

ORDINANCE NO. 141, 2020
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROVING THE ADMINISTRATIVE RULES, REGULATIONS AND STANDARDS
FOR THE RIVERSIDE COMMUNITY SOLAR PROGRAM

WHEREAS, Section 26-463 of the City Code provides that rules, regulations, and standards applicable to electric service and persons receiving electric service provided by the City may be adopted by the Utilities Executive Director and approved by ordinance of the City Council; and

WHEREAS, in 2014, the City entered into an agreement with Clean Energy Collective (CEC) to develop a community solar project through which City Electric Utility customers could participate in “virtual net metering” in lieu of locating solar panels on their own properties; and

WHEREAS, the City and CEC thereafter collaborated to build and operate the Riverside Solar Project (the “Project”) on City property at Riverside Avenue and Mulberry Street from mid-2015 through August 28, 2020; and

WHEREAS, on June 16, 2020, City Council adopted Resolution 2020-055 authorizing the City Manager to execute an asset purchase agreement with CEC and complete steps necessary to acquire the operating assets of the Project, which transaction closed on August 28, 2020 (the “Closing”); and

WHEREAS, City utility customers originally purchased 25-year subscription-ownership interests in the Project from CEC and received utility bill credits directly on their City utility bills based on a power purchase agreement between the City and CEC, which agreement terminated at the Closing; and

WHEREAS, as a condition of the Closing, the City agreed to maintain the bill credit formula provided during CEC’s operation of the Project for 90 days following the Closing (expiring on November 28, 2020), during which time Utility staff would develop a continuing customer participation agreement and Project rules, regulations, and standards; and

WHEREAS, on October 2, 2020, the Interim Utilities Executive Director approved the continuing customer participation agreement and administrative rules, regulations and standards that define the terms and conditions for customers owning solar panels in the Project to continue participating in the Riverside Community Solar Program after November 28, 2020 (the “Riverside Community Solar Program Rules”); and

WHEREAS, the Riverside Community Solar Program Rules clarify relationships between the electric service standards, rates and credits adopted by Council and the benefits available to customers through the Program; and

WHEREAS, the Riverside Community Solar Program Rules also provide continuity for operation of the Project and ensure predictability for customers subscribing to and managing interests in the Project; and

WHEREAS, on October 8, 2020, the Energy Board reviewed the Riverside Community Solar Program Rules, and unanimously recommended approval by Council; and

WHEREAS, the Interim Utilities Executive Director recommends Council approve the Riverside Community Solar Program Rules attached hereto as Exhibit "A," incorporated by this reference, to complete the transfer of Project operation from CEC to the City; and

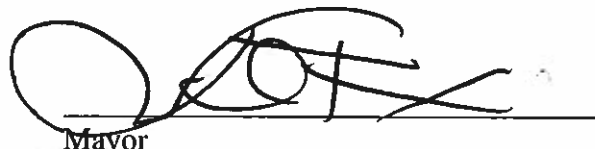
WHEREAS, the City Council has determined the continued operation of the Project directly benefits electric utility ratepayers by facilitating local renewable energy generation, and the recommended administrative rules, regulations, and standards set forth in the Riverside Community Solar Program Rules are in the best interests of the electric utility and its customers.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes any and all determinations and findings contained in the recitals set forth above.

Section 2. That the Riverside Community Solar Program Rules set forth in Exhibit "A," attached hereto and incorporated herein by this reference, are hereby approved by the City Council pursuant to §26-463(a) of the City Code.

Introduced, considered favorably on first reading, and ordered published this 4th day of October, A.D. 2020, and to be presented for final passage on the 17th day of November, A.D. 2020.

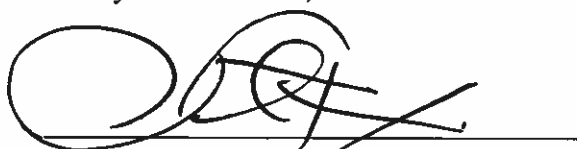


Mayor

ATTEST:


City Clerk

Passed and adopted on final reading on the 17th day of November, A.D. 2020



Mayor

ATTEST:


City Clerk



EXHIBIT A

Utilities
electric · stormwater · wastewater · water
222 Laporte Ave.
PO Box 580
Fort Collins, CO 80522-0580

970.212.2900
V/TDD: 711
utilities@fcgov.com
fcgov.com/utilities

Riverside Community Solar Program Rules

Objective:

The purpose of the rules for the Riverside Community Solar Program is to provide specific details and procedures in alignment with Fort Collins Municipal Code Section 26-464 (r) and 26-464(h). Nothing contained herein is intended to supersede the Fort Collins Municipal Code.

Applicability:

This policy applies to the Utility Service Areas of the City.

Authorized by:

Utilities Executive Director, September 2020

Owners of solar panels located in the Riverside Community Solar Project at 910 E. Mulberry Street (the "Array", or the "Project") may participate in the Riverside Community Solar Program (the "Program"), subject to requirements, terms and conditions, and rules (the "Program Policies") set forth herein.

1. Applicability.

These Program Policies shall apply to all Owners of solar panels ("you", "your", "they"), and the panels they own (the "Selected Solar Panels") located in the Array. Owners on August 28, 2020 retained title to panels in the Array previously acquired from Clean Energy Collective, when Clean Energy Collective, LLC (including CEC #1038, LLC and any subsidiary controlling such assets) (CEC) transferred title and control of all Project assets to the City of Fort Collins on such date (the "Closing Date"). The Bill Credit formula in effect on the Closing Date shall remain in effect for eligible Owners until the earlier of 90 days following the Closing Date or until the Owner enrolls in the Program. All rights to Bill Credits under the Program shall expire for any customer who does not enroll in the Program as of the expiration of that 90-day period (estimated to occur on the next business day following November 28, 2020).

2. Program Requirements.

To participate in the Program and be eligible for Bill Credits to your Utility account based upon Fort Collins Utility's ("our", "we", or "Utility") acceptance of your Solar Output, you must



- a) be (or your designated account or beneficiary must be) and remain a customer of the Utility for electric service,
- b) submit an Enrollment and Continuing Participation Agreement ("Participation Contract"), as approved by the Utility, in which you designate the Utility account to which we can post Program Bill Credits (which shall be at the "Utility Service Location", including Designated Beneficiary attachment, unless changed pursuant to Section 6(c) below, and
- c) be (or your designated account or beneficiary must be) and remain in compliance with these Program Policies and conditions of receiving services from the Utility throughout your participation. In addition, your ability to participate in the Program is subject to the limitations described in Section 5(c) below.

3. Term.

- a) Initial Useful Life of Array. The anticipated useful life of the Array is 20 years from the Closing Date (estimated as December 31, 2040). That period is also the anticipated Program Term, subject to earlier termination by City Council.
- b) Program Extension. Upon direction of City Council, the Utility may extend the Program beyond an initial 20 years (an "extended Term")
 - i. for as long as the balance of the O&M Fund is sufficient to pay all costs associated with operations, in relation to our services or the Array in general, or
 - ii. until City Council terminates the Program.

4. Energy Services

- (a) Net Metering Credits. The actual generated electricity produced by the Selected Solar Panels is referred to herein as the "Solar Output." During the Program Term and while the Selected Solar Panels remain located in the Array, we will assist in transmitting Customer Output to the Utility and provide the services described herein. Your rights to locate the Selected Solar Panels within the Array end upon termination of the Program, as do our obligations in regard to the Selected Solar Panels. The Term and termination of the Program are as set forth in Sections 3 and 10.
- b) Transfer of Solar Output. We agree to, and you hereby appoint and assign to us full power and authority to, take possession, deliver, and transfer all Customer Output by and through the Utility and/or third parties pursuant to these Program Policies and other applicable agreement(s), and to post Bill Credits to your utility account.
- c) Bill Credits. You, or a Designated Beneficiary, will be eligible to receive Bill Credits on your Utility bills for the Utility Service Location, based on Customer Output and according to these Program Policies. Bill Credits are calculated pursuant to the Program and applied solely by the Utility. **Bill Credits conform to the prevailing Community Solar Net Metering**



credit rate per Municipal Code Sec. 24-464. You acknowledge that the duration, terms and conditions of the Program Policies are subject to change by the Utility, and that the Net Metering Bill Credits are subject to change by the Utility as approved by Fort Collins City Council. The prevailing Community Solar Net Metering credit rate is available on the Residential Electric Rates web page (www.fcgov.com/TOD) under TOD Pricing – Solar Customers : Community Solar.

5. Ownership and Program Participation.

(a) Removal. Upon your request, we will remove the Selected Solar Panels from the Array, provided you give us at least thirty (30) days prior written notice of the requested removal. In such case, we will deliver the Selected Solar Panels to you at a Utilities facility on a mutually agreed date. You agree to pay the reasonable costs of the removal and delivery of the Selected Solar Panels following a request for removal made by you under this Section.

(b) Liens and Encumbrances. At all times during the Term (or any extension Term), you will ensure that you will not directly or indirectly place a lien, security interest or other encumbrance against the Selected Solar Panels, the Array, any electrical energy produced from the Array, or any Environmental Attributes associated with the Selected Solar Panels, or any other property relating to the Array.

(c) Maximum Capacity. The electric generating capacity of your Selected Solar Panels cannot exceed the limitations set forth in Municipal Code Chapter 26. **You agree the Utility is not obligated to make Bill Credits from your Solar Output to the extent the electric generating capacity of your Selected Solar Panels exceeds the limitations** in effect under the Program and the Participation Contract (at Appendix A) will be deemed automatically amended to reflect any revisions to such limitations or other terms of the Program, and any excess ownership interests or capacity will be allocated to the Default Beneficiary (as defined below). In such event, we will provide you with a description of such changes within the thirty (30) day period following any such change.

(d) Interaction with Utility. Customer Information which the Utility may request from you includes your name, home address, billing address, Utility Service Location (as designated in the Participation Contract), email address, fax number, Utility account number, your Solar Output, and information regarding your Selected Solar Panels. You hereby authorize us to use your Customer Information in connection with the Program. You agree to execute each document the Utility may request for purposes of the Program.

6. Operations and Maintenance (“O&M”).

(a) O&M Services. During the Term, we will be responsible for operation and maintenance of the Array. You acknowledge and grant to us exclusive authority to designate in our sole discretion affiliates or third parties to help operate and maintain the Array including, but not limited to, your Selected Solar Panels.



- i. We or our designee will operate the Array and provide maintenance services designed to help maintain the Array in working condition. Such maintenance services shall be performed in accordance with industry standards upon terms and conditions we determine to be necessary.
 - ii. During an emergency, or to protect the safety of personnel or the operation of the Array or the Utility's system, and at periodic intervals for improvements, maintenance and repairs, the Solar Output of the Selected Solar Panels may be interrupted. You acknowledge and agree no compensation is due to you for any interruptions or variations in Solar Output.
- (b) O&M Funding.
 - i. In addition to amounts deposited with the City by CEC for operation and maintenance, an O&M Fee of 9.38375% of net solar credits generated by the Array is assessed on a monthly basis against the total net generation of the entire Array before the remaining Bill Credits are applied to individual Owners. Such amounts are retained in a restricted account for O&M purposes (the "O&M Fund"). The fee is subject to change at the Utility's sole discretion for the purpose of providing for operation, maintenance of the array and site, and decommissioning of the Array at end of life.
 - ii. Monies placed into the O&M Fund will be dedicated solely to payment of costs of operation and maintenance of the Array. We will continue to pay each month into the O&M Fund based on Customer Output per kWh generated by the Array, as identified in your Participation Contract (at Appendix A), and transferred in the prior calendar month (the "Recurring O&M Fee"), pursuant to these Program Policies.
 - iii. For purposes of determining decommissioning costs, as used in this Section, such costs shall include expenses associated with disposing of PV modules, associated wiring, and expired inverter and other plant equipment, and as may be determined by the Utility at the time, returning the Project site to the original brownfield status, prior to Project development. Expenses associated with soils remediation will not be include in amounts paid from the O&M Fund unless remediation is required to address issues created by construction or operation of the Array.
- (c) Costs exceeding O&M Fees. Any costs of operating and maintaining the Array that exceed the amount of collected O&M Fees will be the obligation of Owners to pay.
- (d) Owner Assessment. If the expense to repair, replace or decommission the Array exceeds funds available in the O&M Fund and/or from any casualty insurance proceeds, we reserve the right to seek additional funds from Owners to cover such expenses, or to suspend or permanently cease offering the Program, pursuant to Section 10 below.



(e) Return of O&M Fees. In case of a surplus balance in the O&M Fund at the end of the Program Term after decommissioning the Project, Owners will be credited for their proportionate share of the surplus balance.

(f) Loss and Insurance. We will make reasonable efforts to secure the Site, but shall have no obligation to police the Site or to prevent damage or loss to the individual panels you own (as identified in the Participation Contract at Appendix A) or to the Array beyond the measures we put in place to secure the Array in the Utility's normal course of business.

- i. At all times, we will keep a replacement-value property insurance policy in place with regard to the Array (not to include the individual panels you own) to insure against covered perils; such policy shall not be required to cover the Selected Solar Panels owned by customers.
- ii. We shall be entitled to reimbursement from the O&M Fund of all costs of insurance and will determine the acceptability of such policy(s) in our sole discretion.
- iii. SHOULD YOU DETERMINE ADDITIONAL INSURANCE IS REQUIRED TO PROTECT YOUR INTERESTS IN THE SELECTED SOLAR PANELS YOU INDIVIDUALLY OWN, YOU ARE SOLELY RESPONSIBLE FOR PROCURING AND PAYING FOR SUCH ADDITIONAL INSURANCE.

7. Disclaimer.

(a) You understand and accept the Solar Output associated with the Array (including the Selected Solar Panels) may fluctuate from time to time based upon weather, seasonality, degradation and other conditions.

(b) WE DO NOT REPRESENT OR WARRANT ANY MINIMUM SOLAR OUTPUT, CUSTOMER OUTPUT, BILL CREDIT, OR BENEFIT RECOVERY AMOUNT. WE DO NOT REPRESENT OR WARRANT UNINTERRUPTED OR ERROR FREE OPERATION OF THE ARRAY OR ANY PART THEREOF INCLUDING THE PROJECT ASSETS OR ANY SOLAR PANELS. WE DO NOT REPRESENT OR WARRANT THERE WILL BE NO CHANGES TO THE PROGRAM OR RATE OF BILL CREDITS.

(c) WE DO NOT REPRESENT OR WARRANT A DUTY TO REPAIR OR REPLACE THE INDIVIDUAL PANELS YOU OWN (AS IDENTIFIED IN THE PARTICIPATION CONTRACT) NOR THE ARRAY, FOLLOWING A CATASTROPHIC EVENT OR WHEN DAMAGE OR LOSS DUE TO ANY CAUSE EXCEEDS 30% OF THE THEN-PRESENT VALUE OF THE ARRAY. WE DO NOT REPRESENT OR WARRANT THE TIMELINESS OF ANY REPAIR WE MAY ELECT TO PERFORM AND HAVE NO OBLIGATION TO SPEND AMOUNTS FOR SUCH REPAIRS IN EXCESS OF FUNDS AVAILABLE IN THE O&M FUND AND RECEIVED PURSUANT TO INSURANCE SECURED UNDER THESE PROGRAM POLICIES.

8. Changes in services.



(a) Advance Notice. You agree to provide us with thirty (30) days advance written notice of any change or event that may result in the termination of your Utility service at the Utility Service Location.

(b) New Service Location within Utility Service Territory. You agree that you may change your Utility Service Location within the Utility's service territory, and you agree within ninety (90) days of such change you will take all necessary steps and provide all information and documentation required under the Program to substitute your new service location for the Utility Service Location identified in the Participation Contract, including contacting Fort Collins Utilities staff supporting the Program. You further agree the Participation Contract shall continue in effect upon such change of the Utility Service Location. You acknowledge, if the Utility Service Location or any new service location exceeds the Program Limitations or otherwise does not comply with these Program Policies, you will not be entitled to receive Bill Credits in excess of the Program Limitations. Excess Bill Credits may be donated to the Default Beneficiary identified below.

(c) Owner Assignment.

- i. You may not assign the Participation Contract or any right, title or interest under the Program to any other person or entity without express written consent from the Utility. You may change the Utility Service Location pursuant to Section 8(b) above, but any such change or transfer shall not operate as an assignment of your Program interests.
- ii. You may designate beneficial use of the Bill Credits generated by your panels to your own active electric service account with Fort Collins Utilities, or to another active account which is not registered to you, i.e. a "Designated Beneficiary". You must make a Designated Beneficiary allocation through communication with staff supporting the Program, and the allocation may not be for less than 100% of such credits, i.e. no partial or divided allocations.

(d) Abandoned Panels. In the event the electric service account designated to receive the Bill Credits under the Program becomes inactive for any reason, the Select Solar Panels will be considered abandoned and all associated Bill Credits will be assigned to the Default Beneficiary.

(e) Default Beneficiary of Bill Credits. All Bill Credits not disbursed to Owners, Designated Beneficiaries, or the O&M Fund on a monthly basis shall be donated by deposit into the Fort Collins Utilities Payment Assistance Fund as the "Default Beneficiary". Donated Bill Credits are not refundable to Owners once donated.

9. Sale/Transfer of Selected Solar Panels.

Notwithstanding anything in these Program Policies to the contrary, you may sell, donate or make any other arrangement to transfer ownership of some or all of your Selected Solar Panels (a "Transfer") to any eligible customer (a "Recipient") maintaining an active residential electric service



account in good standing with the Utility. You agree that we will not be bound to acknowledge any such Transfer until you provide us with notice of such Transfer (such as a fully executed bill of sale), and that upon the receipt of such notice the Participation Contract will terminate as to the Selected Solar Panels so transferred with no further obligation of either Party hereto. We agree that if the Recipient meets the same customer requirements as set forth in the Participation Contract and these Program Policies, we will offer a Participation Contract to the Recipient; whereby the Recipient will be allowed to continue co-locating the Selected Solar Panels within the Array and to receive Program benefits, according to Program Policies. The Utility may, but is not required to, assist with the sale/transfer of title of the Selected Solar Panels to another customer.

10. Termination.

Your eligibility to participate in the Program will terminate without liability to either party upon any of the following:

- (a) the expiration of the Term or early termination as directed by City Council.
- (b) if you materially fail to fulfill any of your obligations as expressed in these Program Policies for more than sixty (60) days after written notice from us of such failure.
- (c) at such time as we receive a request from you for the removal of the Selected Solar Panels under Section 5 above.
- (d) at such time as we receive notice of Delegation or Transfer, per Section or 9 above.
- (e) If the Participation Contract is terminated prior to the time you request removal of the Selected Solar Panels under Section 5, you will have an additional sixty (60) days to request the removal of the Selected Solar Panels pursuant to the terms and conditions of Section 5(a) above. If you fail to so request the removal of the Selected Solar Panels within such sixty (60) day period, we may consider the panels abandoned, take possession of the Selected Solar Panels and dispose of them in the manner we choose.

11. Dispute Resolution; Choice of Laws.

- a) Credit or Payment Dispute. If you dispute the amount of any Bill Credits made in connection with this Agreement, you shall have those administrative remedies and rights to appeal set forth in Chapter 26 of the City Code.
- b) Applicable Law. The Program will be governed by and construed in accordance with the laws of the State of Colorado.

12. Indemnification. To the fullest extent permitted by law, you agree to indemnify and hold the City of Fort Collins and its directors, officers, managers, members, partners, employees, representatives, agents and Affiliates (together "Related Parties") harmless from any and all claims, demands, actions, liabilities and expenses (including reasonable attorneys' fees) of any kind or nature arising out of or relating to your negligence or intentional acts or breach of the Program Policies; provided,



that nothing herein shall require you to indemnify us for our negligence or intentional acts or breach of the Program Policies. The provisions of this paragraph shall survive termination or expiration of the Program.

13. Reporting and Marketing. You grant the Utility permission to access and use customer data and information produced or recorded by the electrical generation system, system components or sensors installed at the Array to monitor it for reporting and operational purposes. You authorize access of this information by and provided to Utilities and/or Affiliates. Use of such information is subject to Fort Collins Utilities Privacy Policies and the Colorado Open Records Act.

14. Notices. In the event any notice or other communication is required, we will use the information in the customer signature block and as set forth in Appendix A of the Participation Contract. Customer can find our contact information at <http://fcgov.com/communitysolar>

15. Miscellaneous.

a) Authority. The Parties represent and warrant that they have full authority to deliver and perform their obligations pursuant to these Program Policies, and that the person whose signature appears on the Participation Contract is duly authorized to enter into such commitment on behalf of the respective party. You agree that we may delegate any of our obligations under these Program Policies to any Affiliate or third party, provided we remain ultimately responsible for the performance of our obligations hereunder. To the extent of any such delegation, the authorizations you provide us by continuing to participate in the Program under these Program Policies shall extend to any such Affiliate or third party.

b) Confidentiality. The Parties agree to treat as confidential (a) all information owned by and/or obtained from the other Party, or that relates to the business of the other Party, or that is used by the other Party in carrying on business, and (b) all information that is proprietary to a third party (including our customers and suppliers). The Parties shall not disclose such information to any person not having a legitimate need-to-know and approved by the other party, nor use such information in any form to obtain an economic or other benefit for itself, or any third party. If such information is required by the Colorado Open Records Act, §24-72-201 et seq., CRS or other law, regulation or court order to be disclosed, the subject Party's disclosure shall not be greater than that which is required, and in the event of such disclosure, the disclosing Party shall furnish a copy of the Program Policies to anyone requiring such disclosure and promptly advise the other Party in writing of each required disclosure.

c) LIMITATION ON DAMAGES: NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.



d) Severability. Should any terms of the Program Policies be declared void or unenforceable by any arbitrator or court of competent jurisdiction, such terms will be amended to achieve as nearly as possible the same economic effect for the parties as the original terms and the remainder of the Program Policies will remain in full force and effect.

e) No Partnership. Nothing contained in these Program Policies or the Participation Contract will constitute either party hereto as a joint venturer, employee, or partner of the other, or render either party under the Program liable for any debts, obligations, acts, omissions, representations, or contracts of the other, including without limitation your obligations to the Utility for electric service.

Exhibit 1

Definitions

Capitalized terms used in the Program Rules are defined as follows:

"Affiliate" means any person or entity that directly, or indirectly through one or more intermediaries, controls or is controlled by or partnered with, or is under common control with the person or entity specified.

"Bill Credits" means the dollar value credit earned for Your Solar Output according to the prevailing Community Solar Net Metering credit per Municipal Code.

"Co-Locate" shall have the meaning set forth in Section 4(a) of the Participation Contract.

"Customer Information" shall have the meaning set forth in Section 3(d) above.

"Customer Portion" means the fraction or percentage obtained by dividing (i) your Nameplate Capacity by (ii) the total nameplate generating capacity of all panels at the Array.

"Dwelling Unit" means real property improved with a house, apartment, condominium or similar improvement that provides basic living accommodations including sleeping space, bathroom and cooking facilities.

"Environmental Attributes" means the full set of environmental, power source and emissions characteristics, whether in the form of credits (including Renewable Energy Credits), emissions reductions, offsets, allowances, financial incentives, benefits or by any other designation, attributable now or in the future to all or any portion of the Array, its electrical production, or its electrical capacity.

"Owner" means the customer holding title to the Select Solar Panels and controlling allocation of beneficial use of associated Bill Credits.

"Selected Solar Panels" means the solar panels described by serial number in Appendix A to the Participation Contract.



"Solar Interest", "Output" or "Your Solar Output", for any given period, means the actual generated electrical output, measured in kilowatt hours, that is delivered from the Selected Solar Panels during that period. For this purpose, you agree that each panel in the Array shall be considered to have the same efficiency per Watt of Nameplate Capacity at any given time. The Solar Output from the Selected Solar Panels for the period shall be equal to the actual generated electrical output, measured in kilowatt hours, that is delivered by the Array during that period, multiplied by the Customer Portion. You acknowledge that the amount of electrical output delivered by the Array to the Interconnection Point shall be net of any energy consumed by the Array to support its operation.

"Utility" means the Fort Collins municipal electric utility division of Fort Collins Utility Services.