



## COMMUNITY SOLAR PARTICIPATION AGREEMENT

Thank you for your interest in Tacoma Power's Community Solar Program ("**Program**"). By completing this Agreement, you have an opportunity to participate in and facilitate the success of the Program and you agree to be bound by the Program Terms and Conditions (collectively the "**Agreement**") and all policies and guidelines of Tacoma Power are incorporated by reference. This Agreement is specifically for participation in the Tacoma Power Community Solar Projects 1, 2, 3 and 4 as applicable, located at 3628 South 35<sup>th</sup> Street, Tacoma Washington.

### **PARTICIPANT ACKNOWLEDGEMENTS, AUTHORIZATIONS AND WARRANTIES**

Participant expressly acknowledges, agrees to, authorizes, understands and warrants as follows:

- Participation is open to all Tacoma Power customers, subject to limited availability, and is limited to a fixed number of Solar Units. Due to the fixed number of Solar Units available, submittal of Agreement does NOT guarantee participation in the Program.
- Participant must meet the Eligibility Requirements contained in Section 2 of the Agreement.
- Participant has to be 18 years of age or older and have full power and authority to sign this Agreement.
- Participant has read and understands the risks and uncertainties identified in Exhibit A to this Agreement.
- Participant has not relied upon any advice from Tacoma Power, the City of Tacoma or any of its Departments as to the prudence of Participant's participation in the Program. Participant understands that any questions or concerns about available tax credits, tax benefits, tax liability, incentives, and any other attributes of Participant's participation in the Program, or any term or condition in this Agreement should be raised with Participant's tax or legal advisers or the appropriate governmental agencies. Participant acknowledges that there is a wide variety of limitations on tax incentives and other governmental programs, many of which will affect a participant's right to receive benefits under the Program, and Participant assumes the risk of all known and unknown limitations that now exist, as well as any limitations or restrictions that might be imposed in the future.
- Participant understands as part of this Agreement that Tacoma Power is subject to compliance with the Washington State Public Records Act, Title 42.56, RCW, and that this Agreement and any and all public records that are created as a part of this Agreement, the Program, may be requested by and disclosed to any member of the public as required by the Public Records Act. By signing this Agreement, Participant acknowledges that public records may be created and disclosed to any third parties as required by law without further notice or consent by Participant.
- Participant understands that the annual Washington state production incentive is limited to \$5,000.00 annually per household. If you are collecting an incentive for an at-home solar system and are also participating in Tacoma Power's Community Solar program, the annual incentive for both systems, combined, is still \$5,000.00. Tacoma Power will file the WA State Renewable Cost Recovery Incentive form on behalf of its participants to the State annually.
- Participant will receive confirmation of solar unit purchase at time of sale.
- Participant has provided valid contact information.
- Participant has received a complete copy of the TERMS and CONDITIONS of the TACOMA POWER

COMMUNITY SOLAR PROGRAM and has read, understands, accepts and agrees to be bound by them.

- Participant hereby releases and shall defend, indemnify and hold harmless, Tacoma Power, its successors and assigns, and the commissioners, directors, officers, employees and agents of Tacoma Power and its successors and assigns from any and all claims, losses, costs, liabilities, damages and expenses (including, but not limited to, reasonable attorneys' fees) arising out of or in connection with any breach of this Agreement by Participant.

# TACOMA POWER COMMUNITY SOLAR PROGRAM TERMS AND CONDITIONS

## Section 1. Definitions

- 1.1 "Account" means a Tacoma Power customer electric service Account associated with a service address for a residential or general service Tacoma Power account.
- 1.2 "Annual Incentive Payment" is the yearly payment a Participant will receive based on Participant's ownership of Solar Units. The Annual Incentive Payment is the sum of (1) the value, if any, of the Production Incentive Credit plus (2) the Energy Credit times the Value of Electricity produced in the previous year.
- 1.3 "Electric Bill" means a bill from Tacoma Power for electric service that is metered and billed for the Tacoma Power Account number specified in this Agreement or a successor Account number determined in accordance with the terms of this Agreement.
- 1.4 "Energy Credit" is the amount of electricity generated by the Solar Unit as defined in Section 6.3.
- 1.5 "Force Majeure" means any act of God, labor disturbance, act of the public enemy, war, act of terrorism, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond Tacoma Power's control. A Force Majeure event does not include an act of negligence or intentional wrongdoing.
- 1.6 "Investment Cost Recovery Incentive Rate" means the rate used to determine a specific monetary reimbursement the State of Washington plans to offer to Participants pursuant to the State of Washington Renewable Energy System Cost Recovery Program. The Investment Cost Recovery Incentive Rate shall be determined and may be made available by the State of Washington as explained in WAC 458-20-273 and in this Agreement. WHILE TACOMA POWER BELIEVES THAT THESE INVESTMENT COST RECOVERY INCENTIVES WILL BE GRANTED BY THE STATE OF WASHINGTON TO ANY ELIGIBLE PARTICIPANT, TACOMA POWER MAKES NO REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED THAT THE INVESTMENT COST RECOVERY INCENTIVE WILL BE AVAILABLE OR AT WHAT LEVEL IT SHALL BE SET. PARTICIPANT ACKNOWLEDGES THAT, UNDER THE CURRENT STATUTES OF THE STATE OF WASHINGTON, THE INVESTMENT COST RECOVERY INCENTIVE IS SET TO EXPIRE ON JUNE 30, 2020, AND MAY BE MODIFIED FROM TIME TO TIME BY THE STATE OF WASHINGTON.
- 1.7 "Participant" means the person specified as the Participant or Spouse/Domestic Partner in the Agreement and who has received notification of acceptance into the Project, or a successor Participant designated in accordance with Section 7.
- 1.8 "Participation Fee" means the fee specified in Section 3 of this Agreement.
- 1.9 "Production Incentive Credit" shall be the amount determined by multiplying the Investment Cost Recovery Incentive Rate by the Energy Credit by the number of Solar Units owned by a Participant.
- 1.10 "Program" means the community solar program operated by Tacoma Power.
- 1.11 "Project" means Tacoma Power's community solar project which is the three (3) solar photovoltaic electricity generating facilities being developed by Tacoma Power at 3628 South 35<sup>th</sup> Street, Tacoma, Washington with a maximum possible rated output of 75 kilowatts each.
- 1.12 "Service Address" means the real property located at the physical address specified in the Agreement, or a successor Service Address specified in accordance with the terms of this Agreement.
- 1.13 "State of Washington Renewable Energy System Cost Recovery Program" refers to the cost recovery and incentive program codified at RCW Sections 82.16.110-130 and implemented at WAC 458-20-273.
- 1.14 "Solar Unit" means an approximate 26-watt portion of the Project's electricity generating capacity.
- 1.15 "Term" means the period, not to extend beyond June 30, 2020, during which, in the reasonable and sole determination of Tacoma Power, the Project can continue to operate, through the use of commercially

reasonable efforts but without the necessity of significant additional capital expenditures, based upon projected costs, economics and other factors determined by Tacoma Power to be relevant at that time.

1.16 "Terms and Conditions" means the terms and conditions of this Agreement.

1.17 "Value of Electricity" means the \$0.0405 per kilowatt hour paid for electricity generated by the solar project.

## **Section 2. Eligibility Requirements**

Only Tacoma Power customers with metered residential electric service accounts in good standing will be permitted to enroll in the Program or to remain enrolled in the Program. Non-metered, and lighting-only accounts are not allowed to participate in the Program. Tacoma Power may terminate a Participant's participation in the Project at any time if Tacoma Power determines the Participant no longer meets the Eligibility Requirements specified in this Agreement.

## **Section 3. Participation Fee**

Participant agrees to pay the Participation Fee of One Hundred Dollars (\$100.00) per Solar Unit selected by Participant and approved by Tacoma Power for up to twenty (20) Solar Units in total for all community solar projects that are or may be developed by Tacoma Power.

## **Section 4. Term**

Participation in the Program shall be effective upon confirmation of enrollment by Tacoma Power on the date shown in the confirmation notice, which shall be emailed to the Participant and will continue for a period to June 30, 2020, subject to early termination as described in Section 7. If the Participant does not have email, Tacoma Power will mail the confirmation notice. Termination of the Program shall be at sole discretion of Tacoma Power and may be made for any reason. TACOMA POWER ANTICIPATES, BUT DOES NOT GUARANTEE that the Term of the Program will extend to June 30, 2020.

## **Section 5. Annual Incentive Payment**

In consideration of the Participation Fee paid by the Participant, and subject to all the Terms and Conditions set forth herein, the Annual Incentive Payment shall be mailed to the Participant at the address identified in this agreement. The Participant shall receive an Annual Incentive Payment for each year up to June 30, 2020. In 2020, Participants will receive a single payment for the Value of Electricity multiplied by the Energy Credit for the years 2021-2035 in their last Annual Incentive Payment.

5.1 The Annual Incentive Payment shall be delivered via a paper check mailed USPS to the Participant's service address once annually through the Term as discussed herein.

## **Section 6. Calculation of the Annual Incentive Payment**

The Annual Incentive Payment shall be the sum of (1) the Energy Credit multiplied by Value of Electricity and (2) the value, if any, of the Production Incentive Credit.

6.1 The number of kilowatt hours of annual production will be measured and calculated by Tacoma Power using metering installed for that purpose and read each year from July 1 to June 30 during the Term of the Project.

6.2 The value of the Production Incentive Credit shall be determined as defined in Section 1.9 of this document.

6.3 Energy Credit is the amount of electricity generated in kilowatt-hours by the Participant's Solar Unit(s) as measured and calculated by Tacoma Power using metering installed for that purpose and read each year from July 1 to June 30 during the state incentive period which ends June 30, 2020.

6.4 As specified in Washington Renewable Energy System Cost Recovery Program, Washington State utilities

may pay production incentives to qualified solar-generating customers (including Community Solar participants) within their service territories and earn a Utility tax credit equal to the cost of the payments. The tax credit that a utility may claim cannot exceed the greater of \$100,000 or 0.5% of the utility's taxable power sales. The incentive amount paid by a utility on behalf of the State may be proportionally reduced if requests for incentive payments exceed the tax credit cap available to that utility. **Currently, Tacoma Power has not reached the tax credit cap; however, additional customer interest in solar could cause the cap to be reached at a later date. Without modification to the State law, incentive payments to all Tacoma Power solar customers could be reduced for the duration of the Project.** Since reaching the cap is market driven and difficult to predict, it is not possible to estimate the amount of reduction, if any, for Participants in the Program.

- 6.5 The Washington Administrative Code (WAC 458-20-273) (“WAC”) specifies the rules for both Tacoma Power’s Community Solar Program and Washington Renewable Energy System Cost Recovery Program incentives. The WAC states that there is an **applicant limit**. No individual, household, business, or local governmental entity is eligible for incentive payments of more than five thousand dollars (\$5,000) per year. If two or more individuals are living together in one household with one customer account with the light and power business, even though these individuals may each individually participate in the program, they will only receive incentives up to the five thousand dollar annual “applicant limit” per household.
- 6.5.1 If a Participant owns a business, the business may participate in the Program and will be subject to a separate five thousand dollars (\$5,000) per year incentive.
- 6.5.1.1 The Participant’s business must have a separate Account established to be eligible for the separate incentive.
- 6.5.1.2 Sole proprietorships are not considered a separate entity and therefore classified as part of the household.

## Section 7. Transfer of Solar Unit(s)

Except as provided in this Section 7, the Annual Incentive Payment described in Section 5 and Section 6 and all other benefits associated with Participant’s Solar Unit(s) shall be distributed throughout the Term to the Participant at the Tacoma Power account number and Service Address specified on the Agreement.

- 7.1 If Participant terminates their Tacoma Power Account to which Community Solar benefits have been assigned, all prospective rights and benefits associated with Participant’s Solar Units shall revert to Tacoma Power, unless Participant notifies Tacoma Power within sixty (60) days of such termination with a request to transfer the Solar Units to:
- 7.1.1 The same Participant at a new Tacoma Power Account; OR
- 7.1.2 To a successor Participant with a distinct Tacoma Power Account that meets eligibility requirements specified in Section 2. The successor Participant will receive all prospective rights and benefits associated with the assigned Solar Unit(s), with the exception that they cannot transfer the Solar Unit(s) to subsequent successor Participants. The successor Participant must sign a new Agreement with Tacoma Power and is subject to the Terms and Conditions of the Agreement
- 7.2 Only ONE (1) transfer pursuant to Section 7.1.2 may be made during the Term of the Program. If successor Participant terminates his/her Tacoma Power electric Account subsequent to any transfer made pursuant to Section 7.1.2, the Solar Unit(s) will be retained by Tacoma Power or reassigned to an eligible Tacoma Power electric Account chosen at the sole discretion of Tacoma Power with no refund made to either original Participant or the successor Participant.
- 7.3 If Participant moves outside Tacoma Power’s service territory they may sell their Solar Unit(s) to another Tacoma Power customer or they may donate their Solar Units to a non-profit entity with an active Tacoma Power account.

## **Section 8. No Pledge of Solar Unit(s)**

Participant may NOT pledge the Solar Unit(s) as security for repayment of any purchase money loan utilized to obtain all or part of the Participation Fee or any other loan. Except as expressly provided in this Agreement, Participant may not assign, pledge, gift, bequeath or otherwise transfer any Solar Unit(s) to any other individual or entity.

## **Section 9. Ownership of Environmental Attributes**

- 9.1 Tacoma Power retains ownership of environmental attributes, including renewable energy credits, which may be associated with the Participant's Solar Unit(s)
- 9.2 In addition to the limitation set forth in Section 8 above, Participant may not certify or transfer any environmental attributes generated by the Project

## **Section 10. Disclaimer of Warranties**

Participant acknowledges that, except to the extent specifically stated herein, Tacoma Power has NOT made any representation, warranty or promise with respect to any aspect of the performance, condition, value, risks or likelihood of success of the Project, Program or the Solar Units(s) for which the Participant has applied herein. PARTICIPANT ACKNOWLEDGES AND AGREES THAT THE SOLAR UNIT(S) ENROLLED IN BY THE PARTICIPANT ARE MADE AVAILABLE AS IS, WHERE IS, AND WITHOUT WARRANTY OF ANY KIND. ANY WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE ARE HEREBY DISCLAIMED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR OTHERWISE.

Under no circumstances shall any Participant have a right to receive damages, whether compensatory, exemplary, or otherwise, and whether arising in contract, tort or by other legal theory, relating to this Agreement or the Program in an amount that exceeds the amount of his or her Participation Fee, REDUCED BY the amount of any Annual Incentive Payments actually received by such Participant. In connection with any claims asserted under this Agreement or otherwise in connection with the Program, Tacoma Power may, without derogation or limitation of any other defenses available to Tacoma Power and without waiver of any rights or claims Tacoma Power might otherwise have against any person, terminate this Agreement and the Participant's interest in the Project, and may pay, as the Participant's sole and exclusive remedy, an amount equal to the Participation Fee of such Participant, less the amount of any and all Annual Incentive Payments and Energy Credits received by or payable to Participant for his or her participation in the Program from the date of this Agreement until the termination date.

## **Section 11. No Effect on Electric Rates and Tariffs**

Nothing in this Agreement shall be deemed to alter or modify any rate schedule, charge or condition of service (including any policies, fees, charges or assessments) established from time to time by Tacoma Power for electric service. All such rates and charges shall remain subject to change at any time. Participant acknowledges and agrees that Participation in this Program will have no impact on their normal Electric Bill. Enrollment in the Program shall not give Participant any increased or augmented right to contest or otherwise affect the determination of any rates or charges by Tacoma Power for electric services.

## **Section 12. Ownership of the Community Solar Project**

Tacoma Power will have sole ownership, possession and control of the Project, and will have the exclusive right to maintain and operate such Project. Enrollment in the Program does not and shall not be construed to convey any right, title or interest in or to any portion of any property (tangible or intangible, real or personal) underlying or comprising any portion of the Project or its associated equipment or improvements, or any equipment of Tacoma Power.

### **Section 13. Access to Solar Equipment at the Community Solar Project**

Participant WILL NOT have access to the solar electricity generating, interconnection, metering, data acquisition or other related solar equipment at the Project for any purpose, unless otherwise agreed to in writing in advance by Tacoma Power. Such access may be withheld or granted at Tacoma Power's sole discretion.

### **Section 14. No Refund of Participation Fee**

Tacoma Power shall have no obligation to refund all or any portion of the Participation Fee at any time or for any reason.

### **Section 15. Notice**

Except for Tacoma Power's confirmation of enrollment to Participants by e-mail or USPS, all notices, requests, consents, and other communications under this Agreement will be in writing to the mailing address for Tacoma Power set forth below and the Participant's Service Address set forth above unless a different mailing address is provided by Participant in this Agreement.

### **Section 16. Binding Effect**

This Agreement shall bind and inure to the benefit of the Participant and Tacoma Power and their permitted successors and assigns.

### **Section 17. No Third Party Beneficiaries**

This Agreement is intended solely for the benefit of the Participant and Tacoma Power. Nothing in this Agreement shall be construed to create any duty to, or standard of care with reference to, or any liability to, any person or business entity not a party to this Agreement.

### **Section 18. No Waiver**

Neither the Participant's, nor Tacoma Power's failure to enforce any right or obligation with respect to any matter arising in connection with this Agreement shall constitute a waiver as to that matter or any other matter. If a party at any time waives its rights with respect to a default under this Agreement or any other matters arising in connection with this Agreement, the waiver shall not be effective unless it is set forth in a written notice signed by the waiving party. A waiver with respect to one default or matter shall not be a waiver of any other default or matter.

### **Section 19. Governing Law/Jurisdiction/Venue**

This Agreement shall be deemed to have been made in, and shall be construed under, the internal laws of the State of Washington, without regard to the principles of conflicts of laws thereof. The parties acknowledge and agree that a court of competent jurisdiction located in Pierce County, Washington shall have exclusive jurisdiction in any action or proceeding arising under or relating to this Agreement.

### **Section 20. Entire Agreement**

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all previous proposals, both oral and written, negotiations, representations, commitments, writings and all other communications between the parties. This Agreement may not be released, discharged, or modified except by an instrument in writing signed by a duly authorized representative of each of the parties.

## Exhibit A

### Exhibit A Risks and Uncertainties Associated with Participation in the Community Solar Program

Participation in the Tacoma Power Community Solar Program is accompanied by various risks and uncertainties that may diminish the value participants receive from the Program and that may make it more difficult to transfer one's solar units for an amount equal to or greater than the amount paid, or at all. The known risks and uncertainties that may cause the benefits to fall short of those currently expected by Tacoma Power's management are set forth in this Exhibit A, and persons considering participation in the Program should carefully consider these risks before participating. By agreeing to participate, each Participant will be representing to Tacoma Power that he or she has read and fully understands the risks described in this Exhibit. Further, the information presented in this Agreement and in all descriptions of the Program is accurate as of the date of this Agreement. Tacoma Power expressly disclaims any obligation to update or amend these disclosures or other materials at any time in the future to reflect ongoing events or further developments.

**The Program is not suitable for all customers, and the offering price has been determined arbitrarily.** The Program requires a Participation Fee of \$100 per solar unit. This price has been established by Tacoma Power based upon its estimate of allocable costs of the Project and the number of customers participating in the Program. Participant's ability to transfer his or her participation in the Program is highly limited, both because of the requirements that any participant must be a customer of Tacoma Power and because the persons who might benefit from participation in the Program are limited in both number and participation characteristics. Accordingly, Participants should not expect to be able to readily sell or liquidate their participation in the Project.

**Participants should be prepared to bear the risks of their participation for an indefinite period of time.** The Solar Units may be transferred in accordance with certain contractual restrictions set forth in this Agreement. However, Tacoma Power is aware of no market for the participation interests, and for a variety of reasons, no market is likely to develop. Participation in this program is unusual and programs of this type are not in widespread use. Therefore, Participants should recognize that in the event they need to sell the Solar Units, they may be unable to find a buyer, and there may be no readily determinable means to establish a market price or value. Further, a Participant is not permitted to pledge or hypothecate his or her Solar Units in the Project for any purpose. This circumstance is likely to limit a Participant's ability to resell the Solar Units at a price he or she would deem reasonable, or at all, or to achieve liquidity in the Solar Units by means of a loan against their value.

**The incentive payments generated by the solar units are limited by the amount of power produced by the solar panels in an participant's solar unit.** A Participant's receipt of benefits from the Program will depend, among other things, upon the amount of power (measured in kilowatt-hours) generated by the solar power unit in which the participant has purchased Solar Units. The amount of power generated will, in turn, depend upon a wide variety of factors, including solar exposure, the efficiency and cleanliness of the panels, the success of Tacoma Power in managing the Project, the market (if any) for power generated by the Project, competition by the Project with other alternative energy projects or with conventional power generation projects, and technical and equipment failures that limit or eliminate the Project's ability to produce electrical power. Any occurrence of one or more of these factors may reduce the income available to Participants, which will reduce the amounts available for allocation among Participants in the Project.

**Changes in law or regulation may adversely affect the value of the Annual Incentive Credits that are expected to be derived from participation in the Project.** The Project is feasible largely, if not entirely, because federal and state alternative energy incentive programs reduce the cost of generating solar power and create a market for power produced from solar projects and other alternative energy programs. Changes in or termination of these incentives, or changes in law or regulation that make it more expensive to produce power from the Project, reduce the value of the power generated by the Project, may adversely affect the operating results of the Project, may reduce the benefits available to distribute to Participants, or both. Any such outcomes would reduce or eliminate the value of a Participant's incentive payment and may reduce the value of a Participant's interest.

**Participants will not have the ability to change the manager of the Project or to control any aspect of the operation of the Project.** Participants will be dependent upon the management of Tacoma Power to promote the safe, effective and efficient operation of the Project. Participants will not, severally or collectively, have the ability to remove Tacoma Power as the manager of the Project even if they are unhappy with the results or if they believe Tacoma Power is not managing the Project well, or if they believe that another person or entity could manage the Project better or more effectively.

**Tacoma Power may terminate the Program, the Project or the Agreement at any time.** The Agreement permits Tacoma Power to terminate the Program or the Agreement at any time. In any such event, Tacoma Power's liability is limited to a refund of the Participation Fee, less the amounts received in respect of any Production Incentive Credits



received by the Participant. Neither Tacoma Power nor any other person will be liable to a Participant for any additional amounts.

**The remedies Tacoma Power associated with the operation of the Project and the offer and sale of interests therein is strictly limited to a refund of the purchase price.** Under no circumstances may a Participant receive an award of damages associated with the purchase of units or the ownership or operation of the Project, receive damages or assert claims against Tacoma Power or its employees, directors or affiliates that exceed the value of the Participation Fee, less the amounts such participant has received in the form of Production Incentive Credits