



PREPARED BY  
OLYMPIA COMMUNITY SOLAR



2020

# HUMMINGBIRD COMMUNITY SOLAR PROJECT

**PARTICIPATION AGREEMENT**

**Hummingbird Community Solar Project**

Hummingbird CSP LLC  
112 4th Avenue E, Suite 208, Olympia Washington 98501  
Info@olysol.org (360) 481-4020 olysol.org  
Hours of operation: Monday through Friday 9am-5pm

Thank you for your interest in the Hummingbird Community Solar Project (Project). Upon signing this Agreement, you agree to be bound by its terms and conditions. Please review the Agreement terms carefully, provide all the requested information, and return the signed Agreement to Olympia Community Solar (OCS) along with the Participation Fee.

**Purchaser Information**

Name: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_ Date of Signing: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**Solar Unit Purchase:** I want to purchase \_\_\_\_\_ solar units for the beneficiary.

Total Participation Fee (number of solar units multiplied by \$300): \$ \_\_\_\_\_

**Beneficiary Information** (check if same as purchaser  )

The beneficiary may be the purchaser, or a person or organization the purchaser wishes to receive annual solar benefits.

Name: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_ Date of Signing: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Consent for electronic delivery of annual distribution and communications:

**Account Number:** \_\_\_\_\_ **Routing Number:** \_\_\_\_\_

By signing this agreement I certify that I have read and agree to the full Agreement and it's appendices.

**Name:**

**Signature:** \_\_\_\_\_

I will send my payment by mail:

Please invoice me so that I can pay electronically (3% transaction charge):

If you're purchasing units for multiple beneficiaries, please complete a Participation Agreement for each Beneficiary.

Please make checks payable to Hummingbird CSP LLC and mail to 112 4th Ave SE, STE 208 Olympia WA, 98501

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### Special Thanks:

- For project inspiration and years of climate leadership, Sam Garst
- The Hands On Children’s Museum Board of Directors and CEO, Patty Belmonte
- The City Council of Olympia, Public Works Director Rich Hoey, and Facilities Operations Supervisor Eli Cole
- South Sound Solar and President Kirk Haffner for providing an engineering assessment
- A&R Solar and Project Director Andrew Hule for providing the project’s design and installation
- Smith and Dietrich PLLC for providing legal services
- The Transalta Coal Transition Fund for start up funding.
- John MacLean and the Energy Efficiency Finance Corporation for providing a project feasibility study.
- The Tides Foundation for general operating support.
- Rich Phillips, Solar Energy Entrepreneur
- Michael McGaully, CPA/CGMA, StraderHallett Accountants
- Leslie Moynihan, Director of Net Metering, Puget Sound Energy
- Alan Chessman, Administer, Kingston Community Solar
- Joe Deets, Renewable Energy Consultant, Sunergy Systems
- Thad Curtz for providing valuable input and feedback

## Section 1. Summary

### **How do I pay for the Solar Units?**

Olympia Community Solar will accept payment of your Participation Fee by mail or in person. Payment of the Participation Fee is due in full when you submit this Agreement to Olympia Community Solar. Please mail the signed Agreement along with your check for your Participation Fee to 112 4th Avenue E #208 Olympia WA 98501. Checks should be made out to Hummingbird CSP LLC.

Funds received from applicants will be placed in an interest bearing escrow account at Heritage Bank until the Total Project Amount is received. If the Total Project Amount is not received by August 20th, 2021 all funds will be returned including any accrued interest.

### **How are Solar Units allotted?**

There are 800 Solar Units available for purchase. OCS will allocate Solar Units to applicants according to the order in which their complete Agreement was received. If an initial application is incomplete for any reason, the applicant will be allocated units when the missing information is submitted.

### **Can I cancel my participation in the Project?**

You may cancel or transfer your participation for any reason at any time by completing the Participation Cancellation or Transfer Form (Exhibit B) and returning it to OCS.

### **What Distributions will a Participant Receive?**

Participants will receive a check for their portion of the project's generation, a corresponding tax form, and a project update on an annual basis. Participants shall become members of the Project Operating Company, Hummingbird CSP LLC. Participants may be eligible for a Tax Credit worth 26% of their unit cost, which may be used as a credit against their Federal Income Tax. Distributions to any Participant will end once the Participant has recovered the participation fee.

## Section 2. **Definitions**

- “Cancellation” means a participant’s request for a refund of their deposit to the company at any time before the receipt by the company of the Total Project Amount.
- “Deposit” means any moneys provided to the community solar company to purchase an interest in a community solar project.
- “Host” means the Hands On Children’s Museum or other tenant of the building located at 414 Jefferson Street in Olympia, Washington.
- “Hummingbird Community Solar Project” or “Project” means the solar photovoltaic electricity generating facilities to be constructed by the Project Operating Company on the rooftop of the building located at 414 Jefferson Street in Olympia, Washington.
- “Total Project Amount” means the total funding needed to develop the project as specified in the operating agreement.
- “Olympia Community Solar” or “OCS” means the Washington non-profit corporation that will manage the community solar project. Olympia Community Solar is the administrator of the Project Operating Company, Hummingbird CSP LLC.
- “Operating Agreement” means the agreement among members of the Project Operating Company that governs company operations. The Operating Agreement will be in substantially the same form as Exhibit A to this Agreement.
- “Participant” means the person identified in this Agreement as the beneficiary authorized to participate in the Program under the terms and conditions set forth herein, or any individual that is an authorized transferee. Participants are also Members of the Project Operating Company.
- “Party” or “Parties” means either Participant or Olympia Community Solar or both depending upon the context.

- “Project Operating Company” means a Washington limited liability company managed by Olympia Community Solar to operate the Hummingbird Community Solar Project.
- “Solar Unit” means the intangible equivalent of a portion of the Project’s generating capacity.
- “Transfer” means a participant’s sale or transfer of a portion or all of their interest in the community solar project.
- “Utility” means the participant’s electric service provider.

### Section 3. **PARTICIPANT ACKNOWLEDGEMENTS AND AUTHORIZATIONS**

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

- Participant is a Washington resident over the age of 18 or an entity authorized to execute this Agreement.
- Participant acknowledges that their electric service will not change or be impacted by their participation.
- By signing this Agreement, Participant grants a power of attorney to OCS to execute the LLC Operating Agreement on their behalf and add them as members to the Project Operating Company.
- Participant understands and accepts the risks and uncertainties identified in this Agreement.
- Participant understands that they are responsible for providing accurate and up-to-date information for receipt of their distributions and communications from OCS. Participant acknowledges that if the company cannot contact them for at least three years, their units may be considered abandoned under Section 10 of this agreement.
- Participant agrees and represents that their motivation for participation in the program is the promotion of renewable energy generated in the City of Olympia and not the expectation of profit or financial return.
- Participant has not relied upon any advice from, or any information provided by, OCS, or any of OCS’s employees, directors, contractors, agents or affiliates, as to the prudence of Participant’s purchase of Solar Units or participation in the Project. Participant understands that any questions or concerns about available tax credits, tax benefits, tax liability, incentives, and any other economic attributes of Participant’s participation in the Project, or any term or condition in this Agreement and related documents should be

raised with Participant's tax or legal advisers or the appropriate governmental agencies. Participant acknowledges that there are 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 has provided valid contact information listed in the section above and will keep OCS informed of any changes. Project correspondence will be conducted primarily via email unless other arrangements are made, and Participant hereby consents to the delivery of all applicable notices under this Agreement by email, to the email address provided by Participant to OCS.
- Participant hereby releases and shall defend, indemnify and hold harmless OCS, its successors and assigns, and the commissioners, directors, officers, employees and agents of OCS 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 the participant.
- Participant has read, accepts and agrees to be bound by the Agreement and its Terms and Conditions including the Consumer Guide to Community Solar in Washington State which is attached as an exhibit to this agreement.
- Participant confirms that they may opt out of electronic distributions at any time, and that it is the participant's responsibility to notify the company of any changes to their email address. Upon request of the participant, the company will provide a paper copy of any document the company sends electronically. The company is required to provide written notices of any change to the project or participation.

#### Section 4. **Risks**

- The solar energy system may not produce as much energy as expected, reducing sales.
- The program may fail to attract enough participants, and its scale might have to be changed with possible effects on its costs and payback, or funds may be returned.
- The project may face permitting delays from various agencies.
- Energy market prices could change dramatically, and those changes could impact the production payments from the Host.



- The Project Operating Company has no operating history. As a new enterprise, the Company may be subject to risks the management has not anticipated.
- The Project Operating Company's success depends substantially on the services of a small number of individuals. The Project Operating Company may be harmed if it loses the services of these people and is not able to attract and retain qualified replacements.
- The Project Operating Company must comply with local, state, and federal rules and regulations including tax rules and regulations which may change.

### **Section 5. Participation Fee**

Participant agrees to pay Olympia Community Solar a one-time Participation Fee of \$300 for each Solar Unit.

### **Section 6. Term**

Participation in the Program shall be effective upon confirmation of enrollment by OCS on the date shown in a confirmation notice, which shall be emailed to the Participant. This Agreement shall continue until terminated as provided herein or until the solar equipment upon which it is based is no longer functional. OCS shall have the absolute discretion to determine when the solar equipment is no longer functional, and if repairs are feasible in the event that the solar equipment described in this Agreement malfunctions or is damaged. This Agreement may be terminated by OCS at any time provided that OCS provides the participant with ten days written notice.

### **Section 7. Annual Distribution**

In consideration of Participant's payment of the Participation Fee, and subject to all the terms and conditions set forth herein and the Project Company Agreement, the Participant shall receive an annual distribution, which shall be based on the energy generated by the Solar Unit(s) purchased by the Participant after accounting for expenses.

The Annual Distribution will be paid in the form of a check or by electronic deposit and shall be mailed to the Participant's current address or transferred to the Participant's bank account in the Project Company's records.

### **Section 8. Calculation of Annual Distribution, Tax Credits, Production Incentives**

The Annual Distribution shall be calculated as follows:

The value of the solar power generated shall be determined by multiplying the kilowatt-hours (kWh) produced by all the solar panels in the Project for the given year by the Host's current electrical rate and subtracting the allocable expenses associated with the Project. The value of the Annual Distribution for that year is the value of the solar power divided by the number of Solar Units for the project.

Distribution of Solar Unit benefits:

OCS will send an annual check or electronic deposit to each participant. It is the participant's responsibility to ensure their information for depositing the payment is correct and up to date.

Distribution of Tax benefits:

Any tax benefits flowing to the Project Operating Company will be passed through to Participants to the maximum extent allowed by law. However, every Participant's tax situation is different, and Olympia Community Solar cannot guarantee that a Participant will qualify for any tax incentive or benefit from the Project.

#### **Section 9. Transfer of Solar Unit(s)**

Upon Participant request and subject to the approval of OCS, and subject to state and federal law regarding transfers, the Solar Units can be transferred to a person or business that meets the eligibility requirements of this agreement. Transfers are subject to the terms and conditions of the Cancellation and Transfer form. The Transferee will receive all prospective rights and benefits associated with the assigned Solar Unit(s). An additional fee may be imposed for each transfer.

#### **Section 10. Abandonment of Solar Unit(s)**

If the company is unable to maintain contact with the Participant, it may consider the Participant's interest abandoned as provided in RCW 63.29 the "UNIFORM UNCLAIMED PROPERTY ACT" and proceed accordingly.

#### **Section 11. No Pledge of Solar Unit(s)**

Participant may not pledge or hypothecate the Solar Unit(s) as security for repayment of any purpose.

## **Section 12. Participant Ownership of Environmental Attributes**

The Participant agrees that Olympia Community Solar or the Project Operating Company will retain ownership of any renewable energy credits or other environmental attributes of any kind which may be associated with the Project and may retire or sell these on behalf of participants. Participants may not certify or transfer any environmental credit or attribute generated by the Project.

## **Section 13. Disclaimer of Warranties**

Participant acknowledges that, except to the extent specifically stated herein, Olympia Community Solar 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 Program or the Solar Unit(s). Participant acknowledges and agrees that the Solar Unit(s) are made available as is, where is, and without warranty. Any warranties, express or implied, arising by operation of law or otherwise are hereby disclaimed, including without limitation any warranties 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 their Participation Fee, reduced by the amount of any Distribution actually received by such Participant. In connection with any claims asserted under this Agreement or otherwise in connection with the Program, Olympia Community Solar may, without derogation or limitation of any other defenses available to Olympia Community Solar and without waiver of any rights or claims Olympia Community Solar 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 payment made to Participant for their participation in the Program.

## **Section 14. No Effect on Electric Rates and Tariffs**

Nothing in this Agreement shall be deemed to alter, modify, or limit any rate, charge or condition of service (including any policies, fees, charges or assessments) established from time to time by a Utility for electric service. All such rates, charges, or policies shall remain subject to change at any time by the Utility. 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 the Utility for electric services.

#### **Section 15. Ownership of the Community Solar Project Equipment**

The Project Operating Company will have sole ownership, possession, and control of the Community Solar Project and associated equipment and will have the exclusive right to maintain and operate such equipment. 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 Olympia Community Solar.

#### **Section 16. Access to Solar Equipment at the Community Solar Project**

Participant will not have access to the solar equipment at the Community Solar Project for any purpose without prior written approval of Olympia Community Solar. Such access may be withheld or granted at Olympia Community Solar's sole discretion.

#### **Section 17. Force Majeure**

Neither Olympia Community Solar nor the Participant shall be liable for breach of this Agreement occasioned by 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 the Party's reasonable control.

#### **Section 18. Limitation of Liability**

Participant understands and agrees that under no circumstances will Olympia Community Solar's total liability to participant for claims arising under this agreement exceed the amount of Participant's enrollment fee reduced by any payment made to the Participant.

In no event shall Olympia Community Solar, its employees or agents be liable for any special, incidental, indirect or consequential damages or damages for lost profits, whether based on breach of contract, tort (including negligence), product liability, or otherwise, and regardless of whether Olympia Community Solar has been advised of the possibility of such damages.

## Section 19. **Notices**

All notices, requests, consents, and other communications under this Agreement will be transmitted by email or other means as set forth herein.

## Section 20. **Binding Effect**

This Agreement shall be binding and inure to the benefit of the Participant and Olympia Community Solar and their permitted successors and assigns.

## Section 21. **No Third-Party Beneficiaries**

This Agreement is intended solely for the benefit of the Participant and Olympia Community Solar. Nothing in this Agreement shall be construed to create any right or 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 22. **No Waiver**

Neither Party'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 23. **Electronic Distribution**

By checking the "Consent for Electronic Distribution" box, the Participant consents to receive billing, payments, reports, and other distributions electronically. Upon request of the participant OCS will provide paper copies of any document the company sends electronically. The participant may opt out of electronic distributions at any time. Notices of termination or suspension of the project or participation must be delivered in paper form.

## Section 24. **Governing Law/Jurisdiction/Venue**

This Agreement shall be deemed to have been made in and shall be construed under the 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 Thurston County, Washington shall have exclusive jurisdiction in any action or proceeding arising under or relating to this Agreement.

#### **Section 25. Dispute Resolution Process**

Olympia Community Solar will administer its community solar projects in a transparent manner that allows for fair and nondiscriminatory opportunities for customers, project participants, and applicants to participate. Olympia Community Solar is committed to addressing participant concerns or complaints respectfully, transparently and cost-effectively as set forth below:

Participants with concerns or complaints relating to OCS's administration of the participation agreement or related documents should send an email or letter briefly describing their concerns to OCS. An OCS representative will attempt to contact the complaining participant within five working days.

If a participant's concern cannot be satisfactorily resolved within 10 working days from the date of the email or letter, the participant may request voluntary mediation of the dispute. If the participant requests mediation, OCS will arrange for a local mediator to help the parties attempt to resolve the dispute at OCS's sole cost. If mediation does not resolve the dispute, the participant may seek available legal remedies.

#### **Section 26. Entire Agreement**

This Agreement constitutes the entire understanding 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 both Parties.

**Exhibit A (Hummingbird LLC Company Agreement)**

**Exhibit B (Cancellation Form)**

**Exhibit C (ESCROW Agreement)**

**Exhibit D (Consumer Guide to Community Solar in Washington State)**

**PARTICIPATION AGREEMENT EXHIBIT A**  
**LIMITED LIABILITY COMPANY OPERATING AGREEMENT**  
**FOR**  
***HUMMINGBIRD CSP LLC***

This Company Operating Agreement is entered into and shall become effective as of the Effective Date by and among the Company and the persons executing the Subscription Agreement and this Company Operating Agreement as Members. It is the Members' express intention to create a limited liability company in accordance with RCW 25.15, as currently written or subsequently amended or redrafted and that all provisions of this document shall be construed consistent with this intent.

Accordingly, in consideration of the conditions contained herein, the Members agree as follows:

**ARTICLE I**

**Company Formation**

1.1 **FORMATION.** The Members hereby form a Limited Liability Company known as *Hummingbird CSP LLC* ("Company") subject to the provisions of Washington law. A Certificate of Formation has been filed with the Secretary of State.

1.2 **REGISTERED OFFICE AND AGENT.** The location and name of the registered agent shall be as stated in the Certificate of Formation.

1.3 **TERM.** The Company shall continue for a perpetual period or until:

(a) The Initial Member determines that the Company cannot achieve its original purpose or project or another form of entity would better serve the purpose of community solar power; or

(b) Any event which makes it unlawful for the business of the Company to be carried on by the Members; or

(c) Any other event causing dissolution of this Limited Liability Company under applicable law.

1.4 **CONTINUANCE OF COMPANY.** Notwithstanding the provisions of ARTICLE 1.3, in the event of an occurrence described in ARTICLE 1.3(c), if there is at least one remaining Member, the remaining Member or Members shall have the right to continue the business of the Company

1.5 **BUSINESS PURPOSE.** The Company shall conduct any and all lawful business deemed appropriate to execute the Company's objectives, which include the promotion, development,

operation, and management of a community solar project to be built on the Hands On Children's Museum Building in Olympia.

**1.6 PRINCIPAL PLACE OF BUSINESS.** The location of the principal place of business of the Company shall be as stated in the Certificate of Formation or another location selected by the Manager.

**1.7 INITIAL MEMBER.** Olympia Community Solar, a Washington nonprofit corporation, shall be the Initial Member and Initial Manager. The Initial Member's capital contribution may consist of management services, development services, or out-of-pocket expenditures that benefit the Company.

**1.8 THE MEMBERS.** The name and place of residence of each Member are listed below under Certification of Members. The Members are the owners of this Company. The Members do not own the Company's assets and have no right or power to pledge or encumber those assets or receive any asset in a distribution.

**1.9 ADMISSION OF MEMBERS.** No additional Member may be admitted to the Company without the Manager's approval of a completed participation agreement.

## **ARTICLE II**

### **Capital Contributions**

**2.1 INITIAL CONTRIBUTIONS.** The Members, other than the Initial Member, shall make a one-time cash contribution to the Company's capital in the form of a non-interest bearing loan. The Company shall keep a record of the amount contributed by each Member and the Member's share of the Company.

**2.2 ADDITIONAL CONTRIBUTIONS.** No Member shall be obligated to make any additional contribution to the Company capital.

## **ARTICLE III**

### **Profits, Losses and Distributions**

**3.1 PROFITS/LOSSES.** For financial accounting and tax purposes the Company's net profits or net losses shall be determined on an annual basis and shall be allocated to the Members in proportion to each Member's relative capital interest in the Company, and as amended from time to time in accordance with Treasury Regulation 1.704-1.

**3.2 DISTRIBUTIONS.** Subject to available funds, the Company intends to make annual distributions consisting of the Member's share of the solar power revenue generated by the Company after accounting for allocable expenses. Distributions to any Member, other than the Initial Member, shall cease after the Member receives distributions in an amount equal to their capital contribution. Available funds, as referred to herein, shall mean the net cash of the Company available after appropriate provision for expenses and liabilities, as



determined by the Managers. If necessary, distributions in liquidation of the Company or in liquidation of a Member's interest shall be made in accordance with the positive capital account balances pursuant to Treasury Regulation 1.704-1(b)(2)(ii)(b)(2).

## **ARTICLE IV**

### **Management**

**4.1 MANAGEMENT OF THE BUSINESS.** This Company shall be manager managed. The initial elected Manager is set forth in the Certificate of Formation filed with the Secretary of State. The Manager listed in the Certificate of Formation will serve as the Manager of this Company until its resignation.

**4.2 MEMBERS.** Members shall not take part in the operation of the Company's affairs, unless they are elected Manager.

**4.3 POWERS OF MANAGERS.** The Managers will make decisions as to (a) the sale, development, lease or other disposition of the Company's assets; (b) the purchase, lease, or other acquisition of other assets of all kinds; (c) the management of all or any part of the Company's assets; (d) the borrowing of money and the granting of security interests in the Company's assets; (e) the pre-payment, refinancing or extension of any loan affecting the Company's assets; (f) the compromise or release of any of the Company's claims or debts; and, (g) the employment of persons, firms or corporations for the operation and management of the Company's business. In the exercise of their management powers, the Managers are authorized to execute and deliver (a) all contracts, conveyances, assignments, leases, sub-leases, franchise agreements, licensing agreements, management contracts and maintenance contracts covering or affecting the Company's assets; (b) all checks, drafts and other orders for the payment of the Company's funds; (c) all promissory notes, loans, security agreements and other similar documents; and, (d) all other instruments of any other kind relating to the Company's affairs, whether like or unlike the foregoing.

**4.4 NOMINEE.** Title to the Company's assets shall be held in the Company's name or in the name of any nominee that the Managers may designate. The Managers shall have power to enter into a nominee agreement with any such person, and such agreement may contain provisions indemnifying the nominee, except for their willful misconduct.

**4.5 COMPANY INFORMATION.** Upon request, the Manager shall supply to any Member information regarding the Company or its activities. Each Member or their authorized representative shall have access to and may inspect books, records and materials in the Manager's possession regarding the Company or its activities. The exercise of the rights contained in this ARTICLE 4.6 shall be at the requesting Member's expense.

**4.6 EXCULPATION.** Any act or omission of the Manager, the effect of which may cause or result in loss or damage to the Company or the Members if done in good faith to promote the best interests of the Company, shall not subject the Manager to any liability to the Members.

**4.7 INDEMNIFICATION.** The Company shall indemnify any person who was or is a party defendant or is threatened to be made a party defendant, pending or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Company) by reason of the fact that he is or was a Member of the Company, Manager, employee or agent of the Company, or is or was serving at the request of the Company, for instant expenses (including attorney's fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred in connection with such action, suit or proceeding if the Members determine that he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interest of the Company, and with respect to any criminal action proceeding, has no reasonable cause to believe his/her conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of "no lo Contendere" or its equivalent, shall not in itself create a presumption that the person did or did not act in good faith and in a manner which he reasonably believed to be in the best interest of the Company, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his/her conduct was lawful.

**4.8 RECORDS.** The Managers shall cause the Company to keep at its principal place of business, the following:

- (a) A current list in alphabetical order of the full name and the last known street address of each Member;
- (b) A copy of the Certificate of Formation and the Company Operating Agreement and all amendments;
- (c) Copies of the Company's federal, state and local income tax returns and reports, if any, for the three most recent years;
- (d) Copies of any financial statements of the Company for the three most recent years;
- (e) Copies of any records required to be maintained by the Utilities and Transportation Commission or any regulator.

## **ARTICLE V**

### **Compensation**

**5.1 MANAGEMENT FEE.** Any Manager rendering services to the Company shall be entitled to compensation commensurate with the value of such services. The Initial Manager shall be entitled to be reimbursed for its out-of-pocket costs and for the value of management services provided to the Company. The fee paid for management services shall not exceed the lesser of 15% of the Company's annual revenue or the Manager's actual cost to deliver the management services.

**5.2 REIMBURSEMENT.** The Company shall reimburse the Managers for all direct out-of-pocket expenses incurred by them in managing the Company. At the Manager's election, it may elect to forgo reimbursement and have an expenditure treated as a capital contribution to the Company.

## ARTICLE VI

### Bookkeeping

6.1 **BOOKS.** The Managers shall maintain complete and accurate books of account of the Company's affairs at the Company's principal place of business or at another location selected by the Manager. Such books shall be kept on such method of accounting as the Manager shall select. The Company's accounting period shall be a fiscal year selected by the Manager.

6.2 **MEMBER'S ACCOUNTS.** The Managers shall maintain separate capital and distribution accounts for each member. Each Member's capital account shall be determined and maintained in the manner set forth in Treasury Regulation 1.704-1(b)(2)(iv) and shall consist of their initial capital contribution increased by:

- (a) Any additional capital contribution made by the Member;
  - (b) Credit balances transferred from their distribution account to their capital account;
- and decreased by:
- (a) Distributions to the Member in reduction of Company capital;
  - (b) The Member's share of Company losses if charged to their capital account.

6.3 **REPORTS.** The Manager shall close the books of account after the close of each calendar year, and shall prepare and send to each Member a statement of such Member's distributive share of income and expense for income tax reporting purposes.

## ARTICLE VII

### No Transfer or Assignment

7.1 **NONTRANSFERABLE and NONREDEEMABLE.** A Member's interest is not transferable or redeemable without the approval of the Manager, provided that (a) the Initial Member may transfer its interest to another entity under its control; and (b) in the event the Initial Member is removed as Manager of the Company, it will receive a distribution equal to its capital account balance as determined by Article 6.2 at the time of removal.

7.2 **TERMINATION OF MEMBER'S INTEREST.** A Member's ownership interest in the Company shall automatically terminate when they have received cumulative distributions equal to their capital contribution as determined by Article 6.2.

## **PARTICIPATION AGREEMENT EXHIBIT B**

### **CANCELLATION OR TRANSFER OF PARTICIPATION**

As provided in WAC 480-103 a participant may cancel or transfer their participation commitment for any reason, subject to the conditions below. A participant who wants to cancel or transfer their participation may do so by completing this form and submitting it to the Olympia Community Solar. This form serves to provide notice to the Company that the participant listed below is exercising the right to cancel or transfer their participation commitment with the Company.

#### **Cancellation Conditions:**

- A participant may request a refund of their deposit at any time. The Company will cancel the participation commitment of the participant and direct the escrow agent to return any funds committed by the participant as listed below no later than fifteen days following cancellation.

#### **Transfer Conditions:**

- A participant may request a transfer of their participation at anytime after the earlier of the date on which the company receives the Total Project Amount or the deadline for submission of the participation Agreement.
- The portion transferred and any portion retained by the project participant must be larger than the minimum participation size specified in the contract between the participant and the company;
- If the transfer is to one or more persons, those individuals must meet the company's participation requirements;
- The participant must obtain company approval of any transfer to another person, which may not be unreasonably withheld.

## **PARTICIPATION AGREEMENT EXHIBIT C ESCROW AGREEMENT**

### Hummingbird Community Solar Project

In connection with the Hummingbird Community Solar Project, the Participant and Olympia Community Solar agree, and hereby direct that Participant's Participation Fee is paid to the Escrow Agent for deposit as required by WAC 480-103-120.

It is understood and acknowledged that these funds are being held by Escrow Agent as required by WAC 480-103-120 and as an accommodation to the parties to allow the completion of the Project. In dealing with and disbursing such funds, Escrow Agent shall not be liable for any damage, liability or loss arising out of or in connection with the services rendered by the Escrow Agent pursuant to this Agreement, except for damage, liability or loss resulting from the willful or negligent misconduct of the Escrow Agent or its employees. The Escrow Agent shall be under no liability or obligation to take any action under or in respect to this Agreement, which in their opinion shall be likely to involve expenses or liability to the Escrow Agent, other than holding the Escrow Funds as provided herein, and disbursing the Escrow Funds as herein above provided, unless the Escrow Agent shall be paid the amount of such expenses or be furnished security reasonably satisfactory to them against such liability and expense. In the event of any litigation between Participant and Olympia Community Solar as a result of which Escrow Agent incurs any attorney's fees, costs or expenses relative to its obligations under this Agreement, then such fees, costs and expenses may be deducted from the escrowed funds as allowed by a court of competent jurisdiction.

#### **Release of Escrowed Funds**

The Escrow Agent is authorized to release funds held in the Escrow Account only for the following purposes and under the following conditions:

1. To pay project costs, invoices, management fees and similar charges attributable to the Hummingbird Community Solar Project and duly authorized by Olympia Community Solar; or
2. To pay a refund to the Participant of the refundable portion of the Participation Fee in the event that the Participant terminates their participation or Olympia Community Solar terminates the Participant's participation or the Hummingbird Community Solar Project ceases operation; or
3. To pay any interest due to a terminated Participant as required by WAC 480-103-120.

In the event of any disagreement hereunder or in the absence of any written instructions, Escrow Agent may retain the Escrowed Funds pending mutual written instruction or court order.

## Before Entering into a Community Solar Contract

- Review one-time and recurring charges you will be responsible for.
- Ensure the contact information for your community solar company, including business hours, mailing address, email address, website, and toll-free telephone numbers, is included.
- Understand whether you or another entity will own Renewable Energy Credits generated by your project share.
- Understand who will receive the project incentive payments from the WSU Energy Program. WSU calculates incentive payments based on project electricity production. The company issues payments to designated parties.
- Understand you cannot be charged for new services or options without your prior consent.
- Know that you are not required to provide a social security number as proof of your identity. The company must provide a list of five other identification options to choose from.

## Complaints

If you have a complaint against a community solar company that you cannot resolve with the company, contact the UTC's Consumer Protection Help Line at 1-888-333-WUTC or online at [www.utc.wa.gov/fileacomplaint](http://www.utc.wa.gov/fileacomplaint).

## About the UTC

The UTC regulates the rates and services of private or investor-owned utility and transportation companies.

**Call the commission**  
1-888-333-WUTC (9882)  
[consumer@utc.wa.gov](mailto:consumer@utc.wa.gov)

### If you need help with

- Electric Utilities
- Natural Gas Utilities
- Water Services
- Garbage and Recycling
- Telephone Companies
- Movers
- Utility Locates
- Community Solar

**General information**  
[www.utc.wa.gov](http://www.utc.wa.gov)

360-664-1160

PO BOX 47250  
Olympia, WA 98504



## Consumer Guide to Community Solar



## About Community Solar

### What are community solar projects?

Community solar projects provide solar energy generated to paying customers and generate no more than 1 MW of electricity. They are developed within Washington state by companies *other than established electric utilities or community solar cooperatives*.

### Who regulates community solar?

The Utilities and Transportation Commission registers community solar companies prior to conducting business in Washington or applying for certification from the Washington State University extension energy program. The commission maintains rules for registration, consumer protection, and regulatory fees for community solar companies.

### What are the rules for door-to-door sales?

- A community solar company cannot allow a person to conduct door-to-door sales until it has obtained and reviewed the person's criminal history record.
- At minimum, door-to-door sales personnel must pass criminal history

background checks showing they have not been convicted of theft, burglary, assault, sexual misconduct, identity theft, fraud or false statements within five years of employment. Companies must keep filed documentation of background checks through the duration of staff employment and seven years after employment ends.

- Community solar employees are required to wear identification that includes their company's name and logo, the employee's full name and photograph, and the company's phone number.
- Employees must identify themselves and the company they represent as well as remind consumers they do not represent or work for local utilities. Employees must remind customers they do not have to choose a community solar company.

## Customer Deposits

- Deposits collected by community solar companies must be refunded plus interest, less any amount due, when you terminate your participation in the community solar project, when the company terminates your participation in the project, or when the project terminates operations.
- Deposits will be refunded with a check, mailed to you, unless you and the community solar company mutually agree upon another method.

## Consumer Rights

### Can project customers transfer their participation to someone else?

A community solar company must allow project participants to sell or transfer portions or all of their interest in a project, subject to the following:

- If transferred to another person, that person must meet the participation requirements set by the company.
- Community solar companies must allow project participants to transfer portions of interest back to the company.

### Can companies disclose my information?

A community solar company may not disclose private consumer information without prior written or electronic consent from the customer.

### How will I know if my meter is accurate?

A community solar company must test and report to project participants the accuracy of each of its meters every 12 months.

### What is the process for meter disputes?

You may file a complaint with the UTC at [www.utc.wa.gov/fileacomplaint](http://www.utc.wa.gov/fileacomplaint). The commission may require an additional test and a report of the results within 10 business days.