

# LEADER

## A LOOK INSIDE...

**Veterans Choosing Careers  
in Agriculture**

**Lease vs. Purchase:  
The Best Option**

**Castillo Family Farms**





## PRESERVING YOUR POWER: 10 TIPS FOR NEGOTIATING A SOLAR FARM LEASE

**A**s Florida's major electric utility companies increase their efforts to invest in affordable clean energy, advancing technologies and phasing out older coal-fired and oil-burning power plants, locating land suitable for large solar is becoming increasingly competitive. Leading the way is Florida Power & Light ("FPL"). FPL plans to add eight (8) new universal solar power plants by 2018. The new solar plants will require the installation of 2.5 million panels at the eight centers being located across the state. In addition to the solar expansion plans that FPL has for its sites, Duke Energy and Tampa Electric, an Emera Company ("TECO") are also making great strides in Florida with their expansion plans for future solar plants. Duke Energy renewable assets includes 60 solar facilities operating in a dozen states, with

Duke's 8.8 megawatts (MW) Suwannee Solar Facility expected to be fully operational by the end of this year. Once up and running, the facility will produce enough energy to provide electric service to about 1,700 homes at peak production. TECO completed construction on its largest solar area site, located at Big Bend in Apollo Beach earlier this year. This 23 MW solar center is located on 106 acres and is capable of providing electricity to more than 3,300 homes.

Electric utility companies will continue to expand their solar footprint across Florida, and as a result large tracts of agricultural lands will be in increasing demand. Power companies have found that land already farmed has less wetland and endangered species issues and, the more isolated the location, the less likely it will attract potential Not In My Back



Leasing your property to a reputable energy provider for use as a solar farm (energy center) may definitely be something to consider.

Yard (“NIMBY”) opposition. Yes, even something as green as solar energy suffers from NIMBY exposure. Abandoned citrus groves seem to be the most desirable sites. Leasing your property to a reputable energy provider for use as a solar farm (energy center) may definitely be something to consider. Careful drafting of the terms and conditions of the lease is critical in avoiding stormy weather in what otherwise could be a sunny business arrangement. Here are just some of the things to consider:

**1** Beware of signing a listing or option agreement with someone that is only interested in tying up as many sites as possible in hopes that the power

company may want one. Deal with a reputable solar array developer or real estate consultant that has experience in site selection and dealing with large properties and power companies. Do your due diligence and preliminary engineering as to the proximity to transmission lines that have capacity and demand for the power to be produced. Know what you have to market so you drive the negotiations rather than accepting the first offer that may never be realized.

**2** As the property owner, you should not be responsible for any increased assessments as a result of the solar “improvements” that the tenant installs on your property. Additionally, any roll-back taxes associated with the conversion of the property use from agricultural to the use of a solar farm should be passed along to the company that is leasing your property. Florida has recently enacted new tax incentives for these new solar projects that make them more attractive to the power companies.

**3** Zoning and permitting approvals, while typically requiring the property owner’s approval to process, should be the responsibility and at

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<sup>1</sup> FPL Accelerates Major Solar Energy Development Projects - Now Plans to Add Eight New Universal Solar Power Plants Cost-Effectively by Early 2018. (2017, February 20). Retrieved July 26, 2017, from <http://newsroom.fpl.com/2017-02-20-FPL-accelerates-major-solar-energy-development-projects-now-plans-to-add-eight-new-universal-solar-power-plants-cost-effectively-by-early-2018>

<sup>2</sup> Solar Energy Centers. (n.d.). Retrieved July 26, 2017, from <https://www.fpl.com/clean-energy/solar/energy-centers.html>

<sup>3</sup> Wheelless, R. (2017, January 30). Duke Energy Expands Renewable Energy. Retrieved July 26, 2017, from <https://illumination.duke-energy.com/articles/duke-energy-innovates-its-way-into-2017>

<sup>4</sup> Id.

<sup>5</sup> Solar Power at Big Bend in Apollo Beach. (n.d.). Retrieved July 27, 2017, from <http://www.tampaelectric.com/files/renewableenergy/renewableenergyannualupdate.pdf>

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the expense of the solar company leasing your property. This includes site plan approvals to address set back requirements, as well as building permits and approvals for any structures and/or fencing that are to be constructed and installed.

4 The location of any infrastructure, including roadways, together with easements and rights-of-way necessary for the improvements should be conditioned upon mutual agreement to the greatest extent possible, particularly if you own property adjacent to the property which is being leased for the solar farm. A standard condition in a solar farm lease is one that prevents any intentional or preventable shade from being cast on the solar array, which would negatively affect production. This may limit an owner's use of adjacent property to some extent and should be taken into consideration when entering into a lease.

6 A provision that stipulates the terms and conditions of the assignment of the lease should be included in the lease agreement to allow the property owner to approve of any assignment. The property owner should at all times be assured that the proposed tenant has the financial wherewithal to satisfy the financial obligations required by the lease. This may require a guaranty by a corporate parent or assignor.

7 As the property owner, you will want the flexibility to sell the property that is the subject of the lease, should the need arise. Therefore, a provision contemplating the sale of the property during the term of the lease should be included. Additionally, if the property is subject to a mortgage, or should a mortgage be sought during the term of the loan by the property owner, the lease should provide for a provision that would allow for the same. The tenant will want to specify that the lien of the mortgage will

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5 The lease should provide for a provision to address the removal of improvements at the sole cost of the solar company upon the termination of the lease, together with the costs and expenses of restoring the property to its original condition. In certain situations, the property owner may want to consider incorporating an option that would allow the property owner to elect to cause the solar company to remove all improvements at the sole cost of the solar company after the termination of the lease, or elect to have the improvements assigned to the property owner at no cost after the termination of the lease.

not attach to their equipment. Often, the tenant will want to negotiate a Right of First Refusal with respect to any potential sale by the property owner. The property owner may want to consider limiting the Right of First Refusal requested by the tenant to a Right of First Offer.

8 The lease should assign any and all liability that may arise from the use of the property as a solar farm to the solar company. This should include claims from any third party liability and any and all liability that could arise under federal, state and/or local rules and regulations, including, but not limited to environmental statutes, regulations and ordinances.

9 Solar leases are not short in duration and typically tie up the land which is the subject of the lease for several years, minimizing and/or eliminating any and all other uses on the property that is the subject of the lease for the duration of the lease. As the property owner, one must be mindful of the length of time that the property will be “tied up”, perhaps providing for regular adjustments tied to an index. In addition, long-term solar leases need to address the potential for condemnation and how any award will be apportioned between the property owner and the tenant.

10 Most importantly, just as no two properties are alike, no two solar farm leases are alike. Each lease must be written to address the specificities of the deal. Hiring a qualified attorney familiar with both agricultural operations and solar farming will assure the property owner that their interests are protected.

Although drafting the right terms and provisions for a solar farm lease is a complex process, entering into such an agreement is worth consideration. Solar farms provide a source of renewable clean energy for distribution by the electric companies while providing an income stream for the property owner from a crop that keeps on giving.



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