



RESOLUTION NO. 40468

1 A RESOLUTION relating to Click! Network; authorizing execution of the Click!
2 Business Transaction Agreement by and between Tacoma Power and
3 Mashell, Inc., d/b/a Rainier Connect and Rainier Connect North LLC.

4 WHEREAS, in 1998, Click! Network, a trade name used by Tacoma Power,
5 began operating as a cable service provider over excess capacity of the
6 HFC Network, providing primarily cable television and wholesale cable modem
7 (internet access) services, and

8 WHEREAS, since that time, technology and consumer demands have
9 changed, with consumers shifting from predominantly consuming cable
10 programming services to predominantly consuming internet access services, and
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12 WHEREAS operational costs for the Click! Network have significantly
13 increased since 1998 while the Click! Network business model has become
14 outdated and unable to respond quickly or efficiently to changes in the market
15 place or provide the capacity to make capital investments necessary to upgrade
16 the network and compete with the private sector, and
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18 WHEREAS, in response to these challenges, the Public Utility
19 Board ("PUB") began to study alternative Click! Network business models and,
20 after many years of study, the PUB, in collaboration with the City Council, retained
21 the services of CTC Technology & Energy ("CTC") to assist in this analysis, and
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23 WHEREAS, at the January 23, 2018, Joint Study Session of the PUB and
24 City Council, CTC presented its report examining which of the following five
25 alternative business models would best meet 12 Click! Network policy goals later
26 adopted by the PUB and City Council:



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- Continue finding ways to reduce costs and streamline operations;
- Become a retail internet service provider (“ISP”) and potentially eliminate cable TV operations;
- Upgrade the Click! Network to fiber-to-the-premises in an effort to better compete with incumbents in the market;
- Cease internet and cable operations and abandon the related parts of the network;
- Seek a partner willing to take on operating and other obligations and costs while agreeing to conditions that would preserve Click!’s significant policy achievements, and

WHEREAS CTC reported that the 12 policy goals could best be met through a business model in which the City retained ownership of the entire HFC Network, including the Click! Network, with a third party providing Cable TV and/or internet access services and covering the capital and operating costs associated with providing those services, and

WHEREAS, under this model, Tacoma Power would no longer provide cable television or wholesale internet access services, and the third party would provide cable television, video, and internet access services directly to the public, and

WHEREAS the PUB, pursuant to its prior Resolution No. U-10988, expressed its determination that while the 1997 business plan achieved many of the functions envisioned for the HFC Network, the Excess Capacity of the HFC Network and the inventory, equipment, and vehicles allocated to Click! Network are not needed now or in the future by Tacoma Power for utility purposes, and thus, will not be updated or improved or utilized for utility purposes, and are excess to the needs of Tacoma Power, and that the current Click! Network business plan and



1 the proposed all-in retail service business model will not generate sufficient
2 revenues to fully fund operational expenses and the costs of capital improvements
3 needed to maintain the Excess Capacity of the HFC Network as a state-of-the art
4 Network, and

5 WHEREAS, through PUB Resolution No. U-10988 and City Council
6 Resolution No. 39930, the PUB and the City Council rescinded their approval of
7 the all-in retail service business model; adopted 12 policy goals to be maximized
8 through the use and preservation of the Excess Capacity of the HFC Network; and
9 directed the Public Utilities Director and City Manager to work collaboratively to
10 develop a plan to seek information, proposals, or qualifications from interested
11 parties to determine whether the 12 policy goals could be achieved through a
12 collaboration and/or restructuring of Click! Network, and

14 WHEREAS, at the August 21, 2018, Joint Study Session of the PUB and
15 City Council, CTC recommended that the PUB and City Council authorize
16 negotiation of term sheets with Rainier Connect and Wave Broadband, and

18 WHEREAS the City Council and PUB, after a presentation by CTC and
19 review of proposals from third parties at the March 5, 2019, Joint Study Session of
20 the PUB and City Council, directed the Public Utilities Director to execute a letter
21 agreement with Rainier Connect to enter into good faith negotiation of agreements
22 through which: (1) the City, through Tacoma Power, would retain ownership of all
23 of the existing HFC Network; (2) the capital and operating costs of the Excess
24 Capacity of the HFC Network would be borne by a third party; (3) Tacoma Power
25 would no longer provide cable television or wholesale internet access or data
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transport services; and (4) Rainier Connect would use the Excess Capacity of the HFC Network to provide cable, video, and internet access services consistent with the 12 policy goals adopted by the City Council and PUB, and

WHEREAS negotiations with Rainier Connect commenced in April 2019, and the Click! Business Transaction Agreement is now complete, and

WHEREAS, on October 30, 2019, the PUB adopted Resolution No. U-11116, declaring the Click! Assets and the Excess Capacity of the HFC Network surplus to the needs of Tacoma Power and Tacoma Public Utilities and not required for continued public utility services, recommending that the City Council declare the above-referenced property surplus to the needs of the City, and approving the Click! Business Transaction Agreement conditioned upon approval by the City Council and

WHEREAS the City Council, pursuant to Resolution No. 40467, declared the Excess Capacity of the HFC Network and the Click Assets, as those terms are defined therein, surplus to the needs of Tacoma Power, Tacoma Public Utilities, and the City, and no longer required for continued public utility service, and

WHEREAS, pursuant to TMC 1.06.273, the Tacoma Public Utilities Director has recommended that the City Council find that disposal of the Click! Assets and the Excess Capacity in the HFC Network as defined Resolution No. 40467 be conveyed and leased through a negotiated process with Rainier Connect pursuant to agreements in substantially the form of the Click! Business Transaction Agreement on file with the City Clerk, and



1 WHEREAS approval of the Click! Business Transaction Agreement will
2 allow use of the excess capacity of the HFC Network and ownership of related
3 inventory, equipment, and vehicles to be transferred to Rainier Connect and will,
4 among other things, continue use of the Click! Network to provide cable, video, and
5 broadband internet access to families and businesses in Tacoma; maintain
6 ownership of the Click! Network; require private capital to be used to operate,
7 maintain, and upgrade the network to one gigabit speeds in competition with other
8 providers; ensure that such services are provided in an equitable manner with like
9 services and prices throughout the City; and, provide for reduced-cost internet
10 access under the federal lifeline subsidy and to households eligible for TPU's
11 electric service low-income program, and
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13 WHEREAS the Click! Business Transaction Agreement further provides that
14 Rainier Connect will make annual payments to Tacoma Power of \$2,500,000 for
15 year one, \$2,625,000 for year two, \$2,750,000 for year three, \$2,875,000 for year
16 four, and \$3,000,000 for year five, and for each year after year five, the annual
17 payment will increase to reflect the Consumer Price Index Increase, and further
18 provides that Rainier Connect will invest a minimum of \$1.5 million annually in the
19 network, adjusted annually to reflect the Consumer Price Index Increase, and
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21 WHEREAS the City Council, having considered the foregoing, the public
22 comments received during the public hearing of October 29, 2019, and prior public
23 meetings of the City Council and PUB, and the City records and files related to the
24 construction, installation, and operation of the Click! Network, and having been in
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all matters fully advised, finds that it is in the best interest of the public to approve
1 the Click! Business Transaction Agreement; Now, Therefore,

2 BE IT RESOLVED BY COUNCIL OF THE CITY OF TACOMA:

3 Section 1. That the City Council does hereby find and concur with the
4 Tacoma Public Utility Board's determination and recommendation that the
5 conveyance of the Click! Assets and the grant of an indefeasible right of use of the
6 Excess Capacity of the HFC Network to Rainier Connect through a negotiated
7 disposition pursuant to the terms and conditions of the Click! Business Transaction
8 Agreement, in substantially the form on file on the office of the City Clerk, is in the
9 best interests of Tacoma Power, Tacoma Public Utilities, and the City, and all
10 applicable competitive bidding and selection requirements are hereby waived.
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13 Section 2. That the appropriate City officials are authorized to execute the
14 Click! Business Transaction Agreement, in substantially the form on file in the
15 office of the City Clerk, and that upon a joint determination by the City Manager
16 and Public Utilities Director that the conditions precedent to transfer of operational
17 control of the Tacoma Power Commercial Network to Rainier Connect have been
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met, or waived, the Mayor of the City of Tacoma, together with all other appropriate City officials, are authorized to execute the Indefeasible Right of Use Agreement, in substantially the form on file in the office of the City Clerk.

Adopted _____

Mayor

Attest:

City Clerk

Approved as to form:

Chief Deputy City Attorney