



RESOLUTION NO. U-11116

1 A RESOLUTION relating to Tacoma Power; declaring surplus utility-owned property
2 including certain inventory, equipment and vehicles allocated to the Click!
3 Network together with the Excess Capacity of the Tacoma Power HFC
4 Network, part of which is used by what is commonly referred to as the Click!
5 Agreement by and between Tacoma Power and Mashell, Inc., d/b/a Rainier
6 Connect and Rainier Connect North LLC.

7 WHEREAS in the mid-1990s, the City of Tacoma, Department of Public
8 Utilities, Light Division (d.b.a. "Tacoma Power") determined that the best option
9 to address the shifting advance in telecommunications in the electric utility
10 industry landscape was to construct a hybrid fiber coaxial ("HFC")
11 telecommunications network ("HFC Network"), and

12 WHEREAS on July 23, 1996, the Tacoma City Council passed Ordinance
13 No. 25930, approving Tacoma Power's proposal to establish and create the HFC
14 Network as part of Tacoma Power's electric utility infrastructure, allowing
15 Tacoma Power to, among other things, connect its generation, distribution, and
16 transmission assets and support the eventual adoption of smart meters and
17 further, to use the excess capacity of the HFC Network to: (1) sell retail cable
18 television service to Tacoma Power's electric customers, and (2) sell data
19 transport and wholesale internet access services to Internet Service Providers
20 ("ISPs") and others, and

21 WHEREAS on March 26, 1997, the Board adopted Amended Substitute
22 Resolution U-9258, approving Tacoma Power's proposed business plan to
23 develop a state of the art HFC Network to support enhanced control, reliability,
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and efficiency for its electric system and to generate additional revenue through
1 new business lines (i.e., wholesale internet, cable TV, etc.), and

2 WHEREAS the Board recommended that the City Council approve the
3 business plan, which it did through Resolution No. 33668, on April 8, 1997,
4 authorizing Tacoma Power to construct, control, and operate the HFC Network,
5 with the Board providing oversight and approval, and the City Council remaining
6 involved in major policy decisions, and
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8 WHEREAS since its construction in the late 1990s, the HFC Network has
9 connected Tacoma Power's distribution and transmission assets and enabled
10 automated meter reading and billing, distribution automation, and remote turn
11 on/turn off for electric customers, and
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13 WHEREAS in 2004, Tacoma Power also established a pilot project
14 deploying as many as 16,000 Gateway Meters (Tacoma Power's name for its
15 initial smart meters) that relay information from its electric customers to Tacoma
16 Power headquarters via the HFC Network over coaxial cable connected to the
17 customer premises which interconnects with the fiber network, and
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19 WHEREAS within four years following deployment of the gateway meters
20 Tacoma Power began experiencing substandard performance of the gateway
21 meters including: meter failures wherein Tacoma Power is unable to
22 communicate with the meter through the network, read failures wherein the
23 controller in the meter is not able to read the meter, and remote disconnect
24 failures, all resulting in: communications errors, failures to measure electrical
25 consumption, a failure rate of up to 100 meters per month, and increased costs
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1 to replace defective meters, perform repairs, troubleshoot errors, and collect
2 meter data, and

3 WHEREAS by the mid-to-late 2000s, the electric utility industry began to
4 recognize that wireless technology would take the place of wired
5 telecommunications systems with respect to smart meter applications, and

6 WHEREAS as a result of the advances in the reliability and efficiency of
7 interconnecting meters wirelessly with the HFC Network and the substandard
8 and unreliable performance of the Gateway Meters, Tacoma Power has
9 terminated the Gateway Meter Program and ended service over the HFC
10 Network for all Gateway Meters, and

11 WHEREAS the Board has authorized agreements providing for the
12 installation and operation of licensed spectrum advance meters that will
13 interconnect wirelessly to that portion of the HFC Network allocated to Tacoma
14 Power and known and referred to as the Power Control & Operations Network
15 ("PCON"), and

16 WHEREAS the "Excess Capacity of the HFC Network" is generally
17 comprised of: (i) coaxial cable, conduit housing only coaxial cable, conduit
18 installed for service drops (whether or not currently housing coaxial cable), and
19 coaxial cable service drops installed in the Click! Network service area, (ii)
20 specific strands of fiber in the Tacoma Power fiber network that are not reserved
21 for current and future use by Tacoma Power for utility purposes, conduit housing
22 such fiber along routes that do not include reserved utility fiber, and excess
23 space in conduit housing such fiber and reserved utility fiber, (iii) electronic
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1 equipment and related hardware installed in the HUB sites and in rights-of-way;
2 and is defined as the “Tacoma Power Commercial System”, and is described in
3 more detail, in the draft proposed Indefeasible Right of Use Agreement attached
4 hereto as EXHIBIT “C”, and

5 WHEREAS certain inventory, equipment and vehicles allocated to Click
6 Network are described in EXHIBIT “A.1-3” attached hereto and are referred to as
7 the “Click! Assets”, and

8 WHEREAS Click! Network began providing cable television and wholesale
9 internet access services over the excess capacity in the HFC Network in 1998,
10 and since that time, technology and consumer demands have changed and
11 operational costs have significantly increased, and in response to these
12 challenges, the Board has studied different models for delivery of services, and
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14 WHEREAS the Board retained CTC Technology & Energy, to develop an
15 analysis of business models as an alternative to the legacy business plan under
16 which Click! Network currently operates, which analysis was presented to the
17 Board and City Council at the January 23, 2018 joint study session, and
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19 WHEREAS the Board on January 24, 2018, adopted Resolution U-10988,
20 pursuant to which the Board expressed its determination then, and re-affirms and
21 expands upon now, that while the 1997 business plan achieved many of the
22 functions envisioned for the HFC Network, the Excess Capacity of the HFC
23 Network and the inventory, equipment and vehicles allocated to Click! Network
24 are not needed now or in the future by Tacoma Power for utility purposes and
25 thus will not be updated or improved or utilized for utility purposes, and are
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1 excess to the needs of Tacoma Power, and that the current Click! Network
2 business plan and the proposed all-in retail service business model will not
3 generate sufficient revenues to fully fund operational expenses and the costs of
4 capital improvements needed to maintain the Excess Capacity of the HFC
5 Network as a state of the art Network, and that it is prudent and necessary to
6 revise the business plan, and

7 WHEREAS through Resolution U-10988, the Board further rescinded its
8 approval of the all-in retail service business model, adopted 12 policy goals to be
9 maximized through the use and preservation of the Excess Capacity of the HFC
10 Network, directed the Public Utilities Director to work with the City Manager to
11 develop a plan to seek information, proposals or qualifications from interested
12 parties to determine whether the 12 policy goals could be achieved through a
13 collaboration and/or restructuring of Click! Network, and

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15 WHEREAS the PUB and City Council, after review of multiple proposals
16 from third parties, directed the Public Utilities Director to execute a letter
17 agreement with Rainier Connect to enter into good faith, negotiation of
18 agreements through which: (1) the City, through Tacoma Power, will retain
19 ownership of all of the existing HFC Network, (2) the capital and operating costs
20 of the Excess Capacity of the HFC Network will be borne by a third party,
21 (3) Tacoma Power will no longer provide cable television or wholesale internet
22 access or data transport services, and (4) Rainier Connect would use the Excess
23 Capacity of the HFC Network to provide broadband information services
24 consistent with the 12 policy goals adopted by the Board and City Council, and
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1 WHEREAS Tacoma Power, under the supervision of the Director and
2 Rainier Connect, have negotiated the draft proposed Click! Business Transaction
3 Agreement, attached hereto as EXHIBIT "B", and the draft proposed Indefeasible
4 Right of Use Agreement, attached hereto as EXHIBIT "C", that collectively
5 provides for the conveyance of the Click! Assets to Rainier Connect and provides
6 for Rainer Connect's use but not ownership of the Excess Capacity in the HFC
7 Network for the term, and pursuant to the terms and conditions of the
8 Indefeasible Right of Use Agreement, and

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10 WHEREAS the consideration proposed to be paid by Rainier Connect for
11 conveyance of the inventory, equipment and vehicles described in EXHIBIT A.1
12 is \$294,742.98, as set forth in EXHIBIT A.1, the consideration to be paid by
13 Rainier Connect for the inventory and equipment described in EXHIBIT A.2 and
14 A.3, are the contractual obligations of Rainier Connect as set forth in
15 substantially the form of EXHIBIT "C" (Indefeasible Right of Use Agreement), and
16 the use of the Excess Capacity in the HFC Network is proposed to be granted to
17 Rainer Connect in consideration for the obligations of Rainier Connect as set
18 forth in the EXHIBIT "C", including but not limited to, the annual payments of
19 \$2,500,000 for year 1, \$2,625,000 for year 2, \$2,750,000 for year 3, \$2,875,000
20 for year 4, \$3,000,000 for year 5, and for each year after year 5, the annual
21 payment will increase to reflect the Consumer Price Index Increase as described
22 in Exhibit "C" , and

25 WHEREAS the proposed draft agreements include provisions ensuring,
26 among other things, that the use and operation of the Excess Capacity in the



1 HFC Network by the new operator will not interfere with, or jeopardize the safety
2 and security of Tacoma Power's continued use and operation of the Tacoma
3 Power Control & Operations Network or the City's use and operation of the
4 Institutional Network, and

5 WHEREAS pursuant to TMC 1.06.273, the Tacoma Public Utilities
6 Director has recommended that the Board find that the disposal of the Click!
7 Assets and the grant of the Indefeasible Right of Use of the Excess Capacity in
8 the HFC Network through a negotiated process with Rainier Connect, pursuant to
9 agreements in substantially the form of EXHIBITS "B" and "C", are in the best
10 interests of Tacoma Power, and
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12 WHEREAS it is advised that, as a condition of this proposed transaction
13 and in conformance with the provisions of RCW 35.94.040, the Board find and
14 declare the Click! Assets and the Excess Capacity in the HFC Network surplus to
15 the needs of Tacoma Power and the City, and
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17 WHEREAS the Tacoma Public Utilities Director has certified, and Tacoma
18 Power recommends, that the Board find and declare that the Click! Assets and
19 the Excess Capacity in the HFC Network are not required for, and are not
20 essential to, continued public utility service or continued effective utility service,
21 and are surplus to the needs of Tacoma Power and to Tacoma Public Utilities,
22 and that the sale of the Click! Assets to Rainier Connect and the grant of a
23 Indefeasible Right of Use of the Excess Capacity in the HFC Network to Rainier
24 Connect through a negotiated disposition would be in the best interests of
25 Tacoma Power and the City, and
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1 WHEREAS although a declaration that an asset is surplus often proceeds
2 a decision to sell an asset, there is no requirement that a surplus asset be
3 sold, and the Board does not intend to recommend or approve for sale the
4 Excess Capacity in the HFC Network, but rather the City through Tacoma
5 Power, will retain ownership of the entire HFC Network inclusive of the Excess
6 Capacity in the HFC Network to ensure that it has control over how the HFC
7 Network is used through the proposed agreements and to ensure that the entire
8 HFC Network meets all security requirements and can continue to meet the
9 needs of Tacoma Power, Tacoma Water, and Tacoma Rail, and
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11 WHEREAS the Board, in consideration of the foregoing, the public
12 comments received during the public hearing of October 23, 2019, and prior
13 public meetings of the Board, the records and information on file with the Board,
14 and having been in all matters fully advised, finds that it is in the best interest of
15 Tacoma Power and Tacoma Public Utilities, to make the following
16 determinations and recommendation to the City Council; Now, Therefore,
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18 BE IT RESOLVED BY PUBLIC UTILITY BOARD OF THE CITY OF TACOMA:

19 Sec. 1. That the Click! Assets and Excess Capacity in the HFC Network, as
20 described in the recitals above, are not required for, and are not essential to,
21 continued public utility service or continued effective utility service, and pursuant to
22 applicable law, are properly declared surplus property and excess to Tacoma
23 Power's needs.
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25 Sec. 2 That the sale of the Click! Assets and the grant of an Indefeasible
26 Right of Use of the Excess Capacity of the HFC Network to Rainier Connect,



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through a negotiated disposition, is in the best interests of Tacoma Power, Tacoma Public Utilities, and the City; and all applicable competitive bidding requirements are hereby waived.

Sec. 3. Tacoma Power will seek City Council's approval of the Board's declaration herein that the Click! Assets and the Excess Capacity of the HFC Network as described herein are surplus to the needs of Tacoma Public Utilities and a declaration that the same are surplus to the needs of the City of Tacoma.

Sec. 4. The Board finds that disposal of the Click! Assets and the grant of the Indefeasible Right of Use of the Excess Capacity in the HFC Network through a negotiated process with Rainier Connect, pursuant to agreements in substantially the form of EXHIBITS "B" and "C", is in the best interests of Tacoma Power and approves such agreements, authorizes the Director of Tacoma Public Utilities to execute all documents necessary to implement such agreements contingent upon their approval by City Council and recommends that the City Council approve agreements that are substantially in the form of EXHIBITS "B" and "C".

Approved as to form and legality: _____
Chair

Chief Deputy City Attorney Secretary

Clerk Adopted _____



EXHIBIT A.1

(Click! Asset Purchase List)

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Exhibit A.2
(Head End Equipment)

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Exhibit A.3
(Set-Top Boxes)

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Exhibit B

(Click! Business Transaction Agreement)

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Exhibit C

(Indefeasible Right of Use Agreement)

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