



Exhibit "B"

(Click! Business Transaction Agreement)

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- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26

CLICK! BUSINESS TRANSACTION AGREEMENT

by and between

**CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, LIGHT DIVISION,
D/B/A TACOMA POWER**

and

MASHELL, INC., D/B/A RAINIER CONNECT

and

RAINIER CONNECT NORTH, LLC

Dated as of _____, 2019

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I DEFINITIONS AND TERMS	2
Section 1.1 Certain Definitions.....	2
Section 1.2 Other Interpretive Provisions	5
ARTICLE II TRANSFER OF OPERATIONAL CONTROL OF TACOMA POWER COMMERCIAL SYSTEM AND PURCHASE AND SALE OF RELATED SURPLUS ASSETS	6
Section 2.1 Transfer of Operational Control.....	6
Section 2.2 Purchase and Sale of Related Surplus Assets	7
Section 2.3 Excluded Assets	8
Section 2.4 Assumption of Liabilities.....	8
Section 2.5 Excluded Liabilities	8
Section 2.6 Purchase Price.....	8
Section 2.7 Allocation of Revenues and Prepaid Expenses.....	8
Section 2.8 Deliveries by Rainier.	9
Section 2.9 Deliveries by Tacoma Power	9
ARTICLE III REPRESENTATIONS AND WARRANTIES OF TACOMA POWER	10
Section 3.1 Organization and Qualification.....	10
Section 3.2 Municipal Authorization.....	10
Section 3.3 Non-Contravention	10
Section 3.4 Binding Effect.....	11
Section 3.5 Assets	11
Section 3.6 Finders’ Fees.....	11
Section 3.7 No Default.....	11
Section 3.8 Condition of Related Surplus Assets.	11
Section 3.9 No Other Representations or Warranties.	11
ARTICLE IV REPRESENTATIONS AND WARRANTIES OF RAINIER	12
Section 4.1 Organization and Qualification.....	12
Section 4.2 Corporate Authorization	12
Section 4.3 Consents and Approvals	12
Section 4.4 Non-Contravention	12
Section 4.5 Binding Effect.....	13
Section 4.6 Finders’ Fees.....	13
Section 4.7 No Default.....	13
Section 4.8 Acceptance of Surplus Related Assets.....	13
Section 4.9 No Other Representations or Warranties	13
ARTICLE V COVENANTS.....	13
Section 5.1 Access and Information	13
Section 5.2 Conduct of Business	13
Section 5.3 Commercially Reasonable Efforts	13

Section 5.4	Compensation and Benefits; Employees.	14
Section 5.5	Tax Matters.	15
Section 5.6	IRU Agreement.....	15
Section 5.7	Post-Transfer of Operational Control Consents.....	15
Section 5.8	Environmental Matters.....	15
Section 5.9	Name of Business	15
ARTICLE VI CONDITIONS TO TRANSFER OF OPERATIONAL CONTROL		16
Section 6.1	Conditions to the Obligations of Rainier and Tacoma Power	16
Section 6.2	Conditions to the Obligation of Rainier.....	16
Section 6.3	Conditions to the Obligation of Tacoma Power	17
ARTICLE VII TERMINATION and default		18
Section 7.1	Termination by Mutual Consent	18
Section 7.2	Termination by Either Rainier or Tacoma Power.....	18
Section 7.3	Material Breaches.	18
Section 7.4	Effect of Termination.....	19
ARTICLE VIII MISCELLANEOUS		19
Section 8.1	Notices	19
Section 8.2	Amendment; Waiver	20
Section 8.3	No Assignment or Benefit to Third Parties.....	20
Section 8.4	Entire Agreement	20
Section 8.5	Publicity	20
Section 8.6	Expenses	21
Section 8.7	Governing Law	21
Section 8.8	Counterparts	21
Section 8.9	Headings	21
Section 8.10	Severability	21
Section 8.11	Confidentiality.	21
Section 8.12	Time of Essence.....	22
Section 8.13	No Gratuities.....	22
Section 8.14	Further Assurances.....	23
Section 8.15	Non-Discrimination.	23
Section 8.16	Relationship of the Parties.	23
Section 8.17	Conflict of Interest.	23
Section 8.18	Representation.....	23

SCHEDULES AND EXHIBITS

CLICK! BUSINESS TRANSACTION AGREEMENT

THIS CLICK! BUSINESS TRANSACTION AGREEMENT, dated as of _____, 2019, is by and between the **City of Tacoma, Department of Public Utilities, Light Division**, a municipal corporation of the State of Washington (d/b/a and hereinafter referred to as “**Tacoma Power**”), and **Mashell, Inc., d/b/a Rainier Connect**, a Washington corporation, and its designated operating subsidiary, **Rainier Connect North, LLC**, a Washington limited liability company (hereinafter collectively referred to as “**Rainier**”). Tacoma Power and Rainier shall each individually be referred to as a “**Party**” and together constitute the “**Parties**”.

WITNESSETH:

WHEREAS, Tacoma Power owns a hybrid fiber-coaxial network consisting of fiber optic cable and coaxial cable and related network facilities (the “**Tacoma Power Network**”);

WHEREAS, Click! Network, a business unit of Tacoma Power, currently uses a portion of the Tacoma Power Network (the “**Tacoma Power Commercial System**”) to provide cable television services to residents and businesses; to serve as a wholesale provider to internet service providers that provide broadband data services for residential and business customers; and provide Metro Ethernet circuits to businesses within its service area in competition with other providers (the “**Click! Business**”);

WHEREAS, desiring to reduce operational costs while maximizing the community benefits of continuing operation of and investment in the Tacoma Power Commercial System, the City of Tacoma and Tacoma Public Utilities adopted twelve (12) policy goals and issued a Request for Information and Qualifications (“**RFI/Q**”) seeking interest from public or private entities to take over operational control of the Tacoma Power Commercial System and the delivery of services to the community under terms and conditions consistent with the 12 policy goals;

WHEREAS, Mashell, Inc. was selected as a result of the competitive RFI/Q process;

WHEREAS, Tacoma Power and Mashell, Inc. have negotiated the terms of this Agreement and the Exhibits in order to effectuate the transfer of operational control of the Tacoma Power Commercial System through, among other things, an Indefeasible Right of Use Agreement, and the sale of Related Surplus Assets connected with the Click! Business, as more particularly set forth herein (the “**Transaction**”);

WHEREAS, Mashell, Inc. has formed an operating subsidiary, Rainier Connect North, LLC, which it has designated to enter into the Transaction with Tacoma Power;

WHEREAS, Tacoma Power is willing to enter into the Transaction with Rainier Connect North, LLC provided that Mashell, Inc. guarantees the performance of Rainier Connect North, LLC;

WHEREAS, Mashell, Inc. is willing to guarantee the performance of Rainier Connect North, LLC; and

WHEREAS, the Parties have mutually agreed to cooperate to ensure a smooth and seamless transition of the Click! Business as set forth in the Transition Plan attached hereto as Exhibit A.

NOW, THEREFORE, in consideration of the promises and the mutual representations, warranties, covenants and undertakings contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, agree as follows:

ARTICLE I DEFINITIONS AND TERMS

Section 1.1 Certain Definitions. As used in this Agreement, the following terms have the meanings set forth below:

“Click! Business” has the meaning set forth in the Recitals.

“Affiliate” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, such Person as of the date on which, or at any time during the period for which, the determination of affiliation is being made. For purposes of this definition, the term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through equity interest, board membership, LLC interest, contract, charter, statute, regulation, or otherwise.

“Agreement” means this Click! Business Transaction Agreement.

“Ancillary Agreements” means the Indefeasible Right of Use Agreement and other instruments and other agreements and Transfer of Operational Control documents required to be delivered pursuant to this Agreement, including any Bill of Sale and Assignment and Assumption Agreement.

“Assumed Liabilities” has the meaning set forth in Section 2.4.

“Bill of Sale” means an agreement in form and substance reasonably acceptable to Tacoma Power and Rainier, transferring the tangible personal property included in the Related Surplus Assets.

“Business Day” means any day other than Saturday or a legal holiday as defined by RCW 1.16.050.

“Click! Marks” has the meaning set forth in Section 5.9.

“Excluded Liabilities” has the meaning set forth in Section 2.4.

“Employees” means all employees employed by Tacoma Power in connection with the Click! Business and any replacement of such employees between the date hereof and Transfer of Operational Control Date.

“Encumbrance” means any lien, pledge, charge, security interest, option, right of first refusal, mortgage, easement, right-of-way, lease, sublease, license, sublicense, adverse claim, title defect, encroachment, other survey defect, or other encumbrance of any kind, including, with respect to real property, any covenant or restriction relating thereto. For purposes of this Agreement, a Person shall be deemed to own subject to an Encumbrance any asset that it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such asset.

“Environmental Law” means any Law (including common law), Governmental Authorization or agreement with any Government Entity or third party relating to (i) the protection of the environment or human health and safety (including air, surface water, ground water, drinking water supply, and surface or subsurface land or structures), (ii) the exposure to, or the use, storage, recycling, treatment, generation, transportation, processing, handling, labeling, management, release or disposal of, any Hazardous Substance or (iii) noise, odor or electromagnetic emissions.

“Equipment” has the meaning set forth in Section 2.2(a)(i).

“Excluded Assets” has the meaning set forth in Section 2.3.

“Excluded Taxes” means any Taxes imposed with respect to the Tacoma Power Commercial System, Click! Business, or any Related Surplus Assets related thereto or any income or gain derived with respect thereto, in each case. For the avoidance of doubt, Excluded Taxes shall include any income Tax liability payable by Tacoma Power or its subsidiaries in respect of the Transaction.

“FCC” means the Federal Communications Commission.

“Franchise” means, with respect to the Click! Business, each franchise granted by a Government Entity authorizing the construction, upgrade, maintenance or operation of any part of the Tacoma Power Commercial System that is part of the Click! Business.

“Funding Commitment Letters” has the meaning set forth in Section 6.3(l).

“Governmental Authorizations” means, with respect to the Click! Business, all licenses (including cable television relay service, business radio and other licenses issued by the FCC or any other Government Entity), permits (including construction permits), certificates, consents, Franchises (including similar authorizations or permits), other actions by, and notices, filings, registrations, qualifications, declarations and designations with, and other authorizations and approvals primarily related to the Click! Business and issued by or obtained from a Government Entity.

“Government Entity” means any federal, state or local court, administrative body or other governmental or quasi-governmental entity with competent jurisdiction.

“Inventory” has the meaning set forth in Section 2.2(a)(ii).

“Law” means any law, statute, ordinance, rule, regulation, code, order, judgment, injunction or decree enacted, issued, promulgated, enforced or entered by a Government Entity.

“Liabilities” means any and all indebtedness, losses, claims, charges, demands, actions, damages, obligations, payments, costs and expenses, sums of money, bonds, indemnities and similar obligations, covenants, contracts, controversies, omissions, make whole agreements and similar obligations, and other liabilities, including all contractual obligations, whether due or to become due, fixed, contingent or absolute, inchoate or otherwise, matured or unmatured, liquidated or unliquidated, accrued or not accrued, asserted or not asserted, known or unknown, determined, determinable or otherwise, whenever or however arising, including, those arising under any Law, principles of common law (including out of any contract or tort based on negligence or strict liability) action, threatened or contemplated action (including the costs and expenses of demands, assessments, judgments, settlements and compromises relating thereto and attorneys’ fees and any and all costs and expenses (including allocated costs of in-house counsel and other personnel), whatsoever reasonably incurred in investigating, preparing or defending against any such actions or threatened or contemplated actions), order or consent decree of any Government Entity or any award of any arbitrator or mediator of any kind, and those arising under any contract, commitment or undertaking, whether or not the same would be required to be recorded or reflected in financial statements or disclosed in the notes thereto.

“Material Adverse Effect” means (i) a material adverse effect on the Related Surplus Assets, or (ii) a material impairment or delay of Tacoma Power’s ability to effect the Transfer of Operational Control or to perform its obligations under this Agreement or any Ancillary Agreement to which it is a party; provided, however, that Material Adverse Effect shall not include the effect of any event change, circumstance or development arising out of or attributable to: (A) any change in Law or accounting standards or interpretations thereof that is of general application; (B) any change in general economic or business conditions or industry-wide or financial market conditions generally; (C) any adverse effect as a result of the execution or announcement of this Agreement, the Ancillary Agreements, the Transaction or the transactions contemplated by the Ancillary Agreements; or (D) any loss of subscribers.

“Ordinary Course” or “Ordinary Course of Business” means with respect to the Click! Business, the conduct of such Click! Business as a going concern in accordance with Tacoma Power’s normal day-to-day customs, practices and procedures.

“Person” means an individual, a corporation, a partnership, an association, a limited liability company or other entity or organization.

“Purchase Price” has the meaning set forth in Section 2.6(a).

“Records” has the meaning set forth in Section 2.2(a)(vii).

“Related Surplus Assets” has the meaning set forth in Section 2.2(a).

“Subscriber” means, with respect to the Click! Business, a customer who has been installed and who subscribes to at least the lowest level of cable service offered by such Click! Business.

“Tacoma Power” has the meaning set forth in the Preamble.

“Tacoma Power Commercial System” has the meaning set forth in the Recitals.

“Taxes” means all taxes, fees, levies, imposts, duties, charges or withholdings of any nature (including, without limitation, gross receipts taxes, leasehold excise taxes and franchises, license and/or permit fees) together with any penalties, fines, assessments or interest thereon, imposed by any federal, state or local government, regulatory body or other public taxing authority of competent jurisdiction.

“Tax Law” means the Internal Revenue Code, final, temporary or proposed Treasury regulations, published pronouncements of the U.S. Treasury Department or U.S. Internal Revenue Service, court decisions or other relevant binding legal authority (and similar provisions, pronouncements, decisions and other authorities of state, local and foreign Law).

“Tax Return” shall mean any report, return or other information (including any attached schedules or any amendments to such report, return or other information) required to be supplied to or filed with a Government Entity with respect to any Tax, including an information return, claim for refund, amended return, declaration or estimated Tax returns in connection with the determination, assessment, collection or administration of any income Tax.

“Transaction” has the meaning set forth in the Recitals.

“Transfer of Operational Control” means pursuant to Section 2.1 of this Agreement, the assumption by Rainier of all operational control over the Tacoma Power Commercial System pursuant to the IRU Agreement.

“Transfer of Operational Control Date” means the Effective Date of the IRU Agreement.

“Transferred Authorizations” has the meaning set forth in Section 2.2(a)(v).

“Transferred Contracts” has the meaning set forth in Section 2.2(a)(iv).

“Updated Asset Schedules” has the meaning set forth in Section 2.2(b).

“Updated IRU Exhibits” has the meaning set forth in Section 5.6(b).

“Vehicles” has the meaning set forth in Section 2.2(a)(iii).

Section 1.2 Other Interpretive Provisions. Unless the express context otherwise requires:

(a) the words “hereof,” “herein,” and “hereunder” and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(b) the terms defined in the singular have a comparable meaning when used in the plural, and vice versa;

(c) the terms “Dollars” and “\$” mean United States Dollars;

(d) unless the context otherwise requires, references herein to a specific Section, Subsection, Recital, Schedule or Exhibit shall refer, respectively, to Sections, Subsections, Recitals, Schedules or Exhibits of this Agreement;

(e) wherever the word “include,” “includes,” or “including” is used in this Agreement, it shall be deemed to be followed by the words “without limitation”;

(f) references herein to any gender include each other gender;

(g) references herein to any Person include such Person’s heirs, executors, personal representatives, administrators, successors and assigns; provided, however, that nothing contained in this clause (g) is intended to authorize any assignment or transfer not otherwise permitted by this Agreement;

(h) references herein to a Person in a particular capacity or capacities exclude such Person in any other capacity;

(i) references herein to any contract or agreement (including this Agreement) mean such contract or agreement as amended, supplemented or modified from time to time in accordance with the terms thereof;

(j) with respect to the determination of any period of time, the word “from” means “from and including” and the words “to” and “until” each means “to but excluding”;

(k) references herein to any Law or any license mean such Law or license as amended, modified, codified, reenacted, supplemented or superseded in whole or in part, and in effect from time to time; and

(l) references herein to any Law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

ARTICLE II

TRANSFER OF OPERATIONAL CONTROL OF TACOMA POWER COMMERCIAL SYSTEM AND PURCHASE AND SALE OF RELATED SURPLUS ASSETS

Section 2.1 Transfer of Operational Control. The Transfer of Operational Control shall take place on the last Business Day of the calendar month in which the conditions set forth in Article VI (other than those conditions that by their nature are to be satisfied at the Transfer of Operational Control but subject to the fulfillment or waiver of those conditions) have been satisfied or waived, unless such conditions have not been so satisfied or waived by the fifth Business Day preceding the last Business Day of such calendar month, in which case the

Transfer of Operational Control shall take place on the last Business Day of the next calendar month or at such other time, date or place as the Parties hereto may mutually agree in writing.

Section 2.2 Purchase and Sale of Related Surplus Assets.

(a) On the terms and subject to the conditions set forth herein, at the Transfer of Operational Control Date, Tacoma Power shall sell, convey, transfer, assign and deliver to Rainier, and Rainier shall purchase from Tacoma Power, the Related Surplus Assets, free and clear of all Encumbrances. The “**Related Surplus Assets**” are comprised of:

(i) All spare customer equipment, and other tangible personal property and assets of Tacoma Power relating to the Click! Business, as set forth on Schedule 2.2(a)(i) (collectively, the “**Equipment**”);

(ii) All fiber optic cabling, coaxial cabling, supplies, tools and inventories of Tacoma Power relating to the Click! Business (the “**Inventory**”), as set forth on Schedule 2.2(a)(ii);

(iii) All vehicles of Tacoma Power relating to the Click! Business (the “**Vehicles**”), as set forth on Schedule 2.2(a)(iii);

(iv) All rights of Tacoma Power under those Contracts listed on Schedule 2.2(a)(iv) (collectively, the “**Transferred Contracts**”);

(v) All Governmental Authorizations listed on Schedule 2.2(a)(v) (the “**Transferred Authorizations**”);

(vi) Click! Business customer deposits and pro-rated customer advanced payments for services;

(vii) Copies of all customer account information and other Click! Business information (the “**Records**”) reasonably requested by Rainier; and

(viii) All defenses, claims, deposits, prepayments, refunds, causes of action, credits, warranties (including manufacturer’s warranties), rights of recovery, rights of set off and rights of recoupment relating to any right, property or asset included in the Related Surplus Assets, or against any party under the Transferred Contracts.

(b) Updated Asset Schedules. On the tenth (10th) Business Day prior to the Transfer of Operational Control, Tacoma Power shall deliver to Rainier revised Schedules 2.2(a)(i), 2.2(a)(iv) and 2.2(a)(v), which shall set forth lists of assets of the type required to be disclosed thereon and relating to the Click! Business that Tacoma Power owns or has the right to own as of such date, including any assets acquired by Tacoma Power after the date hereof (the “**Updated Asset Schedules**”) and a statement indicating the value of the Advanced Customer Payments as defined in Section 2.6(a). No later than five (5) Business Days prior to the Transfer of Operational Control Date, Rainier shall notify Tacoma Power whether it accepts or requires revisions to the Updated Asset Schedules or the statement of Advanced Customer Payments. If Rainier accepts the Updated Asset Schedules and Advanced Customer Payments as delivered by

Tacoma Power, then the Updated Asset Schedules shall amend, in their entirety, the corresponding schedules attached to this Agreement as of the date hereof, and the Compensation shall be calculated using the stated value of the Advanced Customer Payments.

Section 2.3 Excluded Assets. Notwithstanding anything herein to the contrary, from and after the Transfer of Operational Control, Tacoma Power shall retain, and there shall be excluded from the sale, conveyance, assignment or transfer to Rainier hereunder, all assets of Tacoma Power that are not Related Surplus Assets (the “**Excluded Assets**”).

Section 2.4 Assumption of Liabilities. At the Transfer of Operational Control, Rainier shall assume and discharge or perform when due all of the Liabilities that accrue after the Transfer of Operational Control with respect to operation of the Click! Business pursuant to the IRU Agreement and ownership of the Related Surplus Assets (the “**Assumed Liabilities**”). With respect to operation of the Tacoma Power Commercial System and ownership of the Related Surplus Assets, any Liabilities that accrue before the Transfer of Operational Control shall not be assumed by Rainier (“**Excluded Liabilities**”). The determination of the Excluded Liabilities and the Assumed Liabilities shall be prorated between Tacoma Power and Rainier as of 11:59 p.m. of the Transfer of Operational Control Date, the proration to be made and paid, insofar as feasible, on the Transfer of Operational Control Date, with a final settlement no later than sixty (60) days after the Transfer of Operational Control Date.

Section 2.5 Excluded Liabilities. Tacoma Power shall retain and be responsible for all Excluded Liabilities. Notwithstanding anything to the contrary in this Agreement, Rainier shall not assume, and Rainier shall have no Liability for, any Liability of Tacoma Power that is not expressly assumed by Rainier pursuant to Section 2.4.

Section 2.6 Purchase Price. The aggregate purchase price to be paid to Tacoma Power by Rainier hereunder shall be the agreed price for the Related Surplus Assets as set forth in Schedule 2.2 (“**Purchase Price**”), less the amount of the pro-rated advanced customer payments for services to be rendered after the Transfer of Operational Control received by Tacoma Power as of the 10th (tenth) Business Day (“**Advanced Customer Payments**”) prior to the Transfer of Operational Control (the “**Consideration**”). On the terms and subject to the conditions set forth herein, in consideration of the sale and delivery of the Related Surplus Assets, at the Transfer of Operational Control, Rainier shall:

- (i) assume the Assumed Liabilities; and
- (ii) pay the Consideration by wire transfer of immediately available funds; and
- (iii) execute the Ancillary Agreements.

Section 2.7 Allocation of Revenues and Prepaid Expenses. Operation of the Click! Business and the Tacoma Power Commercial System, and the revenues, expenses and liabilities attributable thereto through 11:59 p.m. on the Transfer of Operational Control Date shall be for the account of Tacoma Power. Revenues and any prepaid or deferred items, shall be prorated between Tacoma Power and Rainier as of 11:59 p.m. of the Transfer of Operational

Control Date, the proration to be made and paid within ninety (90) days after the Transfer of Operational Control Date.

Section 2.8 Deliveries by Rainier. At the Transfer of Operational Control, Rainier shall deliver to Tacoma Power:

(a) the Consideration and the first monthly installment of the IRU Fee required by Section 5 of the IRU Agreement, by wire transfer of immediately available funds to an account which has been designated by Tacoma Power at least two Business Days prior to the Transfer of Operational Control Date;

(b) a duly executed counterpart of one or more Assignment and Assumption Agreements;

(c) the certificate to be delivered pursuant to Section 6.3(m);

(d) duly executed counterparts of such other customary instruments of transfer, assumptions, filings or documents, in form and substance reasonably satisfactory to Rainier and Tacoma Power, as may be reasonably required to give effect to this Agreement;

(e) Copies of the performance assurances and funding commitments required by Section 12 of the IRU Agreement and Section 6.3(l) of this Agreement;

(f) the certification required by Sections 6.3(e) of this Agreement;

(g) the certification required by Section 6.3(f) of this Agreement;

(h) a list of the names of all Persons with an ownership interest of Five Percent (5%) or greater in Rainier Connect North, LLC;

(i) a duly executed counterpart of each Ancillary Agreement; and

(j) copies of the approvals for the transfers of each of the Franchises from the jurisdictions in which Tacoma Power has Franchises for the Click! Business, or copies of the Franchises Rainier Connect North, LLC has entered into to serve such jurisdictions, as required by Section 6.3(k).

Section 2.9 Deliveries by Tacoma Power. At the Transfer of Operational Control, Tacoma Power shall deliver to Rainier:

(a) a duly executed counterpart of one or more Bills of Sale;

(b) a duly executed counterpart of one or more Assignment and Assumption Agreements;

(c) the Records that are Related Surplus Assets;

(d) the certificate to be delivered pursuant to Section 6.2(d);

(e) duly executed counterparts of such other customary instruments of transfer, assumptions, filings or documents, in form and substance reasonably satisfactory to Rainier and Tacoma Power, as may be reasonably required to give effect to this Agreement; and

(f) a duly executed counterpart of each Ancillary Agreement.

ARTICLE III REPRESENTATIONS AND WARRANTIES OF TACOMA POWER

Tacoma Power represents and warrants to Rainier that as of the date hereof and as of the Transfer of Operational Control:

Section 3.1 Organization and Qualification. Tacoma Power is a Division of Tacoma Public Utilities, a Department of the City of Tacoma, a municipal corporation duly organized, validly existing and in good standing under the laws of the State of Washington and the City of Tacoma.

Section 3.2 Municipal Authorization

(a) Tacoma Power has full municipal power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The execution, delivery and performance by Tacoma Power of this Agreement and the Ancillary Agreements have been duly and validly authorized by the Tacoma Public Utility Board and the Tacoma City Council, and no additional authorization or consent is required in connection with the execution, delivery and performance by Tacoma Power of this Agreement. Notwithstanding the foregoing, the Parties are aware of the pending litigation set forth in Section 6.1(d). In the event that, prior to Transfer of Operational Control, a court of competent jurisdiction in any of the matters set forth in Section 6.1(d), issues an order nullifying or invalidating the IRU Agreement or restraining or enjoining either Party from executing the IRU Agreement or exercising any rights accruing to either party under the IRU Agreement, either Party shall have the right to terminate this Agreement, which shall be Party's sole remedy. Alternatively, the Parties may suspend the obligations under this Agreement for such period of time and upon such conditions as the Parties may mutually agree.

(b) Tacoma Power has or prior to the Transfer of Operational Control will have full municipal power and authority to execute and deliver each Ancillary Agreement or Transfer of Operational Control document to which it is (or will be) a party and to perform its obligations thereunder. The execution, delivery and performance by Tacoma Power of each Ancillary Agreement to which it is (or will be) a party has been or prior to the Transfer of Operational Control will have been duly and validly authorized by the Tacoma Public Utility Board and the Tacoma City Council, and no additional authorization or consent will be required in connection with the execution, delivery and performance by Tacoma Power of the Ancillary Agreements or Transfer of Operational Control documents to which Tacoma Power will be a party or signatory.

Section 3.3 Non-Contravention. The execution, delivery and performance by Tacoma Power of this Agreement and the Ancillary Agreements, and the consummation of the

transactions contemplated hereby and thereby, do not and will not violate any provision of Tacoma Power's charter.

Section 3.4 Binding Effect. This Agreement and each of the Ancillary Agreements will constitute, when executed and delivered by Tacoma Power and by Rainier and the other parties thereto, a valid and legally binding obligation of Tacoma Power, enforceable against Tacoma Power in accordance with their respective terms. Each of the unexecuted Ancillary Agreements to be entered into on or prior to the Transfer of Operational Control Date, when executed and delivered by Tacoma Power and by Rainier and the other parties thereto, will constitute a valid and legally binding obligation of Tacoma Power, enforceable against Tacoma Power in accordance with its terms.

Section 3.5 Assets. At the Transfer of Operational Control (after giving effect to the Transaction), Rainier will have good and marketable title to the Related Surplus Assets free and clear of any Encumbrances, other than those created by Rainier or its Affiliates.

Section 3.6 Finders' Fees. There is no investment banker, broker, finder or other intermediary that has been retained by or is authorized to act on behalf of Tacoma Power who might be entitled to any fee or commission in connection with the Transaction.

Section 3.7 No Default. Other than the litigation referenced in Section 6.1(d), there is no action, suit, proceeding, or investigation at law or in equity before or by any court, public board or body pending against or affecting the Party, challenging or affecting the performance of the Party's obligations hereunder.

Section 3.8 Condition of Related Surplus Assets. NOTWITHSTANDING ANY EXAMINATION OR INSPECTION MADE BY RAINIER AND WHETHER OR NOT ANY PATENT OR LATENT DEFECT OR CONDITION WAS REVEALED OR DISCOVERED THEREBY, THE RELATED SURPLUS ASSETS ARE CONVEYED TO RAINIER UNDER THIS AGREEMENT IN THEIR "AS IS" CONDITION WITH ALL FAULTS AS OF THE EFFECTIVE DATE. EXCEPT AS SET FORTH IN THIS AGREEMENT, TACOMA POWER MAKES NO WARRANTY TO RAINIER OR ANY OTHER ENTITY, WHETHER EXPRESS, IMPLIED OR STATUTORY, AS TO THE INSTALLATION, DESCRIPTION, QUALITY, MERCHANTABILITY, USEFUL LIFE, FUTURE ECONOMIC VIABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF RELATED SURPLUS ASSETS, OR AS TO ANY OTHER MATTER, ALL OF WHICH WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED.

Section 3.9 No Other Representations or Warranties. Except for the representations and warranties contained in this Article III, neither Tacoma Power nor any other Person makes any other express or implied representation or warranty on behalf of Tacoma Power.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF RAINIER

Rainier represents and warrants to Tacoma Power that as of the date hereof and as of the Transfer of Operational Control:

Section 4.1 Organization and Qualification.

(a) Rainier is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Washington. Rainier has all requisite power and authority to own and operate its assets and to carry on its business as currently conducted.

Section 4.2 Corporate Authorization.

(a) Rainier has full corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The execution, delivery and performance by Rainier of this Agreement have been duly and validly authorized and no additional authorization or consent is required in connection with the execution, delivery and performance by Rainier of this Agreement.

(b) Rainier has or prior to the Transfer of Operational Control will have full power and authority to execute and deliver each of the Ancillary Agreements to which it will be a party and to perform its obligations thereunder. The execution, delivery and performance by Rainier of each of the Ancillary Agreements to which it will be a party has been or prior to the Transfer of Operational Control will have been duly and validly authorized and no additional authorization or consent will be required in connection with the execution, delivery and performance by Rainier of any of the Ancillary Agreements to which it will be a party.

Section 4.3 Consents and Approvals. No consent, approval, waiver, authorization, notice or filing is required to be obtained by Rainier, or to be given by Rainier, or made by Rainier with, any Person in connection with the execution, delivery and performance by Rainier of this Agreement and the Ancillary Agreements to which it is a party, other than the consents, approvals, waivers, authorizations, notices or filings the failure of which to obtain, give or make would not, individually or in the aggregate, reasonably be expected to have a material impairment or delay of Rainier's ability to effect the Transfer of Operational Control or to perform its obligations under this Agreement or any Ancillary Agreement to which it is a party.

Section 4.4 Non-Contravention. Rainier is not a party to any contract, agreement or other instrument or condition which materially restricts, limits or in any manner materially adversely affects the transactions contemplated hereby. The execution, delivery and performance of this Agreement and the Ancillary Agreements contemplated hereby by Rainier do not violate any provision of law applicable to Rainier or conflict with, result in the termination or breach of any term, condition or provision of, or constitute a material default under, the governing corporate formation documents of Rainier, or of any contract, lease agreement or other instrument.

Section 4.5 Binding Effect. This Agreement and each of the Ancillary Agreements will constitute, when executed and delivered by Rainier and by Tacoma Power and the other parties thereto, a valid and legally binding obligation of Rainier, enforceable against Rainier in accordance with their respective terms.

Section 4.6 Finders' Fees. There is no investment banker, broker, finder or other intermediary that has been retained by or is authorized to act on behalf of Rainier or any Affiliate of Rainier who might be entitled to any fee or commission in connection with the Transaction.

Section 4.7 No Default. Other than the litigation referenced in Section 6.1(d), there is no action, suit, proceeding, or investigation at law or in equity before or by any court, public board or body pending against or affecting the Party, challenging or affecting the performance of the Party's obligations hereunder.

Section 4.8 Acceptance of Surplus Related Assets. RAINIER ACCEPTS THE SURPLUS RELATED ASSETS "AS IS" AND WITH ALL FAULTS. RAINIER HEREBY WAIVES AND RELEASES ANY CLAIM OR ACTION AGAINST TACOMA POWER IN RESPECT OF OR RELATED TO THE CONDITION OF THE RELATED SURPLUS ASSETS, INCLUDING ANY DEFECTS OR ADVERSE CONDITIONS NOT DISCOVERED OR OTHERWISE KNOWN BY RAINIER AS OF THE EFFECTIVE DATE

Section 4.9 No Other Representations or Warranties. Except for the representations and warranties contained in this Article IV, neither Rainier nor any other Person makes any other express or implied representation or warranty on behalf of Rainier.

ARTICLE V COVENANTS

Section 5.1 Access and Information. From the date hereof until the Transfer of Operational Control subject to applicable Laws, Tacoma Power shall (i) afford Rainier and its authorized representatives reasonable access, during regular business hours, upon reasonable advance notice, to the Employees, the Tacoma Power Commercial System, and the Related Surplus Assets, and (ii) furnish, or cause to be furnished, to Rainier any financial and operating data and other information with respect to the Click! Business or in furtherance of this Transaction as Rainier from time to time reasonably requests.

Section 5.2 Conduct of Business. Except with respect to the actions consistent with the contemplated Transfer of Operational Control, during the period from the date hereof to the Transfer of Operational Control, Tacoma Power shall conduct the operations of and maintain the Tacoma Power Commercial System in the Ordinary Course of Business and in accordance with applicable material Laws (including, fulfilling installation requests) and use its commercially reasonable efforts to preserve the Click! Business and its relationship with its customers, suppliers, and creditors.

Section 5.3 Commercially Reasonable Efforts. Tacoma Power and Rainier shall cooperate and use their respective commercially reasonable efforts to fulfill as promptly as

practicable the conditions precedent to the other Party's obligations hereunder and shall use their respective commercially reasonable efforts to fulfill as promptly as practicable the conditions precedent to their obligations hereunder to the extent they have the ability to control the satisfaction of such obligations. Without limiting the generality of the foregoing, Tacoma Power and Rainier shall (i) make all filings and submissions required by Laws, and promptly file any additional information requested as soon as practicable after receipt of such request therefor and promptly file any other information that is necessary, proper or advisable to permit consummation of the Transaction; ; and (ii) use commercially reasonable efforts to perform the tasks set forth in the Transition Plan.

(a) Each of the Parties hereto agrees to execute and deliver such other documents, certificates, agreements and other writings and to take such other commercially reasonable actions as may be necessary or desirable in order to evidence, consummate or implement expeditiously the transactions contemplated by this Agreement and to vest in Rainier good and marketable title to the Related Surplus Assets to the same extent as held by Tacoma Power, free and clear of all Encumbrances.

(b) In furtherance and not in limitation of the foregoing, each of Rainier and Tacoma Power agrees to make as promptly as practicable, (i) appropriate filings with the FCC, and (ii) all other necessary filings with other Government Entities relating to the Transaction, and to use commercially reasonable efforts to cause the receipt of approvals under such other Laws or from such authorities or third parties as soon as practicable.

(c) Each of Tacoma Power and Rainier shall give (or shall cause their respective Affiliates to give) any notices to third parties, and use, and cause their respective Affiliates to use, commercially reasonable efforts to obtain any third party (excluding Government Entities) consents related to or required in connection with the Transaction.

Section 5.4 Compensation and Benefits; Employees.

(a) Compensation and Benefits. The Parties hereto hereby acknowledge and agree that no provision of this Agreement shall be construed to create any right to any compensation or benefits whatsoever on the part of any Employee or other future, present or former employee of Tacoma Power. Nothing in this Section 5.4 or elsewhere in this Agreement shall be deemed to make any employee of the Parties or their respective Affiliates a third party beneficiary of this Section 5.4 or any rights relating hereto.

(b) Employees. None of the provisions contained in this Agreement shall be interpreted as obligating Rainier to make an offer of employment to any of the Employees, provided, however, that Rainier agrees to make a good faith commitment to consider the existing Employees for employment when filling vacancies associated with its operations pursuant to the IRU Agreement. Rainier will evaluate each Employee for employment based on its own hiring criteria. In the event that Rainier does extend an offer of employment to an Employee, such offer will contain Rainier's standard terms and conditions of employment.

Section 5.5 Tax Matters.

Notwithstanding any provision in this Agreement to the contrary, to the extent any of the following apply, any real property excise or transfer tax, sales tax, use tax, or other similar tax imposed on the transactions contemplated by this Agreement shall be borne by Rainier Connect North, LLC.

Section 5.6 IRU Agreement(a) The IRU Agreement attached as Exhibit 5.6 hereto includes the IRU Agreement and Exhibits, including near final drafts of Exhibits A2.1, A2.2, A2.3, A2.4, and A7.

(b) Updated IRU Agreement Exhibits. On the tenth (10th) Business Day prior to the Transfer of Operational Control, Tacoma Power shall deliver to Rainier revised IRU Exhibits A2.1, A2.2, A2.3, A2.4, and A7 which shall set forth lists of assets of the type required to be disclosed thereon and relating to the Tacoma Power Commercial System as of such date, including any changes to the Tacoma Power Commercial System assets after the date hereof (the “**Updated IRU Exhibits**”). No later than five (5) Business Days prior to the Transfer of Operational Control Date, Rainier shall notify Tacoma Power whether it accepts or requires revisions to the Updated IRU Exhibits. If Rainier accepts the Updated IRU Exhibits as delivered by Tacoma Power, then the Updated IRU Exhibits shall amend, in their entirety, the corresponding exhibits attached to the IRU Agreement as of the date hereof.

(c) As of the Transfer of Operational Control Date, Rainier and Tacoma Power shall each execute and deliver the IRU Agreement substantially in the form attached hereto as Exhibit 5.6, including any Updated IRU Exhibits.

Section 5.7 Post-Transfer of Operational Control Consents. Subsequent to the Transfer of Operational Control, Tacoma Power and Rainier shall continue to use commercially reasonable efforts to obtain in writing as promptly as possible any consent, authorization or approval necessary or commercially advisable in connection with the Transaction which was not obtained on or before the Transfer of Operational Control in form and substance reasonably satisfactory to Rainier.

Section 5.8 Environmental MattersIf at any time prior to the Transfer of Operational Control, any material environmental investigation, study, audit, test, review or other analysis in relation to any Related Surplus Asset is conducted, Tacoma Power shall (a) promptly notify Rainier thereof and (b) subject to applicable Law, keep Rainier informed as to the progress of any such proceeding.

Section 5.9 Name of Business To the extent that the names, marks, logos or indicia of Click! Business, (the “**Click! Marks**”), are incorporated in or on the Related Surplus Assets, Rainier may continue to use the Click! Marks pursuant to the terms of the license set forth in Exhibit P to the IRU Agreement. Rainier acknowledges and agrees that except as expressly set forth in Exhibit P to the IRU Agreement, it shall have no rights in and to any trade names, trademarks, service marks, Internet domain names or logos owned by Tacoma Power or any trade names, trademarks, service marks, Internet domain names or logos confusingly similar thereto.

ARTICLE VI
CONDITIONS TO TRANSFER OF OPERATIONAL CONTROL

Section 6.1 Conditions to the Obligations of Rainier and Tacoma Power. The obligations of the Parties hereto to effect the Transfer of Operational Control are subject to the satisfaction (or waiver by both parties) prior to the Transfer of Operational Control of the following conditions:

(a) No Prohibition. No Law shall be in effect prohibiting the Transaction.

(b) Consents and Approvals. All Governmental Authorizations (other than Franchises) that are set forth on Schedule 6.1(b) hereto shall have been obtained, in each case in form and substance reasonably satisfactory to both parties.

(c) No Default. Other than the litigation referenced in Section 6.1(d), there is no action, suit, proceeding, or investigation at law or in equity before or by any court, public board or body pending against or affecting the Party, challenging the validity or enforceability of this Agreement or any other documents relating hereto or the performance of the Party's obligations hereunder.

(d) The pending litigation is: Edward E. (Ted) Coates, et al. v. City of Tacoma (Wa. Sup. Ct, Case No. 17-2-08907); Mitchell Shook v. City of Tacoma (U.S. Dist. Ct, Wa. W. Dist., Case No. 3:19cv05794BHS); Mitchell Shook v. City of Tacoma; Thomas McCarthy and Christopher T. Anderson v. City of Tacoma (Wa. Sup. Ct., Case No 19-2-07135-0).

Section 6.2 Conditions to the Obligation of Rainier. The obligation of Rainier to effect the Transfer of Operational Control is subject to the satisfaction (or waiver by Rainier) prior to the Transfer of Operational Control of the following conditions:

(a) Representations and Warranties. The representations and warranties of Tacoma Power in Article III that are qualified as to materiality or Material Adverse Effect shall be true and correct and all other representations and warranties of Tacoma Power in Article III not so qualified shall be true and correct in all material respects, in each case, at the time made and as of the Transfer of Operational Control Date as if made at and as of such time (except, in each case, to the extent expressly made as of an earlier date, in which case as of such earlier date).

(b) Covenants. Each of the covenants and agreements of Tacoma Power to be performed on or prior to the Transfer of Operational Control shall have been duly performed in all material respects.

(c) Ancillary Agreements. Tacoma Power shall have executed and delivered the Ancillary Agreements to which it is a party.

(d) Certificate. Rainier shall have received a certificate, signed on behalf of Tacoma Power by a duly authorized officer of Tacoma Power, dated the Transfer of

Operational Control Date, to the effect that the conditions set forth in this Section 6.2 have been satisfied.

(e) No Encumbrances. As of the Transfer of Operational Control, there shall be no Encumbrances on any of the Related Surplus Assets, other than Encumbrances that, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

(f) No Material Adverse Change. Since the date of this Agreement, no event or condition has occurred that, individually or in the aggregate, has had or would reasonably be expected to have a Material Adverse Effect

(g) Rainier shall have received a certificate, signed on behalf of Tacoma Power by a duly authorized officer of Tacoma Power, dated the Transfer of Operational Control Date, to the effect that the Rainier's privacy policy and net neutrality policy are in compliance with the requirements of Exhibits J and K of the IRU Agreement, respectively.

Section 6.3 Conditions to the Obligation of Tacoma Power. The obligation of Tacoma Power to effect the Transfer of Operational Control is subject to the satisfaction (or waiver by Tacoma Power) prior to the Transfer of Operational Control of the following conditions:

(a) Representations and Warranties. The representations and warranties of Rainier in Article IV that are qualified by materiality or material adverse effect shall be true and correct and all other representations and warranties of Rainier in Article IV not so qualified shall be true and correct at the time made and as of the Transfer of Operational Control Date as if made at and as of such time (except, in each case, to the extent expressly made as of an earlier date, in which case as of such earlier date).

(b) Covenants. Each of the covenants and agreements of Rainier to be performed on or prior to the Transfer of Operational Control shall have been duly performed in all material respects.

(c) Ancillary Agreements. Rainier shall have executed and delivered the Ancillary Agreements to which it is a party.

(d) Published Rates and Services. Rainier shall have published its rates and services on its website as required by Exhibits G to the IRU Agreement.

(e) Lifeline Certification. Rainier shall have provided Tacoma Power with a signed certification attesting that it is a certified Lifeline provider and that it will offer the federal Lifeline subsidy as required by Exhibit H to the IRU Agreement..

(f) Reduced-Cost Service. Rainier shall have provided Tacoma Power with a signed certification that it will offer the substantially reduced-cost service contemplated by Exhibit H to the IRU Agreement.

(g) Local Office. Rainier shall have established a local office in the City of Tacoma and posted the address on its website as required by Exhibit I to the IRU Agreement

(h) Customer Privacy. Rainier shall have conspicuously published its privacy policy on its website as required by Exhibit J to the IRU Agreement.

(i) Net Neutrality. Rainier's net neutrality policy shall be conspicuously posted on its website as required by Exhibit K to the IRU Agreement

(j) Open Access Program. Rainier shall have provided Tacoma Power with a copy of its Open Access Program as required by Exhibit L to the IRU Agreement.

(k) Franchises. Rainier shall have either obtained approval for the transfer of each of the Franchises from the jurisdictions in which Tacoma Power has Franchises for the Click! Business as of the date of this Agreement, or will have entered into its own Franchises to serve such jurisdictions.

(l) Funding Commitment Letter(s). In order to demonstrate its ability to meet its obligations under this IRU Agreement, Rainier shall have delivered funding commitment letter(s), in a form reasonably acceptable to Tacoma Power, in the amount of four million five hundred thousand Dollars (\$4,500,000) covering the first three (3) years of the Initial Term ("Funding Commitment Letter(s)").

(m) Certificate. Tacoma Power shall have received a certificate, signed on behalf of Rainier by a duly authorized officer of Rainier, dated the Transfer of Operational Control Date, to the effect that the conditions set forth in this Section 6.3 have been satisfied.

ARTICLE VII TERMINATION AND DEFAULT

Section 7.1 Termination by Mutual Consent. This Agreement may be terminated at any time prior to the Transfer of Operational Control by mutual written agreement of Tacoma Power and Rainier.

Section 7.2 Termination by Either Rainier or Tacoma Power. This Agreement may be terminated at any time prior to the Transfer of Operational Control by Rainier or Tacoma Power, by giving written notice of termination to the other Party, if (a) the Transfer of Operational Control shall not have occurred on or before 120 days from the date of this Agreement so long as the Party proposing to terminate has not breached in any material respect any of its representations, warranties, covenants or other agreements under this Agreement, in any manner that shall have proximately contributed to the failure of the Transfer of Operational Control to so occur, or (b) pursuant to Section 7.3 hereof, or (c) pursuant to Section 3.2(a).

Section 7.3 Material Breaches. A Party shall be deemed to be in default under this Agreement only if such Party has materially breached or failed to perform its obligations hereunder, and non-material breaches or failures shall not be grounds for declaring a Party to be in default, postponing the Transfer of Operational Control, or terminating this Agreement. For

purposes of this Agreement, a Party's failure or refusal to execute any of the Ancillary Agreements shall constitute a material breach.

(b) If Tacoma Power or Rainier believes the other to be in default hereunder, the Party believing a default has occurred shall provide the other with written notice specifying in reasonable detail the nature of such default. If the default has not been cured by the earlier of: (a) the Transfer of Operational Control Date, or (b) within ten (10) business days after delivery of that notice (or such additional reasonable time as the circumstances may warrant provided the Party in default undertakes diligent, good faith efforts to cure the default within such ten (10) day period and continues such efforts thereafter), then the Party giving such notice may terminate this Agreement and/or exercise the remedies available to such Party pursuant to this Agreement.

Section 7.4 Effect of Termination.

(a) In the event of the termination of this Agreement in accordance with this Article VII, this Agreement shall thereafter become void and have no effect, and no Party hereto shall have any Liability to the other Party hereto or their respective Affiliates, except that nothing in this Section 7.4 shall relieve any Party from liability for any willful breach of this Agreement that arose prior to such termination.

**ARTICLE VIII
MISCELLANEOUS**

Section 8.1 Notices. All notices, requests, demands, approvals, consents and other communications hereunder shall be in writing and shall be deemed to have been duly given and made if served by personal delivery upon the Party for whom it is intended or on the third day following mailing, postage prepaid, certified mail, return receipt requested to the Person at the address set forth below:

Tacoma Power:

Tacoma Public Utilities
3628 South 35th Street
Tacoma, WA 98409
Telephone: (253) 502 8600

Email:
Attention: TPU Contract Administrator

With a copy to:

City of Tacoma
747 Market Street
Tacoma, WA 98402
Attention: City Attorney

Rainier:

Rainier Connect North, LLC
104 Washington Ave. N.
P.O. Box 639
Eatonville, WA 98329
Attn: Manager

With a copy to:

Richard A. Finnigan
2112 Black Lake Blvd. SW
Olympia, WA 98512

Either Party may change the address to which notices shall be sent by notice to the other Party by providing thirty (30) days' written notice of the change of address.

Section 8.2 Amendment; Waiver. Any provision of this Agreement may be amended, waived or suspended if, and only if, such amendment or waiver is in writing and signed, in the case of an amendment, by Rainier and Tacoma Power, or in the case of a waiver, by the Party against whom the waiver is to be effective. No failure or delay by any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by Law except as otherwise specifically provided in Article VII.

Section 8.3 No Assignment or Benefit to Third Parties. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors. No Party to this Agreement may assign any of its rights or transfer or delegate any of its obligations under this Agreement, and this Agreement may not be assigned to any third parties.

Section 8.4 Entire Agreement. This Agreement (including all Schedules and Exhibits) executed as of the date hereof contain the entire agreement between the parties hereto with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, oral or written, with respect to such matters, including but not limited to the Letter of Intent that was executed on April 2, 2019 by and between Tacoma Power and Mashell Telecom Inc.

Section 8.5 Publicity. Notwithstanding anything to the contrary contained herein, no press release or similar public announcement or communication shall be made or caused to be made relating to this Agreement and the Transaction unless specifically approved in advance by both parties hereto, except that a Party hereto may issue any press release or make any public announcement or communication relating to this Agreement and the Transaction that may be required by any applicable Law (including any listing requirement) without such

approval if, to the extent practicable, such Party has used commercially reasonable efforts to obtain the approval of the other Party before issuing such press release or making such public announcement or communication.

Section 8.6 Expenses. Except as otherwise expressly provided in this Agreement, whether or not the Transfer of Operational Control occurs, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be borne by the Party incurring such costs and expenses.

(a) Bulk Sales. Tacoma Power and Rainier agree to waive compliance with Article 6 of the Uniform Commercial Code as adopted in each of the jurisdictions in which any of the Related Surplus Assets are located to the extent that such Article is applicable to the transactions contemplated hereby. Governing Law. Any action related to this Agreement shall be governed the laws of the State of Washington (except that body of law controlling conflict of laws) and the United Nations Convention on the International Sale of Goods will not apply. Any suit or proceeding arising out of or relating to this Agreement will be brought in the applicable federal or state court located in Pierce County, Washington, and each Party irrevocably submits to the jurisdiction and venue of such courts.

Section 8.8 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same Agreement.

Section 8.9 Headings. The heading references herein and the table of contents hereof are for convenience purposes only, and shall not be deemed to limit or affect any of the provisions hereof.

Section 8.10 Severability. The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement, or the application thereof to any Person or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (b) the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

Section 8.11 Confidentiality.

(a) **Definition**. “**Confidential Information**” means information concerning a Party’s (or its Affiliates’) products, plans, methods, processes, business opportunities, vendors, customers, finances, personnel and other information related to the business of such Party and the terms of this Agreement. “Confidential Information” does not include any information which: (a) the receiving Party rightfully knew before the disclosing Party disclosed it to the receiving Party; (b) has become publicly known through no wrongful act of the receiving Party;

or (c) the receiving Party developed independently and without the use of any Confidential Information, as evidenced by appropriate documentation.

(b) **Nondisclosure.** All Confidential Information remains the property of the disclosing Party, and no license or other right in any Confidential Information is granted hereby. The receiving Party shall not disclose any Confidential Information to any third party or otherwise, and shall take all reasonable precautions to prevent its unauthorized dissemination, during the pendency of this Agreement. The receiving Party shall limit its internal distribution of Confidential Information to its employees and agents who have a need to know, and shall take steps to ensure that dissemination is so limited. The receiving Party shall not use any Confidential Information for its own benefit or for the benefit of anyone other than the disclosing Party. Upon disclosing Party's written request, the receiving Party shall return to the disclosing Party all Confidential Information in the receiving Party's custody or control. All information disclosing Party provides is provided "AS IS" and without any warranty, express, implied or otherwise, regarding its accuracy or performance.

(c) **Confidential or Proprietary Records Must be Marked.** If Rainier provides Tacoma Power with records that Rainier considers confidential or proprietary, Rainier must mark all applicable pages of said record(s) as "Confidential" or "Proprietary." If Rainier fails to so mark record(s), then (1) Tacoma Power, upon request, may release said record(s) without the need to satisfy the notice requirements above; and (2) Rainier expressly waives its right to allege any kind of civil action or claim against Tacoma Power pertaining to the release of said record(s).

(d) **Public Disclosure.** This Agreement and documents provided to Tacoma Power by Rainier hereunder are deemed public records subject to disclosure under the Washington State Public Records Act, Chapter 42.56 RCW ("**Public Records Act**"). Thus, Tacoma Power may be required, upon request, to disclose this Agreement and documents related to it unless an exemption under the Public Records Act or other laws applies. In the event Tacoma Power receives a request for such disclosure, determines in its legal judgment that no applicable exemption to disclosure applies, and Rainier has complied with the requirements herein to mark all content considered to be confidential or proprietary, Tacoma Power agrees to provide Rainier ten (10) days' written notice of impending release. Should legal action thereafter be initiated by Rainier to enjoin or otherwise prevent such release, all expense of any such litigation shall be borne by Rainier, including any damages, attorneys' fees or costs awarded by reason of having opposed disclosure. Tacoma Power shall not be liable for any release where notice was provided and Rainier took no action to oppose the release of information. Notice of any proposed release of information pursuant to Chapter 42.56 RCW, shall be provided to Rainier according to the "Notices" provision herein.

Section 8.12 Time of Essence. Time is of the essence in this agreement and each provision hereof in which time of performance is established.

Section 8.13 No Gratuities. Tacoma Power shall not offer or give any Rainier employee or agent any gratuity, payment, or other personal benefit or inducement with a view toward securing business from Rainier or influencing the terms, conditions, or performance of this Agreement or any statement of work or purchase order.

Section 8.14 Further Assurances. In connection with this Agreement and the transactions contemplated hereby, each Party will execute and deliver any additional documents and instruments and perform any additional acts that may be commercially reasonable, necessary, or appropriate, or reasonably requested by the other Party, to effectuate and perform the Parties' obligations under this Agreement and the transactions contemplated hereby.

Section 8.15 Non-Discrimination. Rainier agrees to take all steps necessary to comply with all federal, state, and Tacoma City laws and policies regarding non-discrimination and equal employment opportunities. Rainier shall not discriminate in any employment action because of race, religion, creed, color, national origin or ancestry, sex, gender identity, sexual orientation, age, marital status, familial status, veteran or military status, the presence of any sensory, mental or physical disability or the use of a trained dog guide or service animal by a disabled person. In the event of non-compliance by Rainier with any of the non-discrimination provisions of this Agreement, Tacoma Power shall be deemed to have cause to terminate this Agreement, in whole or in part.

Section 8.16 Relationship of the Parties. The relationship between the Parties will not be that of partners, agents, or joint venture parties for one another, and nothing contained in this Agreement will be deemed to constitute a partnership or agency agreement between them for any purposes, including, but not limited to, tax purposes. No employment relationship is created by this Agreement. Neither Party will make any commitment, by contract or otherwise, binding upon the other or represent that it has any authority to do so. In performing any of their obligations hereunder, each Party will be an independent contractor or independent Party and shall use its discretion in discharging its contractual obligations at its own risk.

Section 8.17 Conflict of Interest. No officer, employee, or agent of Tacoma Power, nor any member of the immediate family of any such officer, employee, or agent as defined by City ordinance, shall have any personal financial interest, direct or indirect, in this Agreement, either in fact or in appearance. Rainier shall comply with all federal, state, and City conflict of interest laws, statutes, and regulations. Rainier represents that it presently has no interest and shall not acquire any interest, direct or indirect, in the program to which this Agreement pertains which would conflict in any manner or degree with the performance of Rainier's services and obligations hereunder. Rainier further covenants that, in performance of this Agreement, no person having any such interest shall be employed. Rainier also agrees that its violation of the City's Code of Ethics contained in Chapter 1.46 of the Tacoma Municipal Code shall constitute a breach of this Agreement subjecting this Agreement to termination.

Section 8.18 Representation. Both Parties acknowledge that they have each been represented by counsel and this Agreement and every provision hereof has been freely and fairly negotiated. All provisions of this Agreement will be interpreted according to their fair meaning and will not be strictly construed against any Party.

IN WITNESS WHEREOF, the parties have executed or caused this Agreement to be executed as of the date first written above.

CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, LIGHT DIVISION, D/B/A TACOMA POWER

By: _____
Name:
Title:

MASHELL, INC.

By: _____
Name:
Title:

RAINIER CONNECT NORTH LLC

By: _____
Name:
Title:

Click! Transition Plan

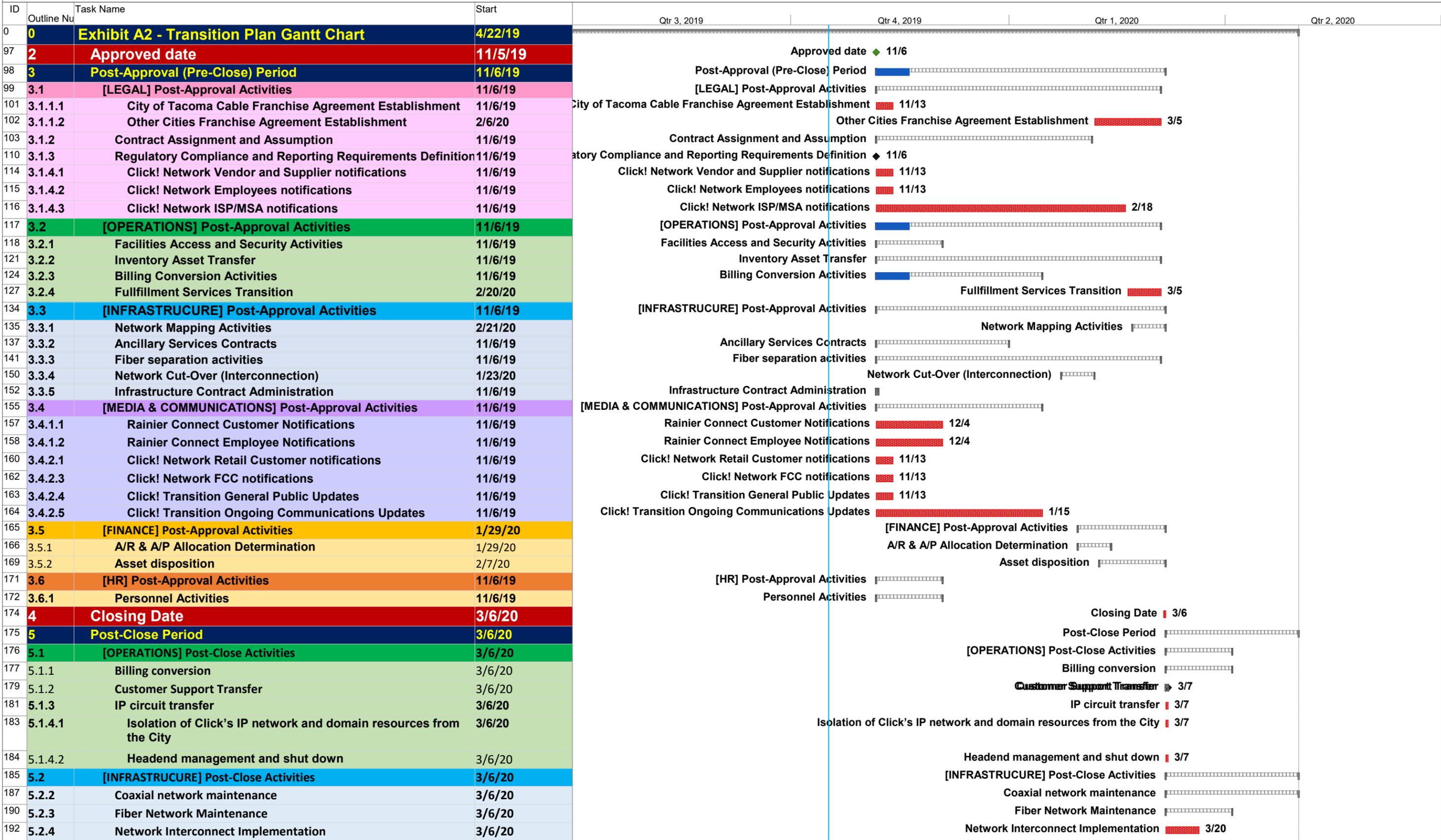
Category	Activity	Description	Owner	Required at Closing?	Post-Approval Activity	Post-Close Activity
Legal	City of Tacoma Cable Franchise Agreement Establishment	Attainment of an agreement between Rainier Connect and the City of Tacoma to continue cable television service provision that Click! formerly provided.	Rainier Connect	yes	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Legal	Other Cities Franchise Agreement Establishment	Attainment of a franchise agreement between Rainier Connect and each of the cities where it will be providing cable television service.	Rainier Connect	yes	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Legal	Contracts Assignment and Assumption	Changes to in-force programming agreements to end TPU post-close financial obligations. Includes Rainier Connect's acquisition of all necessary programming rights.	Tacoma, Rainier Connect	yes	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Legal	Regulatory Compliance and Reporting Requirements Definition	Description of the regulatory requirements for the City of Tacoma post-close.	Tacoma	no	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Legal	Click! Network Vendor and Supplier Notifications	Communication from Click! to existing Click! vendors informing them of the network operation change, key transition dates, request for assignment, and contact information.	Tacoma	no	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Legal	Click! Network Employee Notifications	Provision of separation notices from the City to existing Click! employees informing them of network operation change date, and other post-employment information. This includes bargaining unit notifications.	Tacoma	no	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Legal	Click! Network ISP/MSA Notifications	Communication from Click! to ISP/MSA agreement parties, informing them of the network operation change, relevant legal notices, key transition dates, and contact information.	Tacoma	no	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Operations	Facility Access and Security Activities	Provision of keys, access cards, codes, and other permissions to permit authorized Rainier Connect technical personnel entry to network sites that the agreement covers.	Tacoma	yes	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Category	Activity	Description	Owner	Required at Closing?	Post-Approval Activity	Post-Close Activity
Operations	Inventory Asset Transfer	Activities related to handing over Click! assets which Rainier Connect will acquire, including staging them for movement to Rainier Connect facilities.	Tacoma	no	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Operations	Billing Conversion Decision	Decision from Rainier Connect on its intended approach, timeline, and transition needs for post-close customer billing including data provision.	Rainier Connect	yes	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Operations	Fulfillment Services Transition	Changeover of fulfillment activities from Click! to Rainier Connect based on the agreed-upon schedule and conditions.	Tacoma, Rainier Connect	yes	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Infrastructure	Network Mapping Activities	Completion of activities to enable Rainier Connect to establish a baseline of Tacoma Power's network map and to communicate updates based on mutually agreed-upon changes.	Tacoma, Rainier-Connect	yes	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Infrastructure	Ancillary Services Contract Setup	Establishment of post-close billable network-related activities which Rainier Connect may elect Tacoma Power to perform. This includes service definition, service provision terms and conditions, and pricing information.	Tacoma	yes	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Infrastructure	Fiber Separation Activities	Modifications to fiber plant terminations to enable Rainier Connect technical staff access to non-critical network fiber optic paths while physically isolating nearby Tacoma Power-allocated fiber optic paths.	Tacoma	no	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Infrastructure	Network Cutover (Interconnection)	Completing activities to reflect the post-close network configuration changes that Rainier Connect requires to operate the Click! network and that Tacoma Power needs to have for its connectivity to external networks.	Tacoma	yes	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Infrastructure	Infrastructure Contract Administration	Establishing the roles and related processes to carry out ongoing activities for the IRU and I-Net agreements according to their terms and conditions.	Tacoma	yes	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Media and Communications	Rainier Connect Customer Notifications	Communication from Rainier Connect to existing Click! customers notifying them of the operational change, key transition dates, and contact information.	Rainier Connect	no	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Category	Activity	Description	Owner	Required at Closing?	Post-Approval Activity	Post-Close Activity
Media and Communications	Rainier Connect Employee Notifications	Communication from Rainier Connect to existing Click! employees providing post-close employment offers with Rainier Connect.	Rainier Connect	no	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Media and Communications	Click! Network Retail Customer Notifications	Communication from Click! to existing Click! customers informing them of the network operation change, key transition dates, and contact information.	Tacoma	no	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Media and Communications	Click! Network FCC Notifications	Communication from Click! to the FCC, informing them of the network operation change, relevant legal notices, key transition dates, and contact information.	Tacoma	no	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Media and Communications	Click! Transition General Public Updates	Provide transition status update information via the TPU website, with an intended audience of the general public.	Tacoma	no	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Media and Communications	Click! Transition Ongoing Communication Updates	Establishment and execution of the overall communication plan, based on transition progress and related events.	Tacoma	no	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Finance	A/R and A/P Allocation Determination	Determination and application of criteria to divide outstanding receivables and payables balances between Click! and Rainier Connect at the agreement close date.	Tacoma		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Finance	Asset Disposition	Execution of the financial activities and disposition of Click! assets by surplusing and by operational transfer to Rainier Connect.	Tacoma	no	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Human Resources	Personnel Activities	Execution of human resource activities, which may include employment related notifications, layoff process initiation, severance payments, and retention disbursements.	Tacoma	no	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Operations	Billing Conversion	Identification of the timing and sequence of events to transition billing activities from Click!'s source GLDS instance to Rainier Connect's identified target system.	Rainier Connect	no	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Operations	Customer Support Transfer	Changeover of customer support activities from Click! to Rainier Connect based on the predefined schedule and conditions.	Tacoma	no	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Category	Activity	Description	Owner	Required at Closing?	Post-Approval Activity	Post-Close Activity
Operations	IP Circuit Transfer	Handover of responsibility and administration of IP circuits supporting Click! network operation from Tacoma Power to Rainier Connect.	Tacoma	no	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Operations	Head End Management and Shutdown	Provision of the services at the network's head end location during the agreed-upon time interval, and the orderly winding down of those services and return of control to Tacoma Power once Rainier Connect has migrated from linear video distribution to streaming.	Tacoma	no	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Infrastructure	Coaxial Network Maintenance	Provision of the break-fix service to keep the coaxial-based network paths in good operating order and to restore service after problem identification under agreed-upon conditions.	Tacoma	no	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Infrastructure	Fiber Network Maintenance	Provision of the service to keep the critical fiber-based network paths in good operating order, to restore service after problem identification within agreed-upon conditions, and to support network extensions based on predefined terms and conditions.	Tacoma	no	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Infrastructure	Network Interconnect Implementation	Implementation of the network interconnect changes at Tanawax and Optic Fusion to complete the network operational cutover from Click! to Rainier Connect. This work will take place after completion of fiber separation activities.	Tacoma	yes	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Exhibit A2 - Transition Plan Gantt Chart



Invoice

CBTA Exhibit A, Schedule 2.2.a(i), Equipment, Inventory, Vehicles

Item Description	suggested price	quantity	actual price	totals
Set-Top Boxes				
Set-Top Boxes	\$ 12,361.71	bulk	\$ 12,361.71	
			sub-total:	\$ 12,361.71
Test Equipment				
MPEG Test System	\$ 1,000.00	1	\$ 1,000.00	
MPEG Transport Stream Monitor (QAM)	\$ 100.00	1	\$ 100.00	
MPEG Transport Stream Monitor (GigE/ASI)	\$ 100.00	1	\$ 100.00	
MPEG Transport Stream Monitor (QAM)	\$ 100.00	1	\$ 100.00	
MPEG Transport Stream Monitor (8VSB)	\$ 100.00	1	\$ 100.00	
MPEG Transport Stream Monitor (GigE)	\$ 100.00	1	\$ 100.00	
DSAM	\$ 250.00	9	\$ 2,250.00	
CATV Meter	\$ 2,500.00	4	\$ 10,000.00	
Ethernet Link Assistant (Metroscope)	\$ 100.00	1	\$ 100.00	
Ethernet Link Assistant (Etherscope)	\$ 100.00	1	\$ 100.00	
Bandwidth Analysis	\$ 100.00	1	\$ 100.00	
CATV Sweep Meter Setup	\$ 2,810.50	16	\$ 44,968.00	
			sub-total:	\$ 59,018.00
Portable Generator				
Honda EU2001i	\$ 500.00	5	\$ 2,500.00	
			sub-total:	\$ 2,500.00
Vehicles				
CHEV EXPRESS CARGO VAN	\$ 12,236.00	5	\$ 61,180.00	
FORD E350 VAN ARL 29 FT VERSALIFT	\$ 17,368.00	1	\$ 17,368.00	
FORD TRANSIT VAN VERSALIFT 29' ARL	\$ 28,170.00	1	\$ 28,170.00	
CHEV COLORADO XC 4X4 PU	\$ 6,088.00	1	\$ 6,088.00	
FORD E350 VAN ARL TEREX HI-RANGER	\$ 12,966.00	3	\$ 38,898.00	
FORD ELDORADO 13-PASS SHUTTLE VAN	\$ 2,000.00	1	\$ 2,000.00	
			sub-total:	\$ 153,704.00
Warehouse Inventory				
Click Warehouse Inventory 110	\$ 32,471.16	1	\$ 32,471.16	
Click Warehouse Inventory 120	\$ 697.59	1	\$ 697.59	
Click Warehouse Inventory 121	\$ 19,349.24	1	\$ 19,349.24	
Click Warehouse Inventory 122	\$ 4,641.29	1	\$ 4,641.29	
Dead Stock 2014	\$ -	1	\$ -	
			sub-total:	\$ 57,159.27
Software (for test equipment)				
Effigis (CPAT Leakage detection system)	\$83.33	12	\$ 1,000.00	
Path track	\$0.00	1	\$ -	
Sunrise	\$0.00	1	\$ -	
Trilithic	\$0.00	1	\$ -	
Cable Plant Monitoring	\$9,000.00	1	\$ 9,000.00	
			sub-total:	\$ 10,000.00
Grand Total:				\$ 294,742.98

**SCHEDULE 2.2(a)(iv)
TRANSFERRED CONTRACTS**

[TO BE PROVIDED WHEN FINAL]

DRAFT

SCHEDULE 2.2(a)(v)
TRANSFERRED AUTHORIZATIONS

1. FCC C-Band License E980465 (FCC File No. SES-REG-20180615-01512), Expires June 15, 2033.
2. Franchises in the following jurisdictions: Fife, Fircrest, Lakewood, Pierce County, University Place.

DRAFT

EXHIBIT 5.6

INDEFEASIBLE RIGHT OF USE AGREEMENT

by and between

**CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, LIGHT DIVISION,
D/B/A TACOMA POWER
and
RAINIER CONNECT NORTH, LLC**

Dated as of _____, _____

TABLE OF CONTENTS

	<u>Page</u>
1. DEFINITIONS.....	1
2. INDEFEASIBLE RIGHT OF USE	5
3. OWNERSHIP OF AFTER-INSTALLED ASSETS.....	7
4. TERM	7
5. PAYMENT TERMS.....	8
6. CONTRACT ADMINISTRATION	9
7. TACOMA POWER UNDERLYING RIGHTS.....	11
8. OPERATOR REQUIRED RIGHTS.....	11
9. ACCESS AND USE OF TACOMA POWER COMMERCIAL SYSTEM.....	11
10. MAINTENANCE RESPONSIBILITIES	12
11. ADDITIONAL CONDITIONS RELATED TO USE OF the TACOMA POWER COMMERCIAL SYSTEM.....	13
12. PERFORMANCE ASSURANCES AND PERFORMANCE GUARANTEE	14
13. RELOCATION	14
14. POST-TRANSITION SERVICES	14
15. REPRESENTATIONS & WARRANTIES OF BOTH PARTIES.....	15
16. ADDITIONAL REPRESENTATIONS & WARRANTIES OF OPERATOR.....	15
17. NO WARRANTIES AS TO CONDITION OF TACOMA POWER COMMERCIAL SYSTEM.....	16
18. INDEMNIFICATION.....	16
19. LIMITATION OF LIABILITY	17
20. INSURANCE.....	17
21. DEFAULT AND TERMINATION.....	17
22. LIQUIDATED DAMAGES	19
23. SPECIFIC PERFORMANCE.....	20
24. DISPUTE RESOLUTION.....	20
25. GOVERNING LAWS	21
26. RELATIONSHIP OF THE PARTIES.....	21
27. NOTICES.....	21
28. NO WAIVER.....	22
29. ASSIGNMENTS & TRANSFERS.....	22

TABLE OF CONTENTS
(continued)

	Page
30. SUBCONTRACTING	23
31. FORCE MAJEURE EVENT	23
32. CONFIDENTIALITY	24
33. NO PUBLICITY	25
34. TIME IS OF THE ESSENCE	25
35. NO THIRD PARTY BENEFICIARIES	25
36. EXHIBITS	25
37. NO GRATUITIES	27
38. FURTHER ASSURANCES	27
39. RECORDS RETENTION	27
40. NON-DISCRIMINATION	28
41. CONFLICT OF INTEREST	28
42. ENTIRE AGREEMENT	28
43. INTERPRETATION	28
44. MISCELLANEOUS	28
EXHIBITS	

INDEFEASIBLE RIGHT OF USE AGREEMENT

THIS INDEFEASIBLE RIGHT OF USE AGREEMENT (“IRU Agreement”) is by and between the **City of Tacoma, Department of Public Utilities, Light Division**, a municipal corporation of the State of Washington (d/b/a and hereinafter referred to as “**Tacoma Power**”), and **Rainier Connect North, LLC**, a Washington limited liability company (hereinafter referred to as “**Operator**”). Tacoma Power and Operator shall each individually be referred to as a “**Party**” and together constitute the “**Parties.**”

WHEREAS, Tacoma Power owns the Tacoma Power Commercial System, as defined below;

WHEREAS, Operator wishes to obtain access to and use the Tacoma Power Commercial System; and

WHEREAS, subject to the terms and conditions set forth in this IRU Agreement and Exhibits, Tacoma Power is willing to grant Operator the right to use the Tacoma Power Commercial System.

NOW THEREFORE, in consideration of the mutual promises set forth below, the Parties hereby agree as follows:

1. DEFINITIONS

Unless otherwise defined in this IRU Agreement, capitalized terms used in this IRU Agreement, all Exhibits, and amendments thereto shall have the meaning set forth below:

(a) “**Affiliate**” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, such Person as of the date on which, or at any time during the period for which, the determination of affiliation is being made. For purposes of this definition, the term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through equity interest, board membership, LLC interest, contract, charter, statute, regulation or otherwise.

(b) “**After-Installed Assets**” means any asset used or useful in the ongoing operation of the Tacoma Power Commercial System installed in or used in the operation of the Tacoma Power Commercial System, any extension, expansion, improvement or addition to, replacement of, upgrade or overbuild of the Tacoma Power Commercial System made after the Effective Date of this IRU Agreement within the Tacoma Power Commercial Service Area. The term does not include any assets of Operator or any of its Affiliates located outside the Tacoma Power Commercial Service Area even if such assets are used to provide Shared Network Services or fiber Operator installs within the Tacoma Power Commercial Service Area to connect its network to the Tacoma Power Commercial System..

(c) “**Annual Report**” is defined in Section 6(c) of this IRU Agreement.

- (d) “**Annual Reporting Date**” means July 1.
- (e) “**Applicable Standards**” is defined in Exhibit D to this Agreement.
- (f) “**Business Day**” means any day other than Saturday or a legal holiday as defined by RCW 1.16.050.
- (g) “**Capital Expenditures**” is defined in Exhibit F to this IRU Agreement.
- (h) “**Capital Expenditures Minimum**” is defined in Exhibit F to this IRU Agreement.
- (i) “**Capital Expenditures Period**” is defined in Exhibit F to this IRU Agreement.
- (j) “**Catch-Up Capital Expenditures**” is defined in Exhibit F to this IRU Agreement.
- (k) “**Catch-Up Period**” is defined in Exhibit F to this IRU Agreement.
- (l) “**Change of Control**” and “**Change of Working Control**” are defined in Exhibit N to this IRU Agreement.
- (m) “**Chronic Failure**” is defined in Exhibit C to this IRU Agreement.
- (n) “**City**” means the City of Tacoma, Washington.
- (o) “**Click! Network**” means the business unit of Tacoma Power providing services over the Tacoma Power Commercial System prior to the Effective Date.
- (p) “**Compliance Evaluation**” is defined in Section 4(c) of this IRU Agreement.
- (q) “**Confidential Information**” is defined in Section 32(a) of this IRU Agreement.
- (r) “**Consumer Price Index Increase**” means the increase in the Consumer Price Index for All Urban Consumers (“**CPI-U**”) of the Seattle-Tacoma-Bellevue area, as computed and published by the U.S. Bureau of Labor Statistics. The increase shall be calculated using the annual percentage change as defined as the average of the 12 most recently published months of the Consumer Price Index. In the event that the U.S. Bureau of Labor Statistics ceases publishing such data during the Term, Tacoma Power may designate a different commercially reputable source that regularly computes and publishes the Consumer Price Index.
- (s) “**Controversy**” is defined in Section 21(a) of this IRU Agreement.
- (t) “**Credit**” is defined in Exhibit F to this IRU Agreement.
- (u) “**Critical Routes**” is defined in Exhibit B to this IRU Agreement.
- (v) “**Default**” is defined in Section 20(b) of this IRU Agreement.

- (w) “**Due Date**” is defined in Section 5(c) of this IRU Agreement.
- (x) “**Effective Date**” means _____.
- (y) “**Escalation List**” is defined in Exhibit C to this IRU Agreement.
- (z) “**ETC**” is defined in Exhibit H to this IRU Agreement.
- (aa) “**Exhibits**” means the exhibits attached hereto, and any amendments, modifications and supplements to these Exhibits.
- (bb) “**Facilities-Based Entity**” is defined in Exhibit N to this IRU Agreement.
- (cc) “**Fault**” is defined in Exhibit C to this IRU Agreement.
- (dd) “**FCC**” is defined in Exhibit H to this IRU Agreement.
- (ee) “**Fiber Maintenance**” is defined in Exhibit B to this IRU Agreement.
- (ff) “**Fiber System**” means the Fiber Backbone, Fiber Service Rings and Service Drops owned by Tacoma Power.
- (gg) “**Fiber Unavailability**” is defined in Exhibit C to this IRU Agreement.
- (hh) “**Final Period**” is defined in Exhibit F to this IRU Agreement.
- (ii) “**Final Period Minimum**” is defined in Exhibit F to this IRU Agreement.
- (jj) “**Force Majeure Event**” is defined in Section 31(a) of this IRU Agreement.
- (kk) “**Gigabit Service**” is defined in Exhibit E to this IRU Agreement.
- (ll) “**Hub Sites**” are locations where Tacoma Power Commercial Equipment is installed and in service as listed in Exhibit A3.
- (mm) “**Initial Period**” is defined in Exhibit F to this Agreement.
- (nn) “**Initial Period Minimum**” is defined in Exhibit F to this Agreement.
- (oo) “**Indefeasible Right of Use**” or “**IRU**” is defined in Section 2(a) of this IRU Agreement.
- (pp) “**IRU Fee**” is defined in Section 5(a) of this IRU Agreement.
- (qq) “**Maintenance**” is defined in Exhibit D to this IRU Agreement.
- (rr) “**MTTR**” is defined in Exhibit C to this IRU Agreement.
- (ss) “**Non-Critical Route**” is defined in Exhibit B to this IRU Agreement.

- (tt) “**Non-Renewal Notice Window**” is defined in Section 4(c) of this IRU Agreement.
- (uu) “**Normal Business Hours**” is defined in Exhibit I to this IRU Agreement.
- (vv) “**Normal Operating Conditions**” is defined in Exhibit I to this IRU Agreement.
- (ww) “**Open Access Program**” is defined in Exhibit L to this IRU Agreement.
- (xx) “**Operator Network**” means the communications network owned by Operator or its Affiliates outside of the Tacoma Power Commercial Service Area.
- (yy) “**Person**” means an individual, a corporation, a partnership, an association, a limited liability company or other entity or organization.
- (zz) “**Post-Termination Period**” is defined in Exhibit O to this IRU Agreement.
- (aaa) “**Public Records Act**” is defined in Section 32(d) of this IRU Agreement.
- (bbb) “**Renewal Terms**” is defined in Section 4(b) of this IRU Agreement.
- (ccc) “**Reserved Capacity**” is defined in Section 9(a) of this IRU Agreement.
- (ddd) “**Respond**” is defined in Exhibit C to this IRU Agreement.
- (eee) “**Scheduled Maintenance**” is defined in Exhibit C to this IRU Agreement.
- (fff) “**Senior Representative**” is defined in Section 24 of this IRU Agreement.
- (ggg) “**Shared Network Services**” means centralized services utilizing (a) information technology assets and related rights and/or (b) network and related physical assets, in each case that are owned and operated by Operator or any of its Affiliates and used to support both the operation and use of the Operator Network and the operation and use of the Tacoma Power Commercial System by Operator in accordance with the terms of this IRU Agreement.
- (hhh) “**Successor Operator**” is defined in Exhibit O to this IRU Agreement.
- (iii) “**Shortfall**” is defined in Exhibit F to this IRU Agreement.
- (jjj) “**Tacoma Power Commercial Equipment**” means the equipment installed in the rights-of-way and in Hub Sites as of the Effective Date, as shown in Exhibits A2.2, A2.3 and A2.4.
- (kkk) “**Tacoma Power Commercial Service Area**” means the service area of Click! Network as of the Effective Date as shown in Exhibit A1.

(lll) **“Tacoma Power Commercial System”** means Tacoma Power Commercial Coax, Tacoma Power Commercial Fiber, Tacoma Power Commercial Equipment and After-Installed Assets.

(mmm) **“Tacoma Power Service Area”** is defined in Exhibit A1 to this IRU Agreement.

(nnn) **“Tacoma Power Commercial Coax”** means the 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 Tacoma Power Commercial Service Area, as of the Effective Date, as identified in Exhibit A2.2 to this IRU Agreement.

(ooo) **“Tacoma Power Commercial Fiber”** means the specific strands of fiber identified and designated for the use of Operator in Exhibit A2.1 to this IRU Agreement and conduit housing such fiber on Non-Critical Routes as identified in Exhibit A2.2 of this IRU Agreement.

“Tacoma Power Management” is defined in Section 17(c) of this IRU Agreement.

(ppp) **“Taxes”** shall mean all taxes, fees, levies, imposts, duties, charges or withholdings of any nature (including, without limitation, gross receipts taxes, leasehold excise taxes, and franchises, license and/or permit fees) together with any penalties, fines, assessments or interest thereon, imposed upon the Tacoma Power Commercial System by any federal, state or local government, regulatory body or other public taxing authority of competent jurisdiction.

(qqq) **“Term”** is defined in Section 4(b) of this IRU Agreement.

(rrr) **“Transfer”** is defined in Exhibit N to this IRU Agreement.

(sss) **“Unauthorized Transfer”** is defined in Exhibit N to this IRU Agreement.

(ttt) **“Underlying Rights”** is defined in Section 7(a) of this IRU Agreement.

(uuu) **“Unscheduled Maintenance”** is defined in Exhibit C to this IRU Agreement.

(vvv) **“Upgrade”** is defined in Exhibit E to this IRU Agreement.

(www) **“Use Restrictions”** is defined in Section 7(c) of this IRU Agreement.

(xxx) **“Utility Fiber”** is defined in Exhibit B to this IRU Agreement.

2. INDEFEASIBLE RIGHT OF USE

(a) **IRU.** This IRU Agreement sets forth the terms and conditions under which Tacoma Power agrees to grant an indefeasible right of use to Operator and Operator agrees to use the **Tacoma Power Commercial System** comprised of the following (the **“IRU”**):

- (1) Tacoma Power Commercial Fiber,
- (2) Tacoma Power Commercial Coax,
- (3) Tacoma Power Commercial Equipment, and
- (4) After-Installed Assets.

(b) In connection with the IRU, Tacoma Power grants Operator a non-exclusive license to use space in the Hub Sites, subject to the terms of Exhibit A3, and a non-exclusive license to use spare conduit space, subject to the terms of Exhibit A4.

(c) In connection with the IRU, Tacoma Power will assign IPv4 addresses to Operator from CIDR 131.191.0.0/17 and 192.173.160.0/20. The IP addresses assigned by Tacoma Power to Operator are dedicated to Operator usage for customers on the Tacoma Power Commercial System and are not shared with others or used on other networks. Tacoma Power reserves certain IP addresses for Tacoma Power's use. Operator shall have exclusive responsibility to advertise above referenced CIDR objects to the public Internet, and allocate Tacoma Power reserved CIDRs. The IP addresses assigned to Operator by Tacoma Power will continue to be proprietary to Tacoma Power. Upon termination of the IRU Agreement, Operator must return Tacoma Power-assigned IP addresses. Operator must also return the IP addresses in the event that Operator has used such addresses in violation of this IRU Agreement or the IP Acceptable Use Policy in Exhibit A5. Operator may return the IP addresses at any time upon notice to Tacoma Power.

(d) In connection with the IRU, Tacoma Power grants Operator a non-exclusive license to use space in the headend site, subject to the terms of Exhibit A6 (Headend License). Further, Tacoma Power sells, conveys, transfers, assigns and delivers to Operator, and Operator purchases from Tacoma Power, the headend equipment installed in above-mentioned headend site and listed in Exhibit A6.2 ("Headend Equipment"), free and clear of all encumbrances, and in an "as is" condition with all faults and without warranties of any kind.

(e) In connection with the IRU, Tacoma Power also sells, conveys, transfers, assigns and delivers to Operator, and Operator purchases from Tacoma Power, the customer premises equipment installed in Click! Business customer premises and listed in Exhibit A7 ("Installed Customer Premises Equipment"), free and clear of all encumbrances, and in an "as is" condition with all faults and without warranties of any kind.

(f) Except for the Tacoma Power Commercial Equipment, the Headend Equipment, and the Installed Customer Premises Equipment, Tacoma Power is not supplying nor is Tacoma Power obligated to supply to Operator any optronics or electronics or optical or electrical equipment or other facilities under this IRU Agreement, all of which are the sole responsibility of Operator, nor is Tacoma Power responsible for performing any work in connection with Operator's use of the Tacoma Power Commercial System other than as specified in this IRU Agreement.

3. OWNERSHIP OF AFTER-INSTALLED ASSETS

(a) (i) Operator intends to finance acquisition of After-Installed Assets in whole or in part through capital lease financing in which the After-Installed Assets are initially the property of the lender. Operator agrees that any After-Installed Assets that it constructs, replaces or upgrades as part of the Tacoma Power Commercial System within the Tacoma Power Commercial Service Area during the Term shall, upon completion of the construction, replacement or upgrade and acquisition of title by Operator pursuant to the terms of the capital lease financing agreement, become the property of Tacoma Power. Operator agrees that it will provide any documents or other evidence of transfer of title to Tacoma Power as may be reasonably required to effect the transfer of ownership. (ii) Operator may, in the alternative, finance After-Installed Assets through conventional bank financing. In that case, Operator agrees that with respect to these After-Installed Assets, Operator will request permission from the lender to transfer ownership to Tacoma Power subject to the security interest of the lender. If lender does not grant such permission, Operator shall transfer ownership of the After-Installed Assets upon removal of the security interest of the lender. (iii) Operator shall give a copy to the City of any notice from the lender of Operator's default under any financing agreement encumbering any After-Installed Assets as soon as practicable, but no later than five (5) days of Operator's receipt of such notice; provided further that, Operator shall upon knowledge of lender's transfer of any such financing agreements, immediately provide notice to the City of such transfer.

(b) Operator will own any asset it acquires during the Term of this IRU Agreement that is not an After-Installed Asset.

4. TERM

(a) **Initial Term.** This IRU Agreement commences as of the Effective Date and remains in full force and effect for a term (i) expiring twenty (20) years from the Effective Date of this IRU Agreement (the "**Initial Term**"), unless earlier terminated pursuant to the terms of this IRU Agreement.

(b) **Renewals.** This IRU Agreement may be renewed upon the same terms and conditions for up to two additional terms of ten (10) years each (each a "**Renewal Term**") according to the process set forth in (c) below. The "**Term**" shall be inclusive of the Initial Term and any Renewal Terms.

(c) **Procedure.** In order to terminate this IRU Agreement, Operator must send Tacoma Power a notice of non-renewal no greater than twenty-four (24) and no less than eighteen (18) months prior to the expiration of the Initial Term or, if already renewed, of the first Renewal Term ("**Non-Renewal Notice Window**"). If Operator sends no notice of non-renewal during the Non-Renewal Notice Window, Operator agrees to give Tacoma Power full access to information and facilities sufficient for Tacoma Power to determine Operator's compliance with this IRU Agreement during the Term then concluding ("**Compliance Evaluation**"). Tacoma Power shall complete the Compliance Evaluation no later than twelve (12) months prior to expiration of the then-current Term,

and promptly provide a copy of the Compliance Evaluation to Operator, along with a Notice of Default, if warranted, with respect to any and all Defaults of this IRU Agreement, then existing. In the event that the Parties are unable to resolve all Defaults pursuant to Section 24, or if Operator does not invoke Section 24, Operator must cure such Defaults no later than six (6) months prior to the expiration of the then-current Term. In the event that Operator cannot or will not cure such Defaults to Tacoma Power's satisfaction within such period, Tacoma Power may elect not to renew this IRU Agreement by giving a notice of termination in writing and this IRU Agreement shall terminate at the end of the then-current Term; provided that such notice of termination may only be given by Tacoma Power after completing the process in Section 21(g).

5. PAYMENT TERMS

(a) **IRU Fee.** Operator agrees to pay to Tacoma Power an annual fee ("**IRU Fee**") in accordance with the following amounts:

First Year of the Term:	\$2,500,000
Second Year of the Term:	\$2,625,000
Third Year of the Term:	\$2,750,000
Fourth Year of the Term:	\$2,875,000
Fifth Year of the Term:	\$3,000,000

Each subsequent year of the Term following the Fifth Year, the IRU Fee shall be adjusted on the anniversary of the Effective Date to reflect the Consumer Price Index Increase. If there is no Consumer Price Index Increase (i.e., there is deflation during the relevant period), there shall be no reduction in the IRU Fee from the prior year.

(b) **Schedule.** Commencing on the Effective Date, Operator shall pay the IRU Fee, together with any applicable leasehold excise taxes, to Tacoma Power on a monthly basis in twelve (12) equal instalments in each of the first three (3) years of the Term, and on a quarterly basis in four (4) equal instalments for each year of the Term thereafter. Invoices for any other amounts due to Tacoma Power under this IRU Agreement or the Exhibits (for example, for splicing services performed by Tacoma Power for Operator pursuant to **Exhibit B**) will be sent separately from time to time.

(c) **Due Date.** Unless otherwise specifically stated elsewhere, Operator will tender payment for the IRU Fee in advance on the fifteenth (15th) day of the month for the installment period in which the IRU Fee payment is due. Any other amounts due to Tacoma Power under this IRU Agreement or the Exhibits shall be paid within thirty (30) days of the date that Operator receives the invoice ("**Due Date**").

(d) **Late Payment Fee.** A late payment fee of Ten Percent (10%) per annum shall apply to all undisputed fees received after the Due Date.

(e) **Disputed Billing.** In the event Operator disputes any billing by Tacoma Power, Operator will (a) pay all charges not disputed, and (b) notify Tacoma Power of the dispute in writing, providing the invoice number and an explanation of the issue in dispute, within thirty (30) days of receipt of the disputed invoice. Tacoma Power will

advise Operator of the results of the completed investigation and will make any adjustments mutually agreed to by the Parties. If the Parties are unable to resolve the billing dispute within such 30-day period, the Parties will attempt to resolve the dispute pursuant to Section 24 (Senior Representatives - Dispute Resolution). Payment will not prejudice Operator's right to dispute charges, so long as they are disputed in the manner specified in this Section. If both Parties agree that a disputed amount is a legitimate charge or the charge is determined to be legitimate under Section 24, Operator will pay such amount within ten (10) days of such determination. Pending resolution of the issues(s), Operator's non-payment of the disputed items shall not constitute Default by Operator and shall not entitle Tacoma Power to exercise any rights it may otherwise have to suspend or delay its obligations under this IRU Agreement or pursue any right or remedy it may have under this IRU Agreement, at law or in equity.

(f) **Taxes and Accounting.** Operator shall pay before delinquency all applicable leasehold excise, gross earnings, business and occupation and other applicable Taxes, assessments, licenses and charges on its use and operations of the Tacoma Power Commercial System for which an exemption is not available. If leasehold excise tax is applicable, Operator shall remit the amount of leasehold excise tax then due and owing concurrent with its payment of the IRU Fee to Tacoma Power. Operator is responsible for the payment of all charges and Taxes applicable to the services performed under this IRU Agreement, and Operator agrees to comply with all applicable laws regarding the reporting of income, maintenance of records and all other requirements and obligations imposed pursuant to applicable law. If Tacoma Power is assessed, made liable or responsible in any manner for such charges or Taxes, Operator holds Tacoma Power harmless from such costs, including attorneys' fees.

(g) **Tax Exemption.** When applicable, for any request of exemption from Taxes, Operator will furnish Tacoma Power a valid and properly executed tax exemption/resale certificate(s), including copies of such supporting documentation as may be reasonably requested by Tacoma Power for purposes of compliance with its legal obligations to taxing and regulatory authorities. Tacoma Power will not bill Operator for any Taxes covered by an exemption/resale certificate or any Taxes relating to or arising out of Tacoma Power's indemnification obligations herein.

(h) **Audits.** Operator and Tacoma Power agree to make reasonable efforts to cooperate with each other and coordinate their mutual efforts concerning audits, or other such inquiries, filings, reports, etc., as may relate solely to activities or transactions arising from or under this IRU Agreement, which may be required or initiated by Operator or Tacoma Power as a result of an inquiry or audit from any duly authorized governmental authority relating to Taxes.

6. CONTRACT ADMINISTRATION

(a) **Single Point of Contact.** To facilitate the timely and compliant performance of the obligations in this IRU agreement and Exhibits, the Parties shall each appoint a representative that shall serve as the primary contact person and contract administrator.

(b) **Authorities of the TPU Contract Administrator.** The TPU Contract Administrator shall have the authority to administer this IRU Agreement and Exhibits with respect to the rights, duties and obligations of Tacoma Power, including but not limited to the following:

- (1) Determine the form of certifications and reports required by this IRU Agreement and the Exhibits.
- (2) Investigate Controversies and Defaults, and issue Notices of Default and Compliance Evaluations.
- (3) Accept and review reports and certifications for completeness.
- (4) Schedule and attend status review meetings.
- (5) Order tests and verification procedures to be performed as required by this IRU Agreement.
- (6) Develop and sign off on compliance plans.
- (7) Make determinations to assess or waive liquidated damages.
- (8) Make a determination if a Tacoma Power Force Majeure Event has occurred.

(c) **Annual Report.** Each year on the Annual Reporting Date, Operator shall provide a report to Tacoma Power and the City of Tacoma City Council of its operations, the status of the Tacoma Power Commercial System and the state of the 12 policy goals adopted by the Utility Board and City Council ("**Annual Report**"). The Annual Report shall include, at a minimum, the annual reports and certifications specified by the Exhibits and listed for convenience in the checklist in **Exhibit R**.

(d) **Liquidated Damages.** Unless otherwise specified in this IRU Agreement or Exhibits, Operator shall submit the Annual Report on the Annual Reporting Date. In the event that Operator fails to timely provide the Annual Report required by Section 6(c), Operator shall pay Tacoma Power liquidated damages in the amount of Two Thousand Five Hundred Dollars (\$2500.00) per day until it has provided such Annual Report.

(e) **Status Review Meetings.** In addition to any other obligations to meet set forth in this IRU Agreement, on a periodic basis to be mutually agreed by the Parties, but not less than once annually, Operator and Tacoma Power will meet to review Operator's operations, the status of the Tacoma Power Commercial System and the state of the commitments to the 12 policy goals adopted by the Tacoma City Council as embodied in various Exhibits to this IRU Agreement.

7. TACOMA POWER UNDERLYING RIGHTS

(a) **Securing Underlying Rights.** Tacoma Power represents that it has secured (or will have secured by the commencement of operations by Operator) with respect to the Tacoma Power Commercial System, all rights, licenses, contracts, permits, authorizations, franchises, rights of way, easements, collocation agreements, leases and other approvals that are necessary for Tacoma Power to obtain, in order to permit Tacoma Power to own and maintain the Tacoma Power Commercial System in accordance with this IRU Agreement and to convey the IRU to Operator to utilize the Tacoma Power Commercial System under this IRU Agreement (the “**Underlying Rights**”).

(b) **Continuing Underlying Rights Obligation.** Tacoma Power will cause the Underlying Rights to remain effective through the Term and will, at its sole cost, exercise any renewal rights thereunder, and acquire any and all extensions, additions or replacements as are necessary to cause the Underlying Rights to continue through the Term.

(c) **Use Restrictions.** It is expressly understood that the Underlying Rights may contain limitations, restrictions or reservations which must be adhered to by Tacoma Power (collectively, “**Use Restrictions**”). Tacoma Power therefore agrees to notify Operator in writing of any Use Restriction that applies to the Tacoma Power Commercial System as soon as practicable once that Use Restriction is applied, expressly specifying the practical ramifications of the Use Restriction, the part of the Tacoma Power Commercial System impacted by the Use Restriction, the name of the third party imposing the Use Restriction and whether Operator will be entitled to attempt to resolve the issue directly with such third party and any other information necessary for a complete assessment of the impact of the Use Restriction, including supporting documentation relating thereto. As of the Effective Date, there are no Use Restrictions.

8. OPERATOR REQUIRED RIGHTS

(a) Except as provided in Section 7, Operator at its sole cost and expense, shall obtain and maintain any and all necessary easements, licenses and building access agreements, as well as all governmental permits, licenses, easements, franchises and approvals that may lawfully be required by federal, state or local law, statute, regulation or ordinance, including a City of Tacoma business license, and shall continuously comply with all such laws, statutes, regulations or ordinances as may now or in the future be applicable to: (1) its operation or use of the Tacoma Power Commercial System; (2) Operator’s connection, installation, maintenance and operation of Tacoma Power Commercial Equipment; and (3) Operator’s other rights and obligations under this Agreement.

9. ACCESS AND USE OF TACOMA POWER COMMERCIAL SYSTEM

(a) **Reserved Capacity.** Notwithstanding anything to the contrary herein, Tacoma Power hereby reserves for its own use the capacity on the Tacoma Power Commercial System defined herein as “Reserved Capacity” until such time as Tacoma Power, in its

sole discretion, determines that the Reserved Capacity is no longer needed as evidenced by a surplus declaration duly authorized by the City, or successor authority. The “**Reserved Capacity**” shall be defined as the optical spectrum wavelengths, bandwidth or future technological capacity that is used for the transmission of meter data directly between Tacoma Power and customers with Stark meters within the Tacoma Power Utility Service Area and shall not include any tangible Tacoma Power Commercial System facilities subject to the IRU.

(b) **Interconnection.** Subject to and in accordance with this IRU Agreement, the Exhibits and the Underlying Rights, Operator may connect, including the right to cross-connect, the Tacoma Power Commercial System to other telecommunications systems or facilities including its own network at any points of Operator’s choosing (if so required by Operator).

(c) **Permitted Use of Tacoma Power Commercial System.** Operator may use the Tacoma Power Commercial System only in accordance with the terms of this IRU Agreement and the Exhibits. Operator shall be responsible for all acts or omissions of any third party using the Tacoma Power Commercial System through Operator, as if such acts or omissions were those of Operator directly.

(d) **Compliance.** The Parties agree to cooperate with and support each other in complying with any requirements applicable to the IRU by any governmental or regulatory agency or authority, or Tacoma Power of an Underlying Right. The Parties agree to execute such further instruments as may be necessary or appropriate to carry out the intent of this IRU Agreement with respect to such compliance.

(e) **No Liens.** Tacoma Power shall not cause or permit the portion of the Tacoma Power Commercial System on any Route(s) or any of Operator’s rights under this IRU Agreement to become subject to any liens. If Tacoma Power breaches its obligations under this Section, it will immediately notify Operator in writing, and Tacoma Power will promptly take all steps needed to cause such lien to be discharged and released of record without cost to Operator. Operator shall not cause or permit any of the Tacoma Power Commercial System under this IRU Agreement to become subject to any liens, security interest or any encumbrance of any kind; provided that, After-Installed Assets may be subject to a lien or other security interest as provided in Section 3(a). If Operator breaches its obligations under this Section, it will immediately notify Tacoma Power in writing, and promptly take all steps needed to cause such lien to be discharged and released of record without cost to Tacoma Power.

10. MAINTENANCE RESPONSIBILITIES

(a) **Safeguarding Tacoma Power’s Use of Critical Utility Fiber.** The Parties agree that Tacoma Power shall have responsibility for Maintenance of Tacoma Power Commercial Fiber on Critical Routes as described in **Exhibit B** hereto.

(b) **Service Level Agreement.** The Parties agree that the Service Level Agreement in **Exhibit C** hereto shall apply to Tacoma Power’s Maintenance obligations.

(c) **Operator Maintenance.** The Parties agree that Operator shall have responsibility for Maintenance of the Tacoma Power Commercial System, as described in **Exhibit D** hereto.

11. ADDITIONAL CONDITIONS RELATED TO USE OF THE TACOMA POWER COMMERCIAL SYSTEM

(a) **Tacoma Power Commercial System Upgrades.** Operator agrees to make Tacoma Power Commercial System upgrades in accordance with the terms of **Exhibit E** hereto.

(b) **Capital Expenditures Commitment.** Operator agrees to make Capital Expenditures to the physical assets of the Tacoma Power Commercial System as specified in **Exhibit F** hereto.

(c) **Equitable Access.** Operator agrees to the equitable access commitments in **Exhibit G** hereto.

(d) **Affordable Access.** Operator agrees to the affordable access commitments in **Exhibit H** hereto.

(e) **Customer Service Commitments.** Operator agrees to the customer service commitments in **Exhibit I** hereto.

(f) **Customer Privacy.** Operator agrees to the customer privacy commitments in **Exhibit J** hereto.

(g) **Net Neutrality.** Operator agrees to the net neutrality commitments in **Exhibit K** hereto.

(h) **Open Access to Telecommunications Assets.** Operator agrees to the open access commitments in **Exhibit L** hereto.

(i) **Economic Development and Educational Opportunities.** Operator agrees to the economic development and educational opportunities commitments in **Exhibit M** hereto.

(j) **Preserve Competition Among Providers.** Operator agrees to certain restrictions on Transfers as more fully detailed in **Exhibit N** hereto.

(k) **Continuity of Services.** The obligations and rights of the Parties with respect to the transition of the Tacoma Power Commercial System upon the termination of this IRU Agreement are contained in **Exhibit O** hereto and Section 21(f) (Survival of Certain Provisions) of this IRU Agreement.

(l) **Labor Relations.** Operator agrees that, pursuant to Section 7 of the National Labor Relations Act (29 U.S.C. § 157), all employees used in the operation of the Tacoma Power Commercial System shall 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 and to engage in other activities protected under 29 U.S.C. § 157.

(m) **Intellectual Property.** Tacoma Power grants to Operator a personal, limited, non-transferable, non-exclusive, royalty-free license set forth in **Exhibit P** to use certain “Click!” trademarks for marketing, advertising and branding purposes in connection with its use of the Tacoma Power Commercial System.

12. PERFORMANCE ASSURANCES AND PERFORMANCE GUARANTEE

(a) **Annual Financial Assurances.** Operator shall submit to Tacoma Power, as of the Effective Date, and on an annual basis on the Annual Reporting Date, a report in a form reasonably acceptable to Tacoma Power, demonstrating Operator’s financial health and Operator’s ability to pay the IRU Fee and all other ongoing financial obligations associated with this IRU Agreement. The report shall include the information described in **Exhibit S**.

(b) **Performance Guarantee.** As of the Effective Date, Operator shall cause Mashell, Inc. to deliver a performance guarantee, in the form of **Exhibit T**, unconditionally guaranteeing the timely and full performance of any and all obligations of Operator under this IRU Agreement for the Term.

13. RELOCATION

(a) Tacoma Power will give Operator at least ninety (90) days’ prior written notice (or longer if Tacoma Power becomes aware sooner) of any relocation of any portion of the Tacoma Power Commercial System in the event Tacoma Power becomes aware of the need of such relocation. If Tacoma Power becomes aware of the need of a relocation less than ninety (90) days in advance of the scheduled date for such relocation, then Tacoma Power shall provide Operator with as much advance notice as is reasonably practicable under the circumstances. Operator will cooperate in good faith with Tacoma Power to facilitate such relocation, provided that such relocation is required by a governmental agency or third party acting pursuant to condemnation or similar authority.

(b) Responsibility for performing the relocation and any costs and expenses incurred in connection with any such relocation, shall be borne by the Party that has responsibility for Maintenance as provided in **Exhibits B, C and D** hereto.

14. POST-TRANSITION SERVICES

(a) In the event that Operator requires support services (“**Post-Transition Services**”) after the Transfer of Operational Control Date, it shall provide Tacoma Power written notice of the services it requires, and, subject to meeting the conditions in this Section, Operator and Tacoma Power shall within a reasonable time thereafter enter into a services agreement for the Post-Transition Services requested (“**Agreement for Post-Transition Services**”). The Agreement for Post-Transition Services shall be on Tacoma Power’s

standard terms and conditions and will also describe in detail the service, project scope, fees and term for the Post-Transition Services. Tacoma Power's obligation to enter into an Agreement for Post-Transition Services and to provide Post-Transition Services is expressly contingent on Tacoma Power having adequate staffing and resources to provide the Transition Services requested, as determined by Tacoma Power in its sole discretion. Operator agrees to use its reasonable efforts to reduce or eliminate its dependency on the Post-Transition Services as soon as is reasonably practicable. Operator's right to request Post-Transition Services shall expire on the first (1st) anniversary of the Effective Date.

15. REPRESENTATIONS & WARRANTIES OF BOTH PARTIES

(a) **General Warranties.** Each Party, with respect to this IRU Agreement: (i) has taken all corporate and/or governmental action necessary for the authorization, execution and delivery of such agreements and to make such agreements legal, valid and binding; (ii) has no agreement or understanding with any third party that interferes with or will interfere with its performance of the Party's obligations under such agreements; and (iii) is not interfering with any other party's rights or contracts, or violating the terms of any agreements with other parties, by entering into and/or performing under the terms of this IRU Agreement.

(b) **Compliance with Laws.** Each Party's performance under this IRU Agreement shall be in compliance with all applicable federal, state and local laws and government rules and regulations.

(c) **No Default.** Other than the litigation referenced in Section 15(e), there is no action, suit, proceeding, or investigation at law or in equity before or by any court, public board or body pending against or affecting the Party, challenging the validity or enforceability of this IRU Agreement or any other documents relating hereto or the performance of the Party's obligations hereunder.

(d) **Non-Infringement.** Each Party represents, warrants and covenants to the other Party that it shall perform its responsibilities under this IRU Agreement in a manner that does not infringe, or constitute an infringement or misappropriation of, any intellectual property rights of any third party.

(e) **Pending Litigation.** Edward E. (Ted) Coates, et al. v. City of Tacoma (Wa. Sup. Ct, Case No. 17-2-08907); Mitchell Shook v. City of Tacoma (U.S. Dist. Ct, Wa. W. Dist., Case No. 3:19cv05794BHS); Mitchell Shook v. City of Tacoma; Thomas McCarthy and Christopher T. Anderson v. City of Tacoma (Wa. Sup. Ct., Case No 19-2-07135-0).

16. ADDITIONAL REPRESENTATIONS & WARRANTIES OF OPERATOR

Operator hereby represents and warrants to Tacoma Power as follows:

(a) Operator is a limited liability company organized and existing under the laws of the State of Washington, is duly qualified to transact business and is in good standing in the State of Washington;

(b) Prior to the execution and delivery of this IRU Agreement, Operator has had ample opportunity and access to the Tacoma Power Commercial System, Tacoma Power employees and related information, and has fully examined the condition of the Tacoma Power Commercial System; and

(c) Operator has the financial, technical and legal capability to perform its obligations under this IRU Agreement and the Exhibits.

17. NO WARRANTIES AS TO CONDITION OF TACOMA POWER COMMERCIAL SYSTEM

(a) NOTWITHSTANDING ANY EXAMINATION OR INSPECTION MADE BY OPERATOR AND WHETHER OR NOT ANY PATENT OR LATENT DEFECT OR CONDITION WAS REVEALED OR DISCOVERED THEREBY, OPERATOR UNDERSTANDS IT IS OBTAINING USE OF THE TACOMA POWER COMMERCIAL SYSTEM UNDER THIS IRU AGREEMENT “AS IS” IN ITS CONDITION AS OF THE EFFECTIVE DATE. OPERATOR HEREBY WAIVES AND RELEASES ANY CLAIM OR ACTION AGAINST TACOMA POWER IN RESPECT OF OR RELATED TO THE CONDITION OF THE SYSTEM ASSETS, INCLUDING ANY DEFECTS OR ADVERSE CONDITIONS NOT DISCOVERED OR OTHERWISE KNOWN BY OPERATOR AS OF THE EFFECTIVE DATE.

(b) EXCEPT AS SET FORTH IN THIS IRU AGREEMENT, TACOMA POWER MAKES NO WARRANTY TO OPERATOR OR ANY OTHER ENTITY, WHETHER EXPRESS, IMPLIED OR STATUTORY, AS TO THE INSTALLATION, DESCRIPTION, QUALITY, MERCHANTABILITY, USEFUL LIFE, FUTURE ECONOMIC VIABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY FIBERS, THE TACOMA POWER COMMERCIAL SYSTEM, OR ANY EQUIPMENT, GOODS, OR SERVICE PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED.

(c) Tacoma Power Management has disclosed all known defects to the best of its knowledge. “**Tacoma Power Management**” shall mean and refer to the Tacoma Power Superintendent.

18. INDEMNIFICATION

(a) Operator shall indemnify, defend and hold harmless Tacoma Power, its officials, officers, agents, employees and volunteers, from any and all claims, demands, damages, lawsuits, liabilities, losses, liens, expenses and costs arising out of the subject matter of this IRU Agreement; provided that this provision shall not apply to the extent that damage or injury results from the sole negligence of Tacoma Power, or its officers, agents or employees. This indemnification shall extend to and include attorneys’ fees and the cost of establishing the right of indemnification hereunder in favor of Tacoma Power. This indemnification shall survive the termination of this IRU Agreement.

(b) Operator specifically assumes potential liability for actions brought by its own employees against Tacoma Power and, solely for the purpose of this indemnification and defense, Operator specifically waives any immunity under the state industrial insurance law, Title 51 RCW. OPERATOR RECOGNIZES THAT THIS WAIVER WAS THE SUBJECT OF MUTUAL NEGOTIATION.

19. LIMITATION OF LIABILITY

(a) **DIRECT DAMAGES ONLY.** IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY (OR ANY INDIVIDUAL OR ENTITY CLAIMING THROUGH SUCH PARTY) FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS, LOST REVENUES, LOST SAVINGS, LOSS OF DATA OR HARM TO BUSINESS.

(b) **CAP ON LIABILITY.** IN NO EVENT SHALL TACOMA POWER'S LIABILITY TO OPERATOR FOR THE BREACH OF THIS IRU AGREEMENT OR CLAIMS RELATED TO OR CONNECTED IN ANY WAY WITH THIS IRU AGREEMENT, EXCEED, IN THE AGGREGATE, THE LESSER OF (I) DIRECT DAMAGES; OR (II) THE IRU FEES PAID PRIOR TO THE BREACH OF THIS IRU AGREEMENT.

(c) **NO LIMIT.** IN NO EVENT SHALL THIS SECTION (I) LIMIT ANY INDEMNIFICATION OBLIGATIONS FOR CLAIMS BASED ON DAMAGE CAUSED THROUGH WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OR (II) SERVE AS A LIMITATION ON ANY INSURANCE EITHER PARTY IS REQUIRED UNDER THIS IRU AGREEMENT TO PROVIDE FOR.

20. INSURANCE

Operator will maintain insurance coverages in the amounts and in the manner specified in the City of Tacoma Insurance Requirements. The City of Tacoma Insurance Requirements documents are attached hereto as **Exhibit Q**.

21. DEFAULT AND TERMINATION

(a) **Communication and Discussion.** The Parties are fully committed to working with each other throughout the Term of this IRU Agreement, and agree to communicate regularly with each other at all times so as to avoid or minimize disputes, differences of opinion or controversies (each a "**Controversy**") arising in connection with this IRU Agreement. The Parties agree to act in good faith to prevent and resolve potential sources of conflict before they escalate into a Controversy and shall attempt to resolve Controversies arising in connection with this IRU Agreement through good faith discussions between the contract administrators of both Parties to arrive at an agreeable resolution. In the event that the contract administrators are unable to resolve a Controversy after at least one discussion and the Controversy is alleged to be a default of an obligation under this IRU Agreement, the Party asserting the default may issue a Notice of Default as provided for in this IRU Agreement.

(b) **Defaults.** If either Party fails to perform an obligation under this IRU Agreement or an Exhibit (“**Default**”), the other Party may consider the non-performing Party to be in Default unless the Default is excused by a Force Majeure Event.

(c) **Notice of Default.** Unless otherwise provided in this IRU Agreement, or an exhibit thereto, the non-defaulting Party may assert a Default claim by giving the defaulting Party a written and detailed notice of default (“**Notice of Default**”). Unless the defaulting party timely submits a written request for dispute resolution pursuant to Section 24 of this IRU Agreement, the defaulting Party will have thirty (30) days after receipt of the Notice of Default to either (i) cure such Default and provide written evidence of such cure; or (ii) submit a proposed compliance plan to correct the Default, if the defaulting Party believes in good faith that it will not be able to cure said Default within such timeframe; provided that, the time period to cure or submit a proposed compliance plan shall be limited to ten (10) days for a Notice of Default alleging a failure to timely provide a report or certification listed on **Exhibit R**. The contents of the compliance plan shall specify the steps that the defaulting Party will take to correct the Default and bring itself into compliance with its obligations and the time period over which the correction will occur. The non-defaulting Party will review the proposed compliance plan and the Parties will work in good faith to mutually agree on its final contents and timeframe for implementation within a further thirty (30) days from receipt by the non-defaulting Party. The non-defaulting Party must act reasonably in determining whether a cure plan is acceptable and must make good faith and collaborative efforts to agree upon a mutually acceptable cure plan. The defaulting Party will begin implementing the cure plan immediately after receipt of notice by the other Party that it approves the cure plan. In the event that the Parties are unable to mutually agree upon a compliance plan, either Party may invoke the dispute resolution procedures in Section 24 of this IRU Agreement.

(d) **Action on Failure to Cure.** Subject to the provisions of Section 24 of this IRU Agreement, upon the failure by the defaulting Party to cure any Default within the time specified in paragraph (c), the non-defaulting Party may, except as may be otherwise provided in this IRU Agreement: (i) assess liquidated damages as provided in this IRU Agreement, (ii) pursue any other remedies it may have under this IRU Agreement, applicable law or in equity relating to such Default; and (iii) suspend or delay performance of its obligations under this IRU Agreement.

(e) **Compensation for Prior Performance.** Notwithstanding the foregoing, no termination of this IRU Agreement shall affect the rights or obligations of any Party hereto with respect to any payment hereunder for performance rendered, refunds, or set-offs accruing or due prior to the effective date of termination.

(f) **Survival of Certain Provisions.** The expiration or termination of this IRU Agreement, including due to non-renewal, will not affect the rights or obligations of either Party hereto with respect to matters or claims arising or accruing prior to or as of expiration of this IRU Agreement, or pursuant to any other provisions of this IRU Agreement that, by their sense and context, are intended to survive the expiration or termination of this IRU Agreement, including but not limited to Indemnification,

Limitation of Liability, Taxes, Confidentiality and Continuity of Service Commitments
(Exhibit O).

(g) **Termination.** In the event that the Parties are unable to resolve a Default pursuant to the provisions of Section 24 and the Default is one for which termination is a remedy under this IRU Agreement, the non-defaulting Party may give notice of its intent to terminate this IRU Agreement upon a date set forth in the notice which date shall be no less than one hundred eighty (180) days following the date of receipt of the notice; provided that:

(1) Tacoma Power, shall prior to giving notice of intent to terminate complete the following process:

(i) The Public Utility Board shall determine if termination of this IRU Agreement is, in the opinion of the Board, warranted. The Public Utility Board may consider such facts and circumstances that are relevant to the Default when determining whether or not to terminate this IRU Agreement.

(ii) If the Public Utility Board determines that termination is warranted, such determination shall not be final until the City Council concurs in the decision of the Public Utility Board. The Parties acknowledge that a decision to terminate this IRU Agreement is not a land use decision subject to appeal pursuant to the Land Use Petition Act (Chapter 36.70C RCW).

(2) Any notice of termination given by Operator shall be signed by its manager.

(h) **Uncured Default.** In the event that any Default remains uncured one hundred eighty (180) days after a Notice of Default has been issued, and the uncured status is not excused as a Force Majeure Event, or because the Parties are engaged in arbitration, dispute resolution, implementation of a compliance plan or other mutually agreed resolution of the Default, the non-defaulting Party shall have the right to give notice to terminate this IRU Agreement pursuant to Section 21(g) of this IRU Agreement.

22. LIQUIDATED DAMAGES

(a) **Liquidated Damages as a Remedy.** The Parties explicitly represent that it will be impractical and/or difficult to ascertain or quantify the amount of damages which may be incurred by Tacoma Power as a result of the failure by Operator to comply, or maintain compliance, with certain provisions of this IRU Agreement or the Exhibits as enumerated therein, and further acknowledge and agree that Tacoma Power will be damaged as a result of such non-compliance. Therefore, Tacoma Power and Operator agree that the liquidated damages set forth in the enumerated provisions of this Agreement and the Exhibits are reasonable estimates of the damages resulting from non-compliance of those provisions of this IRU Agreement or Exhibit.

(b) **Exclusive Remedy.** If a Party exercises its right to impose liquidated damages, such damages shall be the Party's sole and exclusive remedy for recovery of the loss resulting from such non-compliance. Nothing in this subsection is intended to preclude the Party from exercising any other right or remedy with respect to other losses not compensated by liquidated damages.

(c) **Adjustment.** The Parties agree that all liquidated damages specified herein shall be adjusted annually on the anniversary of the Effective Date to reflect the Consumer Price Index Increase. If there is no Consumer Price Index Increase (i.e., there is deflation during the relevant period), there shall be no reduction in the liquidated damages from the prior year.

(d) **Assessment of Liquidated Damages.** The Parties agree that liquidated damages may be assessed as a remedy only in the event that the Party in Default has failed to cure in conformance with Section 21(c) of this IRU Agreement or the Parties have been unable to resolve the Default pursuant to the dispute resolution provisions of Section 24 of this IRU Agreement. In the event that liquidated damages are assessed as a remedy under this IRU Agreement against a defaulting Party in connection with a Default pursuant to this IRU Agreement, the non-defaulting Party shall send the defaulting Party an invoice specifying the amounts assessed and the time period subject to assessment of liquidated damages, which may not include any period prior to delivery of the Notice of Default that is the subject of assessment of liquidated damages

23. **SPECIFIC PERFORMANCE**

In recognition that the IRU cannot be readily obtained in the open market, and a suitable Successor Operator may not be readily available, and therefore, that the Parties will be irreparably injured if this IRU Agreement cannot be specifically enforced, each Party shall be entitled, in addition to bringing suit at law or equity for monetary or other damages, to obtain specific performance to order implementation of the IRU contemplated by this IRU Agreement. In any action to enforce the provisions of this IRU Agreement, the Parties both hereby irrevocably and forever waive the defense that there is an adequate remedy at law and hereby irrevocably agree that the other Party shall have the right to obtain specific performance of the obligations contemplated by this IRU Agreement.

24. **DISPUTE RESOLUTION**

In the event that a Party has issued a Notice of Default and the defaulting Party disputes that it is in Default, such defaulting Party shall, within ten calendar days of receipt of said notice, submit to the other Party a written request for dispute resolution. Upon receipt of a timely request for dispute resolution, the cure period in the Notice of Default is tolled. Each Party shall designate a senior representative ("**Senior Representative**") and the Senior Representatives for the Parties shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve the Controversy. Prior to any meetings between the Senior Representatives, the Parties will exchange relevant information that will assist the Parties in resolving the dispute. If the

dispute cannot be resolved through dispute resolution within a reasonable time, not to exceed thirty (30) days, then the Parties shall be free to, (i) assess liquidated damages as provided in this IRU Agreement, (ii) pursue any other remedies it may have under this IRU Agreement, applicable law or in equity relating to such Default; and (iii) suspend or delay performance of its obligations under this IRU Agreement.

25. GOVERNING LAWS

Any action related to this IRU Agreement shall be governed the laws of the State of Washington (except that body of law controlling conflict of laws) and the United Nations Convention on the International Sale of Goods will not apply. Any suit or proceeding arising out of or relating to this IRU Agreement will be brought in the applicable federal or state court located in Pierce County, Washington, and each Party irrevocably submits to the jurisdiction and venue of such courts.

26. RELATIONSHIP OF THE PARTIES

The relationship between the Parties will not be that of partners, agents or joint venture parties for one another, and nothing contained in this IRU Agreement will be deemed to constitute a partnership or agency agreement between them for any purposes, including, but not limited to, tax purposes. No employment relationship is created by this Agreement. Neither Party will make any commitment, by contract or otherwise, binding upon the other or represent that it has any authority to do so. In performing any of their obligations hereunder, each Party will be an independent contractor or independent Party and shall use its discretion in discharging its contractual obligations at its own risk.

27. NOTICES

Except for routine operational communications (which may be delivered personally or by mail or transmitted by electronic mail), all notices and invoices required hereunder shall be in writing and shall be considered properly delivered when personally delivered, or on the third day following mailing, postage prepaid, certified mail, return receipt requested to the Parties at the following addresses:

Tacoma Power:

Tacoma Public Utilities
3628 South 35th Street
Tacoma, WA 98409
Telephone: (253) 502 8600

Attention: TPU Contract Administrator

With a copy to:

City of Tacoma
747 Market Street

Tacoma, WA 98402
Telephone: (253) 591-5000

Attention: City Attorney

Operator:

Rainier Connect North, LLC
P.O. Box 639
104 Washington Ave. N.
Eatonville, WA 98329
Attn: Manager (for all communications except invoices)
Attn: Accounts Payable (for invoices)

With a copy to:

Richard A. Finnigan
2112 Black Lake Blvd. SW
Olympia, WA 98512

Either Party may change the address to which notices shall be sent by notice to the other Party by providing thirty (30) days' written notice of the change of address.

28. NO WAIVER

No failure, forbearance, neglect or delay by a Party in regard to enforcing this IRU Agreement or exercising any rights contained in this IRU Agreement, in whole or in part, will affect or limit such Party's right to strictly enforce same, and no such failure, forbearance, neglect or delay will constitute or be implied as a waiver of any right to enforce same in the future.

29. ASSIGNMENTS & TRANSFERS

(a) In addition to the limitations on its transfer and assignment rights set forth in **Exhibit N**, Operator will not mortgage, pledge, hypothecate, grant a security interest in or deed of trust or charge of any kind upon, its interest under this IRU Agreement or the Tacoma Power Commercial System, or, except as provided in Section 3(a), any portion thereof including After-Installed Assets, without the prior written consent of Tacoma Power.

(b) Nothing in this Agreement will in any manner prohibit Tacoma Power from (i) selling, assigning, transferring or conveying (including as security) all or any part of its interest in the Tacoma Power Commercial System, or (ii) selling, assigning, transferring or conveying this IRU Agreement. In the event Tacoma Power sells, assigns, transfers or conveys its entire ownership in the Tacoma Power Commercial System, Tacoma Power will be relieved of and released from all further obligations under this IRU Agreement

other than pending claims not assumed by the successor; provided that this IRU Agreement shall be binding upon such successor.

(c) The covenants, conditions and agreements contained in this IRU Agreement will inure to the benefit of and be binding upon Tacoma Power and its successors and assigns, and will be binding upon Operator, its successors and assigns, and inure to the benefit of Operator, and only such assigns of Operator to whom the assignment by Operator has been consented to by Tacoma Power as provided in this Section and **Exhibit N**.

30. SUBCONTRACTING

(a) Any delegation or subcontracting by Tacoma Power will not operate to relieve Tacoma Power of its responsibilities and obligations under this IRU Agreement.

(b) Any delegation or subcontracting by Operator will not operate to relieve Operator of its responsibilities and obligations under this IRU Agreement.

31. FORCE MAJEURE EVENT

(a) **Performance Excused by Force Majeure Event.** Neither Party will be deemed in violation of any provision of this IRU Agreement if it is prevented from performing any of the obligations under this IRU Agreement (excluding payment obligations) in whole or in part by reason of any event or circumstance, or combination of events or circumstances, arising after the Effective Date and beyond the reasonable control of, and not the result of the negligent or intentional actions or omissions of, or caused by, the Party that seeks to excuse, in whole or in part, that Party's performance of this IRU Agreement and its obligations hereunder, and that is unavoidable or could not be prevented or overcome by the reasonable efforts and due diligence, (a "**Force Majeure Event**"). In such event, subject to Section 30(b), the non-performing Party shall be excused from further performance of the obligation(s) so affected for as long as such circumstances prevail and such Party continues to use reasonable efforts to recommence performance whenever and to whatever extent possible without delay. In the event of a Force Majeure Event, unless otherwise specified in an applicable Exhibit, the non-performing Party's performance obligation shall be extended on a day by day basis. Events that may give rise to a Force Majeure Event may include acts of God, natural disasters, extreme weather and storms, lightning, floods, fires, earthquakes or other natural occurrences; civil disturbances; strikes or other labor unrest (unless they only concern the Party claiming Force Majeure); catastrophic power failures; terrorist activity, riots, war, nuclear or other civil or military emergencies; acts of legislative, judicial, executive or administrative authorities; or any other circumstances that are not within the reasonable control of, or the result of the negligence of, the claiming Party, and which, by the exercise of due diligence, the claiming Party is unable to overcome or avoid or cause to be avoided. A Force Majeure Event shall not, however, include actions of a government authority with respect to a Party's compliance with applicable laws, franchises, authorizations or permits; any failure by a Party to obtain or maintain any franchise, authorization or permit it is required to obtain or maintain; and any act, omission, delay, default or failure (financial or otherwise) of a subcontractor to a Party.

(b) **Notification.** In the event of a Force Majeure Event, the Party who first becomes aware of the event shall promptly give written notice to the other Party of such event. When either Party becomes aware of the end of the Force Majeure event, it shall give prompt written notice to the other Party.

32. CONFIDENTIALITY

(a) **Definition.** “**Confidential Information**” means information concerning a Party’s (or its Affiliates’) products, plans, methods, processes, business opportunities, vendors, customers, finances, personnel and other information related to the business of such Party and the terms of this IRU Agreement. “Confidential Information” does not include any information which: (a) the receiving Party rightfully knew before the disclosing Party disclosed it to the receiving Party; (b) has become publicly known through no wrongful act of the receiving Party; or (c) the receiving Party developed independently and without the use of any Confidential Information, as evidenced by appropriate documentation.

(b) **Nondisclosure.** All Confidential Information remains the property of the disclosing Party, and no license or other right in any Confidential Information is granted hereby. The receiving Party shall not disclose any Confidential Information to any third party or otherwise, and shall take all reasonable precautions to prevent its unauthorized dissemination, both during and after the Term of this IRU Agreement. The receiving Party shall limit its internal distribution of Confidential Information to its employees and agents who have a need to know, and shall take steps to ensure that dissemination is so limited. The receiving Party shall not use any Confidential Information for its own benefit or for the benefit of anyone other than the disclosing Party. Upon disclosing Party’s written request, the receiving Party shall return to the disclosing Party all Confidential Information in the receiving Party’s custody or control. All information disclosing Party provides is provided “AS IS” and without any warranty, express, implied or otherwise, regarding its accuracy or performance.

(c) **Confidential or Proprietary Records Must be Marked.** If Operator provides Tacoma Power with records that Operator considers confidential or proprietary, Operator must mark all applicable pages of said record(s) as “Confidential” or “Proprietary.” If Operator fails to so mark record(s), then (1) Tacoma Power, upon request, may release said record(s) without the need to satisfy the notice requirements above; and (2) Operator expressly waives its right to allege any kind of civil action or claim against Tacoma Power pertaining to the release of said record(s).

(d) **Public Disclosure.** This IRU Agreement and documents provided to Tacoma Power by Operator hereunder are deemed public records subject to disclosure under the Washington State Public Records Act, Chapter 42.56 RCW (“**Public Records Act**”). Thus, Tacoma Power may be required, upon request, to disclose this IRU Agreement and documents related to it unless an exemption under the Public Records Act or other laws applies. In the event Tacoma Power receives a request for such disclosure, determines in its legal judgment that no applicable exemption to disclosure applies, and Operator has complied with the requirements herein to mark all content considered to be confidential or proprietary, Tacoma Power agrees to provide Operator ten (10) days’ written notice of

impending release. Should legal action thereafter be initiated by Operator to enjoin or otherwise prevent such release, all expense of any such litigation shall be borne by Operator, including any damages, attorneys' fees or costs awarded by reason of having opposed disclosure. Tacoma Power shall not be liable for any release where notice was provided and Operator took no action to oppose the release of information. Notice of any proposed release of information pursuant to Chapter 42.56 RCW, shall be provided to Operator according to the "Notices" provision herein.

33. NO PUBLICITY

Except as specifically authorized in **Exhibit P** of this IRU Agreement, neither Party will issue any press releases or announcements, or any marketing, advertising or other promotional materials, related to this IRU Agreement or referencing or implying the other Party or its trade names, trademarks or service marks, without the prior written approval of the other Party.

34. TIME IS OF THE ESSENCE

TIME IS OF THE ESSENCE IN THIS AGREEMENT AND EACH PROVISION HEREOF IN WHICH TIME OF PERFORMANCE IS ESTABLISHED.

35. NO THIRD PARTY BENEFICIARIES

Each of Tacoma Power and Operator agrees that (a) their respective representations, warranties, covenants and agreements set forth herein are solely for the benefit of the other Party hereto, in accordance with and subject to the terms of this Agreement, and (b) this Agreement is not intended to, and does not, confer upon any Person other than the Parties hereto any rights or remedies hereunder, including the right to rely upon the representations and warranties set forth herein.

36. EXHIBITS

The Exhibits listed below are hereby incorporated into this IRU Agreement and made a part hereof. In interpreting this IRU Agreement and resolving any ambiguities, the language in the Exhibits takes precedence over language in this IRU Agreement.

Exhibit A – Tacoma Power Commercial System

Exhibit A1 – Service Areas Map

Exhibit A2 – System Assets

Exhibit A2.1 Fiber Schedule

Exhibit A2.2 Node Maps

Exhibit A2.3 Equipment Shown in Node Maps (BOM)

Exhibit A2.4 Equipment in Hub Sites

Exhibit A3 – Hub Sites License

 Exhibit A3.1 Hub Site Drawings

 Exhibit A3.2 Ancillary Systems

Exhibit A4 – Conduit Space License

 Exhibit A4.1 – Excluded Conduit (Downtown)

 Exhibit A4.2 – Excluded Conduit (South)

Exhibit A5 – IP Acceptable Use Policy

Exhibit A6 – Headend License

 Exhibit A6.1 Headend Site Drawing

 Exhibit A6.2 Headend Equipment

Exhibit A7 – Installed Customer Premises Equipment

Exhibit B – Safeguarding Tacoma Power’s Use of the Fiber System

 Exhibit B1 Critical Routes

 Exhibit B2 Non-Critical Routes

Exhibit C – Service Level Agreement

Exhibit D – Access to and Maintenance of Tacoma Power Commercial System by Operator

 Exhibit D1 – Access Process

 Exhibit D1.1 – Pole Attachment Request Form

Exhibit E – Tacoma Power Commercial System Upgrades

Exhibit F – Capital Expenditures Commitment

Exhibit G – Equitable Access

Exhibit H – Affordable Access to Telecommunications Services

Exhibit I – Customer Service Commitments

Exhibit J – Customer Privacy

Exhibit J1 – Council Resolution Regarding Customer Privacy

Exhibit K – Net Neutrality

Exhibit L – Open Access to Telecommunications Assets

Exhibit M – Economic Development and Educational Opportunities

Exhibit N – Preserve Competition Among Providers

Exhibit O – Continuity of Services Commitment

Exhibit P – Trademark License

Exhibit P1- Marks

Exhibit P2 – Guidelines

Exhibit Q – City of Tacoma Insurance Requirements

Exhibit R – Checklist of Report and Certification Requirements

Exhibit S – Annual Financial Report

Exhibit T – Form of Guarantee

37. NO GRATUITIES

Tacoma Power shall not offer or give any Operator employee or agent any gratuity, payment or other personal benefit or inducement with a view toward securing business from Operator or influencing the terms, conditions or performance of this IRU Agreement or any statement of work or purchase order.

38. FURTHER ASSURANCES

In connection with this IRU Agreement and the transactions contemplated hereby, each Party will execute and deliver any additional documents and instruments and perform any additional acts that may be commercially reasonable, necessary or appropriate, or reasonably requested by the other Party, to effectuate and perform the Parties' obligations under this IRU Agreement and the transactions contemplated hereby.

39. RECORDS RETENTION

Operator shall establish and maintain records in accordance with requirements prescribed by Tacoma Power, with respect to all matters related to the performance of this IRU Agreement. Except as otherwise authorized by Tacoma Power, Operator shall retain such records in perpetuity.

40. NON-DISCRIMINATION

Operator agrees to take all steps necessary to comply with all federal, state and Tacoma City laws and policies regarding non-discrimination and equal employment opportunities. Operator shall not discriminate in any employment action because of race, religion, creed, color, national origin or ancestry, sex, gender identity, sexual orientation, age, marital status, familial status, veteran or military status, the presence of any sensory, mental or physical disability or the use of a trained dog guide or service animal by a disabled person. In the event of non-compliance by Operator with any of the non-discrimination provisions of this IRU Agreement, Tacoma Power shall be deemed to have cause to terminate this IRU Agreement, in whole or in part.

41. CONFLICT OF INTEREST

No officer, employee or agent of Tacoma Power, nor any member of the immediate family of any such officer, employee or agent as defined by City ordinance, shall have any personal financial interest, direct or indirect, in this IRU Agreement, either in fact or in appearance. Operator shall comply with all federal, state and City conflict of interest laws, statutes and regulations. Operator represents that it presently has no interest and shall not acquire any interest, direct or indirect, in the program to which this IRU Agreement pertains which would conflict in any manner or degree with the performance of Operator's services and obligations hereunder. Operator further covenants that, in performance of this IRU Agreement, no person having any such interest shall be employed. Operator also agrees that its violation of the City's Code of Ethics contained in Chapter 1.46 of the Tacoma Municipal Code shall constitute a breach of this IRU Agreement subjecting this IRU Agreement to termination.

42. ENTIRE AGREEMENT

This IRU Agreement, including the Exhibits hereto, contains all the terms, conditions and obligations of the Parties with respect to the grant of the IRU and related matters contemplated in this IRU Agreement, and supersedes any and all other agreements and representations whether oral or in writing relative to the subject matter of this IRU Agreement, including but not limited to the Letter of Intent that was executed on April 2, 2019 by and between Tacoma Power and Mashell Telecom Inc.

43. INTERPRETATION

Both Parties acknowledge that they have each been represented by counsel and this IRU Agreement and every provision hereof has been freely and fairly negotiated. All provisions of this IRU Agreement will be interpreted according to their fair meaning and will not be strictly construed against any Party.

44. MISCELLANEOUS

(a) Except as otherwise expressly provided, the rights and remedies set forth in this IRU Agreement are in addition to, and cumulative of, all other rights and remedies at law or equity.

(b) The headings in this IRU Agreement are strictly for convenience and do not amplify or limit any of the terms, provisions or conditions hereof.

(c) In the event any provision of this IRU Agreement is held invalid, illegal or unenforceable, in whole or in part, neither the validity of the remaining part of such provision nor the validity of the remaining provisions of this IRU Agreement will be in any way affected. The Parties will cooperate in trying to replace the invalid, illegal or unenforceable provision with a valid provision that attempts to achieve the same result.

(d) This IRU Agreement may be amended only by a written instrument executed by the Parties.

(e) This IRU Agreement may be executed in multiple counterparts, all of which taken together constitute one and the same instrument.

[SIGNATURE PAGES TO FOLLOW]

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IN WITNESS WHEREOF, each Party has caused this IRU Agreement to be executed by its duly authorized representative as of the date indicated below, and effective as of the Effective Date.

**CITY OF TACOMA, DEPARTMENT
OF PUBLIC UTILITIES, LIGHT
DIVISION,**

d/b/a Tacoma Power

By: _____
Name: _____
Title: _____
Date: _____

RAINIER CONNECT NORTH, LLC

By: _____
Name: _____
Title: _____
Date: _____

DRAFT

EXHIBIT A

SYSTEM

SERVICE AREAS MAP (Exhibit A1), SYSTEM ASSETS (Exhibit A2), HUB SITES LICENSE (Exhibit A3), CONDUIT SPACE LICENSE (Exhibit A4), IP ACCEPTABLE USE POLICY (Exhibit A5), HEADEND LICENSE (Exhibit A6), AND CUSTOMER PREMISES EQUIPMENT (Exhibit A7)

DRAFT

EXHIBIT A1

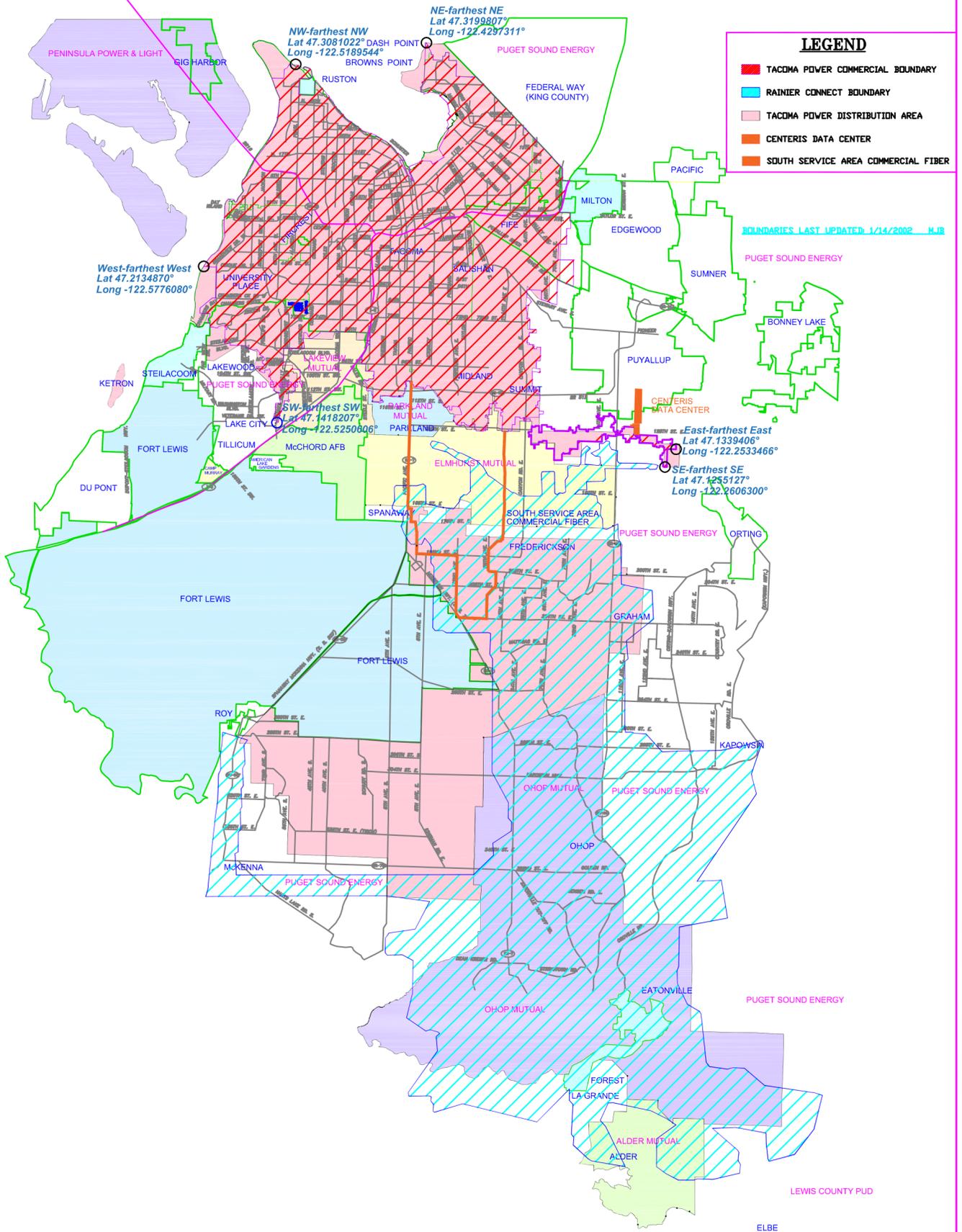
SERVICE AREAS AS OF EFFECTIVE DATE

Tacoma Power Commercial Service Area, Tacoma Power Utility Service Area, and Operator Service Area as of the Effective Date are each depicted in **Exhibit A1**.

Tacoma Power Commercial Service Area in the City of Puyallup is limited to the transiting fiber route to the Centeris Data Center and does not include any retail service area. Tacoma Power Commercial Service Area in Pierce County (Loveland) is limited to the transiting fiber route to interconnect with Wave and Operator and does not include any retail service area.

DRAFT

COMMERCIAL SERVICE AREA MAP



LEGEND

- ▨ TACOMA POWER COMMERCIAL BOUNDARY
- ▨ RAINIER CONNECT BOUNDARY
- ▨ TACOMA POWER DISTRIBUTION AREA
- ▨ CENTERIS DATA CENTER
- ▨ SOUTH SERVICE AREA COMMERCIAL FIBER

BOUNDARIES LAST UPDATED: 1/14/2002 - MJB

EXHIBIT A2

TACOMA POWER COMMERCIAL SYSTEM ASSETS INCLUDED IN IRU AS OF EFFECTIVE DATE

Tacoma Power Commercial Fiber

The fiber counts in the various segments that comprise the Tacoma Power Commercial Fiber are identified in **Exhibit A2.1**.

The Tacoma Power Commercial Fiber is as shown in **Exhibit A2.2**.

Tacoma Power Commercial Coax

The Tacoma Power Commercial Coax is as shown in **Exhibit A2.2**.

Tacoma Power Commercial Equipment in Rights of Way

The Tacoma Power Commercial Equipment in Rights-of-Way and associated with Tacoma Power Commercial Fiber and Tacoma Power Commercial Coax is shown in **Exhibit A2.2** and listed by node in **Exhibit A2.3**.

Tacoma Power Commercial Equipment at Hub Sites

Tacoma Power Commercial Equipment at Hub Sites is listed in **Exhibit A2.4**.

EXHIBIT A2.1

TACOMA POWER COMMERCIAL FIBER COUNTS

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EXHIBIT A2.2

NODE MAPS

DRAFT

EXHIBIT A2.3

SYSTEM EQUIPMENT (BOM)

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EXHIBIT A2.4

HUB SITE EQUIPMENT

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EXHIBIT A3

HUB SITES LICENSE

Section 1: Locations subject to License:

SW Hub – 4102 South 74th Street, Tacoma WA 98409

4,446 Sq. Ft fenced area.
800 Sq. Ft building with HVAC system and generator backup power.

SE Hub – 6301 East “N” Street, Tacoma WA 98404

2,783 Sq. Ft fenced area.
800 Sq. Ft building with HVAC system and generator backup power.

NW Hub – 2402 Pearl Street, Tacoma WA 98406

13,363 Sq. Ft fenced area.
800 Sq. Ft building with HVAC system and generator backup power.

NE Hub – 2431 Alexander Ave E., Fife WA 98424

2,175 Sq. Ft fenced area.
800 Sq. Ft building with HVAC system and generator backup power.

DTS Hub – 2422 Commerce Street, Tacoma WA 98402

15,912 Sq. Ft fenced area.
1080 Sq. Ft building with HVAC system and generator backup power.

DTN Hub – 1111 South Altheimer & S. Tacoma Way, 98405

7,024 Sq. Ft fenced area.
882 Sq. Ft building with HVAC system and generator backup power.

Section 2: Access and Permitted Use

(a) Operator shall have independent, 24-hour access from the nearest public right-of-way over Tacoma Power’s real property to each of the six secured Hub Site locations and buildings listed in Section 1 above. The Hub Site locations are located adjacent to Tacoma Power’s substations and can be entered through a locked gate without entering the substations. The Hub Site buildings are accessed through a locked card key access door. Operator employees and contractors will need authorization from Tacoma Power to obtain card keys for access.

(b) Operator may use parking within the fenced area of a Hub Site location if it is available. Operator may also use off-street parking on Tacoma Power real property immediately outside the fenced area if available to temporarily park vehicles when accessing the Hub Site locations.

(c) Operator shall use the Hub Sites solely for the purpose of maintaining and utilizing existing Tacoma Power Commercial Fiber, Tacoma Power Commercial Coax, and Tacoma Power Commercial Equipment and other personal property made available to Operator, for the installation, maintenance and use of After-Installed Assets pursuant to the terms of this Exhibit and the IRU Agreement, and to fulfil its maintenance obligations under Section 3 below. These Hub Sites shall not be used for storage of materials or tools or decommissioned or failed equipment or for co-location of third-party equipment.

(d) Operator shall have use of all existing racks in the Hub Site, other than those reserved for the City of Tacoma Institutional Network and Tacoma Power. Racks reserved for City of Tacoma Institutional Network and for Tacoma Power, as well as the numbered racks available for Operator's use, are identified for each Hub Site on **Exhibit A3.1**. Operator may add racks within each of the Hub Sites in the open areas shown in **Exhibit A3.1**. Each Party shall have joint use of the Hub Sites and shall use appropriate lockable racks for housing of equipment it uses or install a secure cage. In either event, each Party shall be responsible for the security of the equipment it uses only.

(e) Operator shall not interfere, or allow the operation of Tacoma Power Commercial Equipment it uses to interfere, with Tacoma Power or any other occupants of the Hub Sites.

Section 3: Maintenance Responsibilities

(a) Tacoma Power shall be responsible for maintaining, at its cost, the Hub Site exterior fence, the grounds of the fenced area, the structural elements of the buildings, and the exterior and roof of buildings as well as the electrical and any plumbing systems serving the building, the secured access system, security cameras and door and fire alarms which are monitored by Tacoma Power's contract security team.

(b) Operator shall not make physical alterations to the structural elements of the fences or buildings or alter the external paint color scheme without the prior written consent from Tacoma Power.

(c) Operator shall be responsible for maintaining according to manufacturers' specifications, and replacing, at its cost, the following ancillary systems and equipment at the Hub Sites:

(i) HVAC sufficient to maintain an ambient temperature of 65° F and relative noncondensing humidity. Operator's maintenance will include recorded periodic HVAC inspection, filter replacement, equipment repair or replacement as needed.

(ii) Fire suppression system, either sprinkler system or other system that conforms to local, state, and federal laws and regulations.

(iii) Backup batteries, power supplies, or emergency generation to support all users of the Hub Site, including Tacoma Power and the City of Tacoma Institutional Network. Operator will be responsible for ongoing fueling, operations, maintenance, monitoring, repair, and replacement of this equipment. If Operator needs to perform upgrades to back up power equipment outside of any Hub Site building requiring more space than currently utilized within the Hub Site location, it will notify Tacoma Power. The Parties

will work together to accommodate a solution that is both secure and accessible to Operator.

Exhibit A3.2 lists the existing ancillary systems and equipment at the Hub Sites.

(a) Operator shall be responsible for general maintenance within the Hub Site buildings including lighting and bulb replacement, janitorial services, waste removal and sweeping, mopping, and polishing of floors to maintain cleanliness. Operator shall further be responsible for replacing or repairing, to the reasonable satisfaction of Tacoma Power, any damage caused to the Hub Sites arising from the activities of Operator.

Section 4: Commercial Power

(a) The Hub Sites have the power feeds depicted in **Exhibit A3.1**.

(b) Operator shall be responsible for the cost of commercial power for the Hub Site buildings and equipment pursuant to a separate power service contract with Tacoma Power. If Operator needs additional power or any changes to existing power feeds at any Hub Site, such requests shall be made pursuant to that separate power service contract.

Section 5: Term.

This license is coterminous with the IRU Agreement. Upon the termination of the license, any and all improvements made by Operator (including any replacements of ancillary systems and equipment) shall become the property of Tacoma Power.

Section 6: Defaults. Failure to comply with this Exhibit A3 is a Default.

EXHIBIT A3.1
HUB SITE DRAWINGS

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EXHIBIT A3.2

HUB SITE ANCILLARY SYSTEMS

DRAFT

EXHIBIT A4
CONDUIT SPACE LICENSE

Capitalized terms used herein but not defined shall have the meanings assigned to them in the IRU Agreement.

BACKGROUND

- A. Tacoma Power is the owner of existing conduit located on real property and within public rights-of-way which is occupied in whole or in part by the Tacoma Power Commercial System or which is unoccupied but located within the Tacoma Power Commercial Service Area, all as depicted in Exhibit A2.2 to the IRU Agreement (“Conduit System”).
- B. Pursuant to the IRU Agreement, Operator has been granted an IRU in those portions of the Conduit System that are specified in the definitions of Tacoma Power Commercial Coax and the Tacoma Power Commercial Fiber.
- C. In connection with the grant of the IRU described in the IRU Agreement, Tacoma Power is willing to provide Operator with a non-exclusive license to occupy and use the unoccupied space in the portions of the Conduit System on Critical Routes, except for those portions of the Conduit System described in **Exhibits A4.1** and **A4.2** hereto (“Excluded Conduit”) for the purposes described hereinbelow (“Licensed Conduit Space”).

ARTICLE 1

LICENSE

1.1 Tacoma Power grants Operator a non-exclusive license (“License”) to occupy and make use of the Licensed Conduit Space in order to install After-Installed Assets and otherwise to fulfill its obligations set forth in the IRU Agreement. A separate license shall be required for Operator to occupy or use the Licensed Conduit Space for any purpose not specifically contemplated by this License or the IRU Agreement.

1.2 It is understood and agreed that Tacoma Power shall maintain legal title to the Conduit System, subject to the License granted herein in the Licensed Conduit Space, and the terms of the IRU Agreement. This License is not intended to nor shall it be interpreted to create or vest in Operator any leasehold, easement, or any other property rights or interests in the Licensed Conduit Space, the Conduit System, or any part thereof.

ARTICLE 2

TERM

2.1 This License is coterminous with the IRU Agreement. Upon the termination of this License, all rights of Operator to use the Licensed Conduit Space, or any part thereof, shall cease except to the extent allowed during the Post-Termination Period pursuant to the Continuity of Services Commitments in Exhibit O to the IRU Agreement.

ARTICLE 3

LICENSED CONDUIT SPACE ACCESS AND USE

3.1 Access to Licensed Conduit Space for installation and maintenance of any After-Installed Assets placed in Licensed Conduit Space is governed by the terms and conditions set forth in Exhibits B, C and D of the IRU Agreement.

3.2 Operator agrees to use the Licensed Conduit Space only in a manner consistent with the Underlying Rights and Use Restrictions, and that its rights shall in all respects be subject to the terms and conditions of the Underlying Rights and Use Restrictions. Operator agrees not to cause or allow to be caused any default under the Underlying Rights or Use Restrictions.

3.3 Operator shall not use the Licensed Conduit Space in a way that interferes in any way with or adversely affects the use of the fibers or cable of any other person using the Conduit System. Operator acknowledges that the Conduit System includes or will include other participants, including Tacoma Power and other owners and users of telecommunication systems.

3.4 Operator shall be responsible for the proper design of its cable and other equipment that occupies the Licensed Conduit Space.

3.5 Except as provided in Section 7 of the IRU Agreement, Operator at its sole cost and expense, shall obtain and maintain any and all necessary easements, licenses, and building access agreements, as well as all governmental permits, licenses, easements, franchises and approvals that may lawfully be required by federal, state or local law, statute, regulation or ordinance and shall continuously comply with all such laws, statutes, regulations, or ordinances as may now or in the future be applicable to (1) its use of the Licensed Conduit Space; and (2) Operator's other rights and obligations under this License.

3.6 Tacoma Power's right to relocate all or any portion of the Conduit System, or any of the facilities used or required in providing Operator with this License, shall be governed by Section 13 of the IRU Agreement.

ARTICLE 4

LICENSED CONDUIT SPACE

4.1 Operator may not transfer or assign all or any part of its interest in this License or in the Licensed Conduit Space, in whole or in part, except in connection with the transfer or assignment of the IRU Agreement and subject to the requirements of Section 29 of the IRU Agreement.

ARTICLE 5

DEFAULTS

5.1 Failure to comply with this Exhibit A4 is a Default.

ARTICLE 6

NO WARRANTIES

6.1 NOTWITHSTANDING ANY EXAMINATION OR INSPECTION MADE BY OPERATOR AND WHETHER OR NOT ANY PATENT OR LATENT DEFECT OR CONDITION WAS REVEALED OR DISCOVERED THEREBY, OPERATOR UNDERSTANDS IT IS OBTAINING USE OF THE LICENSED CONDUIT SPACE UNDER THIS LICENSE "AS IS" IN ITS CONDITION AS OF THE EFFECTIVE DATE. OPERATOR HEREBY WAIVES AND RELEASES ANY CLAIM OR ACTION AGAINST TACOMA POWER IN RESPECT OF OR RELATED TO THE CONDITION OF THE CONDUIT SYSTEM, INCLUDING ANY DEFECTS OR ADVERSE CONDITIONS NOT DISCOVERED OR OTHERWISE KNOWN BY OPERATOR AS OF THE EFFECTIVE DATE.

6.2 TACOMA POWER MAKES NO WARRANTY TO OPERATOR OR ANY OTHER ENTITY, WHETHER EXPRESS, IMPLIED, OR STATUTORY, AS TO THE INSTALLATION, DESCRIPTION, QUALITY, MERCHANTABILITY, USEFUL LIFE, FUTURE ECONOMIC VIABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY LICENSED CONDUIT SPACE, OR AS TO ANY OTHER MATTER, ALL OF WHICH WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED.

EXHIBIT A4.1
EXCLUDED CONDUIT (DOWNTOWN)

Conduit housing Tacoma Power Commercial Fiber in the downtown corridor which is accessed via energized vaults as shown in Exhibit A4.1.

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EXHIBIT A4.1
EXCLUDED CONDUIT (SOUTH)

Innerduct and conduit in the Pacific fiber link portion of the Loveland (South) route as shown in Exhibit A4.2.

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EXHIBIT A5 IP ACCEPTABLE USE POLICY

Prohibited End User Activity

Operator will use commercially reasonable efforts to create, maintain, publish and enforce a Customer Acceptable Use Policy for any of its customers who are permitted to use the IP addresses. Operator's Customer Acceptable Use Policy will require (i) end users connect systems to the Tacoma Power Commercial Network are free from viruses and other malware, (ii) end users will not use the assigned IP addresses to send unsolicited bulk or commercial messages, (iii) end users do not engage in activity that will improperly restrict or inhibit any other end user's normal use of the services, (iv) end users do not resell, share, or otherwise distribute the service or any portion thereof to any third party outside the physical location where the service is provided, (v) end users do not provide Internet access to others through a dial up connection, hosting of shell accounts over the Internet, distribution through wireless services, providing e-mail or news services, or news feeds, (vi) end users do not run programs or servers, which provide network services to others via the Tacoma Power Commercial Network, and (vii) end users do not host multi-user interactive services such as Web Hosting, E-mail hosting, or game servers or forums, etc.

Prohibited Use or Inquiries

Operator will receive and respond to incoming abuse or network inquiries associated with the IP addresses assigned under the IRU. Incoming abuse or network inquiry may be delivered to Operator by e-mail or by other means and inquiries may include but not be limited to:

1. Copyright infringement allegations
2. Spam allegations
2. Non-impacting but potentially malicious activity (for example, port scanning or botnet participation)
3. Network impacting activity
4. Subpoena / warrant information requests

Operator will daily monitor for incoming abuse or network inquiries. Operator will respond to any incoming abuse allegations with a system of escalation for each subscriber beginning with a warning, then continuing to blockings (soft disconnects) and culminating with disconnection of service for end users who are not complying with the corrective actions requested by Operator.

Subpoena/warrant information requests will be completed and returned to the requesting agency by Operator under the Operator's standard procedures acceptable to receipt of such documents, but will be returned no later than in the time allotted by the requesting agency (provided the proper documents have been submitted in the proper form and manner).

Operator will assume all responsibility for loss of use or interruption of use of Tacoma Public Utilities or City of Tacoma's Class B IP Address range arising out of Operator's use of the IP addresses assigned under the IRU Agreement under Section 2(c) of the IRU Agreement.

Return of IP Addresses

Use of the assigned IP addresses is coterminous with the IRU Agreement, unless use of IP addresses is terminated early pursuant to Section 2(c) of the IRU Agreement.

Defaults.

Failure to comply with this Exhibit A5 is a Default.

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**EXHIBIT A6
HEADEND LICENSE**

ARTICLE I

DEFINITIONS

1.1 Definitions. Capitalized terms not otherwise defined in the text of this Exhibit will have the meanings ascribed to them in the IRU Agreement.

ARTICLE II

TERM

2.1 Term. The term of the license granted by this Exhibit (the "Term") shall commence on the Effective Date and continue for a period of five (5) years, unless earlier terminated by either Party in accordance with the terms of this Exhibit.

ARTICLE III

LICENSE TO USE HEADEND SITE

3.1 Headend Site. During the Term, TACOMA POWER grants OPERATOR a license to use and occupy the 1412 Sq. Ft building located at 3628 S. 35th St., Tacoma, WA 98409 and rooftop access to satellite dishes depicted in **Exhibit A6.1** hereto ("Headend Site") solely for the purpose of operating and maintaining the Headend Equipment listed in **Exhibit A6.2**, subject to the terms and conditions of this Exhibit.

3.2 OPERATOR shall have 24-hour access to the Headend Site in accordance with the standard access and security policies and procedures established by TACOMA POWER.

3.3 OPERATOR shall have use of all existing space in the Headend Site, except for Comm Shop Room separated and designated for use by TACOMA POWER. The Headend Site shall not be used for storage of tools, supplies or decommissioned or failed equipment.

3.4 Maintenance Responsibilities

3.4.1 TACOMA POWER shall be responsible for maintaining, at its cost, the exterior of the Headend Site as well as security cameras and doors and fire alarms which are monitored by TACOMA POWER's contract security team.

3.4.2 TACOMA POWER shall be responsible for maintaining backup batteries, power supplies, or emergency generation to support all users of the Headend Site, including TACOMA POWER. TACOMA POWER will be responsible for ongoing fueling, operations, maintenance, monitoring, repair, and replacement of this power equipment, including any upgrades to back up power equipment.

3.4.3 OPERATOR shall not make physical alterations to the structural elements of the Headend Site or alter the external paint color scheme.

3.4.4 OPERATOR shall be responsible for maintaining, at its cost, the following at the Headend Site:

- (i) HVAC sufficient to maintain an ambient temperature of 65° F and relative noncondensing humidity.
- (ii) Fire suppression system, either sprinkler system or other system that conforms to local, state, and federal laws and regulations.

3.5 OPERATOR's maintenance of the Headend Site will include recorded periodic HVAC inspection, filter replacement, equipment repair or replacement as needed.

3.6 OPERATOR's maintenance of the Headend Site will include general maintenance of floors such as sweeping, mopping and polishing to maintain cleanliness.

3.7 Default and Termination

3.7.1 Events of Default. Failure to comply with this Exhibit is a Default.

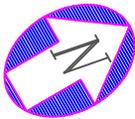
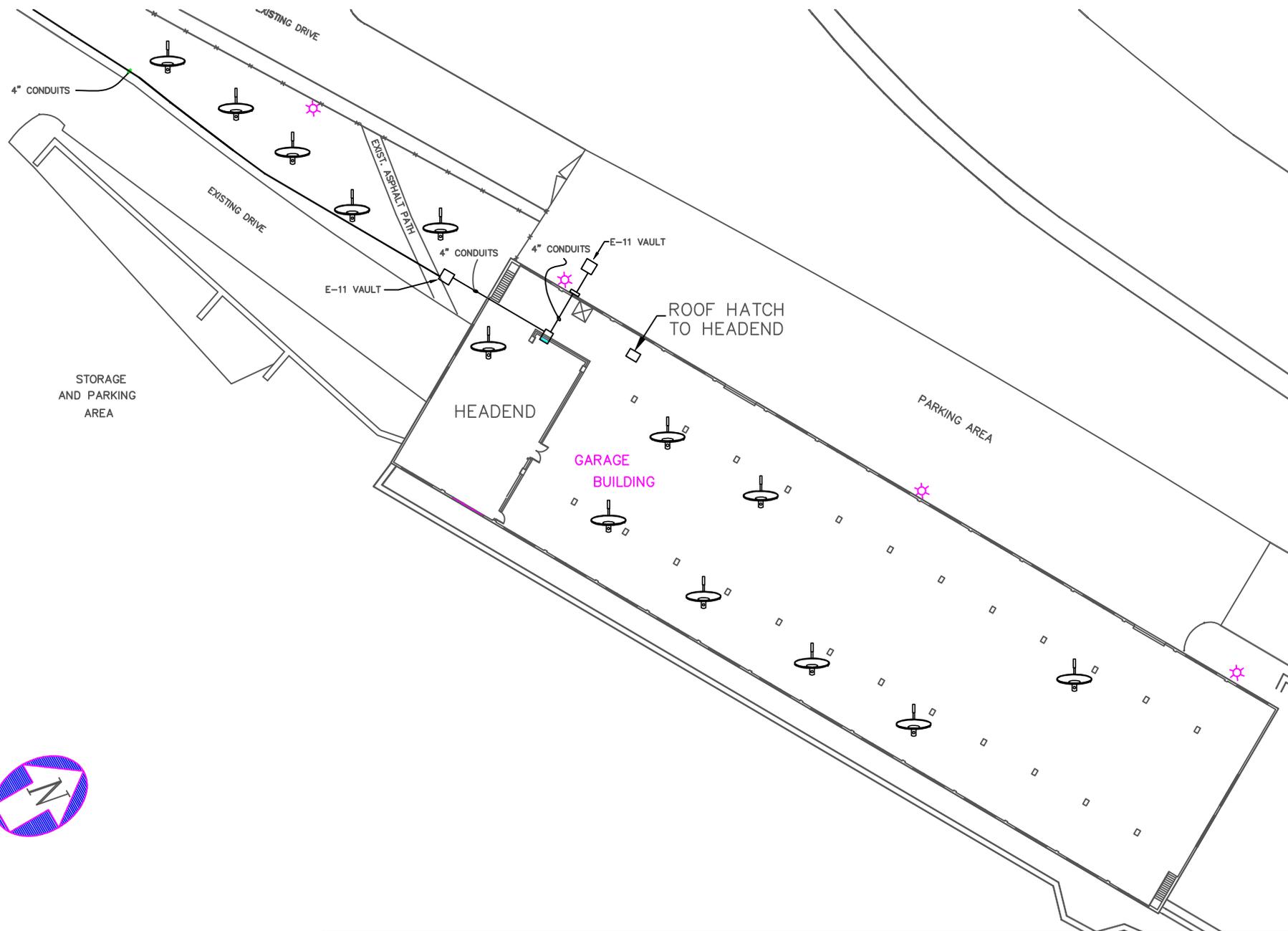
3.7.2 Action on Failure to Cure. Upon the failure by the defaulting Party to cure any Default, the non-defaulting Party may: (i) pursue any remedies it may have under the IRU Agreement or applicable law or in equity relating to such Default; and (ii) terminate the license granted by this Exhibit.

3.7.3 Termination by Operator. OPERATOR may terminate the license granted by this Exhibit upon thirty (30) calendar days' written notice to TACOMA POWER.

3.8 Removal of Headend Equipment. Upon termination of the license granted by this Exhibit for any reason, OPERATOR shall safely remove all Headend Equipment (excluding racks, enclosures and satellite dishes) and leave the Headend Site clear of any debris or damage, reasonable wear and tear excepted.

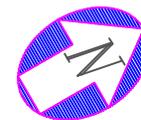
**EXHIBIT A6.1
HEADEND SITE DRAWING**

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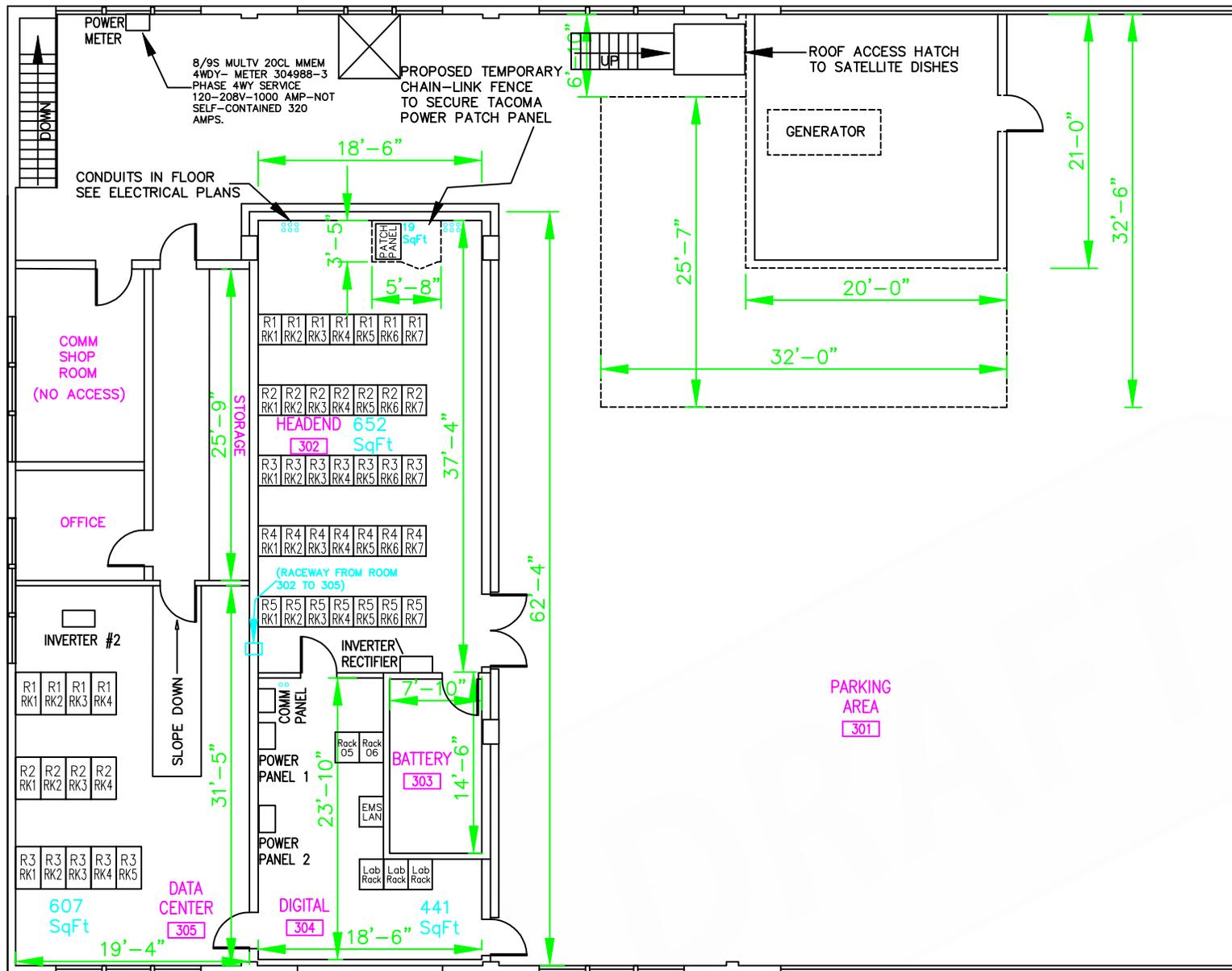


Headend Property View

TACOMA POWER TACOMA PUBLIC UTILITIES	DATE	DRAWN	CIP	NODE	POWER REF D
	09/10/19				



THIRD FLOOR



Headend Building View

 TACOMA PUBLIC UTILITIES	DATE	DRAWN	CIP	NODE	POWER REF D
	09/10/19				

EXHIBIT A6.2
HEADEND EQUIPMENT

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EXHIBIT A7

CUSTOMER PREMISES EQUIPMENT

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EXHIBIT B
SAFEGUARDING TACOMA POWER'S USE OF CRITICAL UTILITY FIBER

1. DEFINITIONS

(a) "Critical Route" means any route of Tacoma Power Commercial Fiber that includes Utility Fiber in the same sheath or fiber bundle anywhere along the route and any route of Tacoma Power Commercial Coax that includes Utility Fiber in the same conduit. Critical Routes as of the Effective Date are provided in **Exhibit B1**.

(b) For the purposes of Exhibits B and C, "Fiber Maintenance" means any activities undertaken to maintain the fiber in working order and to make use of the fiber, including but not limited to regular patrol of the fiber; maintenance of a "Call-Before-You-Dig" program and all required and related locates; maintenance of sign posts along the Tacoma Power Commercial System with the number of the local "Call-Before-You-Dig" organization; infrastructure repair; splicing; emergency restoration; pole transfers; road projects and overhead-underground conversions; cable restoration; reattachment; moves; make-ready compliance; route-relocation; and other standard processes undertaken by communications infrastructure owners. The term includes replacement of Tacoma Power Commercial Fiber only under the limited circumstances described in Sections 6 and 7 of Exhibit C.

(c) "Non-Critical Route" means a route of the Tacoma Power Commercial Fiber that does not share a fiber bundle or sheath with Utility Fiber at any point along the route and any route of Tacoma Power Commercial Coax that does not include Utility Fiber in the same conduit. Non-Critical Routes as of the Effective Date are identified in **Exhibit B2**.

(d) "Utility Fiber" means the fiber in the Fiber System that provides substantial and essential support for Tacoma Power's communications functions and assets as an electrical power utility, and includes both dark and lit fibers.

2. MAINTENANCE OF TACOMA POWER COMMERCIAL FIBER ON CRITICAL ROUTES.

(a) The Parties agree that Operator shall not have access to the Tacoma Power Commercial Fiber or After-Installed Assets in conduit on Critical Routes except as provided in this **Exhibit B**.

(b) With respect to any components of the Tacoma Power Commercial Fiber on Critical Routes, Operator will not provide Fiber Maintenance. Rather, solely Tacoma Power, at its cost (except as provided herein), will provide all Fiber Maintenance during the Term in accordance with the Service Level Agreement attached hereto as Exhibit C.

(c) In the event that Tacoma Power ceases using Utility Fiber on a Critical Route and wants to re-designate the route, the Parties agree to negotiate in good faith to develop a plan for expanding Operator's access to the Tacoma Power Commercial Fiber and reducing Tacoma Power's Fiber Maintenance obligations.

(d) All other rights and obligations with respect to the Tacoma Power Commercial System maintenance on Critical Routes are addressed in **Exhibit D**.

3. SPLICING SERVICES FOR TACOMA POWER COMMERCIAL FIBER IN THE SAME SHEATH OR FIBER BUNDLE WITH UTILITY FIBER/SERVICES FOR REMOVAL OR REPLACEMENT OF FIBER/COAX CABLE IN CONDUIT ON CRITICAL ROUTES

(a) Operator shall not access splice panels or fiber access points for Tacoma Power Commercial Fiber on Critical Routes. Rather, Tacoma Power will provide qualified staff to Operator upon request to provide splicing services and services for removal or replacement of fiber/coax cable in conduit on Critical Routes.

(b) If Operator chooses to build new splicing access points for its own use for Tacoma Power Commercial Fiber on Critical Routes so as to separate Tacoma Power Commercial Fiber access points from Tacoma Power Utility Fiber access points, Tacoma Power will provide qualified staff to provide this construction service to Operator upon request.

(c) All requests for splicing services pursuant to this Section 3 shall be in writing and provide at least ten (10) Business Days' notice of the desired service date. Services will be performed at a time of mutual agreement between Tacoma Power and Operator.

(d) Operator will be invoiced for splicing services based on the price schedule in Section 5 of this Exhibit and shall pay invoices within thirty (30) days of receipt.

4. WORK IN ENERGIZED VAULTS

(a) For safety and regulatory compliance reasons, only qualified Tacoma Power staff may access Tacoma Power Commercial Fiber splice cases that are contained within energized vaults (estimated as approximately 4% of total access points in the Tacoma Power Commercial System). In the event that Operator needs to access assets in energized vaults, Tacoma Power will provide qualified staff to provide access services to Operator upon request.

(b) All requests for access pursuant to this Section 4 shall be in writing and provide at least five (5) Business Days' notice of the desired access date. Access will be provided at a time of mutual agreement between Tacoma Power and Operator.

(c) Operator will be invoiced for access services based on the price schedule in Section 5 of this Exhibit and shall pay invoices within thirty (30) days of receipt.

5. TACOMA POWER'S PRICE SCHEDULE

The rates described below are for work performed in 2019. All amounts listed below are calculated using Tacoma Power's 2019 SAP loaded rates with equipment and materials. The Parties recognize and agree that Tacoma Power may adjust the below amounts periodically to reflect future changes in Tacoma Power's SAP loaded rates with equipment and materials, or any future methodology commonly used by Tacoma Power for calculation of loaded rates with equipment and materials. Operator will be provided thirty (30) days' written notice of any such changes.

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 Site 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. Encapsulate and flash test as required. Support and secure per manufacturer's specifications.	Per fiber splice, tested and documented	\$16.00
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.	Time and Materials (Per hour, five-Person Crew)	\$541.00
5. Remove or Replace Fiber/Coax Cable in Shared Critical Route Conduit	All costs for labor and equipment to remove existing cables or pull new customer provided cables in existing critical route shared conduits. This unit includes a composite crew of HFC personnel, who would perform work on behalf of partner.	Time and Equipment (Per hour, four-Person Crew)	\$365.00

6. REMEDIES FOR NON-COMPLIANCE

(a) Operator's sole remedy for any violation of Section 2 of this Exhibit by Tacoma Power is limited to the liquidated damages specified in the Service Level Agreement (Exhibit C).

(b) In the event that Tacoma Power discovers a Default of an obligation in this Exhibit by Operator that poses an imminent public safety concern or threat to the safety of Tacoma Power operations, Tacoma Power may take corrective action to address the Default without prior notice to Operator, and invoice Operator for the cost of such corrective action.

(c) In the event that Operator commits repeated Defaults of this Exhibit, Tacoma Power shall have the right to give notice to terminate this IRU Agreement pursuant to Section 21(g) of this IRU Agreement.

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EXHIBIT B1
MAP OF CRITICAL ROUTES AS OF EFFECTIVE DATE

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EXHIBIT B2
BOOK OF NON-CRITICAL ROUTES AS OF EFFECTIVE DATE

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EXHIBIT C
SERVICE LEVEL AGREEMENT (“SLA”)

Section 1 Fiber Maintenance

a) Tacoma Power will perform all Fiber Maintenance for Tacoma Power Commercial Fiber on Critical Routes, including Scheduled Maintenance and Unscheduled Maintenance, as defined herein. Operator shall have access to the Tacoma Power Commercial Fiber, consistent with the IRU Agreement and Exhibits, during the performance of any Scheduled Maintenance or Unscheduled Maintenance so long as this requirement does not interfere with Tacoma Power’s ability to perform its obligations under this SLA.

b) Planned, non-emergency and routine Maintenance (“**Scheduled Maintenance**”) will be performed at the times determined by Tacoma Power in its sole discretion, except if it is reasonably expected to produce any signal discontinuity for Tacoma Power Commercial Fiber, in which case the schedule shall be coordinated with Operator pursuant to Section 4 below.

c) Tacoma Power will perform unplanned, emergency or non-routine Maintenance, demand call-out, and repair (“**Unscheduled Maintenance**”) for Tacoma Power Commercial Fiber on the Critical Routes, subject to the terms of this SLA. Unscheduled Maintenance includes the following activities:

- i. Respond to troubleshooting requests from Operator.
- ii. Respond to any notification from Operator or notification from any third party of a Fault (as defined below) on the Critical Routes, or any event imminently likely to cause a Fault on Critical Routes or demand maintenance requested by Operator.
- iii. Respond to any potential service-affecting situation to prevent any Fault on Critical Routes.
- iv. Operator shall immediately report the need for Unscheduled Maintenance to Tacoma Power in accordance with procedures promulgated by Tacoma Power from time to time. Tacoma Power shall log the time of Operator’s report, verify the problem and dispatch personnel to take corrective action in accordance with this SLA.

Section 2 Time to Respond

a) Tacoma Power personnel shall dispatch maintenance and repair personnel to handle and repair problems detected in the Tacoma Power Commercial Fiber on Critical Routes: (i) upon notification by Operator to Tacoma Power, or (ii) upon notification by a third party. Tacoma Power’s Fiber Maintenance services shall be available for dispatch twenty-four (24) hours a day, seven (7) days a week. Tacoma Power shall acknowledge receipt of a notification under (i) or (ii) by telephone (“Respond”) as soon as possible but in no event shall the annual Mean Time to Respond (“**MTTR**”) for Unscheduled Maintenance activity be more than one (1) hour, unless delayed by a Force Majeure Event, including electrical restoration or the establishment of a safe work zone for telecommunication work to commence, or other circumstances beyond the reasonable control of Tacoma Power.

b) Hourly Updates. In all cases of Unscheduled Maintenance, Tacoma Power shall provide Operator with hourly updates of the progress of the Unscheduled Maintenance until the Unscheduled Maintenance is complete.

Section 3 Cooperation and Coordination

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

Section 4 Maintenance Window

a) For any Scheduled Maintenance which is reasonably expected to produce any signal discontinuity, Tacoma Power and Operator must coordinate to determine the appropriate time for that 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 scheduled to be performed during a Maintenance Window must be completed by the end of the Maintenance Window. If any Scheduled Maintenance goes beyond the end of the Maintenance Window and the Tacoma Power Commercial Fiber is unavailable, a period of Fiber Unavailability as defined in Section 10 shall commence and Operator may be entitled to liquidated damages under Section

b) Tacoma Power and Operator 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.

c) Tacoma Power shall notify Operator of any Scheduled Maintenance to be performed during a Maintenance Window. If Scheduled Maintenance is cancelled or delayed for whatever reason as previously notified, Tacoma Power shall notify Operator at its earliest opportunity but no later than one (1) hour after such cancellation or delay.

Section 5 Testing and Restoration of the Tacoma Power Commercial Fiber

a) Tacoma Power shall respond to any failure, interruption, impairment in the operation of, or unavailability of the Tacoma Power Commercial Fiber on Critical Routes. (“**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 Tacoma Power) in accordance with the procedures set forth in Section 2. A Fault commences

upon the earlier of (i) Operator's notification to Tacoma Power or (ii) when indicated by network control information actually or reasonably known to Tacoma Power. Each Fault terminates upon restoration of the Tacoma Power Commercial Fiber as evidenced by appropriate splicing tests by Tacoma Power and confirmed by Operator as to network functionality and availability.

b) Tacoma Power shall maintain sufficient capability to teleconference with Operator during Unscheduled Maintenance in order to provide hourly communications during the restoration process. When correcting or repairing fiber optic cable discontinuity or damage, including but not limited to an event of Unscheduled Maintenance, Tacoma Power shall use commercially reasonable efforts to repair traffic-affecting discontinuity or damage of the affected Tacoma Power Commercial Fiber within six (6) hours of learning of discontinuity or damage after power restoration has been completed and the work site has been made safe. 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 Unscheduled Maintenance, Tacoma Power shall commence its planning for permanent repair and thereafter promptly notify Operator of such plans, and shall implement such permanent repair within an appropriate time thereafter. Restoration of Tacoma Power Commercial Fiber on fiber strands not immediately required for service shall be completed on a mutually agreed-upon schedule.

c) During restoration, Tacoma Power and Operator agree to work together to restore all traffic as quickly as possible.

d) In performing permanent repairs, Tacoma Power shall comply with industry standards (ANSI/TIA/EIA-568 B.3) and when possible Operator's standard splicing specifications. Tacoma Power shall provide to Operator any modifications to these specifications as may be necessary or appropriate in any particular instance for Operator's approval, which approval shall not be unreasonably withheld.

e) Tacoma Power'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. Tacoma Power shall maintain and supply an inventory of spare fiber optic cable in storage facilities supplied and maintained by Tacoma Power at strategic locations to facilitate timely restoration.

f) Upon permanent restoration, Tacoma Power shall perform appropriate testing on the Tacoma Power Commercial Fiber in accordance with Tacoma Power's then current preventative maintenance procedures, which shall not substantially deviate from standard industry practice.

Section 6 Fiber Replacement

a) In the event that all or any part of the Tacoma Power Commercial Fiber on a Critical Route is required by Operator to be replaced, such replacement shall be made as soon as reasonably practical by Tacoma Power using fiber to be provided by Operator and credited toward Operator's Capital Expenditures. Operator must light at least ninety percent (90%) of available fiber in the relevant Tacoma Power Commercial Fiber Backbone, Service Ring or Service Drop, as applicable, before being entitled to make any request to Tacoma Power to install replacement fiber hereunder.

Section 7 Chronic Failure

a) In the event a portion of the Tacoma Power Commercial Fiber on a Critical Route 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, at Operator’s written request, Tacoma Power shall present a remediation plan to Operator to address the Chronic Failure. Following the parties’ mutual agreement of a plan to solve the Chronic Failure, Tacoma Power shall implement and complete, if capable of completion, the plan within thirty (30) days. In the event that Tacoma Power Commercial Fiber requires replacement under the agreed remediation plan, Tacoma Power will replace the fiber using fiber to be provided by Operator and credited toward Operator’s Capital Expenditures. Operator must light all available dark fiber available in the affected Tacoma Power Commercial Fiber Backbone, Service Ring or Service Drop, as applicable, before being entitled to make any request to Tacoma Power to present or implement a remediation plan hereunder.

Section 8 Notifications and Liquidated Damages

a) Notifications required of Tacoma Power by Section 2 shall be provided to the Operator NOC. Operator shall be entitled to liquidated damages in accordance with the following table for each failure of Tacoma Power to Respond as set forth below:

Service Level Failure	Amount
Notification	\$120/initial failure to Respond
Response	\$120 for each hour in excess of the annual MTTR of 1 hour

Section 9 Fiber Availability

a) Fiber Availability Commitment. Tacoma Power shall use commercially reasonable efforts to maintain availability of the Tacoma Power Commercial Fiber one hundred percent (100%) of the time. Fiber Unavailability shall exist when unavailability of Tacoma Power Commercial Fiber causes disruption in service (“**Fiber Unavailability**”). Fiber Unavailability duration is measured from the time Tacoma Power detects Fiber Unavailability or Tacoma Power or Operator opens a trouble ticket until the time Operator confirms that the Fiber Unavailability has been remediated, which confirmation shall be prompt. Tacoma Power shall have a 12-hour grace period from the detection by Tacoma Power or opening of a trouble ticket before liquidated damages apply. Beginning with the 13th hour of Fiber Unavailability, every hour of Fiber Unavailability shall result in liquidated damages of One Hundred and Twenty (\$120) per hour per route, owed by Tacoma Power to Operator. Fiber Unavailability payments shall be capped 720 hours per Fiber Unavailability event. To claim payment, Operator must provide Tacoma Power with a written request

before the sixth (6th) Business Day of the month following the month in which Fiber Unavailability occurred.

b) Terrestrial Fiber Commitment. Tacoma Power commits to maintain attenuation levels not to exceed an overall end to end dB loss as set out in industry standards (See, ANSI/TIA/EIA-568 B.3). End to end dB loss shall be calculated by adding together the loss from each of the segments on the Tacoma Power System.

c) Liquidated Damages Unavailable in Some Circumstances. Liquidated damages shall not be available to Operator under this Exhibit in circumstances where the issue arises from (a) the acts or omissions of Operator 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 Tacoma Power; (c) circumstances or causes beyond the control of TPU, such as Force Majeure Events and third-party attacks on the Tacoma Power Commercial Fiber; (d) Scheduled Maintenance performed within the Maintenance Window for that Scheduled Maintenance; or (e) Unscheduled Maintenance when Tacoma Power Responds as set out in this Agreement.

EXHIBIT D
ACCESS TO AND MAINTENANCE OF TACOMA POWER COMMERCIAL SYSTEM
BY OPERATOR

The terms and conditions of this Exhibit D shall govern Operator's maintenance obligations and access rights with regards to the Tacoma Power Commercial System to the extent not already addressed in Exhibits A, B and C. Capitalized terms used herein but not defined herein shall have the meanings assigned to them in Exhibit A, B, C, or the IRU Agreement.

1. GENERAL

(a) For the purposes of this Exhibit D, "Maintenance" means any activities undertaken to maintain the Tacoma Power Commercial System in working order and to make use of the Tacoma Power Commercial System, including but not limited to regular patrol of the Tacoma Power Commercial System; maintenance of a "Call-Before-You-Dig" program and all required and related locates; maintenance of sign posts along the Tacoma Power Commercial System with the number of the local "Call-Before-You-Dig" organization; infrastructure repair; splicing; emergency restoration; pole transfers; replacement; road projects and overhead-underground conversions; cable restoration; reattachment; moves; make-ready compliance; route-relocation; and other standard processes undertaken by communications infrastructure owners. The term excludes Fiber Maintenance as defined in Exhibit B which is to be performed exclusively by Tacoma Power pursuant to Exhibits B and C.

(b) Maintenance Costs. All of the Maintenance shall be performed by Operator and all Maintenance costs shall be borne by Operator, except those Fiber Maintenance activities (and costs responsibility) reserved for Tacoma Power pursuant to Exhibits B and C.

(b) Energy Costs. Operator's use of energy provided by Tacoma Power is not included in this IRU Agreement. Operator shall, notwithstanding the City's joint use of the Hub Sites, procure and pay for such energy under separate agreement consistent with Tacoma Power's standard commercial pricing.

(c) Compliance with Applicable Standards. In connection with the performance of the Maintenance and any other work and in the operation of equipment pursuant to this IRU Agreement, Operator shall comply and shall ensure that the equipment, the Maintenance and any other work, and all of Operator's suppliers and contractors (of any tier) comply with all Applicable Standards. "**Applicable Standards**" has the meaning in the then-current Master Pole Attachment Agreement between Tacoma Power and Operator.

(d) Cooperation. To the extent permitted by applicable law, Tacoma Power will work with Operator to support efficient and expeditious applications for permits, consistent with City of Tacoma policy and practices and with the appropriate franchise agreement(s) to be separately negotiated. To the extent permitted by applicable law, Tacoma Power will also work with Operator to efficiently and expeditiously issue permits, consistent with Tacoma Power's policy and practices and with the then-current Master Pole Attachment Agreement between Tacoma Power and Operator. The commitments in this paragraph are not intended to imply, predetermine or assure any particular outcome of the City's or Tacoma Power's processing of any applications for permits by Operator. Further, nothing in this paragraph is intended or shall be construed to

require that the City exercise its discretionary authority under its regulatory ordinances to further a project permit application, nor does this paragraph bind the City of Tacoma to do so.

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

(f) Monthly Reporting. On or before the fifteenth (15th) day of each month, following the Effective Date, Operator shall provide Tacoma Power with a report including 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 calendar month. The data shall be provided in .DWG format, or such successor format as may be designated from time to time by Tacoma Power in its reasonable discretion.

(g) Inspection Rights. In order to determine Operator's compliance with this Exhibit, Tacoma Power shall have the right to visually inspect any part of the Tacoma Power Commercial System at any time with or without notice to Operator.

2. MAINTENANCE OF TACOMA POWER COMMERCIAL SYSTEM COMPONENTS

(a) Except as may be otherwise agreed to in writing by the Parties, Operator will be responsible for performing all Maintenance on the Tacoma Power Commercial Coax as needed. This includes Tacoma Power Commercial Coax on Critical Routes and Non-Critical Routes. These tasks may include RF level measurements, noise measurements, and industry standard troubleshooting or regular maintenance tasks. If needed, Operator shall repair or replace active or passive Tacoma Power Commercial Coax components when necessary to eliminate service impairment or outages. Performance of Maintenance must comply with the standards and procedures set forth in the then-applicable Master Pole Attachment Agreement between Tacoma Power and Operator.

(b) Except as provided in **Exhibit B and C**, Operator will be responsible for performing all Maintenance of Tacoma Power Commercial Fiber. This includes any Tacoma Power Commercial Fiber on Non-Critical Routes and any Tacoma Power Commercial Fiber not in the same sheath or bundle with Utility Fiber on Critical Routes.

(c) Operator will be responsible for all Maintenance of all After-Installed Assets, except to the extent covered by Exhibits B and C.

(d) Operator must hold a Master Pole Attachment Agreement with Tacoma Power during the Term of this IRU Agreement.

3. INSTALLATION OF NEW FIBER

(a) Operator may not overlash or delash fiber to the Tacoma Power Commercial System or attach new fiber optic plant to Tacoma Power poles within the Tacoma Power Commercial Service Area without the prior written consent of Tacoma Power. To request consent, Operator must

follow the procedure in its then-current Master Pole Attachment Agreement with Tacoma Power, and additionally submit the supplemental form in **Exhibit D-1**.

(b) Operator may not overlash or delash fiber to any portions of the Tacoma Power Commercial Fiber installed on poles not owned by Tacoma Power without the prior written consent of Tacoma Power and the pole owner.

(c) Operator is solely responsible for obtaining permits to make any attachments to poles not owned solely by Tacoma Power, notwithstanding the fact that Tacoma Power may have power or communications facilities on the same poles.

4. REMEDIES FOR NON-COMPLIANCE

(a) In the event that Tacoma Power discovers a Default of an obligation in this Exhibit by Operator that poses an imminent public safety concern or threat to the safety of Tacoma Power operations, Tacoma Power may take corrective action to address the Default without prior notice to Operator, and invoice Operator for the cost of such corrective action.

(b) In the event that Operator commits repeated Defaults of this Exhibit, Tacoma Power shall have the right to (i) assume responsibility for the performance of the obligations of this Exhibit indefinitely at Operator's cost; or (ii) give notice to terminate this IRU Agreement pursuant to Section 21(g) of the IRU Agreement.

EXHIBIT D1

PROCESS FOR OVERLASHING, DELASHING OR ATTACHING NEW CABLES WITHIN THE TACOMA POWER COMMERCIAL SYSTEM

Prior to any Overlash, Delash or attachment of new Cables to those Tacoma Power poles which are part of the Tacoma Power Commercial System and subject to the IRU Agreement (“IRU”), Operator must have a current Master Pole Attachment Agreement (“MPAA”) with Tacoma Power and submit an IRU Pole Attachment Request to Tacoma Power. IRU Pole Attachment Requests shall be in the format shown in **Exhibit D1.1**. Capitalized terms used herein but not defined shall have the meanings assigned to them in the MPAA.

Any Overlash, Delash or attachment of new Cables to Tacoma Power poles subject to the IRU shall be governed by the terms of Operator’s then current MPAA and all Addendums thereto **except as follows**:

Make Ready Work: Make Ready Work shall be performed by Tacoma Power or Tacoma Power’s contractor at no charge to Operator.

Review and Approval: Tacoma Power’s review and approval process will begin upon Operator’s submission of a complete IRU Pole Attachment Request.

Inventory: IRU Pole Attachment Requests do not require the submission of Attachment inventories.

Photographs: IRU Pole Attachment Requests do not require the submission of photographs.

Fees: IRU Pole Attachment Requests are not governed by the Fees provision of Operator’s then current MPAA. Only the Application Fees, actual costs for engineering review and field inspections and any additional charges for electricity supplied by Tacoma Power will be charged.

Tags: Attachments approved pursuant to an IRU Pole Attachment request must be identified by a tag approved by Tacoma Power confirming the Attachment is subject to this IRU.

Billing: Overlash, Delash or attachment of new Cables to Tacoma Power poles subject to this IRU are not subject to the Billing provision of Operator’s then current MPAA. Only Application, engineering review and field inspection fees will be billed.

Liability, Indemnification and Exculpation: To the extent there is any conflict or inconsistency between the sections of Operator’s then current MPAA entitled **Liability, Indemnification and Exculpation** the terms of the IRU are controlling over Overlash, Delash or attachment of new Cables to those Tacoma Power poles subject to the IRU.

Worker’s Compensation, Insurance and Bonds: To the extent there is any conflict or inconsistency between the sections of Operator’s then current MPAA entitled **Worker’s Compensation, Insurance and Bonds** the terms of this IRU are controlling over Overlash, Delash or attachment of new Cables to those Tacoma Power poles subject to this IRU.

EXHIBIT D1.1

IRU POLE ATTACHMENT REQUEST FORM

DRAFT



Exhibit D-1
IRU Pole Attachment Request
Form Instructions

1	IRU agreement between Tacoma Power and Rainier Connect (Operator) must be fully executed before request will be processed.
2	If utilizing sub-contractors, Rainier Connect must provide a letter authorizing sub-contractors to perform work on their behalf.
3	All shaded areas are REQUIRED to be completed. Failure to provide complete information can result on a delay to process your request and/or denial to attach. No approval, survey or review work will be performed until a complete and accurate request has been submitted.
4	If Electrical Services will be required, make sure to include request on "Electrical Services Information" field.
5	Application for communication enclosures and/or miscellaneous equipment must include specification sheet(s) including weight, dimensions, and configuration of equipment.
6	Proposed attached method means: NEW DIRECT, OVERLASH, REMOVAL, or OTHER.
7	Proposed attachment height must be specific and in feet and inches. Approximate height is not acceptable.
8	Attachments must meet all applicable requirements of the NESC and Tacoma Power Construction Standards including but not limited to the following clearances: Support Clearances - Communication cables to supply cables: 40" - Between communication cables and CenturyLink attachment: 12" - Between communication cables and any other communication cable: 6" Span Clearances - Communication cables to supply cables: 30" - Between communication cables: 4"
9	Two full sets of the request must be mailed to Tacoma Power. An electronic copy must also be emailed to pwrjointutilities@cityoftacoma.org . The request sets must contain the following documents: - Filled in and signed Application (Tab 1) - Filled in Detail Pole Attachment Data (Tab 2) - Legible map(s) of all poles on route and pole height block (Tab 3 example). Streets must be clearly identified and labeled. Map(s) must include existing pole attachments and attachment heights, and any required make-ready for each pole on the application. - Existing attachments must be listed in order from top to bottom and include attachment heights in feet and inches. - Existing attachments must include Attachee name or assigned cable identification tag number. (see Tacoma Power Standard, C-OH-1060, for a current list of tag assignments.)
10	Construction needs to be completed within 180 days unless a permit extension is granted by Tacoma Power.
11	A final construction inspection by Tacoma Power is required.



Operator
IRU Pole Attachment Request

Permit # _____

Request Date _____

INSTRUCTIONS: This cover sheet must be completed for each request. Complete all shaded areas. Any fields left blank may result in return of incomplete request.

_____ Name of Attaching Company	_____ Name of Applicant (Contractor)
_____ Attaching Company Contact Person	_____ Applicant Contact Person
_____ Attaching Company Telephone Number	_____ Applicant Contact Telephone Number & Email Address
_____ Attaching Company Address	_____ Applicant Address
_____ City, State, ZIP	_____ City, State, ZIP

Project Information:	
_____ Site Address:	_____ Company's Reference Number:
Total # of New Contacts: _____	Total # of Removals: _____
Total # of Overlapping _____	Total # of Other: _____
	Total # of Affected Poles: _____

Electrical Services Information (if applicable):
Requires Electrical Service <input type="checkbox"/> YES <input type="checkbox"/> NO

Detailed Description of work:
_____ _____ _____

Expedited Overlash Process:	
<input type="checkbox"/>	Indicate by checking this box if the Request is submitted under the Expedited Overlash Process set forth in Addendum to MPAA

Placing Attachments Across a Railroad:	
<input type="checkbox"/>	Operator has received the appropriate authorizations or approvals required for railroad crossings.

_____ Authorized Signature	_____ Date
_____ Printed Name & Title	_____ Email Address

****Failure to supply requested information may delay acceptance of the request****

For Internal Use Only:	
<input type="checkbox"/>	Applicant has a valid Franchise Agreement and/or other required agreements are in effect to operate within the franchise jurisdiction.



Detail Pole/Attachment Data

Permit # _____

1	2	3	4	5	6		7	8	9	10	11	
Tacoma Power's Pole Number	Operator's Pole Number (if applicable)	Operator's Map/Drawing Number	Proposed Attachment Method (see key below)	Size/Type of Attachments (see key below)	Cable Type (messenger, fiber, etc.)	Diameter (inches to third decimal)	Design Tension (lbs)	Number of guys to be installed	Attachnig to existing anchor (Y/N)	Make Ready (Y / N)	Height of Attachment on Pole (Feet & Inches)	Include Original Permit # for removals
1												
2												
3												
4												
5												
6												
7												
8												
9												
10												
11												
12												
13												
14												
15												

1. Tacoma Power Pole Number, can be up to 5 digits, obtained from TPU.
2. Operator's Pole Number, if applicable.
3. List drawing number of Operator's map that shows this pole.
4. Enter proposed attachment method from key below.
5. Enter appropriate letters from key below.
6. Enter proposed attachment specifications (if design tension unknown, 60% of Rated breaking strength (RBS) will be used)
7. Enter the number of down guys that will be attached after construction.
8. Enter Yes or No if you will be attaching to an existing TPU anchor.
9. Make Ready work that Operator has identified.
10. Enter specific height of proposed attachment. Approximate height is NOT acceptable.
11. If removing an existing attachment, include the original TPU issued permit number.

Proposed Attachment Method:

- NEW = New Direct Attachment
- OVL = Overlapping (overlapping onto an existing wire/cable owned by the company)
- REM = Removal
- OOO = Other

Attachment Type Key:

- A. Amplifier
- B. Enclosure
- C. Slack Box
- D. Splice Box
- E. Power Supply
- F. Risers
- G. Other (please specify)

Company/Contractor's Name: _____

Attachment Site: _____

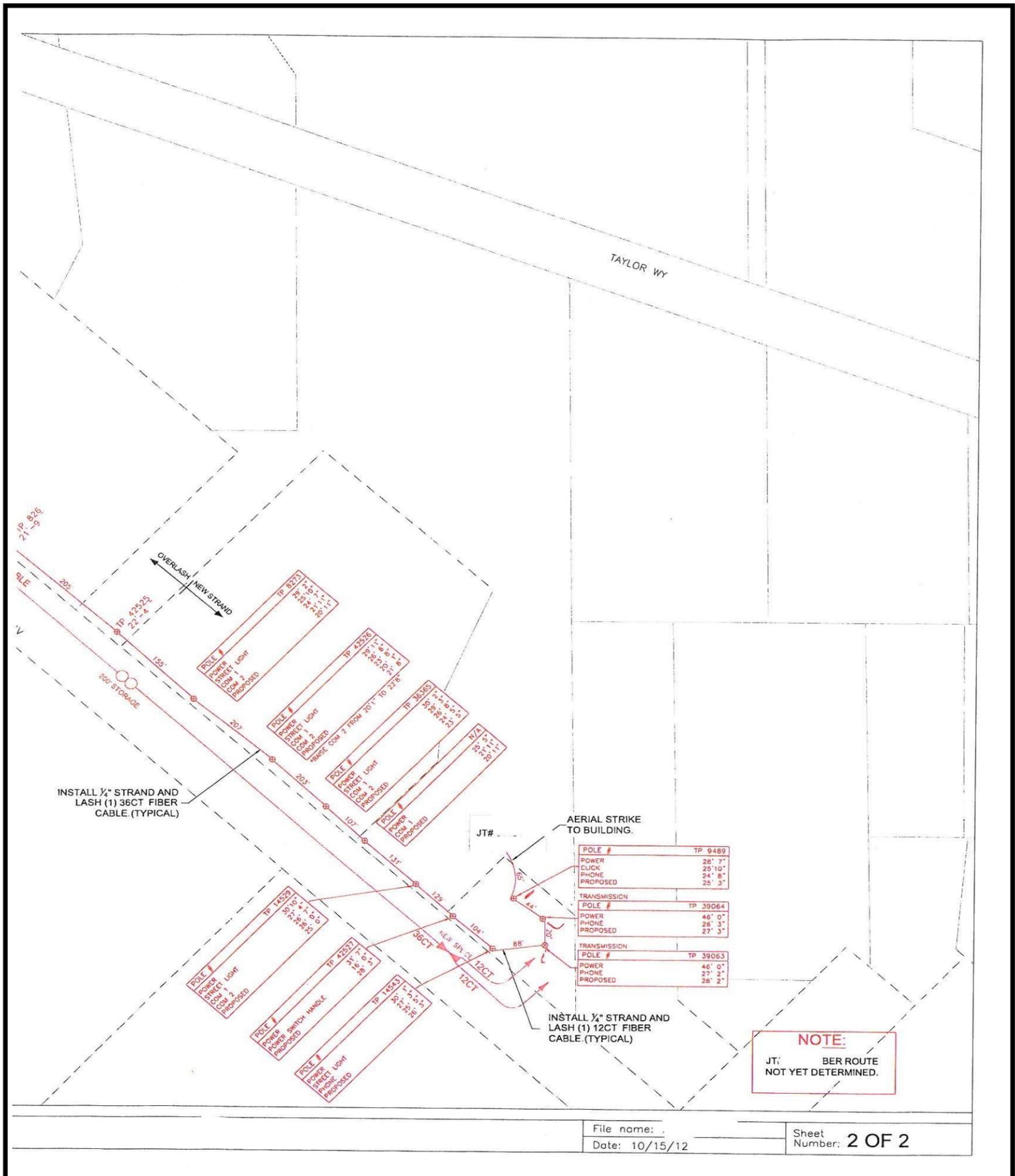


EXHIBIT E
TACOMA POWER COMMERCIAL SYSTEM UPGRADES

1. SERVICE COMMITMENTS—CONTINUITY

(a) For a period of six (6) months following the Effective Date, Operator commits to offer residential broadband internet access services at speeds similar to those available on the Tacoma Power Commercial System immediately prior to the Effective Date. Nothing in this commitment is meant to prevent Operator from offering faster speeds.

(b) For a period of six (6) months following the Effective Date, Operator commits to offer residential cable services similar to those available on the Tacoma Power Commercial System immediately prior to the Effective Date.

(c) Nothing in this Exhibit or the IRU Agreement is intended to prevent Operator from offering the services described in Section 1(a) or (b) for a longer period.

(d) Except as provided in this Exhibit and in Exhibit H (Affordable Access to Telecommunications Services), nothing in this IRU Agreement or the Exhibits limits or controls Operator's authority to determine the types of services it will offer the public via the Tacoma Power Commercial System; provided that Operator complies with the service-related requirements of the IRU Agreement and the Exhibits, including Exhibits G through L.

2. TACOMA POWER COMMERCIAL SYSTEM UPGRADE TO DOCSIS 3.1

(a) **DOCSIS 3.1.** Operator agrees to make such capital expenditures and upgrades as are necessary to migrate the Tacoma Power Commercial System to DOCSIS 3.1 and to make gigabit speed internet service available as described in items 1 and 2 below (the "Upgrade"), which expenditures shall count towards Operator's Capital Expenditures Minimum to the extent they fall within the definition of Capital Expenditure in Exhibit F.

1. Operator will ensure availability of a 1000/10 Mbps service (the "Gigabit Service") at a passing, as evidenced by speed test results at peak usage time measured at the tap at the passing location. The DOCSIS 3.1 upgrade engineering and design shall be completed by the first anniversary of the Effective Date. The Gigabit Service shall be available at 40% of passings by the second anniversary of the Effective Date, and 100% of passings by the third anniversary of the Effective Date.
2. Operator will provide DOCSIS 3.1 modems to all new customers and replace customer modems with DOCSIS 3.1 modems for all existing customers who upgrade to services that require DOCSIS 3.1. Any new or replacement modems will be provided at Operator's terms and fees in effect at the time of provisioning.

(b) Operator further agrees to make available the upgraded services contemplated by this Section in accordance with the equity principles enumerated in Exhibit G.

3. TACOMA POWER COMMERCIAL SYSTEM UPGRADE PLAN AND VERIFICATION

(a) **Quarterly Reports.** Operator shall provide quarterly reports on the status of the Upgrade.

(b) **Annual Certification.** Operator shall provide a certification to Tacoma Power within thirty (30) days after each period identified in Section 2(a)(1) above, signed by one of its corporate officers certifying compliance with the Upgrade requirement for the reporting period and cumulatively as of the date of the certification.

(c) **Verification Procedure.** Tacoma Power may perform tests to confirm compliance with Section 2(a)(1) above. Operator will facilitate and enable Tacoma Power to test the Tacoma Power Commercial System once a month at up to five test points chosen by Tacoma Power. Tacoma Power will conduct such speed tests with results measured at the node at peak and other usage times, at its discretion with prior notice to Operator.

4. OBLIGATION TO MAKE FUTURE UPGRADES

(a) Operator shall upgrade the Tacoma Power Commercial System as new broadband technologies are developed for traditional cable television networks utilizing hybrid fiber/coaxial architecture. Operator will upgrade the Tacoma Power Commercial System to keep pace and parity with the hybrid fiber/coaxial networks operated by the cable broadband providers in the Seattle-Tacoma metropolitan area. As of the Effective Date of this IRU Agreement, those networks are operated by Comcast Cable and Wave Broadband. Future, upgraded network architectures for cable broadband networks that are currently hybrid fiber/coaxial may include newer versions of DOCSIS, deeper fiber architecture such as a node plus 0 cascade depth, increased upstream and downstream cable system capacity, or fiber-to-the-premises. Nothing in the foregoing language is meant to imply that Operator is limited to using a hybrid fiber/coaxial network throughout the Term of this IRU Agreement.

(b) As the networks currently operated by Comcast and Wave in the Seattle-Tacoma metropolitan area are upgraded to new technologies, Operator shall upgrade the Tacoma Power Commercial System to the same technologies or to similar technologies capable of delivering equivalent services.

(c) The upgrade commitments in this Exhibit assume that the Tacoma Power Commercial System will remain a wireline network architecture with the same number of homes passed as of the Effective Date (approximately one hundred and fifteen thousand (115,000)) or larger numbers of homes passed by the physical plant within the Tacoma Power Commercial Service Area throughout the Term. However, should Operator determine that there are new technologies available for future upgrades that would require a smaller wireline network footprint in order to maintain a system that meets the requirements of this Section for delivering services to the Tacoma Power Commercial Service Area, Operator may submit a written proposal to Tacoma Power for its evaluation. Tacoma Power shall have no obligation to accept such proposal.

(d) Any such upgrades that qualify as Capital Expenditures shall be part of and not in addition to the Capital Expenditures Minimum set out in Exhibit F.

5. REPORTING ON FUTURE UPGRADES AND VERIFICATION

(a) On the first Annual Reporting Date following completion of the Upgrade as specified in Operator's final annual certification submitted pursuant to Section 3(b), and on each Annual Reporting Date thereafter, Operator shall submit a report to Tacoma Power on the status and capabilities of the Tacoma Power Commercial System. Based on publicly available information, Operator shall include a comparison to service as provided by wireline broadband providers in the Seattle-Tacoma metropolitan region.

(b) Beginning in the seventh year of the Term of the IRU Agreement, Tacoma Power shall have the right to perform a technical audit and test the Tacoma Power Commercial System to determine whether its capabilities meet the requirements of Section 4. Testing may include, but is not limited to, a review of network configurations and diagrams, site visits, and network testing at random locations in the field. Such technical audits shall take place no more frequently than once every three (3) years. This requirement shall not limit the verification that Tacoma Power may perform under Section 3(c).

6. REMEDIES FOR FAILURE TO TIMELY UPGRADE TACOMA POWER COMMERCIAL SYSTEM OR REPORT

(a) Failure to timely provide the certification required in Section 3(b) is a Default. Liquidated damages in the amount of Two Hundred and Fifty Dollars (\$250) per day shall accrue from the date of receipt of a Notice of Default until the Default is cured.

(b) In the event that Operator does not cure or resolve a Default of a requirement contained in Section 2 within the timeframes established pursuant to Section 21(c) or 24 of this IRU Agreement, liquidated damages in the amount of Seven Hundred Fifty Dollars (\$750) per day will accrue until the Default is cured.

(c) If Tacoma Power provides a Notice of Default to Operator related to the requirements in Section 4, any cure, including the submittal of a compliance plan, shall not relieve Operator from its obligations in Section 4.

EXHIBIT F
CAPITAL EXPENDITURES COMMITMENT

1. CAPITAL EXPENDITURES MINIMUM

(a) Operator shall make such Capital Expenditures (as defined below) to the physical assets of the Tacoma Power Commercial System on an ongoing basis, as are customary to maintain the Tacoma Power Commercial System and its associated services in a technological state comparable to that of other providers of cable/broadband services in the Seattle, Washington metropolitan area as described in Exhibit E.

(b) In no event shall Operator make Capital Expenditures in any full calendar year (“**Capital Expenditures Period**”) during the Term of the IRU Agreement totaling less than One Million Five Hundred Thousand Dollars (\$1,500,000.00), as may be adjusted pursuant to Section 1(e) below (“**Capital Expenditures Minimum**”).

(c) During the period from the Effective Date until December 31, 2019 (“**Initial Period**”), Operator’s Capital Expenditures commitment shall be the amount determined by multiplying the number of days in the Initial Period by Four Thousand One Hundred and Ten Dollars (\$4,110) (“**Initial Period Minimum**”).

(d) During the period from January 1 of the last year of the IRU Agreement until the date the IRU Agreement expires (“**Final Period**”), Operator’s Capital Expenditures commitment shall be the amount determined by multiplying the number of days in the Final Period by the amount calculated by dividing the Capital Expenditures Minimum applicable in the immediately prior Capital Expenditure Period by 365 days (“**Final Period Minimum**”).

(e) Tacoma Power may adjust the Capital Expenditure Minimum once during each Capital Expenditure Period based on changes in the Consumer Price Index.

2. CALCULATING AND REPORTING QUALIFYING CAPITAL EXPENDITURES

(a) In order to count towards the Capital Expenditures Minimum, including the Initial Period Minimum and the Final Period Minimum, an outlay must be a “Capital Expenditure”. The term includes, but is not limited to, expenditures on upgrades of coaxial cable to optical fiber, upgrades in system capacity, reallocation of system capacity from downstream to upstream, system extensions, upgrades of equipment and other materials to enable or support successive generations of DOCSIS, and expenditures on upgrades to fiber-to-the-premises. To qualify, any improvements made due to an expenditure must become physical assets of the Tacoma Power Commercial System owned by Tacoma Power upon installation, subject to the IRU Agreement. The term does not include: (i) any funds spent by Operator on physical assets that do not become part of the Tacoma Power Commercial System; (ii) expenditures on physical assets (whether they become part of the Tacoma Power Commercial System or not) that are *not* related to provision of wireline services. For example, expenditures on wireless communications facilities, including wireless facility attachments to enable deployment of small cell, and

distributed antenna systems, will not be Capital Expenditures. Labor costs may be included if directly attributable to capital and not operations.

(b) Operator shall, on each Annual Reporting Date, submit to Tacoma Power a report on Capital Expenditures, with descriptions and dollar amounts, it has made since the most recent such report, or in the case of the first such annual report, in the Initial Period. The report shall identify if Capital Expenditures include any Credits (as defined below) from any prior Capital Expenditure Period. The report shall include Operator's supporting documentation necessary to demonstrate compliance for the reported Capital Expenditures, including the following:

1. Invoices for all contracted labor, with accompanying certification by Operator management that the claimed labor costs were directly attributable to Capital Expenditures, not operating expenses;
2. Work orders for internal labor associated with capital upgrades, with accompanying certification by Operator management that the claimed labor costs were directly attributable to Capital Expenditures, not operating expenses;
3. Bills of sale and inventory documentation for all materials and equipment purchased as part of Operator's Capital Expenditures obligation; and
4. As-built maps documenting outside plant construction and upgrades.

(c) For the Final Period, the report shall be submitted to Tacoma Power within sixty (60) days after the IRU Agreement expires or terminates.

(d) For any period in which After-Installed Assets are subject to financing arrangements described in Section 3 of the IRU Agreement, the report on Capital Expenditures shall also include a current status report on the ownership interests in and liens to which the After-Installed Assets are subject.

3. CREDITS AND SHORTFALLS

(a) If the report submitted pursuant to Section 2(b) demonstrates that Operator's Capital Expenditures were in excess of the Capital Expenditures Minimum (or if applicable, the Initial Period Minimum), the difference shall be considered a "Credit" and shall be credited toward the Capital Expenditures for the Capital Expenditures Period or Periods that follow (including the Final Period).

(b) If the report submitted pursuant to Section 2(b) demonstrates that Operator's Capital Expenditures (including any Credits from prior Capital Expenditure Periods, including the Initial Period) were less than the Capital Expenditure Minimum (or if applicable, the Final Period Minimum), the difference shall be considered a "Shortfall" and Tacoma Power shall have the remedy described in Section 5 below.

4. AUDIT RIGHTS

(a) Tacoma Power shall have the right no more than once every three (3) years to audit those Operator's books, records, and finances that relate to the IRU Agreement, upon reasonable notice to Operator and during normal business hours, in order to determine Operator's compliance with the Capital Expenditures Minimum.

5. REMEDIES FOR NON-COMPLIANCE

(a) If Operator submits a report, other than the report for the Final Period, showing a Shortfall, it will have an additional twelve (12) month period following the end of the Capital Expenditure Period showing the Shortfall ("**Catch-Up Period**") in which to make Capital Expenditures to be credited towards the Shortfall ("**Catch-Up Capital Expenditures**"). At the end of the Catch-Up Period, Operator shall submit a report on the Catch-Up Capital Expenditures in the same form as the annual report described in Section 2. If the report shows Operator has failed to make Catch-Up Capital Expenditures equivalent to the Shortfall during the Catch-Up Period, Operator will remit a payment, along with the report in the amount of the Shortfall, less the Catch-Up Expenditures, if any.

(b) If Operator submits a report for the Final Period showing a Shortfall, Operator will remit a payment, along with the report in the amount of the Shortfall.

(c) A late fee in the amount of Twelve Percent (12%) per annum shall be due and payable in the event that Operator has not paid the Shortfall within thirty (30) days after its due date.

EXHIBIT G EQUITABLE ACCESS

1. EQUITY IN PRICING AND SERVICE LEVELS.

(a) Operator agrees to offer like services at like prices to residential customers throughout the Tacoma Power Commercial Service Area.

(b) The Upgrade contemplated by Exhibit E hereto, as well as subsequent upgrades pursuant to Section 4 of Exhibit E, will be undertaken on a ubiquitous basis to 100% of the Tacoma Power Commercial System.

(b) Operator's goal is to roll out all upgrades in an equitable manner to ensure that neighborhoods with different levels of household income, neighborhoods with different mixes of race or ethnicity, and different council districts within the City of Tacoma all benefit from the upgrades on comparable deployment schedules.

2. EQUITY IN ACCESS TO SERVICE.

(a) Operator agrees 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 Tacoma Power Commercial Service Area. Consistent with its existing practices, Operator shall reinstate service for delinquent customers so long as they pay outstanding balances including late fees, if any, and remain current.

3. EQUITY COMMITMENTS.

(a) Operator will actively work to eliminate racial and socioeconomic disparities as it upgrades the Tacoma Power Commercial System across the Tacoma Power Commercial Service Area and beyond.

(b) Operator commits to purposeful citizen outreach and engagement with diverse community partners to better understand the needs of historically underserved populations. Through this, Operator will provide access based on the best available technology to serve the unique needs of any particular area or population.

(c) Operator will work with community partners and businesses from all parts of the Tacoma Power Commercial Service Area to promote and track equity and inclusion of services within Tacoma, Washington and throughout the region. This will allow Operator to quantify measurable improvements as they relate to broadband and telecommunication access in the community.

(d) As it does in its other service areas, Operator will provide guidance, education, and assistance to any subscriber requesting such assistance to help achieve equitable service outcomes as it relates to broadband and telecommunications offerings.

(e) Operator 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 Tacoma Power Commercial Service Area.

4. PUBLICATION OF RATES AND SERVICES

(a) Operator shall publish its rates and services for residential customers on its website. This obligation shall not apply to enterprise customers.

5. ANNUAL CERTIFICATION.

(a) Operator shall provide annually to Tacoma Power, on the Annual Reporting Date, a certification signed by a corporate officer certifying that it has complied with the requirements of Sections 1 and 2 of this Exhibit G. Such certification shall also include report on activities that Operator has undertaken pursuant to this Exhibit G, including its specific efforts to meet the obligations contained in Section 3(a)-(e) of this Exhibit.

6. REMEDIES FOR NON-COMPLIANCE

(a) Failure of Operator to publish its rates and services on its website as required by Section 4 of this Exhibit is a Default. Liquidated damages in the amount of Two Hundred and Fifty Dollars (\$250) per day shall accrue from the date of receipt of Notice of Default until the Default is cured; provided that, the liquidated damages amount shall increase to five hundred dollars (\$500) per day if the Default is not cured within ninety (90) days following the date of receipt of the Notice of Default.

(b) In the event that Tacoma Power provides a Notice of Default to Operator related to the requirements contained in Section 1 or 2 of this Exhibit, any cure, including submittal of a compliance plan pursuant to Section 21(c) of this IRU Agreement, shall include rebates or refunds to customers who have overpaid and periodic reporting on compliance plan implementation.

(c) In the event that Operator does not cure or resolve a Default of a requirement contained in Section 1 or 2 of this Exhibit within the timeframes established pursuant to Sections 21(c) or 24 of this IRU Agreement, liquidated damages will accrue until the Default is cured and maintained for three consecutive months. Liquidated damages of Ten Thousand Dollars (\$10,000) will accrue for the first month, increasing by Five Thousand Dollars (\$5,000) each month thereafter until compliance is maintained for three consecutive months; provided that no liquidated damages will accrue or be payable for the three consecutive months of compliance. Operator agrees that, until compliance is maintained for three (3) consecutive months, it will provide Tacoma Power with a monthly report setting forth its efforts to implement the compliance plan together with a certification as to the status of its compliance.

EXHIBIT H
AFFORDABLE ACCESS TO TELECOMMUNICATIONS SERVICES

1. LIFELINE

(a) Operator represents that it is designated by the State of Washington or the Federal Communications Commission (“FCC”) as an eligible telecommunications carrier (“ETC”) and meets the program requirements to serve as a Lifeline services provider as of the Effective Date of the IRU Agreement and that it will maintain such ETC designation and participate in Lifeline or any available successor program, subject to the rules of the FCC, throughout the Term of this IRU Agreement.

(b) Operator shall offer the federal Lifeline subsidy to those customers within the Tacoma Power Commercial Service Area that qualify for the Lifeline subsidy according to the rules and policies of the FCC.

(c) In furtherance of the requirements in this Section 1, Operator agrees to: (i) publish the availability of its Lifeline program on its website; (ii) provide to Tacoma Power a copy of its redacted FCC Form 481, the Carrier Annual Reporting Data Collection Form (or comparable reports if modified by FCC in future) on the Annual Reporting Date each year and its FCC Form 555, the Annual Lifeline Eligible Telecommunications Carrier Certification Form; (iii) provide Tacoma Power with a certification annually on the Annual Reporting Date, certifying that it is in compliance with Section 1(b), and including a report of the annual aggregate statistics regarding customer enrollment in the Lifeline program served by the Tacoma Power Commercial System; and (iv) manage its Lifeline program in good faith at all times.

2. REDUCED-COST BROADBAND PROGRAM

(a) For the Term of the IRU Agreement, Operator shall offer a substantially reduced-cost broadband internet access service, at or above the FCC definition of broadband (as established periodically in FCC Broadband Deployment Reports, or similar reports) to households that are eligible for Tacoma Power’s electric service low-income program and shall periodically evaluate the offering of higher speed service at the reduced-cost service rate. Operator has represented that its initial program will consist of 30/10 (30 megabits download and 10 megabits upload). This plan may change over time.

(b) In furtherance of the requirements in this Section 2, Operator agrees to: (i) publish the availability of its reduced-cost broadband service on its website, in a manner that prominently advertises the service where Operator’s other services and pricing for the Tacoma Power Commercial System are advertised; (ii) establish a verification process for applicants that is non-onerous to customers; (iii) provide Tacoma Power with a certification signed by a corporate officer on an annual basis on the Annual Reporting Date, certifying that it is offering reduced-cost service, and including a report of the annual aggregate statistics regarding customer enrollment in the program; and (iv) manage its program in good faith at all times.

3. FREE BROADBAND SERVICE TO QUALIFYING ENTITIES

(a) Operator shall provide free broadband internet access service (either wired or Wi-Fi service at Operator’s option) to at least 30 locations passed by the Tacoma Power Commercial System within the Tacoma Power Commercial Service Area, that provide services to low-income

members of the community, as a means of facilitating broadband internet access for those who cannot access it elsewhere.

(b) Tacoma Power shall determine which categories of locations qualify for such free service and communicate the categories in writing to Operator. Within ninety (90) days thereafter, Operator must have the program in place so that qualifying entities can submit requests to Operator for processing and approval by both parties.

(c) Operator and Tacoma Power will try cooperatively to process and approve or deny requests within thirty (30) days of receipt.

(d) Operator shall provide the service contemplated in Section 3(a) within a reasonable time period, not to exceed thirty (30) days, following approval, unless the parties mutually agree to a longer period.

(e) Operator shall be excused from meeting the thirty (30) location target if there is insufficient demand from qualifying entities.

(f) In furtherance of the requirements in this Section 3, Operator agrees to: (i) publish the availability of its program on its website; (ii) provide Tacoma Power with a certification signed by a corporate officer on an annual basis on the Annual Reporting Date, certifying that it is offering the service, and including a report listing the locations receiving service under the program; and (iii) manage its program in good faith at all times.

EXHIBIT I
CUSTOMER SERVICE COMMITMENTS

1. CUSTOMER SERVICE CONTACTS

(a) Operator agrees to maintain a local or toll-free telephone line for taking customer calls and will provide other forms of customer contact that will be available twenty-four (24) hours per day, seven (7) days per week, including on holidays. During hours and days during which most similar businesses in Tacoma are open to serve customers, which currently includes Saturday mornings (“**Normal Business Hours**”), company representatives will be available to respond to customer inquiries. After Normal Business Hours, Operator 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.

(b) Under normal operating conditions that are within the control of Operator (“**Normal Operating Conditions**”), calls and other forms of customer contacts will be answered by a company representative within thirty (30) seconds after the connection is made. If the call or contact is transferred, the transfer time will not exceed thirty (30) seconds. These standards will be met at least ninety percent (90%) of the time, measured quarterly. Under Normal Operating Conditions, customers will receive a busy signal no more than three percent (3%) 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.

2. SERVICE CALLS

(a) Operator 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. Operator may also schedule service calls outside of normal business hours for the convenience of the customer. Operator 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, Operator will contact the customer and reschedule the appointment at the convenience of the subscriber.

(b) Standard installations that are located up to One Hundred and Twenty Five (125) feet from the existing distribution system will be performed within seven (7) days after an order has been accepted.

(c) Except during an event of Force Majeure, Operator will begin working on a service interruption no later than twenty-four (24) hours after being notified of the problem. Working is meant to denote that Operator has begun to address the matter.

(d) These standards concerning installations, outages and service calls will be met under normal operating conditions at least ninety-five percent (95%) of the time, measured quarterly.

3. 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 Operator. Refunds will be issued no later than either the customer's next billing cycle or thirty (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.

4. PHYSICAL PRESENCE

Operator will maintain a physical presence in the City of Tacoma, including a store that will be open during all Normal Business Hours, where consumers can transact business in person with Operator staff-persons. The address of Operator's store shall be posted on its website. Operator will maintain some of its customer service staff in Tacoma.

5. QUARTERLY REPORTS

(a) Operator will provide Tacoma Power a report on its compliance with these customer service standards on a quarterly basis within thirty (30) days of the end of each calendar quarter.

(b) After the first three (3) years of the Term, if Operator has been in compliance, then future reporting shall be reduced to an annual basis. If reports are required annually, such report shall be submitted on the Annual Reporting Date, and in the event of a Default, Section 7(b) shall not apply; instead Section 6 of the IRU Agreement shall apply.

6. ANNUAL CERTIFICATION

Operator shall annually submit to Tacoma Power, on the Annual Reporting Date, a certification signed by a corporate officer certifying Operator's compliance with Section 4 of this Exhibit.

7. REMEDIES FOR NON-COMPLIANCE

(a) In the event that Operator does not cure or resolve a Default of a requirement of Section 4 of this Exhibit within the timeframes established pursuant to Sections 21(c) or 24 of this IRU Agreement, liquidated damages in the amount of Two Hundred and Fifty Dollars (\$250) per day will accrue until the Default is cured.

(b) Failure of Operator to timely submit any report required by Section 5 to Tacoma Power is a Default. Liquidated damages in the amount of Two Hundred and Fifty Dollars (\$250) per day shall accrue from the date of receipt of a Notice of Default until the Default is cured.

(c) In the event that Tacoma Power provides a Notice of Default related to the submittal of a report pursuant to Section 5 which demonstrates that Operator has failed to meet any of the customer service standards contained in this Exhibit, any cure, including submittal of a compliance plan shall include a requirement that Operator report to Tacoma Power, on a monthly basis, until such compliance plan is completely implemented and Operator is in compliance with all of the customer service standards in this Exhibit for three (3) consecutive months.

8. SCOPE OF OBLIGATIONS

(a) For the avoidance of doubt, the obligations in this Exhibit are the minimum obligations that may be imposed on Operator by Tacoma Power pursuant to this IRU Agreement with respect to customer service. Operator must also comply with any other obligations it may have with respect to customer service, including but not limited to, obligations in any franchise agreements or in municipal, state or federal laws or regulations, as they exist as of the Effective Date, or as they may be adopted or amended in the future.

(b) Nothing in this Exhibit should be construed to prevent or prohibit: (i) the City of Tacoma, acting in its capacity as a franchising authority, and Operator from agreeing to customer service

requirements that exceed the standards set forth in this Exhibit; (ii) the City of Tacoma, acting in its capacity as a franchising authority, from enforcing pre-existing customer service requirements that exceed the standards set forth in this Exhibit; (iii) the City of Tacoma, acting in its capacity as a franchising authority, from enacting or enforcing any consumer protection law; or (iv) the establishment or enforcement of any ordinance or regulation by the City of Tacoma concerning customer service that imposes customer service requirements that exceed, or address matters not addressed by, the standards set forth in this Exhibit.

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EXHIBIT J CUSTOMER PRIVACY

1. PRIVACY

(a) Consistent with its existing policy and practice, Operator agrees to comply with City Council Resolution No. 39702 regarding privacy, a copy of which is attached hereto as **Exhibit J1**. This Resolution prohibits Internet Service Providers that serve as retail broadband data providers on the Tacoma Power Commercial System from collecting or selling personal information from a customer's use of the Internet without express written approval.

(b) Operator agrees to implement compliance with Resolution No. 39702 into its own broadband data service offerings delivered using the Tacoma Power Commercial System.

(c) Operator agrees to implement compliance with Resolution No. 39702 into any agreements it enters into with Internet Service Providers that serve as retail broadband data service providers on the Tacoma Power Commercial System.

2. PUBLICATION OF POLICY AND ANNUAL CERTIFICATION

(a) Operator shall conspicuously publish its privacy policy on its website.

(b) This privacy policy shall not limit subscribers' rights to seek judicial remedies.

(c) Operator shall annually submit to Tacoma Power, on the Annual Reporting Date, a certification signed by a corporate officer certifying Operator's compliance with this Exhibit. The annual certification shall include a copy of Operator's privacy policy.

3. REMEDIES FOR NON-COMPLIANCE

(a) In the event that Operator does not cure or resolve a Default of the requirement to conspicuously publish its privacy policy on its website within the timeframes established pursuant to Sections 21(c) or 24 of this IRU Agreement, liquidated damages will accrue in the amount of Five Hundred Dollars (\$500) per day, until such time as the Default is cured.

(c) In the event that Operator does not cure or resolve a Default of the requirement in Section 1(b) of this Exhibit within the timeframes established pursuant to Sections 21(c) or 24, liquidated damages in the amount of Seven Hundred Fifty Dollars (\$750) per day will accrue until the Default is cured by posting on its website a privacy policy compliant with Section 1(b) of this Exhibit.

4. SCOPE OF OBLIGATIONS

(a) For the avoidance of doubt, the obligations in this Exhibit are the minimum obligations that may be imposed on Operator by Tacoma Power pursuant to this IRU Agreement with respect to customer privacy. Operator must also comply with any other obligations it may have with respect to customer privacy, including but not limited to, obligations in any franchise agreements or in municipal, state or federal laws or regulations, as they exist as of the Effective Date, or as they may be adopted or amended in the future.

(b) Nothing in this Exhibit should be construed to prevent or prohibit: (i) the City of Tacoma, acting in its capacity as a franchising authority, and Operator from agreeing to customer privacy requirements that exceed the standards set forth in this Exhibit; (ii) the City of Tacoma, acting in

its capacity as a franchising authority, from enforcing pre-existing customer privacy requirements that exceed the standards set forth in this Exhibit; (iii) the City of Tacoma, acting in its capacity as a franchising authority, from enacting or enforcing any consumer privacy law; or (iv) the establishment or enforcement of any ordinance or regulation by the City of Tacoma concerning customer privacy that imposes customer privacy requirements that exceed, or address matters not addressed by the standards set forth in this Exhibit.

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EXHIBIT J1
COUNCIL RESOLUTION REGARDING CUSTOMER PRIVACY

RESOLUTION NO. 39702

BY REQUEST OF MAYOR STRICKLAND AND COUNCIL MEMBERS CAMPBELL, IBSEN, AND MELLO

A RESOLUTION relating to protecting the privacy and security of Click Network! internet users.

WHEREAS, in 1997, the City, through its electrical utility, embarked on an effort to construct and operate a state-of-the-art telecommunication system for the benefit of its electric utility and electric utility customers, and

WHEREAS the telecommunications system (“Click! Network”) was constructed and has been in continuous operation since 1999, and WHEREAS Click! Network has entered into agreements with private internet service providers (“ISPs”) to use the Click! Network to provide internet services to approximately 25,000 retail customers, and

WHEREAS Click! Network and the ISPs have the ability to collect personal information resulting from their customers’ use of the internet, including (a) financial information; (b) health information; (c) information pertaining to children; (d) social security numbers; (e) precise geolocation information; (f) content of communications; (g) call detail information; and (h) web browsing history, application usage history, and the functional equivalents of either, from the users of their services, and

WHEREAS, in 2016, the United State Federal Communications Commission (“FCC”) proposed rules that would have required Click! Network and the ISPs to receive permission from their customers prior to collecting and selling such personal information, and

WHEREAS, on April 3, 2017, President Trump signed a United States congressional resolution that overturned the FCC internet privacy protections related to Click! Network and the ISPs collecting and selling personal information resulting from internet use, and

WHEREAS the Washington State Legislature has proposed legislation (“HB 2200 and SB 5919”) that would institute similar protections included in the prior FCC internet privacy rules; however, it is unlikely that such protections will be enacted into law before the current legislative session ends, and

WHEREAS protecting the privacy and security of Click! Network customers is of vital concern to the City Council, and the City Council desires that the Tacoma Public Utility Board (“Board”) prohibit Click! Network and its ISPs from collecting or selling their customers’ personal information without prior written permission, or refusing to serve customers who do not approve the collection or sale of their personal information;

Now, Therefore, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

Section 1. That the City Council hereby requests that the Tacoma Public Utility Board (“Board”) prohibit internet service providers (including Click! Network pursuant to an “All-In” Retail Business Plan) who have entered into agreements with Tacoma Power to use Click! Network from collecting or selling personal information from a customer resulting from the customer’s use of the internet without express written approval from the customer.

Section 2. That the City Council hereby requests that the Board prohibit its internet service providers (including Click! Network pursuant to an “All-In” Retail Business Plan) from refusing to provide services to a customer on the grounds that the customer has not approved the collection or sale of the customer’s personal information.

Section 3. That the City Council hereby requests that in the event that Click! Network is sold or leased, the prohibitions as set forth in Sections 1 and 2 above be included as condition of the sale or lease.

Section 4. That the prohibitions requested in this resolution shall remain in effect until such time as either the federal government or the state of Washington enacts the same or broader privacy and security protections for internet users.

EXHIBIT K NET NEUTRALITY

1. NET NEUTRALITY

(a) Consistent with its longtime policy and practice, Operator shall operate the Tacoma Power Commercial System on a net neutral basis. Specifically, Operator commits to operate the Tacoma Power Commercial System consistent with the following principles:

(i) **Transparency:** Operator will fully and publicly disclose accurate information about its services, including technical characteristics, performance characteristics, and network management practices, so consumers can make informed choices.

(ii) **No throttling:** Operator shall not impair or degrade lawful Internet traffic on the basis of Internet content, application, or service or use of a non-harmful device, subject to reasonable network management.

(iii) **No blocking:** Subject to reasonable network management, Operator shall not block lawful content, websites, resources, applications, services, or non-harmful devices.

(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 end user, the content of the information, the provider of content, or the type of service being provided.

(v) **No paid prioritization:** Operator shall not engage in paid prioritization. Paid Prioritization refers to the management of a network to directly or indirectly favor some traffic over other traffic, including through use of techniques such as traffic shaping, prioritization, resource reservation, or other forms of preferential traffic management either in exchange for monetary or other consideration from a third party, or to benefit an affiliated entity.

(vi) **Reasonable network management** is any practice that has a primarily technical network management justification, but does not include other business practices. A network management practice is reasonable if it is primarily used for and tailored to achieving a legitimate network management purpose, taking into account the particular network architecture and technology of the service.

(b) In furtherance of the requirements in Section 1(a), Operator agrees to conspicuously post and continuously maintain on its website a copy of its net neutrality policy.

2. ANNUAL CERTIFICATION AND PERIODIC TESTING

(a) On an annual basis, Operator shall by the Annual Reporting Date, provide the Tacoma Power Contract Administrator with a certification signed by a corporate officer certifying Operator's ongoing compliance with Section 1. Such certification shall include a copy of the policy posted on Operator's website.

(b) To confirm that Operator is operating the Tacoma Power Commercial System in compliance with Section 1, Tacoma Power may periodically test the Tacoma Power Commercial System for compliance.

(i) Tacoma Power Commercial Tacoma Power may use any testing tool to monitor net neutrality compliance, including but not limited to online tools, network scanners, and local servers; provided that, the Parties may mutually agree to use of a specific testing tool or methodology to monitor net neutrality compliance. At Tacoma Power's request, Operator will provide network documentation and configuration data to prove that it is not throttling, slowing, promoting, or otherwise treating specific traffic in ways that are impermissible under Operator's net neutrality obligations. Tacoma Power may also make unscheduled site visits to conduct on-site testing up to four times per year and Operator will grant access and opportunity to test on those occasions.

(ii) Tacoma Power may change its technical approach to net neutrality testing and verification in its sole discretion based on technological changes and changes in the use of broadband services.

3. REMEDIES FOR NON-COMPLIANCE

(a) Failure of Operator to conspicuously post its net neutrality policy on its website is a Default. Liquidated damages in the amount of Five Hundred Dollars (\$500) per day shall accrue from the date of receipt of Notice of Default until the Default is cured.

(b) In the event that Tacoma Power provides a Notice of Default to Operator alleging that the tests required in Section 2(b) of this Exhibit K revealed that the Tacoma Power Commercial System is not being operated in compliance with Section 1, any such Notice of Default shall include a copy of the tests showing the Default with full documentation as how the tests were conducted, including, but not limited to, date, time of day, location and methodology. In the event that, (i) Tacoma Power implements a testing tool or methodology not mutually agreed to by the Parties to monitor net neutrality compliance, which test results in a determination that Operator is not in compliance with Section 1 of this Exhibit K, (ii) Tacoma Power issues a Notice of Default based upon such determination, and (iii) the Operator seeks dispute resolution pursuant to Section 24 of the IRU Agreement and disputes the accuracy or reliability of the results of application of such test results, Operator may request that a neutral third party with knowledge and experience regarding the subject of the Dispute, conduct a review of the tests conducted by Tacoma Power and provide a report regarding the accuracy and reliability of the test results, and such other matters as the Parties deem relevant to the review. This report and the conclusions contained therein shall be presumptively conclusive as to this Disputed issue. The independent third party shall be mutually agreed to by the Parties and the parties shall equally bear the costs of such neutral third party. If the Parties are unable to mutually agree to the selection of the neutral third party within a reasonable period of time, the Parties shall each select a neutral third party who collectively shall select a third neutral third party to conduct the review and issue the report.

(c) In the event that Operator does not cure or resolve a Default of a requirement contained in Section 1 of this Exhibit within the timeframes established pursuant to Sections 21(c) or 24 of this IRU Agreement, Tacoma Power shall have the right to perform testing on the Tacoma Power Commercial System for compliance with Section 1 at any frequency it chooses. Operator shall bear the costs of such tests.

(d) Test results obtained pursuant to Section 3(c) will be evaluated on a weekly basis and, if applicable, liquidated damages will accrue as follows:

(i) During the first week following the timeframes established pursuant to Sections 21(c) or 24 of this IRU Agreement, if testing on the Tacoma Power Commercial System reveals that the Tacoma Power Commercial System is not in compliance with Section 1, liquidated damages will accrue in the amount of Ten Thousand Dollars (\$10,000).

(ii) If testing on the Tacoma Power Commercial System during the second week following the timeframes established pursuant to Sections 21(c) or 24 of this IRU Agreement reveals that the Tacoma Power Commercial System is still not in compliance with Section 1, liquidated damages will accrue in the amount of Fifteen Thousand Dollars (\$15,000).

(iii) The aforementioned liquidated damages will accrue at an increased rate of Five Thousand Dollars (\$5,000) per week for every week thereafter where tests reveal the Tacoma Power Commercial System is still not in compliance with Section 1, until such time as Operator has achieved compliance and remains in compliance for twelve (12) consecutive weeks; provided that no liquidated damages will accrue or be payable for the twelve (12) consecutive weeks of compliance.

(d) If in the judgment of Tacoma Power the severity of the breach of Section 1 so warrants, Tacoma Power may perform a technical audit to review the Tacoma Power Commercial System at Operator's cost, in addition to or as an alternative to compliance testing.

4. SCOPE OF OBLIGATIONS

(a) For the avoidance of doubt, the obligations in this Exhibit are the minimum obligations that may be imposed on Operator by Tacoma Power pursuant to this IRU Agreement with respect to net neutrality. Operator must also comply with any other obligations it may have with respect to net neutrality, including but not limited to, obligations in any franchise agreements or in municipal, state or federal laws or regulations, as they exist as of the Effective Date, or as they may be adopted or amended in the future.

(b) Nothing in this Exhibit should be construed to prevent or prohibit: (i) the City of Tacoma, acting in its capacity as a franchising authority, and Operator from agreeing to net neutrality requirements that exceed the standards set forth in this Exhibit; (ii) the City of Tacoma, acting in its capacity as a franchising authority, from enforcing pre-existing net neutrality requirements that exceed the standards set forth in this Exhibit; (iii) the City of Tacoma, acting in its capacity as a franchising authority, from enacting or enforcing any net neutrality law; or (iv) the establishment or enforcement of any ordinance or regulation by the City of Tacoma concerning net neutrality that imposes net neutrality requirements that exceed, or address matters not addressed by the standards set forth in this Exhibit.

EXHIBIT L
OPEN ACCESS TO TELECOMMUNICATIONS ASSETS

1. OPEN ACCESS PROGRAM

(a) Operator shall provide wholesale services over the Tacoma Power Commercial System to other telecommunications providers consistent with its practices and policies in other geographic areas in which it provides such wholesale services (“**Open Access Program**”).

(b) In furtherance of the requirements in Section 1(a), Operator agrees to conspicuously post and continuously maintain on its website a copy of its Open Access Program.

2. ANNUAL REPORT

(a) Operator shall provide Tacoma Power with a copy of its Open Access Program on an annual basis on the Annual Reporting Date.

3. REMEDIES FOR NON-COMPLIANCE

(a) Failure of Operator to maintain its Open Access Program posted on its website is a Default. Liquidated damages in the amount of Two Hundred and Fifty Dollars (\$250) per day shall accrue from the date of receipt of Notice of Default until the Default is cured.

EXHIBIT M
ECONOMIC DEVELOPMENT AND EDUCATIONAL OPPORTUNITIES

1. INTERNSHIP PROGRAM

Operator agrees to develop an internship program to provide work opportunity and training for students and residents of Tacoma, Washington, including veterans.

2. BUSINESS DEVELOPMENT

Operator will work directly with Tacoma Power to assist the Tacoma's economic development department to support efforts to attract businesses to Tacoma and to provide marketing information about Operator's commercial service offerings that can be provided to businesses considering locating in Tacoma.

3. TIMING

(a) Operator shall implement the internship program contemplated by Section 1 of this Exhibit within twenty-four (24) months of the Effective Date of this IRU Agreement. Operator shall provide notice to Tacoma Power when it has established and implemented the program required by Section 1, together with a copy of the program summary.

(b) Operator shall continue to offer the internship program, or a similar program, during the Term of the IRU Agreement. If Operator ceases to offer an internship program, it must provide written notice to Tacoma Power within thirty (30) days of cessation.

4. ANNUAL REPORT

(a) Operator shall annually submit to Tacoma Power, on the Annual Reporting Date, a report detailing the activities that Operator has undertaken to comply with this Exhibit since the most recent such report, or in the case of the first such annual report, since the Effective Date of this IRU Agreement.

5. REMEDIES FOR NON-COMPLIANCE

(a) Failure to timely provide any notice required by Section 3 is a Default. Liquidated damages in the amount of Two Hundred and Fifty Dollars (\$250) per day shall accrue from the date of receipt of Notice of Default until the Default is cured.

(b) In the event that Operator fails to develop and implement the internship program as required by Section 1 of this Exhibit by the deadline in Section 3(a), Operator shall pay Ten Thousand Dollars (\$10,000) annually beginning on the Annual Reporting Date immediately following the deadline in Section 3(a). The payment shall be made either to Tacoma Power to be placed in a Tacoma Power program for workplace training or to another internship program as directed and chosen by Tacoma Power. Payments shall continue to be due annually until such time as Operator establishes an internship program in compliance with this Exhibit.

(c) In the event that Operator establishes a program and then ceases to implement it as required by Section 1 of this Exhibit, Operator shall pay Ten Thousand Dollars (\$10,000) annually beginning on the Annual Reporting Date following Operator's cessation of the program. The payment shall be made either to Tacoma Power to be placed in a Tacoma Power program for workplace training or to another internship program as directed and chosen by Tacoma Power.

Payments shall continue to be due annually until such time as Operator re-establishes an internship program in compliance with this Exhibit.

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EXHIBIT N
PRESERVE COMPETITION AMONG PROVIDERS

1. RESTRICTIONS ON TRANSFERS

(a) Operator represents and warrants that as of the Effective Date, it is [*TEXT TO BE PROVIDED WHEN FINAL*].

(b) Operator acknowledges Tacoma Power's goal of preserving and promoting competition in the local telecommunications industry. To that end, Rainier covenants that it will not sell, grant, assign, delegate, or otherwise transfer (whether voluntarily, by operation of law or otherwise) any of its rights or obligations under this IRU Agreement to any entity (a "Transfer") without the prior written consent of Tacoma Power. Any Change of Control or Change of Working Control shall be deemed a Transfer for the purposes of this provision. A "Change of Control" means the sale of all or substantially all the assets of Operator; any merger, consolidation or acquisition of Operator with, by or into another corporation, entity or person; or any change in the ownership of more than fifty percent (50%) of the voting rights in Operator through one or more related transactions. A "Change of Working Control" means any change in the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of Operator, whether through the ownership of voting securities, by contract or otherwise. Notwithstanding the foregoing, written consent shall not be required for transfer of ownership made by testamentary provisions or the laws of descent.

(c) Further, Operator agrees not to sell, grant, assign, delegate, or otherwise transfer its rights or obligations under the IRU Agreement to any Facilities-Based Entity that has residential broadband or data service market share of twenty-five percent (25%) or more of the Tacoma Power Commercial Service Area. A "Facilities-Based Entity" means an entity that provides residential services primarily via wireline fiber and/or coaxial cable facilities.

2. ANNUAL OWNERSHIP REPORT & CERTIFICATION

(a) Operator agrees to provide to Tacoma Power, annually on the Annual Reporting Date, a current list of the names of all persons and entities with voting rights and ownership interests of Five Percent (5%) or greater in Operator.

(b) Operator agrees to provide to Tacoma Power, annually on the Annual Reporting Date, a certification signed by a corporate officer certifying that Working Control of Operator has not changed without Tacoma Power's consent.

3. TRANSFER REQUESTS

(a) Operator may request Tacoma Power's consent to a Transfer no less than six (6) months prior to the proposed effective date of the Transfer.

(b) Consent to the Transfer may be withheld by Tacoma Power in the event that Tacoma Power determines after an evaluation of the request for consent, that the Transfer would violate any of the 12 policy goals adopted by the Tacoma Public Utilities Utility Board and City of Tacoma Council regarding Tacoma Power Commercial, or the entity will not have adequate legal, technical, and/or financial capacity to perform Operator's obligations under this IRU Agreement.

(c) Any consent to a Transfer to a new legal entity granted by Tacoma Power shall be conditioned on the new legal entity entering into a written acceptance, in form and content approved by the City Attorney, agreeing that all acts and omissions of Operator with respect to the IRU Agreement occurring prior to the Transfer will continue to be deemed to be those of the new entity and committing to comply with all the terms of this IRU Agreement. Operator shall not be relieved of its obligations under the IRU Agreement unless and until Tacoma Power receives such written acceptance.

4. REMEDIES FOR NON-COMPLIANCE

(a) Any attempted or purported assignment, delegation or other transfer not in conformance with this Exhibit (“Unauthorized Transfer”) shall be voidable at Tacoma Power’s option provided that Tacoma Power provides notice of avoidance within six (6) months from the date Tacoma Power has actual notice of the Unauthorized Transfer. Subject to the foregoing, the IRU Agreement shall be binding on the Parties’ successors and assigns.

(c) In the event of an Unauthorized Transfer, the IRU Fee due and payable by Operator shall be doubled, effective the date the Unauthorized Transfer and continuing until such time as Tacoma Power voids the Unauthorized Transfer pursuant to Section 4(a). If Tacoma Power elects not void the Transfer, at the end of the six (6) month period, the IRU Fee due and payable going forward shall no longer be doubled.

EXHIBIT O
CONTINUITY OF SERVICES COMMITMENT

1. COOPERATION

(a) In the event that the IRU Agreement between the Parties is terminated for any reason (including expiration), the parties will cooperate in good faith to transition the Tacoma Power Commercial System to Tacoma Power or to an entity of Tacoma Power's choosing (the "Successor Operator") in accordance with the following principles

(i) Continue the provision of services and minimize disruption to Tacoma Power Commercial System customers;

(ii) Preserve the value of the Tacoma Power Commercial System as a going concern;

(iii) Protect the physical integrity of the Tacoma Power Commercial System; and

(iv) Complete the transition within no more than six (6) months (the "**Post-Termination Period**").

2. RIGHT OF USE

(a) During the Post-Termination Period, Tacoma Power shall have an unrestricted right of access to and use of any equipment and other assets and inventory in use to support operations of the Tacoma Power Commercial System and Associated Property, so as to enable continuity of services and seamless migration to the Successor Operator. This right of access and use shall not include physical access to the Operator Network.

(b) During the Post-Termination Period, Operator will continue to operate the Tacoma Power Commercial System in accordance with the requirements of the IRU Agreement, except as those requirements may be modified consistent with this Exhibit, the Continuity of Services Plan, and as directed by Tacoma Power as necessary to effect the seamless transition to the Successor Operator.

3. ACCESS TO DATA, PERSONNEL AND RECORDS

(a) During the Post-Termination Period, Operator shall provide Tacoma Power with access to personnel and all records and information necessary for Tacoma Power to transition operation of the Tacoma Power Commercial System in a seamless manner, including customer accounts and customer data, and maps and data regarding the Tacoma Power Commercial System and its use.

(b) During the Post-Termination Period, Operator shall fully cooperate in the assignment of customer contracts, content and services contracts, and any other third-party arrangements necessary to effect the seamless transition.

4. REVENUES AND EXPENSES

(a) During the Post-Termination Period, Operator shall be responsible for all operating expenses and shall be entitled to all of the revenues generated by the Tacoma Power Commercial System, subject to Section 4(c) below.

(b) During the Post-Termination Period, Operator shall have no obligation to pay the IRU Fee or make Capital Expenditures.

(c) During the Post Termination Period, Operator shall pay to Tacoma Power five percent (5%) of its gross revenue generated from its operations on the Tacoma Power Commercial System. "Gross Revenues" means all revenues derived from operation of the Tacoma Power Commercial System.....

5. PERFORMANCE GUARANTEE

(a) During the Post-Termination Period, the Performance Guarantee provided by Operator pursuant to the IRU Agreement shall be maintained in full force and effect and may be relied upon by Tacoma Power if Operator fails to comply with the obligations in this Exhibit or any related agreements.

6. DEVELOPMENT OF CONTINUITY OF SERVICES PLAN

(a) On the second Annual Reporting Date following the Effective Date of the IRU Agreement, Operator will submit to Tacoma Power for its review and approval a Continuity of Services Plan to replace the Continuity of Services Commitment contained in this Exhibit. The plan shall at a minimum: (1) require the Parties to exercise best efforts and cooperation to effect an orderly and efficient transition to the Successor Operator; (2) identify the major components of the transition, including but not limited to: (i) separation of the Tacoma Power Commercial System from the Operator Network; (ii) network operations and management; (iii) accounting and recordkeeping; and (iv) regulatory compliance; and (3) specify the anticipated timeframe and sequence for transferring customers, contracts, equipment and responsibilities for each component of operations described in the Continuity of Services Plan.

(b) The Parties agree to review the Continuity of Services Plan in good faith no more frequently than once every three (3) years during the Term, but no less frequently than every five (5) years during the Term and make any necessary revisions.

7. OPERATOR'S CONTINUED RETAIL OPERATIONS

(a) Tacoma Power understands that Operator will be serving customers currently served by Net-Venture and Mashell Telecom, Inc. under their existing ISP Advantage Agreements with Tacoma Power. In the event that the IRU Agreement between the Parties is terminated for any reason (including expiration) and Tacoma Power takes over operation of the Tacoma Power Commercial System, or transfers the Tacoma Power Commercial System to a Successor Operator, Tacoma Power or the Successor Operator shall be obligated to have an Open Access Program as described in Exhibit L to the IRU Agreement.

EXHIBIT P
TRADEMARK LICENSE AGREEMENT

THIS AGREEMENT, effective as of _____, ___ is by and between **City of Tacoma, Department of Public Utilities, Light Division**, a municipal corporation of the state of Washington, (“Licensor”) and Rainier Connect North, LLC, a Washington limited liability company (“Licensee”). The parties hereto are hereinafter collectively referred to as the “Parties.” Capitalized terms used herein and not defined shall have the meanings assigned to them in the IRU Agreement.

WHEREAS, Licensor is the owner of two (2) Washington state trademarks, one for “Click! Cable TV” and symbol (Washington trademark registration number 53233 under trademark classifications 35 and 38) and one for “Click! Cable TV” (Washington trademark registration number 54077 under trademark classification 41), shown in **Exhibit P1** hereto (collectively the “Marks”);

WHEREAS, Licensor has used the Marks in connection with the marketing and operation of its retail and wholesale communications business (“Click! Business”) but intends to cease operations and transfer control of the assets related to the Click! Business, including but not limited to the Tacoma Power Commercial System, to Licensee as of the Effective Date of this IRU Agreement;

WHEREAS, Licensee desires to use the Marks in connection with the use of the Tacoma Power Commercial System in the manner and subject to the terms and conditions set forth in this Agreement and the IRU Agreement; and

NOW, THEREFORE, In consideration of the premises and the mutual covenants and agreement of the Parties set forth herein and other good and valuable consideration, the sufficiency of which is hereby mutually acknowledged, the Parties agree as follows:

1. **GRANT OF LICENSE.** Licensor grants to Licensee an exclusive, royalty-free non-transferable license to use the Marks in connection with the Tacoma Power Commercial System, throughout the Tacoma Power Commercial Service Area depicted in IRU Agreement, Exhibit A1.

2. **USE OF THE MARKS.** Licensee shall comply with the following requirements when using the Marks:

2.1 The use must be accompanied by the following text:

All rights reserved. [Insert Mark] is a trademark of City of Tacoma.

2.2 The use must comply with the applicable provisions of the guidelines set forth in **Exhibit P2** attached hereto.

3. **NO ASSIGNMENT.** This license to use the Marks may not be assigned or otherwise transferred by Licensee, under any circumstances, without the prior, express, written

consent of Licensor. Licensor does not grant, and nothing in this Agreement shall be construed as granting, to Licensee the right to license, sublicense, or authorize others to use the Marks.

4. OWNERSHIP.

4.1 Licensee acknowledges that the Marks are valid, are the exclusive property of Licensor, and can lawfully be used only with the express license or consent of Licensor. Licensee shall not at any time do, or cause to be done, any act or thing contesting or in any way impairing or intending to impair the validity of the Marks and/or Licensor's exclusive rights, title, and interest in and to the Marks.

4.2 Licensee shall not register or apply to register the Marks, either alone or in combination with any other word(s) and/or design(s), in any country, state, or jurisdiction. Licensee shall not in any manner represent that it owns the Marks, and Licensee hereby acknowledges that its use of the Marks shall not convey any rights, title, or interest in or to said Marks in Licensee's favor, but that all use of the Marks by Licensee shall inure to the benefit of Licensor.

4.3 Licensee shall be responsible for all costs associated with maintaining the registration of the Marks, including all fees charged by the Washington Secretary of State associated with renewing the Marks. Licensee shall provide copies of all filings and correspondence related to the Marks to Licensor.

5. TERM AND TERMINATION.

5.1 Unless sooner terminated under the provisions of Section 5.2 below, or by mutual agreement of the Parties in writing, this Agreement shall continue so long as the IRU Agreement is in full force and effect. In the event that the IRU Agreement is terminated, by either Party and for any reason, this Agreement shall automatically terminate.

5.2 If Licensee fails to comply with any of the provisions of this Agreement, Licensor may terminate this Agreement by express written notice to Licensee; provided, however, that if Licensee, within 60 days after Licensor's notice, cures or otherwise corrects such violation or noncompliance to Licensor's reasonable satisfaction, said termination notice shall be of no further force or effect and this Agreement shall be reinstated under all the terms and conditions as existed before the notice of termination.

5.3 Upon termination of this Agreement, Licensee shall permanently discontinue all use of the Marks and refrain from using any other service mark, trademark, trade name, corporate name, or any other designation confusingly similar to any one or all of the Marks.

6. INDEMNITY.

6.1 Licensee shall indemnify and defend Licensor against any loss or losses incurred through claims, actions, or lawsuits by third parties against Licensor involving or arising from the use of the Marks by Licensee, and shall hold Licensor harmless for

any damages, attorney fees, or other costs that Licensor may be required to pay as a result of any such claims, actions, or lawsuits being asserted against Licensor.

6.2 If Licensee brings to Licensor's attention an unauthorized third party use of the Marks, Licensor shall take steps to abate such use at Licensor's expense if Licensor, after investigation and evaluation of such unauthorized use, concludes that such use constitutes an infringement of its rights and that there is a reasonable probability of success in taking action to abate such infringement.

7. NOTICES.

Except for routine operational communications, which may be delivered personally or transmitted by electronic mail all notices required hereunder shall be in writing and shall be considered properly delivered when received if personally delivered, or on the third day following mailing, postage prepaid, certified mail, return receipt requested to the Parties at the following addresses:

Licensor:

Tacoma Public Utilities
3628 South 35th Street
Tacoma, WA 98409
Telephone: (253) 502-8600
Attention: TPU Contract Administrator

With a copy to:

City of Tacoma
747 Market Street, Suite 1120
Tacoma, WA. 98402
Telephone: (253) 591-5626
Attention: City Attorney

Licensee:

Rainier Connect North, LLC
P.O. Box 639
104 Washington Ave. N.
Eatonville, WA 98329
Attn: Manager

With a copy to:

Richard A. Finnigan
2112 Black Lake Blvd. SW
Olympia, WA 98512

8. **BINDING EFFECT.** This Agreement shall be effective as of the date first above written and shall be binding upon and inure to the benefit of the Parties hereto and their respective successors or assigns as permitted by this Agreement.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, each Party has caused this License Agreement to be executed by its duly authorized representative as of the date indicated below.

CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, LIGHT DIVISION,

d/b/a Tacoma Power

By: _____

Print Name: _____

Title: _____

Date: _____

RAINIER CONNECT NORTH, LLC

By: _____

Print Name: _____

Title: _____

Date: _____

DRAFT

**EXHIBIT P1
MARKS**

DRAFT

**EXHIBIT P2
GUIDELINES**

DRAFT



The Operator shall obtain and maintain the minimum insurance set forth below. By requiring such minimum insurance, the City of Tacoma (City) shall not be deemed or construed to have assessed the risk that may be applicable to Operator under this IRU Agreement. Operator shall assess its own risks and, if it deems appropriate and /or prudent, maintain greater limits and/or broader coverage.

1. GENERAL REQUIREMENTS

The following General Requirements apply to Operator performing services or activities pursuant to the terms of this IRU Agreement. Operator acknowledges and agrees to the following insurance requirements applicable to Operator:

- 1.1. City reserves the right to approve or reject the insurance provided based upon the insurer, terms and coverage, the Certificate of Insurance, and/or endorsements.
- 1.2. The insurance must be written by companies licensed in the State of Washington pursuant to RCW 48 with an (A-) VII or higher in the A.M. Best's Key Rating Guide www.ambest.com.
- 1.3. Operator shall keep this insurance in force during the entire term of the IRU Agreement and for thirty (30) calendar days after completion of all work required by the IRU Agreement, unless otherwise provided herein.
- 1.4. Policies of Insurance, *such as Commercial General Liability or Commercial Auto Liability or Excess Liability*, required under this IRU Agreement that name City as Additional Insured shall:
 - 1.4.1. Be considered primary and non-contributory for all claims.
 - 1.4.2. Contain a "Severability of Insureds", "Separation of Interest", or "Cross Liability" provision and a "Waiver of Subrogation" clause in favor of City.
- 1.5. A Waiver of Subrogation in favor of City for General Liability and Automobile Liability.
- 1.6. Insurance limits shown below may be written with an excess policy that follows the form of an underlying primary liability policy or an excess policy providing the required limit.
- 1.7. Insurance policy(ies) shall be written on an "occurrence" form, except for Cyber/Privacy and Security.
- 1.8. If coverage is approved and purchased on a "Claims-Made" basis, Operator warrants continuation of coverage, either through policy renewals or by the purchase of an extended reporting period endorsement as set forth below.
- 1.9. Operator shall provide City notice of any cancellation or non-renewal of this required insurance within 30 calendar days.
- 1.10. Operator shall not allow any insurance to be cancelled or lapse during any term of this IRU Agreement, otherwise it shall constitute a material breach of the IRU Agreement, upon which City may, after giving thirty (30) business days' notice to Operator to correct the breach, immediately terminate the IRU Agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith; with any sums so expended to be repaid to City by Operator upon demand, or at the sole discretion of City, offset against funds due Operator from City.



Exhibit Q

CITY OF TACOMA INSURANCE REQUIREMENTS

- 1.11. Operator shall be responsible for all premiums, deductibles and self-insured retentions. All deductibles and self-insured retained limits shall be shown on the Certificates of Insurance. Any deductible or self-insured retained limits in excess of Ten Thousand Dollars (\$10,000) must be approved by City Risk Management Division.
 - 1.12. Insurance coverages specified in this IRU Agreement are not intended and will not be interpreted to limit the responsibility or liability of Operator.
 - 1.13. City reserves the right to review insurance requirements and request that reasonable adjustments be made.
 - 1.14. City, including its officers, elected officials, employees, and agents, , shall be named as additional insured(s) by endorsement for all liability insurance policies set forth below. No specific person or department should be identified as the additional insured.
 - 1.15. Operator shall deliver a Certificate of Insurance for each policy of insurance meeting the requirements set forth herein when Operator delivers the signed IRU Agreement to City. Operator shall deliver copies of any applicable Additional Insured, Waiver of Subrogation, and primary and non-contributory endorsements.
 - 1.16. Failure by City to identify a deficiency in the insurance documentation provided by Operator or failure of City to demand verification of coverage or compliance by Operator with these insurance requirements shall not be construed as a waiver of Operator's obligation to maintain such insurance.
- 2. SUBCONTRACTORS**
- It is Contractor's responsibility to ensure that each subcontractor obtain and maintain adequate liability insurance coverage. Contractor shall provide evidence of such insurance upon City's request.
- 3. REQUIRED INSURANCE AND LIMITS**
- The insurance policies shall provide the minimum coverages and limits set forth below. Providing coverage in these stated minimum limits shall not be construed to relieve Operator from liability in excess of such limits.
- 3.1. Commercial General Liability (CGL) Insurance**
- The CGL insurance policy must provide limits not less than One Million Dollars (\$1,000,000) each occurrence and Two Million Dollars (\$2,000,000) annual aggregate.
- The CGL policy shall be written on an Insurance Services Office (ISO) form CG 00 01 (04-13) or its equivalent. The CGL policy shall be endorsed to include:
- 3.1.1 Contractual Liability-Railroad using ISO form CG 24 17 (10-01) or equivalent if Operator is performing work within fifty (50) feet of a City railroad right of way.
 - 3.1.2 City as additional insured using ISO form endorsements CG 20 10 (04-13) and CG 20 37 (04-13) or equivalent for ongoing and completed operations, or using ISO form endorsement CG 20 26 (04-13) or equivalent for Facility Use Agreements. Neither additional insured provisions within an insurance policy form, nor blanket additional insured endorsements will be accepted in lieu of the endorsements specified herein.
- 3.2 Commercial Automobile Liability (CAL) Insurance**
- Operator shall obtain and keep in force during the term of the IRU Agreement, a policy of CAL



Exhibit Q

CITY OF TACOMA INSURANCE REQUIREMENTS

insurance coverage, providing bodily injury and property damage coverage for owned (if any), non-owned, hired, or leased vehicles.

Operator must also maintain an MCS 90 endorsement or equivalent and a CA 9948 endorsement or equivalent if "Pollutants" are to be transported. CAL policies must provide limits not less than One Million Dollars (\$1,000,000) each accident for bodily injury and property damage. Must use ISO form CA 0001 or equivalent.

3.3 Workers' Compensation

Operator shall comply with Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

3.4 Employers' Liability (EL) (Stop-Gap) Insurance

Operator shall maintain EL coverage with limits not less than One Million Dollars (\$1,000,000) each employee, One Million Dollars (\$1,000,000) each accident, and One Million Dollars (\$1,000,000) policy limit.

3.5 Excess or Umbrella Liability (UL) Insurance

Operator shall provide Excess or UL coverage at limits of not less than Ten Million Dollars (\$10,000,000) per occurrence and in the aggregate. This coverage shall apply, at a minimum, in excess of primary underlying Commercial General Liability and Automobile Liability if required herein.

3.6 Employee Theft (ET) Insurance

Operator shall maintain an Employee Dishonesty policy with a limit not less than One Million Dollars (\$1,000,000) per occurrence. Such policy shall include City as Loss Payee.

3.7 Cyber/Privacy and Security (CP&S) Insurance

Operator shall maintain CP&S insurance with coverage of not less than One Million Dollars (\$1,000,000) per claim and Two Million Dollars (\$2,000,000) general aggregate that includes, but is not limited to, coverage for first party costs and third-party claims. Coverage shall include loss resulting from data security/privacy breach, unauthorized access, denial of service attacks, introduction of virus and malicious code, network security failure, dissemination or destruction of electronic data, business interruptions, privacy law violation, and disclosure of non-public, personal and confidential information, and failure to disclose breaches as required law or contract. Coverage shall include notifications and other expenses incurred in remedying a privacy breach as well as costs to investigate and restore data. Coverage shall also include communications liability (e.g., infringement of copyrights, title, slogan, trademark, trade name, trade dress, service mark, or service name in the policy holders covered material).

3.8 Commercial Property (CP) Insurance

Operator shall provide CP for loss or damage to any and all equipment owned by City while in the care, custody, or control of Operator, or its agents. The coverage shall be provided on an ISO special form Causes of Loss form or equivalent and shall provide full replacement cost coverage. The deductible shall not exceed Two Thousand Five Hundred Dollars (\$2,500). Operator shall be responsible for paying the deductible for the applicable coverage.

EXHIBIT R
Reports and Certifications

To comply with Section 6(c) of the IRU Agreement, Operator shall submit the following reports and certifications to Tacoma Power on an annual basis.

Policy Goal	Report	Source
Continued public ownership of the infrastructure assets	Cert. of requisite portion of DOCSIS 3.1 upgrade (first three years only)	Ex. E, Section 3(b)
	Status/capabilities of the Tacoma Power Commercial System (post-upgrade)	Ex. E, Section 5(a)
Maintain financial stability of the telecommunications business operations	Capital Expenditures report	Ex. F, Section 2(b)
	Financial report from CPA	Ex. S/IRU Section 12(a)
Ensure equitable access	Compliance with equitable access requirements and equity commitments	Ex. G, Section 5(a)
Low-income affordable access	FCC Forms 481 and 555	Ex. H, Section 1(c)
	Cert. of offering Lifeline subsidy	Ex. H, Section 1(c)
	Lifeline enrollment stats	Ex. H, Section 1(c)
	Cert. of offering reduced-cost broadband	Ex. H, Section 2(b)
	Reduced-cost broadband enrollment stats	Ex. H, Section 2(b)
	Cert. of offering free broadband	Ex. H, Section 3(f)
	Locations receiving free broadband	Ex. H, Section 3(f)
Preserve Click! goodwill	Cert. of physical presence in Tacoma	Ex. I, Section 6
Protect customer privacy	Cert. of customer privacy compliance, with copy of policy	Ex. J, Section 2(c)
Net neutrality	Cert. of net neutrality compliance with copy of policy	Ex. K, Section 2(a)

Policy Goal	Report	Source
Open access to telecommunications assets	Copy of Open Access Program	Ex. L, Section 2(a)
Promote economic development and educational opportunities	Report of activities for economic development and educational opportunities	Ex. M, Section 4(a)
Preserve competition among telecommunications providers	List of names of persons/entities with voting rights and ownership interests in RC	Ex. N, Section 2(a)
	Cert. that working control of RC has not changed	Ex. N, Section 2(b)

The following periodic reports and certifications must also be submitted to Tacoma Power, at the frequencies listed for each report and certification.

Policy Goal	Report	Source
Continued public ownership of the infrastructure assets	Continuity of Services Plan (second Annual Reporting Date only, parties to review every 3-5 years and revise if necessary)	Ex. O, Section 6(a)
Maintain financial stability of the telecommunications business operations	Final Period Capital Expenditures (within 60 days after IRU expires/terminates)	Ex. F, Section 2(c)
	Catch-Up Capital Expenditures (end of Catch-Up Period, only applies if there is a Shortfall)	Ex. F, Section 5(a)
Safeguard municipal use of telecommunications services	New construction and upgrades on Critical and Non-Critical Routes (monthly)	Ex. D, Section 1(f)
Continued public ownership of the infrastructure assets	Status of the Upgrade (quarterly)	Ex. E, Section 3(a)
Preserve Click! goodwill	Customer service report (quarterly, reduced to annual after 3 years if RC has been in compliance)	Ex. I, Section 5(a)

Exhibit S
Annual Financial Report

[TO BE PROVIDED WHEN FINAL]

Exhibit T
Form of Guarantee

PERFORMANCE GUARANTEE

THIS GUARANTEE is made with reference to the following facts and circumstances:

- A. Mashell Inc. (“GUARANTOR”) is a corporation organized under the laws of the State of Washington.
- B. Rainier Connect North, LLC (“OPERATOR”) is a limited liability company organized under the laws of the State of Washington, whose Governing Entity is GUARANTOR.
- C. OPERATOR has negotiated that certain Indefeasible Right of Use Agreement with City of Tacoma, Department of Public Utilities, Light Division, a municipal corporation of the State of Washington (d/b/a and hereinafter referred to as “TACOMA POWER”) (such agreement, as it may be amended, modified or waived from time to time, the “IRU Agreement”). A copy of the IRU Agreement is incorporated herein by this reference.
- D. It is a requirement of the IRU Agreement, and a condition to TACOMA POWER’s entering into the IRU Agreement, that GUARANTOR guarantee OPERATOR’s performance of the IRU Agreement.
- E. GUARANTOR is providing this Guarantee to induce TACOMA POWER to enter into the IRU Agreement.

NOW, THEREFORE, in consideration of the foregoing, GUARANTOR agrees as follows:

1. Guarantee of the IRU Agreement. GUARANTOR hereby irrevocably and unconditionally guarantees to TACOMA POWER the complete and timely performance, satisfaction and observation by OPERATOR of each and every term and condition of the IRU Agreement which OPERATOR is required to perform, satisfy or observe. In the event that OPERATOR fails to perform, satisfy or observe any of the terms or conditions of the IRU Agreement, GUARANTOR will promptly and fully perform, satisfy or observe them in the place of the OPERATOR. Without limiting the generality of the foregoing, GUARANTOR hereby guarantees prompt payment to TACOMA POWER of each and every sum due from OPERATOR to TACOMA POWER under the IRU Agreement, as and when due from time to time, and the prompt performance of every other task and duty required to be performed by the OPERATOR under the IRU Agreement.
2. GUARANTOR’s Obligations Are Absolute. The obligations of the GUARANTOR hereunder are direct, immediate, absolute, continuing, unconditional and unlimited and, with respect to any payment obligation of OPERATOR under the IRU Agreement, shall constitute a guarantee of payment and not of collection, and are not conditioned upon the genuineness, validity, regularity or enforceability of the IRU Agreement.

3. Waivers and Subordination.

- (A) The GUARANTOR shall have no right to terminate this Guarantee or to be released, relieved, exonerated or discharged from its obligations under Section 1 hereof for any reason whatsoever, including, without limitation: (1) the insolvency, bankruptcy, reorganization or cessation of existence of the OPERATOR; (2) any amendment, modification or waiver of any provision of the IRU Agreement or the extension of its Term (as defined in the IRU Agreement); (3) the actual or purported rejection of the IRU Agreement by a trustee in bankruptcy, or any limitation on any claim in bankruptcy resulting from the actual or purported termination of the IRU Agreement; (4) any waiver, extension, release or modification with respect to any of the obligations of the IRU Agreement guaranteed hereunder or the impairment or suspension of any of TACOMA POWER's rights or remedies against OPERATOR; or (5) any merger or consolidation of the OPERATOR with any other organization, or any sale, lease or transfer of any or all the assets of the OPERATOR.
- (B) The GUARANTOR hereby waives any and all rights to require TACOMA POWER to (a) proceed against OPERATOR, (b) proceed against or exhaust any security or collateral TACOMA POWER may hold now or hereafter hold, or (c) pursue any other right or remedy for GUARANTOR's benefit, and agree that TACOMA POWER may proceed against GUARANTOR for the obligations guaranteed herein without taking any action against OPERATOR or any other guarantor or pledgor and without proceeding against or exhausting any security or collateral TACOMA POWER may hold now or hereafter hold. TACOMA POWER may unqualifiedly exercise in its sole discretion any or all rights and remedies available to it against OPERATOR or any other guarantor or pledgor without impairing TACOMA POWER's rights and remedies in enforcing this Guarantee.
- (C) The GUARANTOR hereby waives and agrees to waive at any future time at the request of TACOMA POWER, to the extent now or then permitted by applicable law, any and all rights which the GUARANTOR may have or which at any time hereafter may be conferred upon it, by statute, regulation or otherwise, to avoid any of its obligations under, or to terminate, cancel, quit or surrender this Guarantee.
- (D) Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not affect the liability of the GUARANTOR hereunder: (a) at any time or from time to time, without notice to the GUARANTOR, the time for OPERATOR's performance of or compliance with any of its obligations under the IRU Agreement is extended, or such performance or compliance is waived; (b) the IRU Agreement is modified or amended in any respect; (c) any other indemnification with respect to OPERATOR's obligations under the IRU Agreement or any security therefor is released or exchanged in whole or in part or otherwise dealt with; (d) any assignment of the IRU Agreement is effected which does not require TACOMA POWER's approval; or (e) any termination or suspension of the IRU Agreement arising by reason of a default by OPERATOR.
- (E) The GUARANTOR hereby expressly waives diligence, presentment, demand for payment or performance, protest and all notices whatsoever, including, but not limited to, notices of non-payment or non-performance, notices of protest, notices of any breach or default, and notices of acceptance of this Guarantee. If all or any portion of the obligations guaranteed hereunder are paid or performed, GUARANTOR's obligations

hereunder shall continue and remain in full force and effect in the event that all or any part of such payment or performance is avoided or recovered directly or indirectly from TACOMA POWER as a preference, fraudulent transfer or otherwise, irrespective of (a) any notice of revocation given by GUARANTOR or OPERATOR prior to such avoidance or recovery, or (b) payment in full of any obligations then outstanding. The GUARANTOR expressly subordinates and waives its rights to subrogation, reimbursement, contribution or indemnity with respect to performance by GUARANTOR of the obligations of OPERATOR guaranteed hereby, until such time as TACOMA POWER receives payment or performance in full of all such obligations.

4. Term. This Guarantee is not limited to any period of time, but shall continue in full force and effect until all of the terms and conditions of the IRU Agreement have been fully performed by OPERATOR, and GUARANTOR shall remain fully responsible under this Guarantee without regard to the acceptance by TACOMA POWER of any performance bond or other collateral to assure the performance of OPERATOR's obligations under the IRU Agreement. GUARANTOR shall not be released of its obligations hereunder unless and until all of the following conditions have been met: (i) the IRU Agreement is terminated; (ii) all obligations that survive termination of the IRU Agreement as set out in Section 21(f) have been fully performed by OPERATOR; and (iii) there are no claims by TACOMA POWER against OPERATOR arising out of the IRU Agreement based on OPERATOR's failure to perform which have not been settled or discharged.

5. No Waivers by TACOMA POWER. No delay on the part of TACOMA POWER in exercising any rights under this Guarantee or failure to exercise such rights shall operate as a waiver of such rights. No notice to or demand on GUARANTOR shall be a waiver of any obligation of GUARANTOR or right of TACOMA POWER to take other or further action without notice or demand. No modification or waiver by TACOMA POWER of any of the provisions of this Guarantee shall be effective unless it is in writing and signed by TACOMA POWER and by GUARANTOR, nor shall any waiver by TACOMA POWER be effective except in the specific instance or matter for which it is given.

6. Attorney's Fees. In addition to the amounts guaranteed under this Guarantee, GUARANTOR agrees to pay actual attorney's fees and all other costs and expenses incurred by TACOMA POWER in enforcing this Guarantee, or in any action or proceeding arising out of or relating to this Guarantee, including any action instituted to determine the respective rights and obligations of the parties hereunder.

7. Governing Law; Jurisdiction. This Guarantee is and shall be deemed to be a contract entered into in and pursuant to the laws of the State of Washington and shall be governed and construed in accordance with the laws of Washington without regard to its conflicts of laws rules for all purposes, including, but not limited to, matters of construction, validity and performance. As the IRU Agreement is made and performed in Pierce County, GUARANTOR agrees that any action brought by TACOMA POWER to enforce this Guarantee may be brought in any Pierce County Superior Court and GUARANTOR consents to personal jurisdiction over it by such courts.

8. Severability. If any portion of this Guarantee is held to be invalid or unenforceable, such invalidity shall have no effect upon the remaining portions of this Guarantee, which shall be severable and continue in full force and effect.

9. Binding on Successors. This Guarantee shall inure to the benefit of TACOMA POWER and its successors and shall be binding upon GUARANTOR and its successors, including a successor entity formed by a merger or consolidation, a transferee of substantially all of its assets, and its shareholders in the event of its dissolution or insolvency.

10. Authority. GUARANTOR represents and warrants that it has the corporate power to give this guarantee, that its execution of this Guarantee has been authorized by all necessary action under its Articles of Incorporation and by-laws, and that the person signing this Guarantee on its behalf has authority to do so.

11. Notices. Notice shall be given in writing, deposited in the U.S. mail, registered or certified, first class postage prepaid, addressed as follows:

To TACOMA POWER:

Tacoma Public Utilities
3628 South 35th Street
Tacoma, WA 98409
Telephone: (253) 502-8600
Attention: TPU Contract Administrator

With a copy to:

City of Tacoma
747 Market Street, Suite 1120
Tacoma, WA. 98402
Telephone: (253) 591-5626
Telecopy: (253) 591-5755
Attention: City Attorney

To GUARANTOR:

The parties may change the address to which notice is to be sent by giving the other party notice of the change as provided in this Section.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, GUARANTOR has executed this Guarantee on the _____ day of _____ in the year 2019.

MASHELL INC.

By:

_____ {Insert name}
_____ {Insert title}

By:

_____ {Insert name}
Corporate Secretary

DRAFT

Draft Click! Business Transaction Agreement
Indefeasible Right of Use Agreement – Additional Exhibits

Additional Exhibits A: (34 MB)

https://cms.cityoftacoma.org/cityclerk/Files/CityCouncil/Agendas/20191029_AddlExhibits1.pdf

- Exhibit A2.1 Fiber Schedule
- Exhibit A2.2 Node Maps
- Exhibit A2.3 Equipment Shown in Node Maps (BOM)
- Exhibit A2.4 Equipment in Hub Sites
- Exhibit A3.1 Hub Site Drawings
- Exhibit A3.2 Ancillary Systems
- Exhibit A6.2 Headend Equipment
- Exhibit A7 – Installed Customer Premises Equipment

Additional Exhibits B-P: (48 MB)

http://cms.cityoftacoma.org/cityclerk/Files/CityCouncil/Agendas/20191029_AddlExhibits2.pdf

- Exhibit B1 Critical Routes
- Exhibit B2 Non-Critical Routes
- Exhibit P1 – Marks
- Exhibit P2 – Guidelines

