

Update and Analysis: Alignment of Click! Policy Goals with Partner Proposals

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To the City of Tacoma City Council & Utility Board

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Agenda

Background

Financial and technical review of bidders

Comparison of negotiated term sheets

Summary of outcome and alignment with Council/Board policy goals



BACKGROUND



12 Click! policy goals

Adopted by Council and Board in
2018

Reflect areas of policy success
over life of Click! operations



The 12 Click! Policy Goals

1. Public ownership of assets
2. Equitable access
3. Low-income affordability
4. Net neutrality
5. Open access
6. Competition
7. Safeguard City and TPU use
8. Financial stability
9. Economic development & educational opportunity
10. Job options for Click! staff & protection of intellectual property
11. Consumer privacy
12. Consumer goodwill

2017 – mid-2018: evaluative process

Consideration of a range of models for Click!, focused on 2 key requirements

- Best means to achieve policy goals into future
- Best means to cover operating costs

Over course of multiple processes, considered multiple models

- Status quo with additional efficiencies
- Municipal ISP (“All In”)
- Utility model (tax-supported)
- Public-private collaboration

2018: RFI/Q to test collaboration model



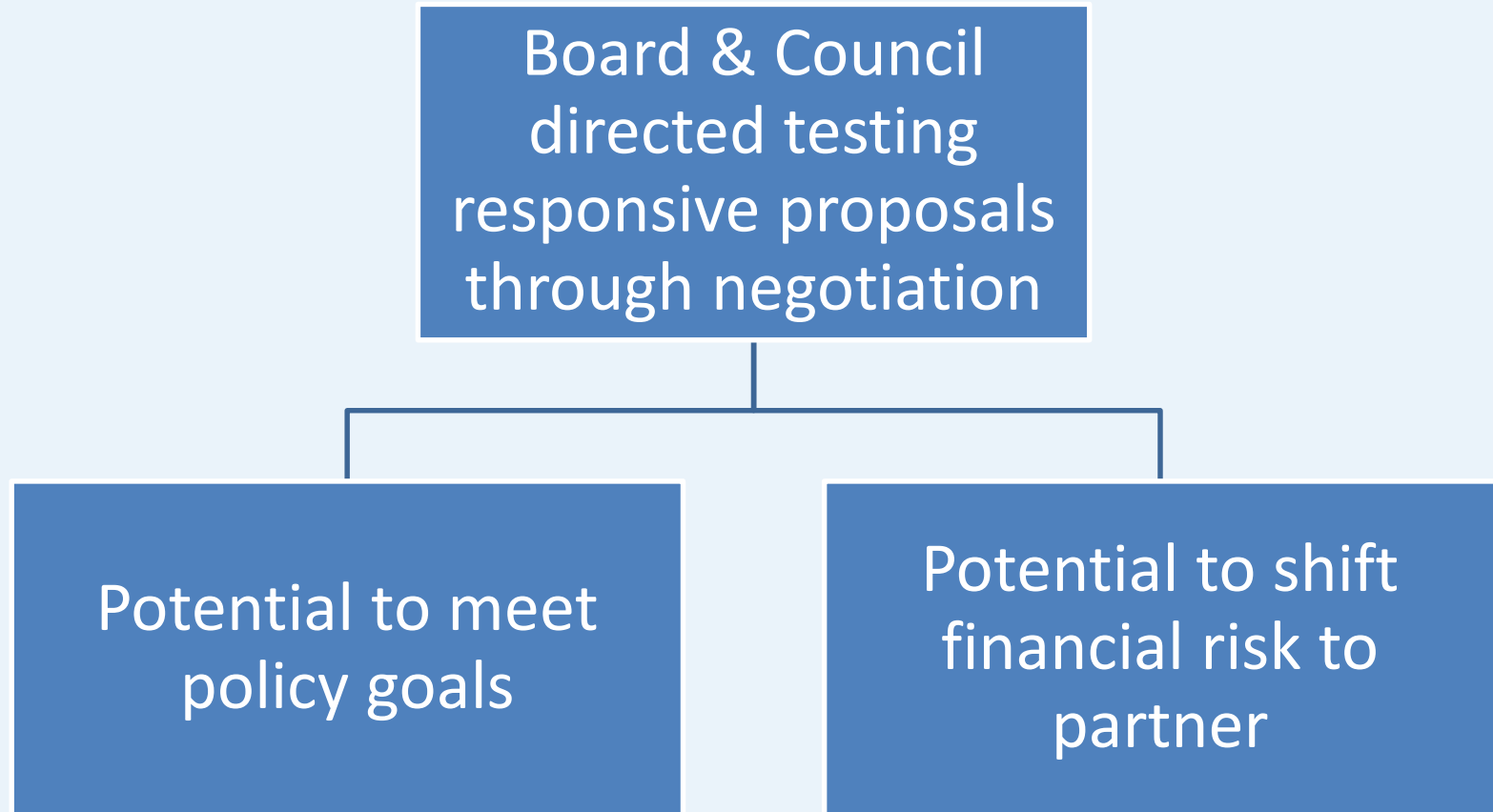
Non-responsive bidder opportunity to revise

Rainier Connect revised proposal to align with policy goals

Wyerd declined to participate unless able to buy Click!

Advanced Stream proposal required substantial increase in City/TPU financial risk

August 2018



Fall 2018

Stakeholder engagement process

- City and TPU undertook formal process of outreach
- Consultation with community members, Click! customers, and Click! employees

Stakeholders affirmed key policy goals

- Public ownership
- Competition
- Low-income affordability



Fall 2018 – present

Negotiations with three final bidders

- **Yomura Fiber:** Promising discussions ended due to incompatibility regarding control of fiber to meet power utility security regulations
- **Wave Broadband:** Extensive discussions led to completed term sheet
- **Rainier Connect:** Extensive discussions led to completed term sheet



FINANCIAL AND TECHNICAL CAPACITY OF THE TWO POTENTIAL PARTNERS

Summary: technical & financial capacity

Wave	Rainier Connect
1. Demonstrates technical and operating capacity to upgrade and operate Click! Assets	1. Demonstrates technical and operating capacity to upgrade and operate Click! assets
2. Has provided independent verification of financial capacity to meet partnership obligations	2. Has provided independent verification of financial capacity to meet partnership obligations
3. Large, private equity-backed , enterprise that is part of sixth largest broadband company in US. Should easily be able to meet partnership obligations	3. Small, family-owned enterprise. Appears to have capability to scale up operations to meet partnership obligations



COMPARISON OF TERM SHEETS

1. Public ownership of assets

Wave	Rainier Connect
1. 20-year IRU with two 10-year extensions possible	1. 20-year IRU with two 10-year extensions possible
2. Upgrade to DOCSIS 3.1 (gigabit speeds) to minimum of 75% within 24 months and minimum of 95% within 36 months	2. Responsible for ubiquitous upgrades to DOCSIS 3.1 within 36 months
3. TPU will own both existing and all new & upgraded outside plant assets in Click! service area	3. TPU will own both existing and all new & upgraded outside plant assets in Click! service area

2. Equitable access

Wave	Rainier Connect
1. Will offer like services, at like prices, across entire Click! service area	1. Will offer like services, at like prices, across entire Click! service area
2. Will not decline service to any customer in good standing and services will be available on equitable basis throughout Click! service area	2. Will not decline service to any customer in good standing and services will be available on equitable basis throughout Click! service area

3. Low-income affordability

Wave	Rainier Connect
1. Will offer substantially reduced-cost broadband service to households eligible for TPU electric service low-income program	1. Will offer substantially reduced-cost broadband service to households eligible for TPU electric service low-income program
2. Will provide free wired or Wi-Fi service to at least 30 locations within Click! service area that provide services to low-income members of the community	2. Will provide free wired or Wi-Fi service to at least 30 locations within Click! service area that provide services to low-income members of the community
	3. Will offer federal Lifeline subsidy (\$9.25 per month) to qualified low-income consumers

4. Net neutrality

Wave	Rainier Connect
1. Will operate Network on neutral basis	1. Will operate Network on neutral basis
2. Customers will be fully informed about services	2. Customers will be fully informed about services
3. Customers will have access to internet content, applications, and services without intentional degradation	3. Customers will have access to internet content, applications, and services without intentional degradation
4. No blocking of lawful websites	4. No blocking of lawful websites
5. No discrimination against lawful network traffic	5. No discrimination against lawful network traffic
6. No paid prioritization	6. No paid prioritization

5. Open access

Wave	Rainier Connect
<ul style="list-style-type: none">• Will provide wholesale services consistent with its practices and policies in other markets	<ul style="list-style-type: none">• Will provide wholesale services consistent with its practices and policies in other markets

6. Competition

Wave	Rainier Connect
1. Will not sell, grant, or transfer IRU without TPU's agreement; TPU can decline based only on legal, technical, & financial capacity of entity to meet IRU obligations	1. Will not sell, grant, or transfer IRU without TPU's agreement; TPU can decline if transfer violates any of the 12 policy principles or based on legal, technical, & financial capacity of entity to meet IRU obligations
2. Will not sell to any entity that has residential fixed data market share of 33% or more in Click! service area	2. Will not sell to any entity that has residential data market share of 25% or more in Click! service area
3. Will require assignee to comply with IRU terms, including 12 policy goals	3. All IRU terms transfer to purchasing entity

7. Safeguard City and TPU use

Wave	Rainier Connect
1. IRU does not include fiber used by Tacoma Power or CityNet	1. IRU does not include fiber used by Tacoma Power or CityNet
2. Tacoma Power will maintain critical fiber routes	2. Tacoma Power will maintain critical fiber routes
3. Wave will maintain coaxial cable	3. Rainier Connect will maintain coaxial cable
4. Wave will maintain new fiber on non-critical routes	4. Rainier Connect will maintain new fiber on non-critical routes

8. Financial stability

Wave	Rainier Connect
1. Will pay TPU approx. \$1.5 million annually during each year of the IRU term, of which \$500,000 will be applied to Wave's electricity costs	1. Will pay TPU \$2.5 million in the first year, increasingly incrementally to \$3 million annually beginning in year six
2. Net revenue to TPU: \$1 million	2. Net revenue to TPU: \$2.5 increasing to \$3 million over the first five years
3. Will invest \$1.5 million each year to deliver service that meets or exceeds federal definition of broadband	3. Will invest \$1.5 million each year to maintain state-of-the-art network

All numbers to be adjusted annually for inflation

9. Economic development & educational opportunity

Wave	Rainier Connect
1. Will work with TPU to develop internship program to provide work opportunity and training for students and residents of Tacoma, including veterans	1. Will work with TPU to develop internship program to provide work opportunity and training for students and residents of Tacoma, including veterans
2. Will work with TPU to assist City economic development department to support efforts to attract businesses	2. Will work with TPU to assist City economic development department to support efforts to attract businesses

10. Job options for Click! staff

Wave	Rainier Connect
1. Will make good-faith effort to interview Click! employees interested in employment	1. Will make good-faith effort to interview Click! employees interested in employment
2. Will potentially make job offers prior to execution of the IRU	2. Will potentially make job offers prior to execution of the IRU

11. Consumer privacy

Wave	Rainier Connect
<ul style="list-style-type: none">• Will comply with City Council Resolution No. 39702, which prohibits ISPs that serve as retail broadband data providers on the Click! network from collecting or selling personal information from a customer without express written approval	<ul style="list-style-type: none">• Will comply with City Council Resolution No. 39702, which prohibits ISPs that serve as retail broadband data providers on the Click! network from collecting or selling personal information from a customer without express written approval

12. Consumer goodwill, customer service

Wave	Rainier Connect
1. 24/7 customer service contact options	1. 24/7 customer service contact options
2. Will schedule installation and service appointments within maximum 4-hour time block during normal business hours	2. Will schedule installation and service appointments within maximum 4-hour time block during normal business hours
3. Will meet standards at level consistent with its operations elsewhere	3. Will meet standards at least 90 percent of the time
	4. Will begin repair of service interruptions within 24 hours
5. Will give 30 days' notice for changes	5. Will give 30 days' notice for changes
6. Will maintain a physical presence in Tacoma, including a store open during normal business hours & Saturday mornings	6. Will maintain a physical presence in Tacoma, including a store open during normal business hours & Saturday mornings. Customer service staff will be located in Tacoma



SUMMARY OF OUTCOMES AND ALIGNMENT WITH POLICY GOALS AND PUBLIC ENGAGEMENT



Summary: Achievements

Both term sheets represent substantial achievements

- Meet or exceed policy goals
- Unprecedented private sector commitments to net neutrality, privacy, non-transfer to entity with substantial market share, and low-income affordability – will serve as a model for other communities

Both entities are stable, capable competitors

- Provided financial data to demonstrate capacity to meet IRU obligations
- Solid technical and business track records
- Long history of providing competitive services
- Headquartered in Tacoma/Seattle region, with substantial local operations

Summary: Key differences

Wave	Rainier Connect
1. Proposes to pay net \$1M million/yr. (\$1.5M less electricity cost)	1. Proposes to pay \$2.5 million/yr., increasing to \$3 million in year 6
2. Does not participate in federal Lifeline subsidy program	2. Participates in federal Lifeline subsidy program (\$9.25/mo. for qualified consumers)
3. Will not sell to any entity with more than 33% market share	3. Will not sell to any entity with more than 25% market share
3. TPU can decline transfer of IRU interests based on legal, technical or financial capacity of transferee	3. TPU can decline transfer that violates any of the 12 policy principles or based on legal, technical, & financial capacity
4. Offers good customer service guarantees	4. Offers exceptional customer service guarantees
5. Able easily to scale to meet IRU obligations	5. Capability to scale to meet IRU obligations



Summary and recommendation

Both term sheets meet and exceed the policy goals and represent optimal market outcomes

Wave's scale, resources, and capacity offer lower risk in execution

- But higher risk of sale of company

Rainier Connect offers higher compensation and some better terms

- Modestly better terms with respect to customer service and low-income affordability
- Substantially better term with respect to oversight of sale or transfer of IRU rights

Recommend proceeding to detailed IRU negotiations with Rainier Connect

Tacoma Click! – Wave Public-Private Partnership Term Sheet

February 22, 2019

1. Continued public ownership of the infrastructure assets

- a. IRU assets: Wave will be granted an indefeasible right of use (“IRU”) for the hybrid fiber-coaxial network assets owned by Tacoma Public Utilities (TPU) and used by Tacoma Click! (“Click!) to provide cable television, telecommunications, and broadband data services to residents and businesses in the currently existing Click! service area (with reference to the serviceable homes passed by such facilities) (“Click! Service Area”), which is mapped in Appendix E, hereinafter referred to as the “Network.” The Network includes the outside plant assets associated with the Click! network, including fiber optics (as described in Appendix C), coaxial cable (as described in Appendix D), cabinets, splitters, backup powering equipment, and other outside plant physical assets including those discussed in 14(b) below.
- b. IRU term: The IRU term will be 20 years (“Initial Term”). On the expiration of the Initial Term, the IRU will be renewed for two additional periods of 10 years (“Extension Terms”) so long as Wave is (a) not in material breach of the IRU or (b) is not commencing cure of a material breach under the IRU, either of which were subject to a notice from TPU at least 180 days prior to the applicable expiration date. The Initial Term and any Extension Term will be referred to as the “IRU Term.”
- c. Other assets: Wave will purchase other assets currently used by Click! in the provision of cable television, telecommunications and broadband data services, including equipment used to operate the Network and deliver services to customers, customer accounts, inventory of spare parts and equipment, prepaid items, customer premises equipment and material contracts, in each case related to the operation of the Network and the provision of products and services (collectively, “Related Assets”). The Related Assets will be conveyed to Wave subject to the terms of an asset purchase agreement (“APA”) to be negotiated between the parties.
- d. Network upgrades: Wave commits to complete upgrade to DOCSIS 3.1 to a minimum of 75 percent of the Click! Service Area within 24 months of transfer of control of the Network from TPU to Wave and to a minimum of 95 percent within 36 months. Wave will take into account the City of Tacoma’s Equity Principles in developing the phasing of the upgrade in addition to business, technical and efficiency considerations.

- e. Ownership of new and upgraded assets:
 - i. Subject to the IRU, TPU will own any outside plant asset constructed or upgraded by Wave that is connected to the existing Network within and throughout the Click! Service Area and for which Wave has applied its Capital Expenditure commitment set forth in Section 8(b) below. with the exception of outside plant that is owned by Wave as of the date of execution of the IRU and that is mapped in Appendix F (“Wave Plant”), together with any extensions of the Wave Plant constructed by Wave.
 - ii. In the event of contractual default by Wave and termination by TPU, TPU will have an unrestricted right of use for any equipment and other assets, including customer accounts and customer data necessary for the operation of the Network, but not with respect to Wave Plant, in use to support operations for a defined period of time, so as to enable continuity of services and seamless migration to a new operator. In the event of termination by TPU, the demarcation point between Wave Plant and TPU-owned Network will be the splice points or similar physical interconnection points.
- f. Good Faith Cooperation. Wave and TPU acknowledge that the transactions and operations contemplated by this Term Sheet will require the good faith efforts of all of them to support Wave’s operation of the Network and provision of services to customers. Wave and TPU will agree to an information matter resolution process (including appropriate escalation process) prior to any matter being declared a material breach which would allegedly give rise to a termination right if left uncured after proper notice.

2. Ensure equitable access regardless of geographic location, socioeconomic status, or technology used to access online content

- a. Equity in pricing and service levels. Wave commits that it will offer like services, at like prices, across the entire Click! Service Area. The DOCSIS 3.1 upgrade, as well as subsequent upgrades to successive generations of DOCSIS technology, will be undertaken to at least 95 percent of the Network. Further Network upgrades will be undertaken based on economic feasibility without any consideration of impermissible demographic considerations.
- b. Equity in access to service. Wave commits that it will not decline service to any customer in good standing and that its services will be available on an equitable basis throughout the Click! Service Area. Consistent with Wave’s existing practices, delinquent customers will be eligible for reinstatement of services so long as they pay outstanding balances and related fees, provide other appropriate

assurances (such as a deposit) and remain current.

3. Create low-income affordable access to telecommunications services

- a. Wave will offer a substantially reduced-cost service, at or above the federal definition of broadband, to households in the Click! Service Area that are eligible for Tacoma Power’s electric service low-income program.
- b. Wave will provide free wired or Wifi service to up to 30 locations in the Click! Service Area that provide services to low-income members of the community, as a means of facilitating broadband access for those who cannot access it elsewhere. The locations will be determined in collaboration with TPU.

4. Enforce net neutrality principles for all customers

- a. Consistent with its longtime policy and practice, Wave will operate the Network on a net neutral basis.
- b. Specifically, Wave commits to the following:
 - i. Transparency: Customers will be fully informed about their services, including technical characteristics and network management practices, so they can make informed choices.
 - ii. Free flow of information over the internet: Customers will have access to internet content, applications, and services without intentional degradation.
 - iii. No blocking of lawful websites: Customers will have access to all lawful websites, resources, applications, and internet-based services.
 - iv. No discrimination against lawful network traffic: All lawful traffic, including encrypted traffic, will receive similar treatment. No traffic will receive preferential treatment based on affiliation, the identity of the user, the content of the information, the provider of content, or the type of service being provided.
 - v. No paid prioritization: Wave will not offer prioritized transmission of certain content, applications, or content providers over other internet traffic sharing the same network facilities; provided that nothing in these principles will restrict Wave from entering into industry standard peering and hosting agreements.

5. Allow open access to telecommunications assets by other telecommunications providers, to the extent such access benefits customers

Wave will have a wholesale services program consistent with its practices and policies in other geographic areas in which it provides service.

- 6. Preserve competition among telecommunications providers that benefits customers (such as high-quality, technologically up-to-date, and reasonably priced telecommunications services), including restricting transfer of ownership or operations that reduce competition**
 - a. Wave recognizes the City and TPU’s goal of preserving and promoting competition.
 - b. Wave commits that it will not sell, grant, or otherwise transfer its rights and obligations under the IRU or asset purchase agreement to any entity without written consent from TPU. TPU’s consent may not be unreasonably withheld, conditioned, or delayed, and may be based only on legal, technical, and financial capacity of the entity to meet its obligations under the IRU.
 - c. Wave commits that it will not sell, grant, or otherwise transfer its rights and obligations under the IRU to any entity that has residential fixed data subscriber market share of 33 percent or more in the Click! Service Area.
 - d. In the event that Wave sells, grants, or otherwise transfers its rights and obligations under the IRU to another entity, Wave will require, in its contract of assignment, that the assignee will comply with all contractual obligations under the IRU including the 12 policy goals. All the terms of the IRU will transfer to any entity to whom Wave sells, grants, or otherwise transfers its rights and obligations under these documents.

- 7. Safeguard municipal use of telecommunications services by Tacoma Power, the City, and other local governments**
 - a. Maintenance of Tacoma Power Fiber: The parties recognize that large parts of the Network were constructed for the primary purpose of supporting Tacoma Power operations, and the 24 strands of Tacoma Power Fiber on the routes mapped in Appendix A (Critical Routes) provide substantial and essential support for critical Tacoma Power functions and assets. The Tacoma Power Fiber on Critical Routes is collocated with the fiber optic strands that are used by Click! and are now planned to lease to Wave under the IRU. With respect to any components of the Network or Tacoma Power Fiber on Critical Routes, Wave will not provide maintenance, including infrastructure repair; splicing; replacement; emergency restoration; pole transfers; road projects and overhead-underground conversions; cable restoration; locates; reattachment; moves; make-ready compliance; route-relocation, and other standard processes undertaken by communications infrastructure owners (“Maintenance”). Rather, Tacoma Power will provide all Maintenance on Critical Routes for the term of the IRU, Extended IRU Terms, and thereafter. Tacoma Power will provide Wave a service level

agreement (SLA) for on-going physical maintenance and restoration of the Network (including both fiber and coaxial cable) on Critical Routes . The SLA will include NOC communications processes, service availability requirements, standards for measuring service availability, scheduled maintenance terms, unscheduled maintenance response and resolution standards and remedies for any failures to perform under the SLA. In the event that Tacoma Power no longer utilizes fiber on Critical Routes to support critical functions and assets, the two parties will develop a plan for expanding Wave’s access to Tacoma Power fiber and reducing Tacoma Power’s Maintenance obligations.

- b. Fiber overlash or delash on Critical Routes: Wave may overlash or delash fiber to the Network on Critical Routes consistent with Tacoma Power’s standard requirements.
- c. Maintenance on Non-Critical Routes: The Network on routes that are not Critical Routes as defined by Appendix A does not carry traffic that is critical to Tacoma Power operations and assets (“Non-Critical Routes”). Wave will provide Maintenance for the Network on Non-Critical Routes during the IRU Term and Extended IRU Terms and will be responsible for supporting and maintaining that plant to meet its own needs. In the event that Wave upgrades existing coaxial plant on Non-Critical Routes to fiber optics or otherwise adds new infrastructure on those routes, it will be responsible for Maintenance. In the event that Tacoma Power has reason to re-designate Non-Critical Routes as Critical Routes, the two parties will work to determine the terms of the changed designation.
- d. New Routes: For those routes on which Wave constructs new communications infrastructure where Click! does not currently have outside plant (“New Routes”), Wave will be responsible for all Maintenance on the same terms as for Non-Critical Routes.
- e. Splicing on Critical Routes: Wave will not access splice panels or fiber access points anywhere on Critical Routes. Rather, qualified Tacoma Power staff will provide splicing services to Wave upon request based on the price schedule in Appendix B. Tacoma Power will provide qualified staff to provide splicing services at a time of mutual agreement between Tacoma Power and Wave based on notice of 10 business days. If Wave chooses to build new splicing access points for its own use on Critical Routes so as to separate Network access points from Tacoma Power Fiber access points, Tacoma Power will provide qualified staff to provide this construction service based on the price schedule in Appendix B and notice of 10 business days.
- f. Energized vaults: For safety and regulatory compliance reasons, only qualified Tacoma Power staff can access Network assets that are contained within

energized vaults (estimated as approximately four percent of total access points in the Network). In the event that Wave needs to access these assets, qualified Tacoma Power staff will provide access services to Wave upon request based on the price schedule attached hereto as Appendix B. Tacoma Power will provide qualified staff to provide these access services at a time of mutual agreement between Tacoma Power and Wave based on notice of five business days. Wave may build new infrastructure to avoid the energized vaults.

- g. Hub site access and security: Under the IRU, Wave will have independent, 24-hour access to the six secured Click! hub site locations, which are located adjacent to Tacoma Power's substations and can therefore be entered by Wave staff without entering the substations. Wave will also have access and use of all existing racks in the hub site, other than those reserved for the I-Net and TPU. Wave can add racks within the hub site. All parties will be responsible for the security of their respective equipment only. With respect to existing shared racks and patch-panels, Tacoma Power will ensure they are lockable.
- h. Updates to infrastructure documentation: On a quarterly basis, Wave will provide Tacoma Power with as-built drawings indicating construction type, routes, and strand count for any new construction, upgrades, or other efforts on both Critical Routes and Non-Critical Routes over the previous quarter. The data will be provided in a format to be agreed to by the parties and that is intended to make sharing of data as efficient and useful as possible. At the termination or expiration of the IRU, Tacoma Power will receive data, sufficient for TPU to operate the Network, regarding the Network and its use, without exception, including Wave's Network data, maps, and information regarding the Network and any changes to it within Tacoma Power's electric service territory, subject to customer privacy concerns. The parties will agree to mutually acceptable IRU terms for access to data to enable TPU to continue operations during a transition period.

8. Maintain financial stability of the telecommunications business operations utilizing the Click! assets

- a. Direct Lease Fee
 - i. Wave will pay TPU \$1.5 million annually ("IRU Fee") during each year of the IRU Term and Extended IRU Terms, adjusted annually based on increases in the Consumer Price Index ("CPI").
- b. Capital Expenditures
 - i. Wave will make at least \$1.5 million in capital expenditures ("Capital Expenditures") on the physical assets of the Network during each year of

the IRU Term, adjusted annually based on increases in the Consumer Price Index (“CPI”). Expenditures on the Wave Plant within the Click! Service Area and expenditures outside the Click! Service Area will not apply toward Capital Expenditures. The following items, among others, may be included within this Capital Expenditures commitment.

- ii. Beginning with the date of commencing operation of the Network, Wave will begin investing the capital needed to accomplish Network upgrades and improvements to migrate the Network to DOCSIS 3.1 and to enable the provision of gigabit speed internet service to at least 95 percent of the existing Click! Service Area within 36 months.
- iii. Throughout the IRU Term, Wave’s financial investments in the Network will be designed such that the Network will be capable of delivering consumer services to residences and small businesses that meet or exceed the federal definition of broadband.
- iv. All responsibility for capital expenditures for the provision of the products and services to Network subscribers will be borne by Wave during the IRU Term other than expenditures necessary to meet Tacoma Power’s obligations for Maintenance on Critical Routes which will be borne by TPU.
- v. Capital Expenditures on the physical assets of the Network will include, but not necessarily be limited to, expenditures on upgrades to successive generations of DOCSIS and expenditures on upgrades to fiber-to-the-premises. Capital Expenditures can also include point-to-point wireless equipment for service to multi-dwelling and multi-tenant buildings.
- vi. These improvements to the Network will be owned by TPU subject to the IRU.
- vii. Expenditures on physical assets that do not become part of the Network (such as customer premises equipment, cloud-based services, web-based services, or a soft switch located elsewhere) will not be credited toward Capital Expenditures. TPU will have no ownership rights in such physical assets either during the pendency of the IRU or thereafter. In the event of contractual default by Wave and termination by TPU, in which case TPU will have the ability to use such physical assets to support operations for a defined period of time, so as to enable continuity of services and seamless migration to a new operator, under terms of a transition services agreement to be agreed by the parties.
- viii. Expenditures on physical assets that are not related to provision of wireline broadband data, telecommunications and cable services (such as

wireless communications facilities except as set forth in Section 8(b)(vi) above) will not be credited toward Capital Expenditures.

- ix. Compliance with the Capital Expenditures commitment will be measured annually and tracked on a cumulative basis. Wave will describe the Capital Expenditures actually made in each year of the IRU Term in an annual report to TPU. If Wave exceeds its commitment in a given year, Wave will get credit in immediately future years for those expenditures in excess of its annual commitment. If Wave does not meet its Capital Expenditures commitment in a given year through current year expenditures, credits from prior years or a combination, Wave will have an additional 12 month “catch-up” period in which to make expenditures. If Wave fails to meet its Capital Expenditures commitment during the catch-up period, Wave will remit the shortfall in cash to TPU at the end of the 12 month “catch-up” period. TPU will have the right to audit these expenditures.
- c. Operating and Maintenance Costs
 - i. All of the operating expenses of the operation of the Network will be borne by Wave during the IRU Term, other than the Maintenance obligations to be assumed by Tacoma Power on Critical Routes.
 - ii. In addition, Wave will assume and perform a maintenance and support agreement for the coaxial-based service to the approximate 14,000 wired gateway meters utilized by Tacoma Power to collect electric service usage data over the Network until a substitute meter reading network is deployed by Tacoma Power. Tacoma Power plans to gradually phase out use of these meters over approximately two years, depending on the timeline and progress for its wireless Automated Metering Infrastructure (“AMI”) initiative. Tacoma Power and Wave agree to work together to determine a reasonable arrangement for support of the meters and migration away from their use. Tacoma Power understands that continued use of the meters could slow Wave’s upgrade of the network to DOCSIS 3.1 if the upgraded equipment cannot support the meters. Similarly, Wave understands that Tacoma Power is engaged in deploying the AMI solution to replace the wired gateway meters, and that the AMI deployment process may entail two or more years.
 - iii. Energy Costs: Wave’s use of energy provided by Tacoma Power will be included in the IRU up to a total of \$516,000 per year, adjusted annually based on increases in the Consumer Price Index (“CPI”). Any additional

energy costs will be paid for by Wave consistent with Tacoma Power's standard commercial pricing.

9. Promote economic development and educational opportunities

- a. Wave will work with TPU to develop an internship program to provide work opportunity and training for students and residents of Tacoma, including veterans.
- b. Wave will work with TPU to develop a strategy to support the City's economic development department in its efforts to attract businesses to Tacoma and to provide data about Wave's commercial broadband data offerings that can be provided to businesses considering locating in Tacoma.

10. Provide job options and security for Click! staff

- a. Wave will make a good faith commitment to interview current employees of Click! who express an interest in potential employment and will potentially make offers of employment prior to execution of the IRU and APA to those employees who have the required skill sets and who meet Wave's hiring criteria.
- b. The terms and conditions of employment will be established by Wave under its standard employment terms and conditions.

11. Protect customer privacy

- a. Consistent with its existing policy and practice, Wave will comply with City Council Resolution No. 39702 regarding privacy. This Resolution prohibits ISPs that serve as retail broadband data providers on the Click! network from collecting or selling personal information from a customer without express written approval.
- b. Resolution No. 39702 will be incorporated in the IRU as an obligation of Wave with respect to both its own broadband data service offerings and those of the ISPs that serve as retailer broadband data providers on the Network.

12. Preserve Click!'s goodwill, including its market-leading customer service

- a. Wave recognizes the importance of customer service to Click!'s customers, TPU, and the City. It commits to adhering to robust customer service standards under the IRU for internet services.
- b. Customer Service Contacts: Wave will maintain a local or toll-free telephone line for taking customer calls and will provide other forms of customer contact that will be available 24 hours per day, seven days per week, including on holidays. During hours during which most similar businesses in Tacoma are open to serve customers ("Normal Business Hours"), company representatives will be available to respond to customer inquiries. After Normal Business Hours, Wave may make provision for electronic response pending opportunity the following day for a response by a

company representative. A company representative will endeavor to respond to inquiries received after Normal Business Hours on the next business day. Wave will maintain a level of customer service consistent with the levels of customer service it provides in other areas where it provides cable, telephone and residential data services. Service Calls: Wave will schedule appointments for installations and other service calls either at a specific time or, at a maximum, during a four-hour time block during normal business hours. Wave may also schedule service calls outside of normal business hours for the convenience of the customer. Wave will not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment. If the service technician is running late and will not meet the specified appointment time, Wave will contact the customer and reschedule the appointment at the convenience of the subscriber.

- c. Standard installations that are located up to 125 feet from the existing distribution system will be performed within seven days after an order has been placed.
- d. The standards concerning installations, outages and service calls will be consistent with the levels of service it provides in other areas where it provides cable, telephone and residential data services.
- e. Billing Practices: Thirty days advance notice will be given to subscribers of any changes in rates or services if the change is within the control of Wave. Refunds will be issued no later than either the customer's next billing cycle or 30 days following resolution of the request, whichever is earlier, or upon the return of equipment when service is terminated. Credits will be issued no later than the billing cycle following the determination that a credit is warranted.
- f. Physical Presence: Wave will maintain a physical presence in the City of Tacoma, including a store that will be open during all Normal Business Hours, including on Saturday mornings, where consumers can transact business in person with Wave staff-persons. Wave customer service staff will be located locally in the region, either in Tacoma or in other areas of Wave's service territory.

13. Timeline, Process, and Approvals

- a. Closing of the proposed transaction will be conditioned, among other typical conditions, on regulatory consents and approvals and any third-party consents relating to designated material contracts to be assumed by Wave.
- b. The parties contemplate the IRU and APA will be fully negotiated within 60 to 90 days following required approvals by the City of Tacoma Public Utilities Board and by the Tacoma City Council.
- c. The IRU and APA will be executed following required approvals by the City of Tacoma Public Utilities Board and by the Tacoma City Council.

- d. At the time of execution of the IRU, the Related Assets will be conveyed to Wave and Wave will assume such liabilities related to the Network and Related Assets as have been mutually agreed. The parties will agree to a working capital adjustment mechanism so that pre-closing liabilities may be efficiently managed.
- e. The parties anticipate a six-month transition period after closing, with Wave taking over operations on a mutually-acceptable schedule reasonably determined to cause the least disruption to Click!'s customers. The parties will, during negotiations for the IRU and APA, also negotiate a mutually-agreeable agreement to govern the transition period and transfer of control of the Network to Wave.
- f. During the six-month post-closing transition period, Wave will compensate TPU for any transition services, ongoing back-office support, or other arrangements necessary to facilitate the continued operation of Click!'s business and the transfer of operations to Wave. Such terms will be similar to any transition services that TPU may require of Wave in connection with any reconveyance of the IRU at the termination of the IRU.
- g. Prior to the closing of the proposed transaction, Wave will either obtain approval from the jurisdictions with whom Click! has franchise agreements to assume those agreements or will enter into its own franchise agreements to serve these jurisdictions. TPU will provide all reasonable assistance to Wave in obtaining these approvals or new franchise agreements.
- h. On a periodic basis to be mutually agreed by the parties, Wave and TPU will meet to review Wave's operations, the status of the Network, and the state of the 12 policy goals adopted by the Tacoma City Council and Tacoma Public Utilities Board. In addition, on an annual basis, beginning one year after execution of the IRU, Wave will provide a report to the Utility Board and City Council of its operations, the status of the Network, and the state of the 12 policy goals adopted by the Utility Board and City Council.

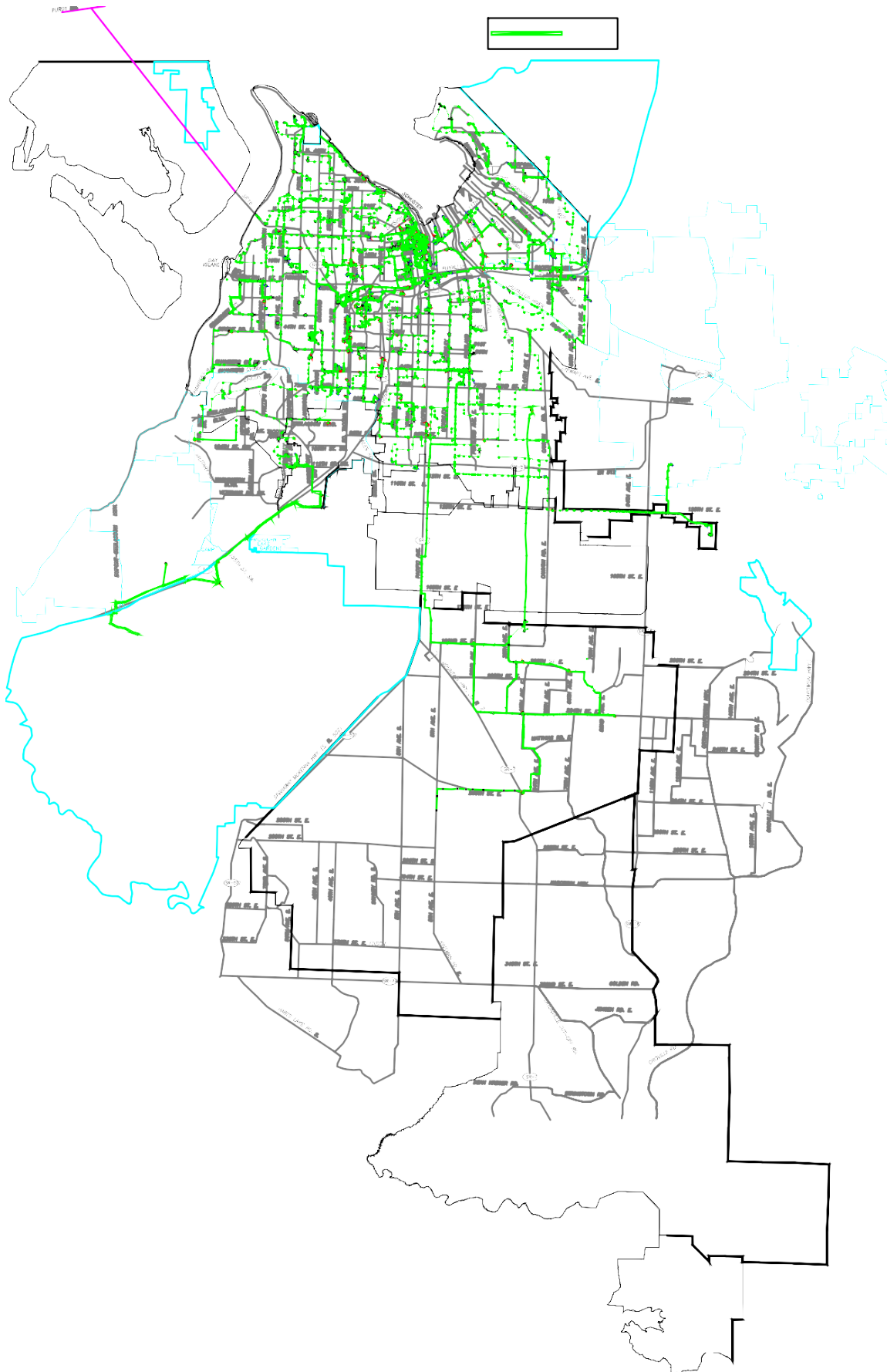
14. Additional Technical Matters

- a. Permitting and pole attachments: TPU will work with Wave to support and ensure efficient and expeditious issuance of City permits, consistent with City policy and practices and with the appropriate franchise agreement(s) to be negotiated by the parties. TPU will also work with Wave to efficiently and expeditiously issue permits, consistent with Tacoma Power policy and practices and with pole attachment and conduit access agreements in existence or to be negotiated by the parties.
- b. Backup generation, batteries, HVAC system, and power supply at hub sites. The IRU will include existing backup batteries, HVAC systems, power supplies, and

emergency generation within the hub sites. The existing equipment of this sort will be maintained by Wave, under the IRU, including ongoing fueling, operations, maintenance, monitoring, repair, and replacement of this equipment. Wave will provide power, including backup power, to the I-Net equipment located in the hub sites.

- c. Construction engineering meetings: Following execution of the IRU and APA, the technical teams for both parties will meet on a quarterly basis for purposes of sharing information, data, and plans regarding upcoming construction and upgrades, so as to enable both parties to plan accordingly based on shared expectations. The parties anticipate that these meetings will serve to provide predictability and enable both parties to facilitate the support the needs of the other, as well as to plan appropriately for staffing and other upcoming efforts.

Appendix A: Critical Routes



Appendix B: Tacoma Power Price Schedule

Work Item	Description	Measured By	Cost
1. Fusion Fiber Splicing (Existing Splice Case)	Labor, materials and equipment required for fusion splicing, including dress and storage of unspliced fibers within the splice tray. A minimum of 24 fiber splices will be performed at each location. Provide electronic documentation and analysis of each splice. Includes installation of splice cases and storage loops with snowshoes, grounding and bonding of all equipment. Encapsulate and flash test as required. Support and secure per manufacture’s specifications.	Per fiber splice, tested and documented	\$28.00
2. Fusion Fiber Splicing (Mid-Entry, Create Splice Case)	All labor, materials and equipment costs necessary to de-lash and re-lash system up to 1000’, retrieve fiber storage, prepare mid-entry case, fusion splicing, including dress and storage of unspliced fibers within the splice tray. A minimum of 24 fiber splices will be performed at each location. Provide electronic documentation and analysis of each splice. Includes installation of splice cases and storage loops with snowshoes, grounding and bonding of all equipment. Encapsulate and flash test as required. Support and secure per manufacture’s specifications. Includes all safety measures and traffic control.	Per fiber splice, tested and documented	\$58.00
3. Fusion Fiber Splicing (at Hub and Headend Buildings)	All costs associated with the labor, materials and equipment necessary for fusion splicing to be performed at hub and headend locations, including dress and storage of unspliced fibers within the splice tray. A minimum of 96 fiber splices will be performed at each location. Provide electronic documentation and analysis of each splice. Includes installation of splice cases and storage loops, grounding and bonding of all equipment.	Per fiber splice, tested and documented	\$16.00

Tacoma Click! – Wave Public-Private Partnership Term Sheet
 February 22, 2019

	Encapsulate and flash test as required. Support and secure per manufacture’s specifications.		
4. Access Management – Access Energized Power Vaults	All costs for labor, materials and equipment to provide escorted access to Tacoma Power energized vaults in the downtown business network. This unit includes a composite crew of Wire and HFC personnel, who would perform work on behalf of partner. <i>4% of the system splice cases reside inside energized vaults.</i>	Time and Materials (Per hour, five-Person Crew)	\$541.00

Appendix C: Inventory of Click! Fiber to be Included in the IRU

The following spreadsheet contains an inventory of the Click! fiber that will be included in the IRU, by segment, as well as fiber in use by other entities. The Click! fiber that is subject to the IRU is only that designated as such.

Appendix D Inventory of Click! Coaxial Cable to be Included in the IRU

[Appendix E: Map of Existing Click! Service Area](#)
[Appendix F: Map of Wave Plant](#)

Tacoma Click!/Rainier Connect Public-Private Partnership Term Sheet

March 4, 2019

1. Continued public ownership of the infrastructure assets

- a. IRU assets: Rainier Connect will be granted an indefeasible right of use (“IRU”) for the hybrid fiber-coaxial network assets owned by Tacoma Public Utilities (TPU) and used by Tacoma Click! (“Click!”) to provide cable television and broadband data services to residents and businesses (“Network”) in the existing Click! service area (“Click! Service Area”). The Network includes the outside plant assets associated with the Click! network, including fiber optics, coaxial cable, cabinets, splitters, backup powering equipment, and other outside plant physical assets including those discussed in 14(b) below.
- b. IRU term: The IRU term will be 20 years (“IRU Term”). On the expiration of the IRU Term, the IRU can be renewed for two additional periods of 10 years (“Extension IRU Terms”) so long as Rainier Connect is in compliance with all the terms of its contractual relationships with the City of Tacoma and TPU.
- c. Other assets: Rainier Connect will be granted use of other assets currently used by Click! in the provision of cable television and broadband data services, including equipment used to operate the Network and deliver services to customers, customer accounts, inventory of spare parts and equipment, prepaid items, and material contracts, in each case related to the operation of the Network and the provision of products and services (collectively, “Related Assets”). The Related Assets will be conveyed to Rainier Connect subject to the terms of an asset purchase agreement (“APA”) to be negotiated between the parties.
- d. Network upgrades: Rainier Connect commits to complete ubiquitous upgrade to DOCSIS 3.1 throughout the Click!’ Service Area within 36 months of transfer of control of the Network from TPU to Rainier Connect.
- e. Ownership of new and upgraded assets:
 - i. Subject to the IRU, TPU will own any outside plant asset constructed or upgraded by Rainier Connect on the existing Network within and throughout the Click! Service Area, with the exception of outside plant that is owned by Rainier Connect as of the date of execution of the IRU.

- ii. Rainier Connect will own any electronic asset it purchases that is not located on TPU property and that can be removed at the end of the IRU. In the event of contractual default by Rainier Connect and termination by TPU, TPU and Tacoma Power will have an unrestricted right of use for any equipment and other assets, including customer accounts and customer data, with respect to the Network, but not with respect to Rainier Connect Plant, in use to support operations, so as to enable continuity of services and seamless migration to a new operator. Following execution of the agreements between the parties, the two parties will develop a mutually-agreeable plan for such migration, and will review and revise the plan every three to five years throughout the IRU Term and Extended IRU Terms. In the event of termination by TPU, the demarcation point between Rainier Connect Plant and TPU-owned Network will be the splice points or similar physical interconnection points.

2. Ensure equitable access regardless of geographic location, socioeconomic status, or technology used to access online content

- a. Equity in pricing and service levels. Rainier Connect commits that it will offer like services, at like prices, across the entire Click! Service Area. The DOCSIS 3.1 upgrade, as well as subsequent upgrades to successive generations of DOCSIS technology, will be undertaken on a ubiquitous basis to 100 percent of the Network. Upgrades to fiber-to-the-premises will be undertaken based on economic feasibility without any consideration of impermissible demographic considerations.
 - i. Rainier Connect will actively work to eliminate racial and socioeconomic disparities as it upgrades the network across the Click! Service Area and beyond.
 - ii. Rainier Connect commits to purposeful citizen outreach and engagement with diverse community partners to better understand the needs of historically underserved populations. Through this, Rainier Connect will provide access based on best available technology to serve the unique needs of any particular area or population.
 - iii. Rainier Connect plans to work with community partners and businesses from all parts of the Click! Service Area to promote and track equity and inclusion of services within Tacoma and throughout the region. This will allow Rainier Connect to quantify measurable im-

provements as they relate to broadband and telecommunication access in the community.

- iv. As it does in its other service areas, Rainier Connect will provide guidance, education, and assistance to all community members to help achieve equitable service outcomes as it relates to broadband and telecommunications offerings.
- v. Rainier Connect commits to being transparent and collaborative with individuals and community groups, holding itself accountable for measurable improvements and outcomes as it relates to equitable penetration of telecommunications and broadband services in the TPU footprint.

- b. Equity in access to service. Rainier Connect commits that it will not decline service to any customer in good standing and that its services will be available on an equitable basis throughout the Click! Service Area. Consistent with its existing practices, Rainier Connect will reinstate service for delinquent customers so long as they pay outstanding balances and remain current.

3. Create low-income affordable access to telecommunications services

- a. Rainier Connect will offer the federal Lifeline subsidy to qualified low-income consumers. Rainier Connect is a certified Lifeline provider.
- b. Rainier Connect will offer a substantially reduced-cost service, at or above the federal definition of broadband, to households that are eligible for Tacoma Power's electric service low-income program. In compliance with this obligation, in the immediate period after transfer of Network control, Rainier Connect will offer a 30 Mbps download/10 Mbps upload package for \$10 per month.
- c. Rainier Connect will provide free wired or Wifi service to at least 30 locations within the existing Click! Service Area that provide services to low-income members of the community, as a means of facilitating broadband access for those who cannot access it elsewhere. The locations will be determined in collaboration with TPU.

4. Enforce net neutrality principles for all customers

- a. Consistent with its longtime policy and practice, Rainier Connect will operate the Network and any other communications assets it builds within the Tacoma Power electric service territory on a net neutral basis.

- b. Specifically, Rainier Connect commits to the following:
 - i. Transparency: Customers will be fully informed about their services, including technical characteristics and network management practices, so they can make informed choices.
 - ii. Free flow of information over the internet: Customers will have access to internet content, applications, and services without intentional degradation.
 - iii. No blocking of lawful websites: Customers will have access to all lawful websites, resources, applications, and internet-based services.
 - iv. No discrimination against lawful network traffic: All lawful traffic, including encrypted traffic, will receive similar treatment. No traffic will receive preferential treatment based on affiliation, the identity of the user, the content of the information, the provider of content, or the type of service being provided.
 - v. No paid prioritization: Rainier Connect will not offer prioritized transmission of certain content, applications, or content providers over other internet traffic sharing the same network facilities.

5. Allow open access to telecommunications assets by other telecommunications providers, to the extent such access benefits customers

Rainier Connect will provide wholesale services to other providers consistent with its practices and policies in other geographic areas in which it provides service.

6. Preserve competition among telecommunications providers that benefits customers (such as high-quality, technologically up-to-date, and reasonably priced telecommunications services), including restricting transfer of ownership or operations that reduce competition

- a. Rainier Connect recognizes TPU's goal of preserving and promoting competition.
- b. Rainier Connect commits that it will not sell, grant, or otherwise transfer its rights and obligations under the IRU or asset purchase agreement to any entity without written agreement from TPU, and that such agreement can be withheld in the event that TPU believes that the transfer violates any of the 12 policy principles adopted by the Tacoma Public Utilities Utility Board and City of Tacoma Council regarding Click!. TPU may decline consent based on

the entity's legal, technical, and financial incapacity to meet its obligations under the IRU.

- c. Rainier Connect commits that it will not sell, grant, or otherwise transfer its rights and obligations under the IRU or asset purchase agreement to any facilities-based entity that has residential data market share of 25 percent or more in the existing Click! Service Area.
- d. All the terms of this document, the IRU, and the APA will transfer to any entity to whom Rainier Connect sells, grants, or otherwise transfers its rights and obligations under these documents.

7. Safeguard municipal use of telecommunications services by Tacoma Power, the City, and other local governments

- a. Maintenance of Tacoma Power Fiber: The parties recognize that large parts of the Network were constructed for the primary purpose of supporting Tacoma Power operations, and the 24 strands of Tacoma Power Fiber on the routes mapped in Appendix A (Critical Routes) provide substantial and essential support for critical Tacoma Power functions and assets. The Tacoma Power Fiber on Critical Routes is collocated with the fiber optic strands that are used by Click! and are now planned to lease to Rainier Connect under the IRU. With respect to any components of the Network or Tacoma Power Fiber on Critical Routes, Rainier Connect will not provide maintenance, including infrastructure repair; splicing; replacement; emergency restoration; pole transfers; road projects and overhead-underground conversions; cable restoration; locates; reattachment; moves; make-ready compliance; route-relocation, and other standard processes undertaken by communications infrastructure owners ("Maintenance"). Rather, Tacoma Power will provide all Maintenance on Critical Routes for the term of the IRU, Extended IRU Terms, and thereafter. Tacoma Power will provide Rainier Connect a service level agreement (SLA) for on-going physical maintenance and restoration of the Network (including both fiber and coaxial cable) on Critical Routes per the specifications in Appendix B. In the event that Tacoma Power no longer utilizes fiber on Critical Routes to support critical functions and assets, the two parties will develop a plan for expanding Rainier Connect's access to Tacoma Power fiber and reducing Tacoma Power's Maintenance obligations.
- b. Maintenance of Coaxial Network on Critical Routes: Rainier Connect will perform regular maintenance on the coaxial cable as needed on critical routes. These tasks may include RF level measurements, noise measurements, and industry standard troubleshooting or regular maintenance tasks. If needed

Rainier connect will repair or replace active or passive coaxial network components when necessary to eliminate service impairment or outages.

- c. Fiber overlash or delash on Critical Routes: Rainier Connect may not overlash or delash fiber to the Network on Critical Routes without the express written consent of Tacoma Power, consistent with Tacoma Power's standard requirements. This limitation will not apply to potential overlash or delash of Network not located on Critical Routes, to which Rainier Connect may overlash or delash additional fiber plant subject to Tacoma Power's standard pole attachment terms and conditions. This limitation also does not limit Rainier Connect's opportunity to attach new fiber optic plant on Critical Routes, subject to Tacoma Power's standard pole attachment terms and conditions.
- d. Maintenance on Non-Critical Routes: The Network on routes that are not Critical Routes as defined by Appendix A does not carry traffic that is critical to Tacoma Power operations and assets ("Non-Critical Routes"). Rainier Connect will provide Maintenance for the Network on Non-Critical Routes during the IRU Term and Extended IRU Terms and will be responsible for supporting and maintaining that plant to meet its own needs. In the event that Rainier Connect upgrades existing coaxial plant on Non-Critical Routes to fiber optics or otherwise adds new infrastructure on those routes, it will be responsible for Maintenance. In the event that Tacoma Power has reason to re-designate Non-Critical Routes as Critical Routes, it will notify Rainier Connect and the two parties will work collaboratively to determine the terms of the changed designation and a date for transfer of Maintenance responsibilities.
- e. New Routes: For those routes on which Rainier Connect constructs new communications infrastructure where Click! does not currently have outside plant ("New Routes"), Rainier Connect will be responsible for all Maintenance on the same terms as for Non-Critical Routes.
- f. Splicing on Critical Routes: Rainier Connect will not access splice panels or fiber access points anywhere on Critical Routes. Rather, qualified Tacoma Power staff will provide splicing services to Rainier Connect upon request based on the price schedule in Appendix C. Tacoma Power will provide qualified staff to provide splicing services at a time of mutual agreement between Tacoma Power and Rainier Connect based on notice of 10 business days. If Rainier Connect chooses to build new splicing access points for its own use on Critical Routes so as to separate Network access points from Tacoma Power Fiber access points, Tacoma Power will provide qualified staff to pro-

vide this construction service based on the price schedule in Appendix C and notice of 10 business days.

- g. Energized vaults: For safety and regulatory compliance reasons, only qualified Tacoma Power staff can access Network assets that are contained within energized vaults (estimated as approximately four percent of total access points in the Network). In the event that Rainier Connect needs to access these assets, qualified Tacoma Power staff will provide access services to Rainier Connect upon request based on the price schedule attached hereto as Appendix C. Tacoma Power will provide qualified staff to provide these access services at a time of mutual agreement between Tacoma Power and Rainier Connect based on notice of five business days. Rainier Connect may build new infrastructure to avoid the energized vaults.
- h. Hub site access and security: Under the IRU, Rainier Connect will have independent, 24-hour access to the six secured Click! hub site locations, which are located adjacent to Tacoma Power's substations and can therefore be entered by Rainier Connect staff without entering the substations. Rainier Connect will also have use of all existing racks in the hub site, other than those reserved for the I-Net and TPU. Rainier Connect can add racks within the hub site. All parties will purchase appropriate lockable racks for housing of their equipment or install a secure cage within the hub site and will be responsible for the security of their own equipment only. With respect to existing shared racks and patch-panels, Tacoma Power will ensure they are lockable.
- i. Updates to infrastructure documentation: On a monthly basis, Rainier Connect will provide Tacoma Power with as-built drawings indicating construction type, routes, and strand count for any new construction, upgrades, or other efforts on both Critical Routes and Non-Critical Routes over the previous month. The data will be provided in a format to be agreed to by the parties and that is intended to make sharing of data as efficient and useful as possible. At the end of the IRU term or Extended IRU Term, or in the event of Rainier Connect's default, Tacoma Power will be entitled to all data regarding the existing network and its use, without exception, and nothing in this paragraph will limit Tacoma Power's access to Rainier Connect's data, maps, and information regarding the Network.

8. Maintain financial stability of the telecommunications business operations utilizing the Click! assets

- a. Direct Lease Fee

- i. Rainier Connect will pay TPU \$2.5 million annually (“IRU Fee”) during each of the first five years of the IRU term, increasing to \$3 million annually for all subsequent years of the IRU Term and Extended IRU Terms, adjusted annually based on increases in the Consumer Price Index (“CPI”).

b. Capital Expenditures

- i. Beginning with the date of closing, Rainier Connect will immediately begin investing the capital needed to accomplish Network upgrades and improvements to migrate the Network to DOCSIS 3.1 and to enable the provision of gigabit speed internet service to the existing Click! Service Area within 24 to 36 months. At least one third of the Click! Service Area upgrade will be completed each year and the phasing of upgrades will include consideration of the City’s Equity Principles.
- ii. Throughout the IRU and Extension IRU Terms, Rainier Connect will make continuous financial investments in the Network to maintain a state-of-the-art distribution network carrying products and services, and with service quality standards equal to or better than the products and services offered by the leading ISPs in the Seattle metropolitan area.
- iii. All responsibility for capital expenditures for the provision of the products and services to Network subscribers will be borne by Rainier Connect during the IRU Term and Extension IRU Terms other than expenditures necessary to meet Tacoma Power’s obligations for Maintenance on Critical Routes.
- iv. To achieve these goals, Rainier Connect will make at least \$1.5 million in capital expenditures (“Capital Expenditures”) on the physical assets of the Network during each year of the IRU Term and Extended IRU Terms, adjusted annually based on increases in the Consumer Price Index (“CPI”).
- v. Capital Expenditures on the physical assets of the Network will include, but not necessarily be limited to, expenditures on upgrades to successive generations of DOCSIS, expenditures on upgrades to fiber-to-the-premises, and network equipment.
- vi. These improvements will be physical assets of the Network and owned by TPU subject to the IRU.

- vii. Expenditures on physical assets that do not become part of the Network (such as customer premises equipment, cloud-based services, web-based services, support and maintenance, or a soft switch located elsewhere) will not be credited toward Capital Expenditures. In the event of contractual default by Rainier Connect and termination by TPU, TPU and Tacoma Power will have an unrestricted right of use to support operations for a defined period of time, so as to enable continuity of services and seamless migration to a new operator.
- viii. Expenditures on physical assets that are not related to provision of wireline broadband data and cable services (such as wireless communications facilities, including wireless attachments to enable cellular, small cell, and distributed antenna systems) will not be credited toward Capital Expenditures.
- ix. TPU will have the right to audit these expenditures. In any two-year period, with the first two-year period beginning as of the date of execution of the IRU, in which Rainier Connect's Capital Expenditures are less than its obligations under this agreement, it will pay to TPU funds equal to the amount not spent on Capital Expenditures. Capital Expenditures in excess of the amount required under this agreement will be credited to future years' obligations.

c. Operating and Maintenance Costs

- i. All of the operating expenses of the operation of the Network will be borne by Rainier Connect during the IRU Term, other than the Maintenance obligations to be assumed by Tacoma Power on Critical Routes.
- ii. In addition, Rainier Connect will assume and perform a maintenance and support agreement for the coaxial-based service to the approximate 14,000 wired gateway meters utilized by Tacoma Power to collect electric service usage data over the Network until a substitute meter reading network is deployed by Tacoma Power. Tacoma Power plans to gradually phase out use of these meters over approximately two years, depending on the timeline and progress for its wireless Automated Metering Infrastructure ("AMI") initiative. Tacoma Power and Rainier Connect agree to work together to determine a reasonable arrangement for support of the meters and migration away from their use. Tacoma Power understands that continued use of the meters could slow Rainier Connect's upgrade of the network to DOCSIS 3.1 if the upgraded equipment cannot support the meters. Similarly, Rainier Connect understands that Tacoma Power is en-

gaged in deploying the AMI solution to replace the wired gateway meters, and that the AMI deployment process may entail two or more years.

- iii. Energy Costs: Rainier Connect's use of energy provided by Tacoma Power will not be included in the IRU and will be paid for by Rainier Connect consistent with Tacoma Power's standard commercial pricing.

9. Promote economic development and educational opportunities

- a. Rainier Connect will work with TPU to develop an internship program to provide work opportunity and training for students and residents of Tacoma, including veterans.
- b. Rainier Connect will work directly with TPU to assist the City's economic development department to support efforts to attract businesses to Tacoma and to provide data about Rainier Connect's commercial broadband data offerings that can be provided to businesses considering locating in Tacoma.

10. Provide job options and security for Click! staff

- a. Rainier Connect will make a good faith commitment to interview current employees of Click! who express an interest in potential employment and will potentially make offers of employment prior to execution of the IRU and APA to those employees who have the required skill sets and who meet Rainier Connect's hiring criteria.
- b. The terms and conditions of employment will be established by Rainier Connect under its standard employment terms and conditions.

11. Protect customer privacy

- a. Consistent with its existing policy and practice, Rainier Connect will comply with City Council Resolution No. 39702 regarding privacy. This Resolution prohibits ISPs that serve as retail broadband data providers on the Click! network from collecting or selling personal information from a customer without express written approval.
- b. Resolution No. 39702 will be incorporated in the IRU as an obligation of Rainier Connect with respect to both its own broadband data service offerings and those of the ISPs that serve as retailer broadband data providers on the Network.

12. Preserve Click!'s goodwill, including its market-leading customer service

- a. Rainier Connect recognizes the importance of customer service to Click!'s customers, TPU, and the City. It commits to adhering to robust customer service

standards under a cable franchise agreement for cable television services and under the IRU for internet services.

- b. **Customer Service Contacts:** Rainier Connect will maintain a local or toll-free telephone line for taking customer calls and will provide other forms of customer contact that will be available 24 hours per day, seven days per week, including on holidays. During hours during which most similar businesses in Tacoma are open to serve customers (“Normal Business Hours”), company representatives will be available to respond to customer inquiries. After Normal Business Hours, Rainier Connect may make provision for electronic response pending opportunity the following day for a response by a company representative. A company representative will respond to inquiries received after Normal Business Hours on the next business day.
 - i. Under normal operating conditions that are within the control of Rainier Connect (“Normal Operating Conditions”), calls and other forms of customer contacts will be answered by a company representative within 30 seconds after the connection is made. If the call or contact is transferred, the transfer time will not exceed 30 seconds. These standards will be met at least 90 percent of the time, measured quarterly. Under Normal Operating Conditions, customers will receive a busy signal no more than three percent of the time. Normal Operating Conditions include special promotions and normal system maintenance and upgrades, but do not include natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions.
- c. **Service Calls:** Rainier Connect will schedule appointments for installations and other service calls either at a specific time or, at a maximum, during a four-hour time block during normal business hours. Rainier Connect may also schedule service calls outside of normal business hours for the convenience of the customer. Rainier Connect will not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment. If the service technician is running late and will not meet the specified appointment time, Rainier Connect will contact the customer and reschedule the appointment at the convenience of the subscriber.
 - i. Standard installations that are located up to 125 feet from the existing distribution system will be performed within seven days after an order has been placed.

- ii. Except during conditions beyond its control, Rainier Connect will begin working on a service interruption no later than 24 hours after being notified of the problem.
 - iii. These standards concerning installations, outages and service calls will be met under normal operating conditions at least 95 percent of the time, measured quarterly, and Rainier Connect will provide to TPU quarterly reports regarding compliance.
- d. **Billing Practices:** Thirty days advance notice will be given to subscribers of any changes in rates or services if the change is within the control of Rainier Connect. Refunds will be issued no later than either the customer's next billing cycle or 30 days following resolution of the request, whichever is earlier, or upon the return of equipment when service is terminated. Credits will be issued no later than the billing cycle following the determination that a credit is warranted.
- e. **Physical Presence:** Rainier Connect will maintain a physical presence in the City of Tacoma, including a store that will be open during all Normal Business Hours, including on Saturday mornings, where consumers can transact business in person with Rainier Connect staff-persons. Rainier Connect customer service staff will be located in Tacoma.
- f. **Branding:** The City agrees that, upon request by Rainier Connect, it will grant a limited license to allow Rainier Connect to use the "Click!" trademark and copyright for marketing, advertising and branding purposes if Rainier Connect desire to do so.

13. Timeline, Process, and Approvals

- a. Closing of the proposed transaction will be conditioned, among other typical conditions, on regulatory consents and approvals and any third-party consents relating to designated material contracts to be assumed by Rainier Connect.
- b. The parties contemplate the IRU and APA will be fully negotiated within 60 to 90 days following required approvals by the City of Tacoma Public Utilities Board and by the Tacoma City Council.
- c. The IRU and APA will be executed following required approvals by the City of Tacoma Public Utilities Board and by the Tacoma City Council.
- d. At the time of execution of the IRU, the Related Assets will be conveyed to Rainier Connect and Rainier Connect will assume such liabilities related to the Network and Related Assets as have been mutually agreed.

- e. The parties anticipate a six-month transition period after closing, with Rainier Connect taking over operations on a mutually-acceptable schedule reasonably determined to cause the least disruption to Click!'s customers. The parties will, during negotiations for the IRU and APA, also negotiate a mutually-agreeable agreement to govern the transition period and transfer of control of the Network to Rainier Connect.
- f. During the six-month post-closing transition period, Rainier Connect will compensate TPU for any transition services, ongoing back-office support, or other arrangements necessary to facilitate the continued operation of Click!'s business and the transfer of operations to Rainier Connect.
- g. Prior to the closing of the proposed transaction, Rainier Connect will either obtain approval from the jurisdictions with whom Click! has franchise agreements to assume those agreements or will enter into its own franchise agreements to serve these jurisdictions.
- h. On a periodic basis to be mutually agreed by the parties, Rainier Connect and TPU will meet to review Rainier Connect's operations, the status of the Network, and the state of the 12 policy goals adopted by the Council. In addition, on an annual basis, beginning one year after execution of the IRU, Rainier Connect will provide a report to the Utility Board and City Council of its operations, the status of the Network, and the state of the 12 policy goals adopted by the Utility Board and City Council.
- i. Rainier Connect will agree to inclusion of language in the IRU acknowledging that, under Section 7 of the National Labor Relations Act (NLRA) 29 U.S.C. § 157, employees have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection and to engage in other activities protected under the NLRA (29 U.S.C. §§ 151-169).

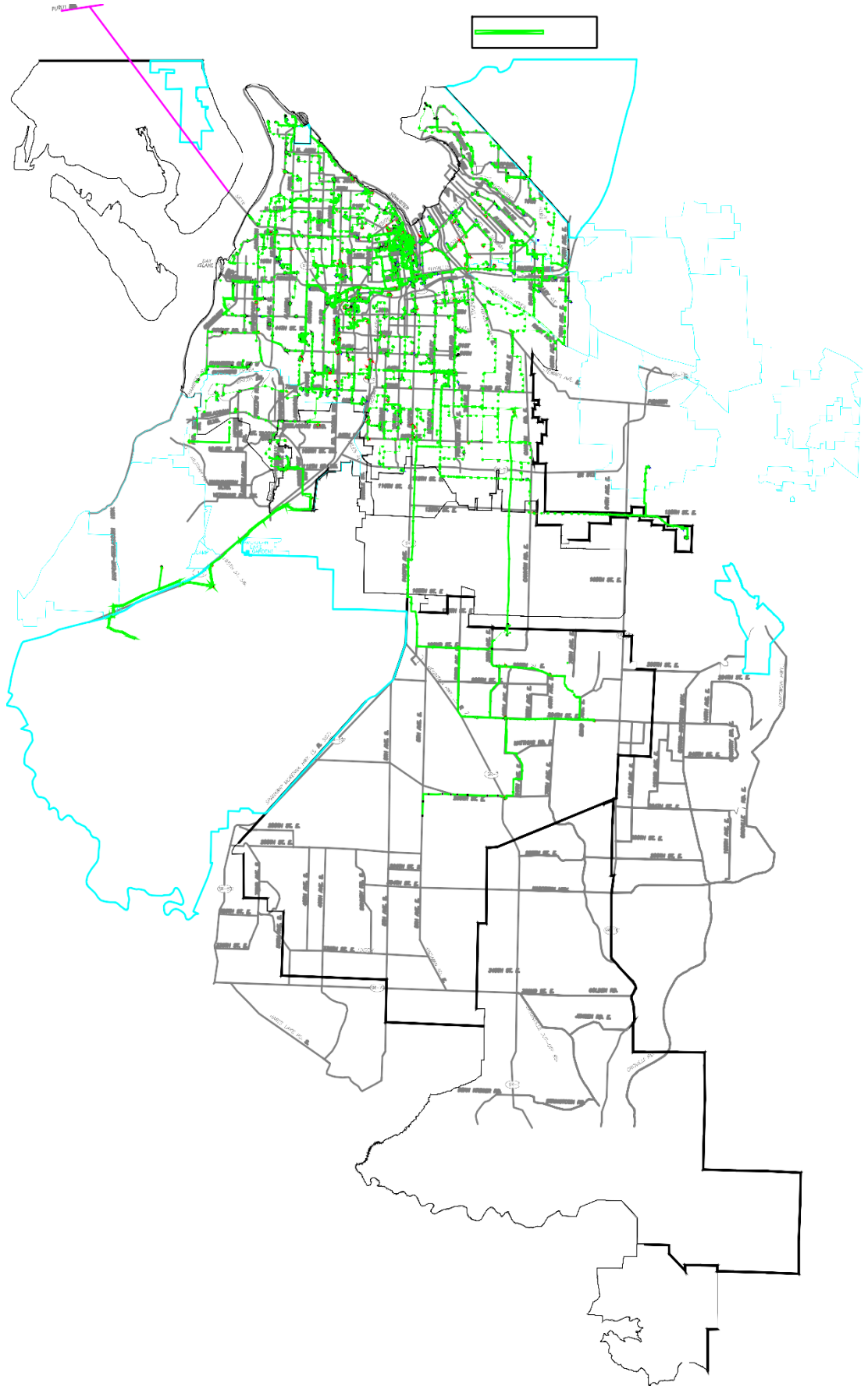
14. Additional Technical Matters

- a. Permitting and pole attachments: TPU will work with Rainier Connect to support efficient and expeditious application for City permits, consistent with City policy and practices and with the appropriate franchise agreement(s) to be negotiated by the parties. TPU will also work with Rainier Connect to efficiently and expeditiously issue permits, consistent with Tacoma Power policy and practices and with pole attachment and conduit access agreements in existence or to be negotiated by the parties.

- b. Backup generation, batteries, and power supply at hub sites. Tacoma Power will have no obligation to provide or maintain backup batteries, power supplies, or emergency generation within the hub sites. Existing equipment of this sort will be conveyed to Rainier Connect as part of the Asset Purchase Agreement and Rainier Connect will hold all obligations for the ongoing fueling, operations, maintenance, monitoring, repair, and replacement of this equipment. If Rainier Connect needs to perform upgrades to back up power equipment outside of the hub structure requiring more space than what is currently utilized it will notify Tacoma Power. The two parties will work together to accommodate a solution that is both secure and accessible to Rainier Connect. Example: Replacing an existing generator that requires a larger concrete pad or placing new fuel tanks.

- c. Construction engineering meetings: During the first 36 months following execution of the IRU and APA, the technical teams for both parties will meet on a monthly basis for purposes of sharing information, data, and plans regarding upcoming construction and upgrades, so as to enable both parties to plan accordingly based on shared expectations. The parties anticipate that these monthly meetings will serve to provide predictability and enable both parties to facilitate the support the needs of the other, as well as to plan appropriately for staffing and other upcoming efforts. Following the first 36 months (or at another time of mutual agreement), the meetings will be held on a quarterly rather than monthly basis.

Appendix A: Critical Routes



Appendix B: Service Level Agreement

Section 1 Maintenance

- a) TPU will perform Maintenance for fiber on Critical Routes. Scheduled maintenance will include the following activities:
 - a. Patrol of the fiber on a regularly scheduled basis
 - b. Maintenance of a “Call-Before-You-Dig” program and all required and related cable locates
 - c. Maintenance of sign posts along the TPU System with the number of the local “Call-Before-You-Dig” organization
- b) TPU will perform unplanned, emergency or non-routine maintenance, demand call-out, and repair (“Unscheduled Maintenance”) for fiber on the Critical Routes. Unscheduled Maintenance includes the following activities:
 - a. Respond to troubleshooting requests by Rainier Connect
 - b. Respond to any notification by Rainier Connect or notification by any third party of any failure, interruption or impairment in the operation of the fiber on the Critical Routes, or any event imminently likely to cause the failure, interruption or impairment in the operation of the fiber on Critical Routes or demand maintenance requested by Rainier Connect
 - c. Respond to any potential service-affecting situation to prevent any failure, interruption or impairment in the operation of the fiber on Critical Routes
 - d. Rainier Connect shall immediately report the need for Unscheduled Maintenance to TPU in accordance with procedures promulgated by TPU from time to time. TPU shall log the time of Rainier Connect’s report, verify the problem and dispatch personnel immediately to take corrective action in accordance with this Agreement.

Section 2 Time to Response

TPU personnel shall dispatch maintenance and repair personnel to handle and repair problems detected in the fiber on Critical Routes: (i) upon notification by Rainier Connect to TPU, or (ii) upon notification by a third party. TPU’s maintenance employees shall be available for dispatch twenty-four (24) hours a day, seven (7) days a week. TPU shall have its first maintenance employee at the site requiring Emergency Unscheduled Maintenance activity within two (2) hours after the time TPU becomes aware of an event requiring Emergency Unscheduled Maintenance, unless delayed by a Force Majeure Event or other circumstances beyond the reasonable control of TPU.

Section 3 Cooperation and Coordination

TPU shall provide Rainier Connect with a contact/escalation list (“Escalation List”) to aid in trouble reporting and resolution. The current Escalation List shall be made available to Rainier Connect and may be revised by TPU from time to time by written notice. In performing Maintenance, TPU shall take workmanlike care to prevent impairment to the signal continuity and performance of the IRU Fibers. The precautions to be taken by TPU shall include notifications to Rainier Connect when there may be service-affecting Maintenance. In addition, TPU shall reasonably cooperate with Rainier Connect in sharing information and analyzing the disturbances regarding the IRU Fibers. If any Maintenance requires a traffic roll or reconfiguration involving fibers, electronic equipment, or regeneration or other facilities of Rainier Connect, then Rainier Connect shall, at TPU’s reasonable request, make such personnel of Rainier Connect available as may be necessary to accomplish such Maintenance, which personnel shall coordinate and cooperate with TPU in performing such Maintenance.

Section 4 Maintenance Window

Scheduled Maintenance, which is reasonably expected to produce any signal discontinuity, must be coordinated between the parties to determine the appropriate time for the scheduled Maintenance. Generally, this work should be scheduled after 11:00 p.m. and before 6:00 a.m. local time and on certain weekends (the “Maintenance Window”). Scheduled Maintenance must be scheduled so that it is completed by the end of the Maintenance Window. If any scheduled Maintenance goes beyond the end of the Maintenance Window and the IRU is unavailable, such time shall be considered a SLA Failure for which Rainier Connect shall be entitled to a service credit. The parties shall agree upon a detailed Maintenance Window calendar. Major system work, such as fiber rolls and hot cuts, shall be scheduled for Maintenance Window weekends. The intent is to avoid jeopardy work on high-traffic holidays. TPU shall notify Rainier Connect of any scheduled Maintenance and as soon as possible after becoming aware of the need for Unscheduled Maintenance. Rainier Connect shall have access to the IRU Fibers during the performance of any scheduled Maintenance or Unscheduled Maintenance so long as this requirement does not interfere with TPU’s ability to perform its obligations under this Agreement. If scheduled Maintenance is canceled or delayed for whatever reason as previously notified, TPU shall notify Rainier Connect at its earliest opportunity.

Section 5 Testing and Restoration of the IRU Fibers

- a) TPU shall respond to any failure, interruption, impairment in the operation of, or unavailability of the IRU Fibers, but excludes any failure, interruption, impairment in the operation of, or unavailability of the IRU Fibers based upon a Force Majeure Event (“Fault”) as quickly as possible following commencement of the Fault (allowing for delays caused by Force Majeure Events and other circumstances beyond the reasonable control of TPU) in accordance with the procedures set forth in this document. A Fault commences upon the earlier of (i) Rainier Connect’s notification to TPU or (ii) when indicated by network control information actually or reasonably

known to TPU. Each Fault terminates upon restoration of the IRU Fibers as evidenced by appropriate network tests by TPU, so long as access to Rainier Connect fiber terminations is granted to TPU, copies of which shall be provided to Rainier Connect upon request.

- b) TPU shall maintain sufficient capability to teleconference with Rainier Connect during emergency restoration or Unscheduled Maintenance in order to provide regular communications during the restoration process. When correcting or repairing fiber optic cable discontinuity or damage, including but not limited to an event of emergency Unscheduled Maintenance, TPU shall use commercially reasonable efforts to repair traffic-affecting discontinuity of the affected IRU Fibers within six (6) hours of learning of discontinuity, with repair of the other unlit IRU fibers to occur expeditiously after TPU's maintenance employee's arrival at the problem site and after power restoration. In order to accomplish such objective, it is acknowledged that the repairs so effected may be temporary in nature. In such event, within twenty-four (24) hours after completion of any such Emergency Unscheduled Maintenance, TPU shall commence its planning for permanent repair and thereafter promptly notify Rainier Connect of such plans, and shall implement such permanent repair within an appropriate time thereafter. Restoration of open IRU fibers on fiber strands not immediately required for service shall be completed on a mutually agreed-upon schedule.
- c) During restoration, the parties agree to work together to restore all traffic as quickly as possible.
- d) In performing permanent repairs, TPU shall comply with industry standards and when possible Rainier Connect's standard splicing specifications. TPU shall provide to Rainier Connect any modifications to these specifications as may be necessary or appropriate in any particular instance for Rainier Connect's approval, which approval shall not be unreasonably withheld.
- e) TPU's representatives that are responsible for initial restoration of a cut fiber optic cable shall carry on their vehicles the typical appropriate equipment that would enable a temporary splice, with the objective of restoring operating capability in as little time as possible. TPU shall maintain and supply an inventory of spare fiber optic cable in storage facilities supplied and maintained by TPU at strategic locations to facilitate timely restoration.
- f) Upon permanent restoration, TPU shall perform appropriate testing on the IRU Fibers in accordance with TPU's then current preventative maintenance procedures, which shall not substantially deviate from standard industry practice.

Section 6 Step-In Rights In the event of a failure by TPU to perform its Maintenance obligations, Rainier Connect will have the right to cause performance to be completed by or through a third-party contractor that is pre-approved by TPU.

Section 7 Fiber Replacement

In the event that all or any part of the IRU Fibers shall require replacement, such replacement shall be made as soon as reasonably practical by TPU using fiber to be provided by Rainier Connect and credited toward Rainier Connect’s Capital Expenditures.

Section 8 Chronic Failure

In the event a portion of the IRU Fibers suffers from a Fault (i) lasting more than 48 hours in the aggregate during any calendar month, (ii) lasting more than 24 hours consecutively in any three of the past 12 consecutive calendar months, or (iii) occurring on two or more separate occasions of more than 12 hours each in the aggregate in any calendar month, such a Fault will be considered a chronic failure (“Chronic Failure”). In the event of a Chronic Failure, TPU shall present a remediation plan to Rainier Connect to address the Chronic Failure. Following the parties’ mutual agreement of a plan to solve the Chronic Failure, TPU shall implement the plan within 30 days. In the event that IRU Fiber requires replacement, TPU will replace the Fiber per Section 7.

Section 9 Fault Notification and Response Time

TPU shall contact Rainier Connect within 15 minutes of learning of any Fault if Rainier Connect has not first notified TPU. Notification shall be provided to the Rainier Connect NOC. TPU shall respond to any Fault within 2 hours after receiving a report of any such Fault, unless delayed by a Force Majeure Event or other circumstances beyond the reasonable control of TPU. Rainier Connect shall be entitled to a service credit in accordance with the following table for each failure of TPU to meet the notification or response times set forth above, which service credit shall equal the following percentage for the affected IRU Fibers in the month in which such failure occurs:

Service Level Failure	Credit Amount
Notification	\$120
Response	\$120

Section 10 Service Availability

- a) Network and Fiber Availability Commitment. TPU shall use commercially reasonable efforts to maintain availability of the IRU Fibers 100 percent of the time. Fiber Unavailability shall exist when unavailability of IRU Fibers causes disruption in service (“Fiber Unavailability”). Fiber Unavailability duration is measured from the time TPU detects Fiber Unavailability or TPU or Rainier Connect opens a trouble ticket until the time Rainier Connect confirms that the Fiber Unavailability has been remediated, which confirmation shall be prompt. TPU shall have a 12-hour grace period from the detection by TPU or opening of a trouble ticket before penalty fees. Beginning with the 13th hour of Fiber Unavailability, every hour of Fiber Unavailabil-

ity shall result in penalty fee of \$120 per hour payment from TPU to Rainier Connect. Such payments shall be capped at one month total. To claim payment, Rainier Connect must provide TPU with a written request within five business days of the last day of the month in which Fiber Unavailability occurred.

- b) Terrestrial Fiber Commitment. TPU commits to maintain attenuation levels not to exceed an overall end to end dB loss greater than 35 dB at the beginning of the IRU term and not to exceed 39.4 dB for the duration of the IRU Term. End to end dB loss shall be calculated by adding together the loss from each of the segments on the TPU System.
- c) Penalty Fees. Service fees shall not be available to Rainier Connect in cases where the issue arises from result of (a) the acts or omissions of Rainier Connect or its employees, contractors, agents or end-users; (b) the failure, malfunction, or limitation of throughput of equipment, network, software, applications or systems not owned or directly controlled by TPU; (c) circumstances or causes beyond the control of TPU, such as Force Majeure Events and third-party attacks on the IRU Fibers; (d) scheduled maintenance; or (e) urgent maintenance with notice provided as soon as is commercially practicable under the circumstances.

Appendix C: Tacoma Power Price Schedule

Work Item	Description	Measured By	Cost
1. Fusion Fiber Splicing (Existing Splice Case)	Labor, materials and equipment required for fusion splicing, including dress and storage of unspliced fibers within the splice tray. A minimum of 24 fiber splices will be performed at each location. Provide electronic documentation and analysis of each splice. Includes installation of splice cases and storage loops with snowshoes, grounding and bonding of all equipment. Encapsulate and flash test as required. Support and secure per manufacture's specifications.	Per fiber splice, tested and documented	\$37.00
2. Fusion Fiber Splicing (Mid-Entry, Create Splice Case)	All labor, materials and equipment costs necessary to de-lash and re-lash system up to 1000', retrieve fiber storage, prepare mid-entry case, fusion splicing, including dress and storage of unspliced fibers within the splice tray. A minimum of 24 fiber splices will be performed at each location. Provide electronic documentation and analysis of each splice. Includes installation of splice cases and storage loops with snowshoes, grounding and bonding of all equipment. Encapsulate and flash test as required. Support and secure per manufacture's specifications. Includes all safety measures and traffic control.	Per fiber splice, tested and documented	\$77.00

Work Item	Description	Measured By	Cost
3. Fusion Fiber Splicing (at Hub and Headend Buildings)	<p>All costs associated with the labor, materials and equipment necessary for fusion splicing to be performed at hub and headend locations, including dress and storage of unspliced fibers within the splice tray. A minimum of 96 fiber splices will be performed at each location. Provide electronic documentation and analysis of each splice. Includes installation of splice cases and storage loops, grounding and bonding of all equipment. Encapsulate and flash test as required. Support and secure per manufacture's specifications.</p>	<p>Per fiber splice, tested and documented</p>	<p>\$16.00</p>
4. Access Management - Access Energized Power Vaults	<p>All costs for labor, materials and equipment to provide escorted access to Tacoma Power energized vaults in the downtown business network. This unit includes a composite crew of Wire and HFC personnel, who would perform work on behalf of partner. 4% of the system splice cases reside inside energized vaults.</p>	<p>Time and Materials (Per hour, five-Person Crew)</p>	<p>\$541.00</p>