

FARMER'S GUIDE TO SOLAR ENERGY

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Contract Basics

- Offer and acceptance
 - Both parties must be competent
- Definite and certain terms
- Consideration
- Performance

Contract Basics

- **“Four corners” rule: If the contract is clear and unambiguous, no evidence of the parties’ intent is allowed.**
- **Courts try to determine the intention of the parties and to give ambiguous contracts the effect of those intentions.**

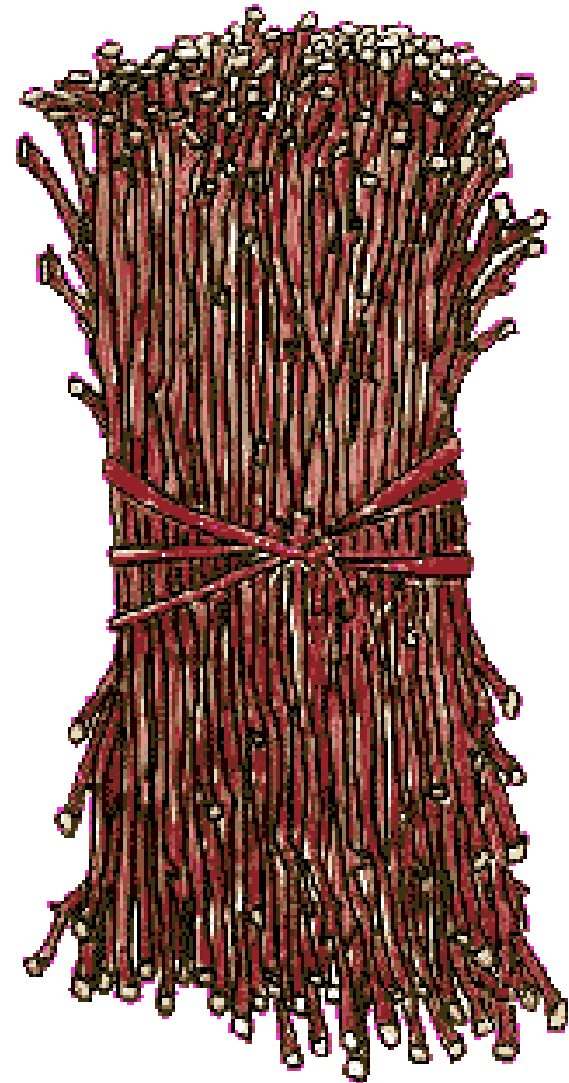
Easement and Lease Agreements

➤ Lease

- Landlord-tenant relationship for set period of time allowing exclusive right to use your property

➤ Easement

- Allows grantee to do specified things



General Provisions and Considerations

- Broad grant of powers:
 - typically exclusive right to construct and install facilities
 - excavating, grading, leveling, roads, foundations, transmission lines, substations, inverters, etc.

- How will this interfere with your farming operations on adjacent acreage?
 - Crop protection?
 - Ability to plant trees or build structures?
 - Burning?
 - CRP?
 - Development of mineral interests?

- Negotiate limits to powers granted to developer so you can continue current farming operations and negotiate compensation for impact on current and future operations

Lease Provisions

- **Legal description of the land subject to the Agreement (§2)**
 - What is the site plan? What other facilities will need to be installed?
 - Limited to land needed for operation of solar farm – not entire parcel
 - Landowner input on the siting; ask company to take commercially “reasonable” or “feasible” suggestions

Easement Agreements

➤ Construction, Access and Transmission

- developer access for construction; travel across your property to construct and operate farm -- ¶12
- consider water use requirements; ask the company about water access
- 16,000 gallons/MW annually

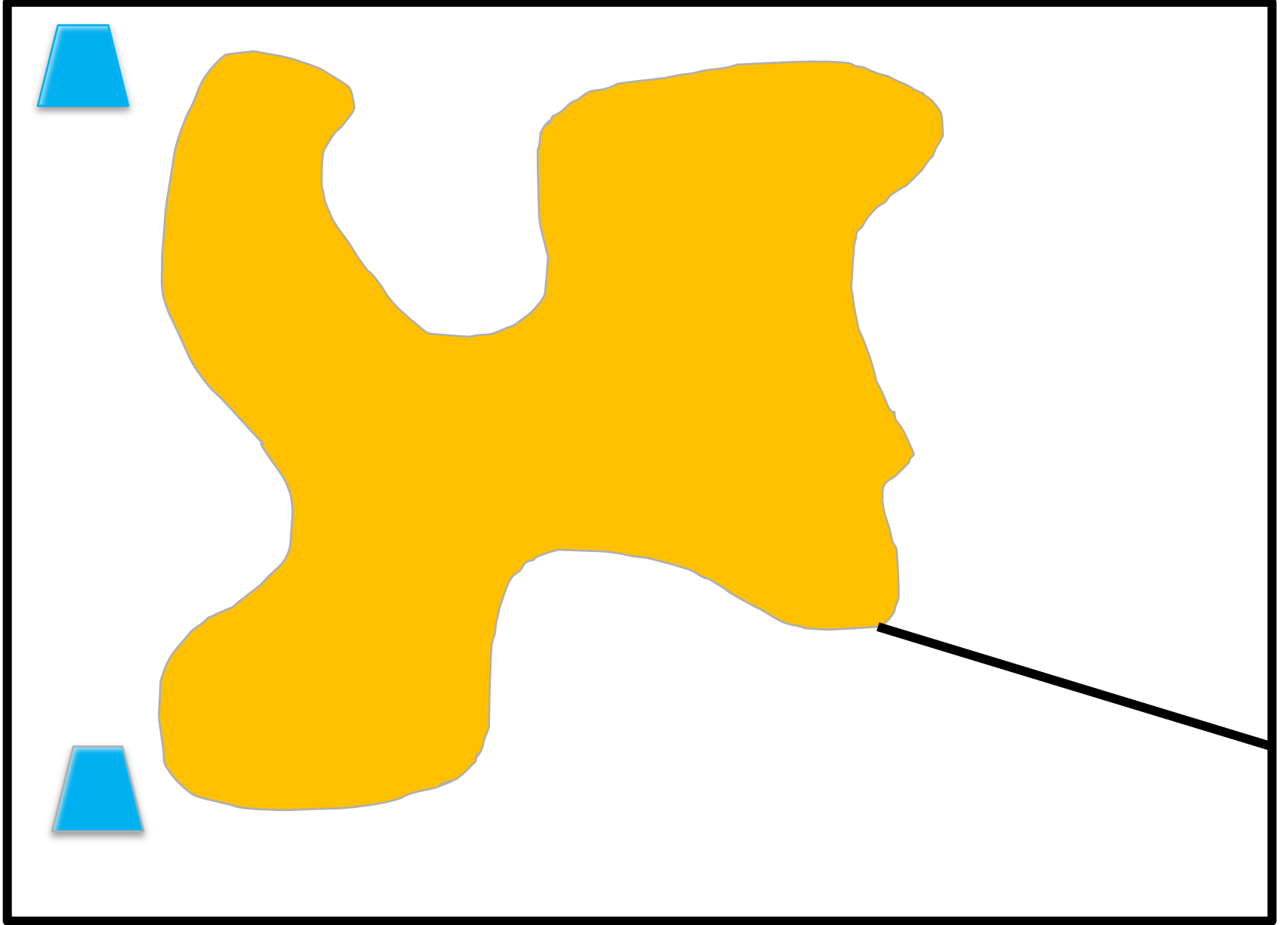
➤ Sun obstruction

- agree not to do anything that may interfere with sunlight -- ¶24(a)
- Dust from adjacent farming operations?
- Particulates? What about spraying?

➤ Interference -- ¶20

- agree to allow glare, noise, flicker, electromagnetic, or any other effects from the solar farm

➤ Includes an easement over adjacent property!!! -- ¶20; 24(a)



Easement Agreements

- Mineral development – don't count on it -- ¶33
- Defend company's exclusive control and right to use property -- ¶33
- Exclusivity zone – 1 mile -- ¶41
- You must sign any agreement so developer can get the tax credit -- ¶44

Term of Agreement

- Avoid granting perpetual easement and/or lease
- Diligence Period
 - Allows developer to access land for investigation, testing, and to obtain regulatory approvals
 - 6 months – 2 years -- starts to run on the day that *both parties* sign the agreement.
- Operations Term
 - 20–40 years: Should be tied to life of solar farm
 - Usually termination by developer prior to end of agreement
 - Caution–avoid automatic renewals w/o landowner agreement
 - Tie length of lease to the Power Purchase Agreement?

Term of Agreement

- **Landowner should require advance renewal notice**
 - ¶ 4(b) – notice of renewal is sent 60 days prior; landlord must give notice of 30 days notice of failure to send renewal notice
 - Difficult to terminate lease due to lack of renewal notice
- **Renegotiation of lease or certain terms at the end of the term in between renewal periods?**

Term of Agreement—Caution!!!

- Right of first refusal to lease -- ¶39
- Right of first refusal to purchase -- ¶40
- Both of these could create “perpetual” leases or force a sale that you may not want to make.

Payment for Lease/Easement Rights

- Compensation during Diligence Period
- Rental Period begins at the time of construction or after the Diligence Period, whichever occurs first.
 - *Unclear when term starts in Cyprus agreement—Term commencement or Rent Commencement?

Lease Provisions

➤ Indemnification (§18)

- Usually mutual but make sure developer agrees to indemnify you for any injury or claims due to developers exercise of rights under any agreements

➤ Insurance (§23)

- Require developer to carry commercial liability insurance in appropriate amount and name landowner as additional insured
- Inquire with your agent about any landowner indemnity obligations (will your general farm policy provide coverage?)

➤ Termination

- At end of Development term?
- Can developer terminate prior to end of listed term?

Lease Provisions [con't]

- **Decommissioning (¶13)**
 - AIMA not applicable
 - Supplement and/or incorporate provisions in County Ordinance
 - Add whatever necessary to get your ground back to current productivity levels
 - Financial assurance should be considered
- **Confidentiality provisions (¶42)**
 - How broad? Do not allow a “gag” clause
- **Further Cooperation Clause**
 - Cooperate in zoning, title matters, permitting operations
 - If yes, require reimbursement for time and expense

Landowner Should Reserve These Rights

- “Catch-all” rights not given to Developer retained by Landowner
- Specific rights can be reserved:
 - Right to conduct farming or agricultural activities or other activities involving adjacent land
 - “Shared uses” of land (i.e., small animal grazing)
 - Aerial spraying
- Landowner should reserve any rights that are unique to Landowner’s agricultural or other operations
- When specifically listing the rights being reserved, Landowner may also want to include a “catch-all” to avoid limiting the rights reserved to just those listed

Restoration of Land

- **Repair of compaction and rutting on site and on adjacent land**
 - all areas impacted by vehicles and construction equipment rip 18 inches
- **Repair of damaged soil conservation practices**
- **Repair damaged tile on farm and on adjacent property**

Landowner Easement/Lease Negotiation Tips

- Research the company
- Seek advice from qualified attorney, tax advisor, farm manager and anyone involved in the operation of your farm
- Landowner groups
 - Bargaining power in large groups
- Do not sign form easement/lease without consulting attorney experienced in easement/lease negotiations on behalf of farmers
 - Well versed in county ordinances and other applicable laws

Landowner Easement/Lease Negotiation Tips [con't]

- If Development Term or any Operation Term expires, avoid automatic renewal
 - take opportunity to review and renegotiate agreement terms
- Demand transparency in negotiation process and agreements
- Request reimbursement for attorneys' fees for agreement review

Government Farm Programs

- **Contact FSA!**
- **Make sure to ask permission first if land is in CRP, EQIP, or WHIP**
- **Installation without permission might trigger repayment of program monies previously received.**

QUESTIONS?

