided) shall be in writing and directed to the recipient at the address set forth in this Section, unless written notice of change of address is provided to the other party. If the date for making any payment or performing any act is a legal holiday, payment may be made or the act performed on the next succeeding business day which is not a legal holiday.

Notices shall be directed to the parties as follows:

To the Grantor:           Public Works Director  
                                  City of Bellingham  
                                  201 Lottie Street  
                                  Bellingham, WA 98225

                  w/copy to:       City Attorney's Office  
                                  City of Bellingham  
                                  210 Lottie Street  
                                  Bellingham, WA 98225

To Grantee:                Trans Mountain Pipeline  
                                  7815 Shellmont Street  
                                  Burnaby, BC, Canada V5A 4S9  
                                  Attn: Land Manager

19.8 The parties each represent and warrant that they have full authority to enter into and to perform this Franchise, that they are not in default or violation of any permit, license, or similar requirement necessary to carry out the terms hereof, and that no further approval, permit, license, certification, or action by a governmental authority is required to execute and perform this Franchise, except such as may be routinely required and obtained in the ordinary course of business.

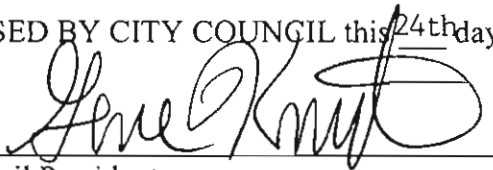
19.9 This Franchise and the attachments hereto represent the entire understanding and agreement between the parties with respect to the subject matter and it supersedes all prior oral negotiations between the parties. This Franchise can be amended, supplemented, modified or changed only by an agreement in writing which makes specific reference to the Franchise or the appropriate attachment and which is signed by the party against whom enforcement of any such amendment, supplement, modification or change is sought. All previous Franchise between the parties pertaining to Grantee's Operation of its pipeline(s) and/or Facilities are hereby superseded.

19.10 Grantee shall, within thirty (30) days after passage of this Ordinance, file with the City Clerk, its unconditional written acceptance of all the terms and conditions of this Franchise. If

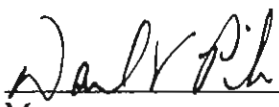
Grantee shall fail to so file its written acceptance within such period, then the rights and privileges granted hereunder shall be deemed forfeited.

19.11 The Effective Date of this Franchise shall be the 8<sup>th</sup> day of June, 2010, after passage, approval and legal publication of this Ordinance as provided by law, and provided it has been duly accepted by Grantee as herein above provided.

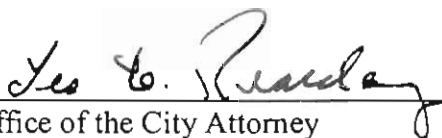
PASSED BY CITY COUNCIL this 24<sup>th</sup> day of May, 20  .

  
Council President

APPROVED by me this 2<sup>nd</sup> day of June, 20  .

  
Mayor

Approved as to form:

  
Office of the City Attorney

Attest:

  
Finance Director

Published: April 16, 2010  
April 30, 2010  
May 28, 2010

April 23, 2010  
May 7, 2010

UNCONDITIONAL ACCEPTANCE BY GRANTEE:

I, the undersigned official of Trans Mountain Pipeline (Puget Sound) LLC, am authorized to bind Trans Mountain Pipeline (Puget Sound) LLC and to unconditionally accept the terms and conditions of the foregoing Franchise (Ordinance No. 2010-05-032) which are hereby accepted by Trans Mountain Pipeline (Puget Sound) LLC this 23rd day of June, 2010.

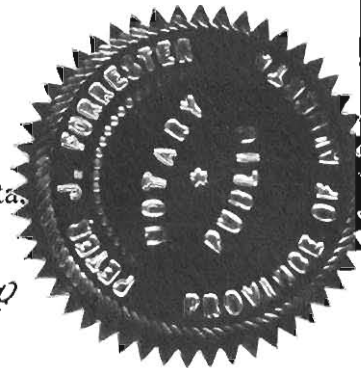
Trans Mountain Pipeline (Puget Sound) LLC,  
a Washington Limited Liability Company

By: *D. Scott Stoness*  
Name: D. Scott Stoness  
Title: VP - Finance / Reg

SUBSCRIBED AND SWORN TO before me this 23rd day of June, 2010.

*Peter J. Forrester*  
Notary Public in and for the Province of Alberta,  
Residing in Calgary, Alberta.

Received on behalf of the City this 24<sup>th</sup> day of June, 2010  
Name: Joan Hoisington  
Title: City Attorney



**PETER J. FORRESTER**  
Barrister & Solicitor  
Notary Public for the  
Province of Alberta











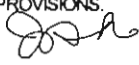
<b>CERTIFICATE OF INSURANCE</b>	<i>ORD. 2010-05-032</i>	ISSUE DATE: July 12, 2010
<b>PRODUCER</b> Jardine Lloyd Thompson Insurance Services Inc. 22 Century Hill Dr., Ste 102 Latham, NY 12110	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
	<b>INSURERS AFFORDING COVERAGE</b>	<b>NAIC #</b>
<b>INSURED</b> Trans Mountain Pipeline (Puget Sound) LLC #2700 Stock Exchange Tower 300 - 5 <sup>th</sup> Avenue S.W. Calgary, Alberta T2P 5J2	Insurer A	Zurich Insurance Company
	Insurer B	Underwriters at Lloyds (By auth. Of Jardine Lloyd Thompson Limited)
	Insurer C	
	Insurer D	

**COVERAGES**

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	<b>GENERAL LIABILITY</b>	GLO 3792920-02  (CAD2,000,000 each Pollution Hazard and aggregate for each annual period, all Pollution Hazards Combined. Time Element: 168 hours detection / 30 days subsequent reporting)	11/30/2009	11/30/2010	EACH OCCURRENCE	CAD2,000,000
	<input type="checkbox"/> COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	\$
	<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person)	\$
	<input type="checkbox"/>				PERSONAL & ADV INJURY	CAD2,000,000
	<input type="checkbox"/>				GENERAL AGGREGATE	\$
	<input type="checkbox"/>				PRODUCTS - COMP/OP AGG	CAD2,000,000
	<input type="checkbox"/>				GEN'L AGGREGATE LIMIT APPLIES PER:	
	POLICY	PRO-JECT	LOC			
	<b>AUTOMOBILE LIABILITY</b>				COMBINED SINGLE LIMIT (Ea accident)	\$
	<input type="checkbox"/> ANY AUTO				BODILY INJURY (Per person)	\$
	<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$
	<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	\$
	<input type="checkbox"/> HIRED AUTOS					
	<input type="checkbox"/> NON-OWNED AUTOS Borrowed Autos					
	<b>GARAGE LIABILITY</b>				AUTO ONLY - EA ACCIDENT	\$
	<input type="checkbox"/> ANY AUTO				OTHER THAN EA ACC	\$
					AUTO ONLY: AGG	\$
B	<b>EXCESS/UMBRELLA LIABILITY</b>	BM0901710	11/30/2009	11/30/2010	EACH OCCURRENCE	CAD8,000,000
	<input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE	\$
	<input type="checkbox"/> DEDUCTIBLE RETENTION \$					
	<b>WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY</b>				WC STATU-TORY LIMITS	OTH-ER
	ANY PROPRIETER/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				E.L. EACH ACCIDENT	\$
					E.L. EACH DISEASE - EA EMPLOYEE	\$
					E.L. DISEASE - POLICY LIMIT	\$
B	OTHER: Energy Pkg (Section II-Liab)	BM0700357	11/30/2009	11/30/2010	CAD100,000,000 excess of underlying	

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS  
**Re: Ordinance No. 2010-05-032**  
 It is hereby understood and agreed that City of Bellingham is added as Additional Insured to the above-referenced Commercial General Liability policy but only with respect to liability arising out of the operations of the Named Insured.

<b>CERTIFICATE HOLDER</b>  City of Bellingham 201 Lottie Street Bellingham, WA 98225 Attention: Public Works Director	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  _____ AUTHORIZED REPRESENTATIVE
--	--

This certificate is issued for convenience only. All of the terms and Conditions of the Policies referred to are contained in the original document which are not modified or amended by this Certificate. With respect to Liability Insurance Coverages, where an Aggregate limit applies, the Certificate Holder is advised that the limit shown may apply to products/completed operations or projects other than shown on this certificate and the limit may be reduced by Claims/Expenses Paid.  
 This certificate is issued as a matter of Information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policies listed herein. These statements have been made in good faith and are a summary of the insurance cover in force (which is subject to the full terms and conditions of the policy). We accept no responsibility whatsoever for any inadvertent or negligent act, error or omission on our part in preparing these statements or for any loss, damage or expense thereby occasioned to any recipient of this certificate.  
 S:\DEPT\ENERGY\KINDER MORGAN\CERTS\09-10\Trans Mountain Pipeline ULC\N21766-City of Bellingham-Acord.doc



# Certificate of Insurance

Sulte 400, 220 - 12<sup>th</sup> Avenue S.W., Calgary, Alberta T2R 0E9 Telephone: (403) 264-6600 Facsimile: (403) 264-8608

Certificate No. : RNL #17

**Certificate Holder:** City of Bellingham  
201 Lottie Street  
Bellingham, WA 98225  
USA

**Re:** Ordinance No. 2010-05-032

**Name of Insured:** Trans Mountain Pipeline (Puget Sound) LLC  
7815 Shellmont Street  
Burnaby, BC V5A 4S9

This certificate is issued as a matter of information only and confers no rights upon the certificate holder other than those provided in the policy. This certificate does not amend, extend or alter the coverage afforded by the policies listed herein.

This is to certify that the policies of insurance listed below have been issued to the insured named above for the policy period indicated, notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain. The insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies. Limits shown may have been reduced by paid claims/expenses.

Schedule of Insurance(s)			
Type of Insurance	Insuring Company and Policy Number	Policy Dates	Limit of Liability/ Amount of Coverage
A* Commercial General Liability (US policy)	Zurich Insurance Company Policy # GLO3792920-04	November 30, 2011 - November 30, 2012	CAD2,000,000 per occurrence CAD20,000,000 general aggregate (CAD2,000,000 each Pollution Hazard and aggregate for each annual period, all Pollution Hazards Combined. Time Element: 168 hours detection / 30 days subsequent reporting)
B* Umbrella Liability	Underwriters at Lloyds and other London Companies (by authority of Jardine Lloyd Thompson Limited) Policy # BM1103958	November 30, 2011 - November 30, 2012	CAD8,000,000 excess of underlying
C* Energy Package (Section II - Liability)	Underwriters at Lloyds and other London Companies (By authority of Jardine Lloyd Thompson Limited) Policy # BM1002902	November 30, 2010 - November 30, 2011	CAD40,000,000 excess of underlying
D* 3 <sup>rd</sup> Excess Liability	(See attached Certificate issued by Energy Insurance Mutual Limited)	November 30, 2011 - November 30, 2012	CAD60,000,000 excess of underlying

### Terms and Conditions

With reference to (A) above, it is hereby understood and agreed that City of Bellingham is added as Additional Insured(s) but only with respect to liability arising out of the operations of the Named Insured.

With reference to (A/B/C) above, the Insurer will endeavour to provide the Holder of this Certificate with Thirty (30) days written notice of cancellation of this policy(ies); but failure to provide such notice to the Certificate Holder shall impose no obligation or liability of any kind upon the Insurer, its Agents or Representatives.

These statements have been made in good faith and are a summary of the insurance cover in force (which is subject to the full terms and conditions of the policy). We accept no responsibility whatsoever for any inadvertent or negligent act, error or omission on our part in preparing these statements or for any loss, damage or expense thereby occasioned to any recipient of this certificate.

**Jardine Lloyd Thompson Canada Inc.**

Date: November 30, 2011

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



3000 Bayport Drive • Suite 550  
Tampa, Florida 33607-8418  
(813) 287-2117 • Fax: (813) 874-2523

### CERTIFICATE OF INSURANCE

This is to certify that we have issued to the Member Insured listed below, by delivery to its representative in Tampa, Florida, Policy No. 252026-11GL which provides insurance coverage from 11/30/2011 to 11/30/2012 both days at 12:01AM Standard Time, as described below.

Insured Address: Trans Mountain Pipeline (Puget Sound) LLC  
7815 Shellmont Street  
Burnaby BC V5A 4S9

Additional Insured: The Certificate Holder is an Additional Insured under the Policy but only to the extent and for such Limits of Liability (subject always to the terms and Limits of Liability of the Policy) as the Insured has agreed to provide insurance for the Certificate Holder regarding Ordinance No. 2010-05-032.

The policy indicated above applies with respect to the coverages and limits of liability indicated by specific entry herein but this Certificate of Insurance does not amend, extend or otherwise alter the terms and conditions of the insurance coverage in such policy.

<u>Coverage:</u>	<u>Limits of Liability:</u>
General Liability	CAD 60,000,000 per occurrence subject to a CAD 60,000,000 Annual Aggregate for all occurrences excess of CAD 50,000,000 per occurrence

If the policy is cancelled, thirty (30) days advance written notice thereof shall be given to:

City of Bellingham  
201 Lottie Street  
Bellingham WA 98225

This certificate is for information only, it is not a contract of insurance but attests that a policy as numbered above, and as it stands at the date of this Certificate, has been issued by the Company. Said policy is subject to change by endorsement and cancellation in accordance with its terms.

ENERGY INSURANCE MUTUAL LIMITED

*Jill Dominguez*  
p.p. Jill Dominguez, Vice President - Underwriting

December 12, 2011