

Community Solar Agreement

Availability

All residential, commercial, large power and municipal electric customers.

Description

Community Solar is a voluntary program that allows customers to purchase a capacity portion, known as Solar Units, of a solar facility owned, operated and maintained by the Electric and Water Plant Board of the City of Frankfort, KY ("FPB" or "Frankfort Plant Board"). Each Solar Unit of the facility will be available for subscription in nominal 250 watt (W) DC increments.

By subscribing to Solar Units, customers will receive a monthly bill credit based on the actual output of the Community Solar Facility ("Facility"), relative to the customer's number of Solar Units. Participation is subject to terms and conditions set forth in this Agreement.

Solar Units

- A. The Facility will be constructed and operated by FPB at FPB's Administration Building located at 151 Flynn Avenue, Frankfort, KY. Customer acknowledges and agrees that the Board retains sole ownership, possession and control of each Facility, and will have the exclusive right to maintain and operate such Facilities. Customer also acknowledges that the Board may replace equipment with any make, model, brand or type as the Board may elect, in its sole discretion.
- B. During the Term (as defined below), Customer will receive energy credit for each Solar Unit as a credit on Customer's monthly bill for electricity provided by the facility.

Only Frankfort Plant Board metered residential, commercial, industrial and municipal accounts will be permitted to receive the credits. Exterior lighting accounts are not eligible to participate in the program.

A separate Agreement with a Customer is required for each specific account.

The subscription granted to the Customer hereunder is limited to the receipt of the credits referred to above, and includes no other rights except as specified herein.

Subscription Options

Customer may subscribe to Solar Units by purchasing either a one-time capacity charge or monthly capacity charge.

1. **One-Time Capacity Charge**
Requires a one-time payment for Solar Units of future Facility phases.
2. **Monthly Capacity Charge**
Requires a recurring monthly payment for Solar Units of existing or new Facility.

Subscription Term

A. **One-Time Capacity Charge**

Requires a twenty-five (25) year commitment from the date the solar charges appear on a customer's bill. A customer that purchases a one-time capacity charge will receive credit according to the terms of this Agreement for a period of 25 years beginning with and including the first full billing period immediately following the customer's payment of the capacity charge.

B. **Monthly Capacity Charge**

Requires a one (1) year or five (5) year commitment from the date the solar charges appear on a customer's bill. Customers who subscribe 50 kW (200 Solar Units) or more require the five (5) year commitment.

Subscription Cost

A. **One-Time Capacity Charge**

\$1049.70 per 250W DC Subscribed

B. **Monthly Capacity Charge**

\$3.96 per 250W DC Subscribed

Cancelation and Termination

At the end of the Subscription Term, this Agreement shall terminate without further action by either party. Under no circumstances will the Customer be entitled to any refund at the end of the Subscription Term.

Upon cancelation of a subscription or the termination of this Agreement, FPB will have no further obligations to Customer with regard to the Community Solar Facility, the Solar Unit(s) or the Credits

In the event that the: A) Customer's account is canceled and/or ceases to qualify for this program; or B) Customer's service is disconnected for any violation of FPB's policies then:

Solar Unit Transfer / Assignment

A. **One-Time Capacity Charge**

With advance written notice to FPB, a Customer may elect to change the account for which the Solar Units will apply, provided such account qualifies for the program. Customer will notify FPB of such change or assignment in writing at least thirty (30) days prior to the effective date of such change. Customer may only transfer the remaining Term of the Agreement.

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 FPB and is subject to the Terms and Conditions of the Agreement.

Only One (1) transfer may be made during the Agreement's Term. If the successor Participant terminates his/her FPB electric account subsequent to any transfer, the Solar Unit(s) will be retained by FPB with no refund made to either the original Participant or the successor Participant.

Solar Units may be transferred to a qualifying account. Any Solar Units that are not transferred at time of cancellation will be forfeited to FPB. FPB will make reasonable effort to assist customer with options for transferring, but FPB is under no obligation to provide such assistance, to find an assignee, or to permit customer to assign the Solar Units other than in compliance with this Agreement. Customer may only transfer the remaining Term of the Agreement. In no event, shall Customer receive any refund or cash for Solar Units.

Upon transfer of any Solar Units, the Customer will surrender all right, title and interest in and to such Solar Units. Customer further acknowledges and agrees that such assignment does not extend the Term of this Agreement.

B. Monthly Capacity Charge

Solar Units are non-transferable and will be forfeited to FPB at time of cancellation. Any remaining monthly capacity charges, as dictated by the committed term, will be due at time of cancellation.

A customer may increase or decrease a monthly subscription after the initial subscription term ends by executing a new Agreement.

Solar Unit Production Credits

The Solar Unit Production Credit will be set forth each month as a credit on the Customer's bill, beginning with the bill covering the next full billing cycle following the latter of: A) the date of execution of this Agreement; or B) the date the solar generating facility is deemed operational by FPB. At no time shall FPB be required to convert the Solar Unit Production Credit to cash. Any excess Solar Unit Production Credit can be carried forward to offset a later billed amount.

The Panel Production Credit for each Solar Unit will be defined, calculated and distributed as follows:

- A. For each Solar Unit subscribed by the Customer, the Customer shall receive a monthly Solar Unit Production Credit consisting of the total kWh output of the Facility, divided by total number of available Solar Units at the Facility.

- B. The actual electric energy production for the entire Community Solar Facility will be recorded in kilowatt hours on a monthly basis (“Facility Power Production”). This Facility Power Production will then be allocated to each Solar Unit by dividing the Facility Power Production by the total number of available Solar Units in the Community Solar Facility to determine the Final Energy Production Credit. This Final Energy Production Credit is the basis for the energy portion of the Solar Unit Production Credit applied to the Customer’s bill. FPB will apply Solar Unit credits to Customer’s monthly bill on a per kWh basis at the retail energy rate that it sells energy to the customer adjusted by the Power Cost Adjustment per kWh, as applied to the Board’s purchase from its wholesale supplier for the same period.

Additional Acknowledgements

The Parties further acknowledge and agree that:

- A. Customer will not have access to the Community Solar Facility or any Solar Panel, for any purpose, unless otherwise agreed to in advance by FPB in their sole discretion. FPB will have sole ownership, possession and control of each Solar Panel, and will have the exclusive right to maintain and operate such Solar Panel.
- B. The maximum number of Solar Units available to a customer will be determined by the rate class associated with the existing customer account as follows:
 - 1. Residential – 100 Solar Units (15kW) in the aggregate.
 - 2. Commercial, Municipal and Large Power – 200 Solar Units (50kW) in the aggregate.
- C. Customer may not require FPB to repurchase the subscription for any Solar Unit. In the event Customer desires to assign or transfer the subscription for one or more Solar Units, FPB may provide Customer with reasonable assistance in finding an assignee or transferee for such License, but FPB is under no obligation to provide such assistance, to find an assignee, or to permit Customer to assign the License other than in compliance with this Agreement.
- D. Except as expressly provided in this Agreement, Customer may not sell, assign, gift, bequeath or otherwise transfer any License for a Solar Units to any other individual or entity.
- E. Solar Renewable Energy Credit: All Renewable Energy Certificates (“RECs”) related to energy produced by the facility will be retired by the Frankfort Plant Board.
- F. Customer hereby releases and shall defend, indemnify and hold harmless, FPB, its successors and assigns, and the directors, officers, employees and agents of FPB 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 Customer.
- G. Customer understands that the Production Credits will depend, among other things, upon the amount of power (measured in kilowatt-hours) generated by the solar power unit in which the Customer 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 FPB in managing the Project 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 Production Credits available to Customers.

- H. Use of any images of the Solar Facility or use of any other of FPB's intellectual property or images requires FPB licensing prior to use.

Disclaimer and Force Majeure

Customer understands and acknowledges that the generation of solar energy and the sale of solar energy, generation capacity and SRECs is dependent upon numerous factors, including many which are beyond the control of FPB. FPB shall not be responsible for any disruption or prevention of the production of solar energy from the subscribed Solar Units that is attributable to: (a) natural events such as acts of God, landslides, lightning, eclipses, weather patterns, epidemic or pandemic, earthquakes, fires, storms or the like; (b) interruption and/or curtailment of transmission facilities and wholesale power supply agreements of third-parties; (c) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections or wars, or acts of terror; (d) breakage or accident to equipment or machinery, and (e) governmental actions such as necessity for compliance with any court or administrative order, law, statute, ordinance, regulation, order, or policy having the effect of law promulgated by a governmental authority having jurisdiction.

Disclaimer of Warranties; Limitation of Liability

Participant acknowledges that, except to the extent specifically stated herein, FPB 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) SUBSCRIBED TO 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.

Customer also understands and agrees that his or her sole and exclusive remedy in the event of a breach of this Agreement by FPB is expressly limited to the return of the Subscription fee(s) tendered to FPB in an amount proportionate to the number of years remaining on the subscription granted herein.

Notice

Except for FPB'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 FPB at 151 Flynn Avenue Frankfort, KY 40601 and the Participant's Service Address set forth above unless a different mailing address is provided by Participant in this Agreement.

No Third-Party Beneficiaries. This Agreement is intended solely for the benefit of the Participant and FPB. 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.

No Refund of Subscription or other Fees. Unless otherwise provided for herein, FPB shall have no obligation to refund all or any portion of any Subscription Fee or other fees at any time or for any reason. Under no circumstances, may Solar Units be converted to cash.

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 FPB 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 FPB for electric services.

No Waiver

Neither the Participant's, nor FPB'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.

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.

Governing Law; Venue

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