RESOLUTION NO. U-11116

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

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

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

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

WHEREAS the Board recommended that the City Council approve the business plan, which it did through Resolution No. 33668, on April 8, 1997, authorizing Tacoma Power to construct, control, and operate the HFC Network, with the Board providing oversight and approval, and the City Council remaining involved in major policy decisions, and

WHEREAS since its construction in the late 1990s, the HFC Network has connected Tacoma Power's distribution and transmission assets and enabled automated meter reading and billing, distribution automation, and remote turn on/turn off for electric customers, and

WHEREAS in 2004, Tacoma Power also established a pilot project deploying as many as 16,000 Gateway Meters (Tacoma Power's name for its initial smart meters) that relay information from its electric customers to Tacoma Power headquarters via the HFC Network over coaxial cable connected to the customer premises which interconnects with the fiber network, and

WHEREAS within four years following deployment of the gateway meters Tacoma Power began experiencing substandard performance of the gateway meters including: meter failures wherein Tacoma Power is unable to communicate with the meter through the network, read failures wherein the controller in the meter is not able to read the meter, and remote disconnect failures, all resulting in: communications errors, failures to measure electrical consumption, a failure rate of up to 100 meters per month, and increased costs
to replace defective meters, perform repairs, troubleshoot errors, and collect
meter data, and

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

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

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

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

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

WHEREAS Click! Network began providing cable television and wholesale internet access services over the excess capacity in the HFC Network in 1998, and since that time, technology and consumer demands have changed and operational costs have significantly increased, and in response to these challenges, the Board has studied different models for delivery of services, and

WHEREAS the Board retained CTC Technology & Energy, to develop an analysis of business models as an alternative to the legacy business plan under which Click! Network currently operates, which analysis was presented to the Board and City Council at the January 23, 2018 joint study session, and

WHEREAS the Board on January 24, 2018, adopted Resolution U-10988, pursuant to which the Board expressed its determination then, and re-affirms and expands upon now, that while the 1997 business plan achieved many of the functions envisioned for the HFC Network, the Excess Capacity of the HFC Network and the inventory, equipment and vehicles allocated to Click! Network are not needed now or in the future by Tacoma Power for utility purposes and thus will not be updated or improved or utilized for utility purposes, and are
excess to the needs of Tacoma Power, and that the current Click! Network business plan and the proposed all-in retail service business model will not generate sufficient revenues to fully fund operational expenses and the costs of capital improvements needed to maintain the Excess Capacity of the HFC Network as a state of the art Network, and that it is prudent and necessary to revise the business plan, and

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

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

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

WHEREAS the proposed draft agreements include provisions ensuring,
among other things, that the use and operation of the Excess Capacity in the
HFC Network by the new operator will not interfere with, or jeopardize the safety
and security of Tacoma Power's continued use and operation of the Tacoma
Power Control & Operations Network or the City's use and operation of the
Institutional Network, and

WHEREAS pursuant to TMC 1.06.273, the Tacoma Public Utilities
Director has recommended that the Board find that the 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", are in the best
interests of Tacoma Power, and

WHEREAS it is advised that, as a condition of this proposed transaction
and in conformance with the provisions of RCW 35.94.040, the Board find and
declare the Click! Assets and the Excess Capacity in the HFC Network surplus to
the needs of Tacoma Power and the City, and

WHEREAS the Tacoma Public Utilities Director has certified, and Tacoma
Power recommends, that the Board find and declare that the Click! Assets and
the Excess Capacity in the HFC Network are not required for, and are not
essential to, continued public utility service or continued effective utility service,
and are surplus to the needs of Tacoma Power and to Tacoma Public Utilities,
and that the sale of the Click! Assets to Rainier Connect and the grant of a
Indefeasible Right of Use of the Excess Capacity in the HFC Network to Rainier
Connect through a negotiated disposition would be in the best interests of
Tacoma Power and the City, and
WHEREAS although a declaration that an asset is surplus often proceeds a decision to sell an asset, there is no requirement that a surplused asset be sold, and the Board does not intend to recommend or approve for sale the Excess Capacity in the HFC Network, but rather the City through Tacoma Power, will retain ownership of the entire HFC Network inclusive of the Excess Capacity in the HFC Network to ensure that it has control over how the HFC Network is used through the proposed agreements and to ensure that the entire HFC Network meets all security requirements and can continue to meet the needs of Tacoma Power, Tacoma Water, and Tacoma Rail, and

WHEREAS the Board, in consideration of the foregoing, the public comments received during the public hearing of October 23, 2019, and prior public meetings of the Board, the records and information on file with the Board, and having been in all matters fully advised, finds that it is in the best interest of Tacoma Power and Tacoma Public Utilities, to make the following determinations and recommendation to the City Council; Now, Therefore,

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

Sec. 1. That the Click! Assets and Excess Capacity in the HFC Network, as described in the recitals above, are not required for, and are not essential to, continued public utility service or continued effective utility service, and pursuant to applicable law, are properly declared surplus property and excess to Tacoma Power's needs.

Sec. 2 That the sale of the Click! Assets and the grant of an Indefeasible Right of Use of the Excess Capacity of the HFC Network to Rainier Connect,
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 10-30-19