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A GUIDE TO SOLAR LEASING FOR THE AGRICULTURAL LANDOWNER

Kansas ranks 50th for total installed solar capacity of the United States, but that capacity is expected to grow 10-fold over the next 5 years.[1] This growth will create new opportunities for landowners, as well as new burdens to agricultural land. While it would be ideal for solar projects to be located on unused or underused agricultural lands, it is often prime agricultural land that provides the large, flat, clear expanse needed for a commercial solar installation. Without diving too deep into renewable energy policy, or the pressure created by a competitive use for agricultural lands, this paper aims to inform landowners about the important elements they should consider before entering into a solar energy agreement.

SOLAR ENERGY IN KANSAS?

Yes, Kansas is a good environment for the development of solar energy. From abundant sun and wide-open spaces, to large capacity transmission lines and relatively friendly regulations, Kansas has many of the crucial components that are attractive to solar energy project developers.

FIND ADDITIONAL *RESOURCES* ON THE LEGAL FOUNDATION'S WEBSITE:

- Information about decommissioning of electric energy generation projects
- Conservation considerations for solar projects
- Guidance on local solar regulations
- The macroeconomics of solar energy
- Links to other helpful websites with information on solar energy

IS SOLAR ENERGY RIGHT FOR YOUR OPERATION?

There are some big picture items that a landowner should consider before entering into a solar agreement. First, it is important to understand that solar energy projects involve an intensive use of the land - more so than wind energy projects. For wind projects, the land leased for the project is generally much larger in size than for solar projects, but the land occupied by wind turbines and other project infrastructure is just a small fraction of the entire project – around 5% or less.[2] For solar projects, however, much of the land leased for the project is covered by solar panels and other project infrastructure. In fact, landowners are rarely able to continue traditional agricultural production on property leased for a solar energy project. As a result of this, landowners should think of solar lease payments being a replacement of agricultural income, while wind lease payments are supplemental to agricultural income.

The relatively new concept of *agrivoltaics* involves agricultural production of some sort in conjunction with solar energy generation. Agrivoltaics can range from vegetable production, to grazing small ruminants like sheep and goats, to planting pollinator habitat under and around solar panels. An even newer concept, ecovoltaics, might better describe the planting of pollinator habitat or the incorporation of native grass habitats into a solar project, as they are beneficial for the ecosystem but may not result in agricultural output.[3]

In any event, landowners should also be mindful that solar agreements are long-term contracts, often lasting for 20-50 year terms. That means whatever impacts a solar lease has will not only affect today's generation, but future generations, too. Landowners will also want to consider what other agreements exist on the land (e.g. CRP or other government programs, farm leases, mineral leases, or hunting leases), and determine whether a solar lease will interfere with any of those existing leases, or vice versa. Depending on the desirability of a parcel of land to an overall project, energy companies may be willing to pay the costs associated with the early termination of other existing contracts.

WHAT CONTRACT PROVISIONS SHOULD LANDOWNERS BE ON THE LOOKOUT FOR?

The following list of considerations are some of the most important aspects of a solar lease or easement agreement. For more in-depth discussions of solar lease considerations, view the other resources gathered on our Legal Foundation website.

- **Legal description:** When agreeing to an area to be covered by a solar lease, make sure to weigh the financial benefit of maximizing lease payments (by maximizing the leased area), with preserving land for farming. In the event that the developer has an opportunity to release part of the property from the lease agreement after the completion of feasibility studies (or at any future point), consider adding a clause to the lease that limits the amount of land that can be released. This will help ensure larger lease payments and prevent a patchwork of land being released that will not provide income through the solar agreement, and cannot practically be used for agricultural production.

CONTRACT PROVISIONS, CONT'D

- **Lease term:** The lease agreement will likely be broken down into multiple terms.
  - The first term may be an option period ranging from 2-8 years, in which the developer will complete feasibility studies to determine if they can develop a successful solar project on the leased land, as well as work to acquire other necessary easements and leases.
  - The option period will be followed by a short development/construction term (1-2 years).
  - Then there will be an initial 20-30 year operational lease term (with renewal periods possibly adding decades more to the lease term). When establishing the length of the lease periods, the solar energy company is considering the duration of power purchase agreements through which it agrees to sell the electrical energy produced by the project, as well as the payback of loans, and the desire to maximize its return on investment.
  - Finally, there should be a decommissioning period following the end of the main lease term that sets a deadline by which the project must be decommissioned and the land returned to its pre-project state.
  - It is important to note that the contract will likely provide many opportunities or reasons for the solar company to terminate the contract early, while a landowner's termination rights are far more limited. It might be possible to negotiate for a termination fee if the solar company terminates the contract early.
- **Compensation:** With very little solar development in Kansas to date, it is difficult to suggest fair rates of compensation for solar leases, and compensation will vary during the different stages of a lease term. Some resources would propose that several hundred dollars per acre per year would be an average lease rate during the main lease term (though rates as low as farm lease payments, and as high as thousands of dollars, are possible). Some recent solar agreement offers in Kansas have ranged from $500/A to $1,300/A, annually, with payment offers highly dependent upon local land values. Lease compensation may also be calculated based on royalties, in which case it is very important for the lease agreement to clearly describe how revenues are calculated. There could also be a combination of a base rate and a royalty, or payments could be based on the amount of power generated, or on the capacity for generation (even if a lesser amount is actually produced). Yet another option, and one that is common in renewable energy leases, is to set compensation at the greatest of more than one option (e.g. fixed rate, production, or royalty). When compensation is not based upon a fixed number, it might be possible to negotiate for a minimum payment. Additional compensation can come in the form of a signing bonus, plus option period payments. With the long-term nature of solar leases, it is important to have an annual inflation adjuster built into the lease. A landowner will need to review the proposed timing of lease payments and determine if that timing works well with their cash flow needs. Finally, it may be possible to get a "most favored nations" clause added to the lease agreement, which would give the landowner the benefit of the highest rates that the company contracts for with other similarly-situated landowners within the project.

CONTRACT PROVISIONS, CONT'D

- **Taxes:** Land leased for a solar project often loses its agricultural classification for valuation purposes. The installation of solar panels on agricultural land, therefore, can increase real estate taxes exponentially. A solar company will commonly pay the difference in real estate taxes before and after development, and any agreement to that effect should be contained in the written lease agreement. It is unclear how agrivoltaics and county regulation, allowing or requiring some agricultural production on the land, may impact the land classification for tax purposes.
- **Maintenance:** Typically, most maintenance obligations rest with the developer (e.g. roads, vegetation, drainage, buffer zones, fire safety, etc.). However, if the developer fails to perform one or more of its maintenance duties, then the landowner may want the option to perform the necessary maintenance and be compensated for it. All maintenance responsibilities and breach remedies should be clearly set forth in the lease agreement.
- **Transmission:** Once electric energy is produced by a solar project, it must be transmitted for use by energy consumers. Easements for transmission lines that connect the solar facility to the larger electrical grid, often referred to as "gen-tie" lines, generally must be acquired by agreement with the landowner because eminent domain authority does not exist for these types of lines. As a result, easements for gen-tie lines often cost more for energy companies to acquire than easements for transmission lines where eminent domain authority might exist.
- **Landowner's obligations:** Pay special attention to any lease or easement provision that states something like, "the lessor shall." A landowner should carefully review those provisions, and the timing requirements set forth therein, and make sure that they are capable of meeting those requirements. From time to time, landowners may be asked by the solar company to take actions, like signing documents, to assist in getting the necessary paperwork or permits for the solar project. In the contract, landowners can try to negotiate for reasonable compensation for their time and expenses, including attorneys fees, in review of any documents that the solar company has requested.
- **Liability, Indemnification, and Insurance:** From physical injuries to curious trespassers, to nuisance claims by neighbors, or interference with an endangered species, landowners face increased liability risks when leasing land to a solar energy project. It is very important to make sure that the solar company carries substantial liability coverage through a reputable insurer. The landowner can request to be named as an additional insured on the policy. The landowner may also want to increase their own insurance coverage or limits, and may request from the developer additional compensation to cover the increased insurance premiums. It is recommended that landowners visit with their insurance agent to see if any coverage additions or changes are recommended. Finally, the landowner will also want the developer to agree to hold the landowner harmless and provide indemnification for any landowner liabilities connected to the solar energy project, especially when such liabilities are not due to the actions or inactions of the landowner. Solar companies will often require reciprocal insurance coverages and indemnification provisions.

CONTRACT PROVISIONS, CONT'D

- **Damages:** Financial damages to the landowner can come in many different forms, but most commonly they are the result of damage to crops or livestock grazing capacity. These types of losses are predictable, and it is helpful to lay out how the landowner will be compensated for them. This is called a liquidated damaged clause. For example, a lease can provide for the ways that yield and price are determined in calculating damages to a specific crop.

- **Mortgages:** There may be several issues involving mortgages in a solar energy contract. If a landowner has an existing mortgage on the property, their mortgage lender will have to approve of the solar lease, and likely sign a subordination agreement stating that they will honor the lease agreement if they have to foreclose on the property. The developer may need to have a mortgage on their leasehold interest, which would also need to be approved by any existing mortgage lender. Finally, the landowner may want to reserve the right to mortgage the property at some point during the lease term.

- **Water, minerals, and natural resources:** Within the lease agreement, landowners should reserve their rights in water, minerals, and other natural resources. If any of those natural resources have been severed, then it may be necessary to get a written agreement from the parties owning those resources, providing that they will not interfere with the solar project. As to existing water rights, landowners will want to consider whether non-use of the water right during the term of the solar project could result in abandonment of the right. Moreover, the energy company may want to use some local water during the term of the agreement, which could require changes to an existing water right to be filed with the Kansas Department of Agriculture Division of Water Resources. The lease should provide that any such use entitles the landowner to additional compensation.

- **Agricultural Impact Mitigation Policy and Code of Conduct:** Many renewable energy companies have developed agricultural impact mitigation policies to set standards for how they will approach working on agricultural lands, as well as restoring them after use-intensive phases like construction and decommissioning. These policies might have provisions that require the company to employ someone with knowledge of agriculture to oversee activities on agricultural lands, and to serve as the point of contact for agricultural landowners. Likewise, companies often adopt standards or codes of conduct that prohibit unfair, deceptive, or abusive practices when their employees or agents interact with landowners. Landowners should ask to see any such policies and codes of conduct, but if they are not included or incorporated into the lease agreements, they are unenforceable, aspirational documents at best. Industry or trade groups, like the Solar Energy Industries Association (SEIA), have adopted their own codes of conduct.[4] Members of those groups must abide by the established codes.

CONTRACT PROVISIONS, CONT'D

- **Regulatory requirements:** The solar company should be responsible for obtaining all necessary permits on the local, state, and federal levels, and for complying with all local, state, and federal statutes and regulations, including environmental laws. Furthermore, the landowner will want to ensure that the indemnification clause is broad enough to provide for indemnification of the landowner should the landowner face any liability as a result of inadequate permits or violations of law.

- **Confidentiality:** Most leases presented to landowners will include a confidentiality clause aimed at preventing landowners from discussing the matter with third parties. At a minimum, landowners should verify that the contract language still allows them to consult with their attorneys, accountants, and other advisers. It may even be possible for a landowner to negotiate the removal of that clause from the lease. Well-aligned landowner groups can be an effective way to negotiate solar agreements for better landowner terms. Confidentiality clauses, however, may deter landowners from forming groups to collectively bargain solar agreements. Landowners are not bound by the terms of the agreement, though, until they sign something agreeing to keep the information confidential. Because of that, landowners will want to make sure the confidentiality clause does not apply to previous (pre-signing) disclosures.

- **Decommissioning:** Decommissioning involves removing the solar project at the end of the lease term, and restoring the land to its original state. This is a costly endeavor, and includes removing solar panels, roads (if removal is desired), substations, transmission lines, underground cables, etc. It also involves regrading the property, replacing topsoil, and reestablishing vegetation. Landowners should require very specific decommissioning language (e.g. "reestablishment of vegetation," along with the exact seed mix, as opposed to "reseeding," which may not actually result in reestablishment of desired vegetation). Because of the great expense involved, it is recommended that landowners require a decommissioning bond from the developer to help provide some assurance that the project will be properly decommissioned even in the event of the developer's financial insolvency.

- **Separate easement agreements:** In addition to the main lease or easement agreement, there will be some additional easements necessary to complete a solar project. These easements could cover transmission lines, access to roads, solar (non-obstruction) easements, and temporary construction easements. There should be separate compensation associated with these easements, and the easements can last for a specified term tied to the project (preferably) or be perpetual in nature. Some renewable energy developers seek what some call "nuisance easements" from neighboring properties. These agreements can provide some compensation to the non-participating neighboring landowners, while deterring those neighbors from bringing lawsuits against landowners or developers for things like light reflection and aesthetic nuisance. To help keep neighbor relations as positive as possible, landowners may want to limit light reflection in certain directions from the project, or require natural screening in addition to standard fencing around the project.

ANY OTHER WORDS OF WISDOM?

- **Know who you are dealing with:** Not all solar energy developers are created equal. A little due diligence into the leasing company can go a long way to protecting a landowner's financial interests. For example, landowners should be aware of who they are dealing with – whether it is an agent of the company that intends to develop a solar energy project in their area, or someone who is accumulating leases on a mass of land that they can then offer to a solar energy company for development. Research can be done by reviewing the leasing company's website, performing a Better Business Bureau search and a general internet search, as well as by asking the company for a list of references or nearby projects that the landowner can view.

- **Get it in writing:** Regardless of who a landowner is negotiating with, it is important to get all promises in writing. Remember, with only a few exceptions, contracts involving land must be made in writing to be enforceable. If a matter is important to a landowner's decision of whether or not to enter into a lease agreement, then the landowner should demand that the matter be covered explicitly and clearly in the lease agreement, without the necessity of verbal explanation by an employee or agent of the solar developer.

- **Get the right help:** It is important for landowners to consult with a private attorney and their tax adviser, who can each review the landowner's situation and make recommendations to help ensure benefit to the landowner, while reducing downside risks and potential liabilities. Renewable energy companies often provide a stipend to landowners for attorney fees (around $750) for contract review as part of the lease agreement. Solar energy attorneys that are willing and able to represent landowners can be hard to find in Kansas, but they do exist. Alternatively, landowners should look for an attorney who has plenty of real estate experience, with oil and gas or wind energy experience a plus.

CONCLUSION

Solar leasing can provide a great revenue source for a farm or ranch operation, but there are many more things to consider besides the financial opportunity, including how the project may impact the long-term use of the farm or ranch operation. Moreover, having the right legal and tax advisers is imperative to a good outcome to a solar leasing arrangement.

This publication was written for The Kansas Farm Bureau Legal Foundation by Wendee Grady, of Wendee Grady Law Office, LLC.

END NOTES

[1] ***KS Solar State Spotlight***, a factsheet prepared by Solar Energy Industries Association, available at https://seia.org/state-solar-policy/kansas-solar/ (last accessed May 27, 2025).

[2] ***Agricultural Land Near Solar and Wind Projects Usually Remained in Agriculture After Development***, by Karen Maguire, Sophia Turner and Justin B. Winikoff, for Amber Waves, a magazine of the United States Department of Agriculture Economic Research Service (Sept. 2012), available at https://ers.usda.gov/amber-waves/2024/september/agricultural-land-near-solar-and-wind-projects-usually-remained-in-agriculture-after-development (last accessed May 27, 2025).

[3] ***Solar Energy Expansion and its Impacts on Rural Communities***, by Betty Resnick and Arica Hamilton, for the American Farm Bureau Federation's Market Intel (Aug. 2024), available at https://www.fb.org/market-intel/solar-energy-expansion-and-its-impacts-on-rural-communities (last accessed May 27, 2025)

[4] *See e.g.* ***SEIA Solar Business Code*** (Sept. 2015), available at https://seia.org/wp-content/uploads/2024/07/SEIA-Solar-Business-Code_Sep2015.pdf (last accessed May 27, 2025).