# Agreements for Renewable Energy Installations on Your Land

Over the next 25 years, Ontario plans to double electricity grid capacity and reduce reliance on fossil fuel based energy for building heating, transportation, and industrial processes. Potentially, this includes some 6,000 MW of utility-scale solar, 17,000 MW utility-scale wind facilities, and Battery Energy Storage Systems needed to make those variable facilities consistent, as well as significant transmission corridor developments.

These buildouts will mostly be decentralized in rural regions and will increase demand for access to farmland. OFA supports non-emitting energy frameworks that do not hinder normal farming practices, accommodate on-farm diversified uses, and protect prime agricultural areas.

The Ontario Government recently clarified the role of Agricultural Impact Assessments, restrictions on ground-mounted solar, and restrictions on large projects procured by the Independent Electricity System Operator (the IESO) in Prime Agricultural Areas. Although meeting these IESO qualifications is the responsibility of developers of energy sites on farmland, and qualifications do not currently apply to any facilities that are not part of IESO procurements, you should become familiar with this information.
https://news.ontario.ca/en/release/1004981/province-launches-largest-competitive-energy-procurement-in-ontario-history

**Before signing a lease or easement agreement, ensure it fits your plan for your farm.**

1. Meet and work with your neighbours and your OFA Member Service Representative.
2. Seek legal counsel. If there is a group of landowners impacted by a large project, consider obtaining legal representation for the group. Request the facility owner pay for legal services.
3. Transferability – Stipulate that the agreement cannot be transferred by a facility owner to any person or company without your approval or include steps to facilitate an agreeable transfer.
4. Appearance – Prohibit advertising. Stipulate a maintenance schedule to ensure the appearance of a facility does not increase injurious affection. Stipulate site reclamation and decommissioning.
5. Building Restrictions – Include a map of the property as an appendix to the agreement that outlines areas where farm activities are prohibited, and where new buildings can and cannot be built, to ensure land remains available for new farm operation buildings.
6. Fill Material & Chemicals – Do not allow fill to be taken from your land, prohibit toxic gear oils and fluids on your land, and stipulate remediation.
7. Conversion to Easement – Try to negotiate a lease agreement and avoid an easement or conversion to an easement, as it can be difficult or impossible to discharge.
8. Option to Purchase – A valuable agreement, separate from a lease or easement agreement, and includes valuation and option payment. Take your time to review an option; it can be exercised to achieve the underlying lease or easement.

9. Right of First Refusal (gives you the right to match an offer on an asset before the owner can sell it to someone else) – This can also be a valuable agreement, separate from a lease or easement agreement, if you are interested in purchasing the facility the owner wants to sell.
10. Option – Ensure you have a fair option payment on a good lease. A large option payment will not turn a bad agreement into a good agreement.
11. Option Termination – Negotiate an option expiry date that suits your needs.
12. Net Meter Generation – Depending on the type of project, consider asking the facility owner to install your own electricity generator for net metering or on farm use. Utilize their expertise at their expense.
13. Rent – In addition to payment at the onset of an agreement, consider negotiating for annual rent based on the value of the land and a prevailing bank term rate, including a schedule to reassess any upward land value increase.
14. Insurance – Stipulate that the facility company must annually produce a valid certificate of insurance covering liability to the farm and others, indemnifying the farm and assuming full liability for damages to the facility, and any third parties.
15. Trees and Cutting - Add a clause or map as an appendix to the agreement indicating where trees may or may not be cut.
16. Other Development – If the property may be valuable for other future developments, do not sign; you will be giving the facility company your future profits or capital gains. Otherwise, have a rent structure that accounts for higher land value - one way, with no devaluation.
17. Your Other Rights - Some leases have clauses that appropriate development rights for aggregates, ground water, topsoil, sale outside of the family, and even non-disclosure clauses that restrict your right to speak in public. Any such clauses should be removed from the agreement.
18. Site Security – Do not take on any obligation, paid or unpaid, to provide security, it could make you responsible for preventing damage.
19. Tenants' Rights – These stipulate that the facility company will have rights to do needed studies and to construct, operate and maintain the facility and transfer electricity from the site to the grid. Stipulate the numbers and density of turbines, solar panels, and/or battery compartments, as well as required roads and wires.
20. A Cooling Off Period –a clause that states that either party may cancel the agreement within 30 days without reason or penalty.
21. Power Sales - If your rental income is based on a percentage of the price the power is sold at, stipulate that power must be sold to the government, utility, or the Independent Energy System Operator. Otherwise, require your preapproval for sale to a third party, because sales to a subsidiary of the facility at a loss could artificially reduce your rental income.
22. Times of Access – Access for emergencies at any time. Other access between 8:00 a.m. and 5:00 p.m. Monday to Friday and requires notice so there is no interference with seeding, harvests, calving, or other farm or family time restricted activities.
23. Area of Lease - Limit the area covered by lease to a suitably small area – 1 to 5 acres

24. Applies to One Lot Only - Limit the agreement so it only applies to the actual lot leased and that there is no reference to any other land you own.
25. Specific Rights Only - Do not allow any clause that gives the facility company a right of first refusal or an option for any purpose other than the specific renewable energy activity. Such clauses can encumber your ability to sell the property to someone, your estate, or your interest in developing other activities.
26. Term of Lease – such as suggesting a 3 year option, 20 year first term, with 5 year renewals. This provides enough time to do tests and make profits and brings the replacement date for the generator and the lease renewal dates closer together, which improves your negotiating position.
27. Quitclaim – ensure the lease provides for a clean end so the facility cannot be released from the agreement or recover funds from the escrow account without your approval and certification that they have met all their obligations including decommissioning and restoration.
28. Assessment and Property Taxes – the landowner is responsible for taxes – a clause to require the facility company to pay taxes associated with project is essential and it requires an enforcement clause – you cannot afford to pay their taxes, without their income. In the case of default, you should get ownership of licenses to produce and sell power.
29. Escrow Fund – Require the tenant to have an escrow fund held with your lawyer or a trust company. Escrows are created at the start of construction and are used to pay debts to contractors, arrears in taxes, any maintenance that the company refuses to do and reclamation.
30. Registration of Surveys – surveys should only be registered with your approval. The agreement should state that the tenant does not acquire a legal right of way or any privilege that could lead to shared or sole title. The tenant only acquires limited rights to use specific land for a specific period.
31. Before you sign any papers, speak to your bank and insurance company. Make sure any concerns they have are addressed by the energy company in all agreements.
32. Minimum setback – Stipulate the minimum distance that any turbine, solar array, or battery module will be from any home, barn, or other place of work on the property.
33. Know all your options – There are other firms and partnerships. You could also consider undertaking a similar project yourself, to earn more than you would as a landlord. Don’t sign any agreement until you have considered the choices and determined what is best for your farm operation for the next 20 plus years.
34. To increase your bargaining power, apply to your local distribution company for the right to connect a generator yourself. The connection agreement is valuable. Own it yourself.

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