



RESOLUTION NO. U-11070

1 A RESOLUTION relating to Click! Network; authorizing the execution of an
2 agreement between Tacoma Power and Rainier Connect to negotiate in
3 good faith formal partnership contracts related to the operation and use of
4 the Click! Network, setting a time frame for negotiations and authorizing a
5 conditional extension of that time frame.

6 WHEREAS in July 2018 the City Council of Tacoma and the Public Utility
7 Board ("Board") directed CTC Technology & Energy ("CTC") to negotiate with
8 Rainier Connect, Wave Broadband, and Yomura Fiber to develop formal
9 partnership proposals regarding the operation and use of the Click! Network that
10 further the City's 12 policy goals, and

11 WHEREAS in the fall of 2018 the City and Tacoma Public Utilities ("TPU")
12 undertook a formal process of outreach to seek feedback from community
13 members, Click! customers, employees, ratepayers, businesses, and current Click!
14 Network business partners on the 12 policy goals as part of the negotiation process,
15 and

16 WHEREAS CTC, with representatives from the TPU, Light Division (d.b.a.
17 "Tacoma Power"), City Attorney's Office, and City of Tacoma, Office of Media and
18 Communication, spent extensive time discussing and meeting with the prospective
19 partners and negotiating term sheet proposals, and

20 WHEREAS negotiations with Yomura Fiber ended due to incompatibility
21 regarding control of fiber used by Tacoma Power and current federal security
22 regulations, and

23 WHEREAS negotiations with Wave Broadband and Rainier Connect led to
24 completed term sheets, and



1 WHEREAS the two term sheets were presented to the Council and Board at
2 a joint study session on March 5, 2019, and

3 WHEREAS a summary of the key differences between the two term sheet
4 proposals are as follows:

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

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16 WHEREAS, although both term sheets meet and exceed the policy goals
17 and represent optimal market outcomes, Rainier Connect offers higher
18 compensation and better terms than the Wave Broadband proposal, therefore, CTC
19 recommends TPU and the City negotiate a formal partnership arrangement with
20 Rainier Connect to operate and use the Click! Network, and

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22 WHEREAS the Board conducted public meetings on March 13, 2019 and
23 March 18, 2019, seeking input from all interested parties on the partnership
24 proposals and recommendation, and
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WHEREAS the Board has diligently reviewed the proposals and comments from interested parties and believes it is in the best interests of the Tacoma Power ratepayers and customers of Click! Network to negotiate a formal partnership arrangement with Rainier Connect; Now, Therefore,

BE IT RESOLVED BY THE PUBLIC UTILITY BOARD OF THE CITY OF TACOMA:

Section 1. The Director of Utilities is authorized to execute an agreement on behalf of Tacoma Power with Rainier Connect to negotiate in good faith, formal partnership contracts related to the operation and use of the Click! Network, and the City Council is requested to concur with such authorization.

Section 2. It is expected that such contracts will be ready for review and approval by both the Board and Council by the end of June 2019; however, if the parties are making substantial progress and agree to continue negotiations, then the Director of Utilities and City Manager are authorized to jointly extend the deadline for negotiations. In the event the deadline is extended, the Director of Utilities and City Manager shall provide the Board and City Council with regular updates on the progress of such negotiations.

Approved as to form and legality: _____
Chair

_____ *R. C. Merrill* _____
Chief Deputy City Attorney Secretary

_____ Adopted _____
Clerk

DRAFT

March __, 2019

Ms. Jackie Flowers
Director
Tacoma Public Utilities
1224 Martin Luther King Jr. Way
Tacoma, WA 98405

Re: Proposed Partnership for Tacoma Power's Click! Network

Dear Ms. Flowers:

The purpose of this Letter of Intent ("LOI") is to outline the terms upon which Rainier Connect is willing to enter into a proposed transaction with the City of Tacoma ("City") Department of Public Utilities ("Tacoma Public Utilities") by which Rainier Connect would partner with Tacoma Public Utilities to preserve and enhance the robust competitive communications services market environment envisioned by the leaders of the City and Tacoma Public Utilities and to do so in a manner that is consistent with the 12 Click! Policy Goals adopted by the Tacoma Public Utilities Board and the Tacoma City Council in 2018. In the proposed transaction, Rainier Connect would obtain an exclusive indefeasible right to use ("IRU") and operate the hybrid fiber coaxial system that today the Department of Public Utilities, Light Division ("Tacoma Power") d/b/a Click! Network ("Click!") operates to provide wholesale and retail video and broadband products and services to residents and businesses in the City and in the other jurisdictions in which Click! is franchised to operate. In exchange, Rainier Connect would commit to upgrade and improve the system, offer new and expanded cable TV and high-speed broadband internet services as well as new and expanded services to residents and businesses served by the system, and pay other financial consideration to Tacoma Public Utilities. This LOI is intended to be a binding commitment by Rainier Connect with respect to the terms upon which Rainier Connect is willing to enter into the proposed transaction.

A term sheet outlining the key terms of the proposed transaction is set forth on Attachment A attached hereto and incorporated herein.

Approvals. Rainier Connect has obtained the necessary corporate approvals to undertake the proposed transaction outlined in this LOI and the attached term sheet subject to completion of due diligence and negotiations of the definitive IRU and other transaction documents.

Responsibility for Costs. Each of Rainier Connect and Tacoma Public Utilities will be responsible for and bear all of its own costs and expenses incurred at any time in connection with pursuing or consummating the proposed transaction.

Binding Commitment to Negotiate in Good Faith. Although this LOI (including Attachment A) does not contain all of the material terms and conditions necessary for the proposed transaction, this LOI is intended as a binding commitment of Rainier Connect and Tacoma Public Utilities to negotiate the definitive agreements in good faith and consistent with the terms and conditions described herein within ninety (90) days following approval by the Tacoma Public Utilities Board and Tacoma City Council of this LOI. The parties may extend the timeline to negotiate the definitive agreements through mutual written consent. Notwithstanding anything herein to the contrary, the obligation to consummate the proposed transaction contemplated herein is expressly made contingent upon and subject to: (i) the negotiation of definitive agreements, the terms of which must be acceptable to each party, acting in its discretion; (ii) the approval of the definitive agreements by the City of Tacoma Public Utilities Board; (iii) the

approval of the definitive agreements by the Tacoma City Council (acting in its proprietary capacity and not as a franchising authority); (iv) the execution of definitive agreements; and (v) the fulfillment or waiver of the closing conditions to be further specified in the definitive agreements.

Please sign as indicated below to signify Tacoma Public Utilities' concurrence with the intent of the terms proposed herein. Rainier Connect understands that execution of this LOI, and further pursuit of the proposed transaction by the Tacoma Public Utilities management is subject to approval by the Tacoma Public Utilities Board and the Tacoma City Council.

Very Truly Yours,

[Rainier Connect signatory]

Agreed and accepted this _____ day of March, 2019.

Tacoma Public Utilities

By: _____

Name: _____

Title: _____