

**ORIGINAL**

**ASSIGNMENT OF RECEIVABLES**

**THIS AGREEMENT FOR THE ASSIGNMENT OF RECEIVABLES** (the “**Agreement**”), dated as of the **31st day of March, 2020**, is entered into 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**”), and

**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**”), and

**WHEREAS**, Tacoma Power 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, and Rainier was selected as a result of the competitive RFI/Q process, and

**WHEREAS**, Tacoma Power and Rainier have executed the Click! Business Transaction Agreement dated November 8, 2019 (the “**CBTA**”), 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 in the CBTA, and

**WHEREAS**, Section 2.2 of the CBTA excludes from the sale of Related Surplus Assets all excluded assets, inclusive of those accounts receivable for the account of Tacoma Power, and

**WHEREAS**, Section 2.7 of the CBTA governs the allocation of revenues and provides that accounts receivable to be held on account of Tacoma Power shall be prorated as the date of transfer of Operational Control with such proration being made and paid within 90 days after the transfer of operational control, and

**WHEREAS**, the Parties agree that it would be in their mutual interest for Tacoma Power to assign irrevocably all of its respective rights, title and interest in and to the Assigned Accounts Receivable and for Rainier to purchase such right, title and interest therein on the terms and subject to the conditions set forth in this Agreement, and to extend the time period for payment in response to the coronavirus pandemic and emergency declarations;

**NOW, THEREFORE**, in consideration of the payment as provided for herein and the mutual benefits to the Parties as set forth herein, the sufficiency and adequacy of which is hereby acknowledged, Tacoma Power and Rainier agree as follows:

1. **Incorporation of Recitals.** The Parties agree that the foregoing recitals are true and correct to the best of their knowledge and are incorporated by this reference as though fully set forth herein.

2. **Definitions.** For purposes of this Agreement, the following terms shall have the meaning given herein where capitalized in this Agreement:

“Account Balance” shall mean the gross amount of all Accounts Receivable unpaid on the Transfer of Operational Control Date, less any accounts assigned by Tacoma Power to collections or that have been written-off.

“Account Debtor” shall mean and include any person liable on any Account Receivable, including without limitation, any guarantor of the Account Receivable and any issuer of a letter of credit or banker’s acceptance.

“Account Receivable” shall mean and refer to all revenues, less any adjustments, whether billed or unbilled, that are legally enforceable by Tacoma Power and unpaid by an Account Debtor on the Transfer of Operational Control Date and held as net realizable value.

“Adjustments” shall mean all discounts, allowances and offsets to which any Account Debtor would be entitled with respect to any Account Receivable.

“Assigned Accounts Receivable” shall mean the Account Balance together with all rights to payment with respect to each Accounts Receivable, and all proceeds thereof (all of the foregoing being referred to as “receivables”) constituting one or more of categories of included Accounts Receivable described in **Exhibit A** (Categories of Accounts Receivable), attached hereto and incorporated herein by this reference.

“Transfer of Operational Control” shall mean and refer to the assumption by Rainier of all operational control over the Tacoma Power Commercial System pursuant to the CBTA.

“Transfer of Operational Control Date” means the Effective Date of the IRU Agreement, the form of which is attached as Exhibit 5.6 to the CBTA (the “IRU”).

“Unpaid” shall mean payment has not been received and posted by Tacoma Power to the account of the Account Debtor.

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3. Assignment and Purchase of Assigned Accounts Receivable. In consideration for the payment and other obligations of Rainer as set forth herein, effective on the Transfer of Operational Control Date, all right, title and interest of Tacoma Power in and to the Assigned Accounts Receivable, and all monies due or which may become due on or with respect to such Assigned Account Receivable, shall be and are hereby assigned to Rainer, and Rainier accepts such assignment without qualification.

4. Determination of Tacoma Power Allocated Account Balance. Section 2.7 of the CBTA provides that revenues and any prepaid or deferred items, shall be prorated between Tacoma Power and Rainier as of 11:59 p.m. on the Transfer of Operational Control Date, the proration to be made and paid within ninety (90) days after the Transfer of Operational Control Date. The Parties have agreed that Tacoma Power will assign its interest in the Assigned Accounts Receivable to Rainier in accordance with the terms of this Agreement. The total compensation to be paid by Rainier to Tacoma Power in consideration for the Assigned Accounts Receivable shall be determined and calculated as set forth below.

Tacoma Power will run a complete report that shows the net outstanding amounts owed by each Account Debtor as of 11:59 p.m. on the Transfer of Operational Control Date. The Parties will use the final closing report to determine the Account Balance. Upon determination of the Account Balance, a percentage of the Account Balance will be allocated to Tacoma Power (the "**Tacoma Power Allocated Account Balance**") based upon the percentage of the Account balance earned by Tacoma Power as of 11:59 p.m. on the Transfer of Operational Control Date. The remaining percentage of the Account Balance (the percentage un-earned by Tacoma Power) shall be allocated to Rainier (the "**Rainier Allocated Account Balance**"). The Tacoma Power Allocated Account Balance represents the portion of the Account Balance that, once collected, will be remitted to Tacoma Power as provided in Section 6 below, less the discount as stated below.

5. Extension of Time for Payment. In March of 2020, in response to the national health crisis arising from the coronavirus outbreak and COVID – 19, a national emergency was declared by the President of the United States, and declarations of emergency were made by the Governor of the state of Washington and the Mayor of the City of Tacoma (collectively or individual referred to as the "**Declaration of Emergency**"). The ongoing health crisis has resulted in closures of schools, businesses, and government buildings leading to increased rates of unemployment and significant impacts to the financial markets as well as the operational capabilities of all sectors of government and business that remain open. Providers of internet access services and internet based services have been asked to curtail collection activities for past due accounts and to keep providing services to customers whose accounts are in arrears. The Parties are in agreement, that as a consequence of the foregoing, account balances will take longer to collect and it is necessary to adjust the schedule for remittance to Tacoma Power of the Tacoma Power Allocated Account Balance collected by Rainier. Accordingly, Tacoma Power and Rainier agree that the ninety (90) day period for remittance to Tacoma Power of the Tacoma Power Allocated Account Balance will be extended as set forth in Section 6 below.



6. Payment and Schedule. Rainier agrees that it will, in accordance with its usual and customary business practices except as may be modified during the period of the Declaration of Emergency, collect the Account Balances that are due for each Assigned Account Receivable, and remit to Tacoma Power, no later than the fifteenth (15) day of the Month following the month of collection, that portion of the Tacoma Power Allocated Account Balance that is collected less a five percent discount to cover Rainier's costs of collection; provided that, remittance of the amounts collected during the month of April may be deferred to June 10, 2020. Rainier shall submit with its monthly remittance a complete report that shows the amounts collected and uncollected for each category of accounts receivables (i.e., 0-30, 31-60, 61-90 and 91plus). Rainier shall after six (6) months of collection efforts run a complete report by category of all Tacoma Power Allocated Account Balances that remain unpaid. Tacoma Power and Rainier shall jointly assign a collectability factor ("**Collectability Factor**") to those remaining unpaid Account Balances. The Collectability Factor shall then be applied to the remaining unpaid balance to determine the value of the remaining unpaid Tacoma Power Allocated Account Balance. Rainier shall pay this sum to Tacoma Power on or before December 31, 2020 which payment shall, together with all prior remittances, constitute full and final payment to Tacoma Power for the assignment of the Tacoma Power Allocated Account Balance.

7. Payments Received Post-Transfer. Any payment received by Tacoma Power from an Account Debtor after the Transfer of Operational Control Date of any Assigned Account Receivable, shall be promptly made available by Tacoma Power to Rainier. Rainier shall include that portion of the payment that is allocated to the Tacoma Power Allocated Account Balance in its next regular remittance payment to Tacoma Power.

8. Dispute Resolution. In the event that the Parties are unable to reach agreement upon the Account Balance, the Tacoma Power Allocated Account Balance, the Collectability Factor, the Parties agree to resolve the Dispute pursuant to the Disputed Billing procedures set forth at Section 5(e) of the IRU.

9. Agreement Administration. Sharon Brophy, or her designee, for Tacoma Power shall have primary responsibility for Agreement administration and shall coordinate all communications between Tacoma Power and Rainier. Danielle Clausen for Rainier shall have primary responsibility for Agreement administration and shall coordinate all communications between Rainier and Tacoma Power.

10. 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 deemed to have been duly given if delivered personally or mailed first-class mail, postage prepaid, to the parties at the following addresses:

<p><b>Tacoma Power:</b></p> <p>Name: Sharon Brophy</p> <p>Title: Contract Administrator</p> <p>Address:</p> <p>3628 S 35th St, Tacoma, WA. 98409</p> <p>Telephone No.: 253 502-8988</p> <p>E-mail: pwrjointutilities@ci.tacoma.wa.us</p>	<p><b>Rainier:</b></p> <p>Name: Danielle Clausen</p> <p>Title: Controller</p> <p>Address:</p> <p>P.O. Box 639 Eatonville, WA. 98328</p> <p>Telephone No.: (360) 832-4130</p> <p>E-mail: <a href="mailto:Danielle.clausen@rainierconnect.net">Danielle.clausen@rainierconnect.net</a></p>
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14. Public Disclosure. This Agreement and documents provided to Tacoma Power by Rainier and by Tacoma Power to 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.

15. 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).

16. Governing Law and Venue. 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

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federal or state court located in Pierce County, Washington, and each Party irrevocably submits to the jurisdiction and venue of such courts.

17. No Third Party Beneficiaries. Each of Tacoma Power and Rainier 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.

18. No Waiver. No failure, forbearance, neglect or delay by a Party in regard to enforcing this Agreement or exercising any rights contained in this 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.

19. Severability and Survival. If any term, condition or provision of this Agreement is declared void or unenforceable or limited in its application or effect, such event shall not affect any other provisions hereof and all other provisions shall remain fully enforceable. The provisions of this Agreement, which by their sense and context are reasonably intended to survive the completion, expiration or cancellation of this Agreement, shall survive termination of this Agreement.

20. Entire Agreement. This Agreement and the attached Exhibit, as they may be modified in the future, contain the entire agreement between the Parties as to the services to be rendered hereunder. All previous and contemporaneous agreements, representations or promises and conditions relating to the subject matter of this Agreement are superseded hereby. The Parties hereto mutually acknowledge, understand and agree that the terms and conditions set forth herein shall control and prevail over any conflicting terms and conditions stated in any attachments hereto.

21. Modification. No modification or amendment of this Agreement shall be effective unless set forth in a written and executed Amendment to this Agreement.

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## **EXHIBIT A**

### *(Categories of Included and Excluded Accounts Receivable)*

The following categories of Accounts Receivable shall be included in the Account Balance:

1. Charges for cable television services whether billed in advance or in arrears;
2. Charges for installation of equipment;
3. Charges for truck rolls;
4. Charges for video on demand purchases;
5. Charges for pay per view purchases;
6. Applied but unbilled Adjustments;
7. Charges for broadband master services agreement Account Debtors, including per-circuit charges, whether billed in advance or in arrears;
8. Applied but unbilled Adjustments to charges for broadband master services agreement Account Debtors; and
9. Late charges.

The following categories of Accounts Receivable shall be excluded from the Account Balance:

1. Charges to Advanced Stream, whether billed in advance or in arrears.




**IN WITNESS WHEREOF**, the Parties hereto have accepted and executed this Agreement, as of the Effective Date stated above, which shall be Effective Date for bonding purposes as applicable. The undersigned Rainier representative, by signature below, represents and warrants they are duly authorized to execute this legally binding Agreement for and on behalf of Rainier.

**TACOMA PUBLIC UTILITIES:**

**RAINIER CONNECT NORTH, LLC:**

  
By:  
Jackie Flowers, Director  
Tacoma Public Utilities

  
By:  
Brian Haynes, CEO and President  
Rainier Connect North, LLC

**(City of Tacoma use only - blank lines are intentional)**


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Director of Finance:



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Chief Deputy City Attorney (approved as to form):

 3-31-2020

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Approved By:

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Approved By:

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Approved By:

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