

Here comes the

SUN How rooftop solar panel “farms” can turn sunshine into dollars.



Above: Victoria, B.C.-based Carmanah Technologies Corp. has been awarded a \$1.5 million contract by the Town of Markham, Ont. to supply, install, and commission a 250 kW solar photovoltaic grid-tie system that is being installed on the town's newly re-located Emergency Operation Centre. Once operational, the new solar photovoltaic grid-tie system will generate revenue through the contracted sale of energy from the OPA under the FIT program at a rate of \$0.713/kWh. From the annual revenue received by the system under the OPA FIT contract, Markham will pay down its capital budget investment portion within the first five years of operation, the remaining 15 years of the contract revenues are proposed to be reinvested in future Markham energy projects.

By Pamela Green and David Forgione

There's a new money-making opportunity for Ontario businesses: installing and operating a solar panel “farm” on their commercial or industrial building. In fact, the Ontario Green Energy Act (GEA), enacted in May 2009, is currently offering financial incentives for businesses that create solar energy, among other renewable energy types.

Here's how the GEA works. It set up a Feed-in Tariff Program (FIT) that first, guarantees access to the provincially-regulated power grid, when specific regulatory requirements are met; and second, pays producers specific rates for the energy generated.

The Ontario Power Authority operates the FIT Program and is currently offering 20-year contracts to producers of renewable energy. As a result of the FIT Program, owners of commercial and industrial buildings are now being approached by solar power companies seeking to lease rooftop space to install and operate solar panel facilities.

Here are some factors for property owners to consider when they're thinking about a solar rooftop lease:

Review existing property leases

The initial exercise in determining whether or not to lease the roof of your building is to review the leases already affecting your property, if any. A detailed review of existing leases should include analyzing provisions governing the use, maintenance and control of the roof, the allocation of costs between the landlord and the tenants with respect to the roof, and how a rooftop tenant would affect the management and operation of the building generally. It is likely that leases will need changes to allow for installation and maintenance or to address tenant concerns in relation to the rooftop solar panel system's impact on the tenant's business and expenses.

Check zoning issues

Property owners will also need to consider how solar panels might impact height restrictions on the buildings on the property. Most municipalities now have specific

provisions in their zoning by-laws dealing with rooftop solar panel systems.

Consider property tax implications

The Municipal Property Assessment Corporation (MPAC) has not yet set a formal policy on how to classify and assess rooftop solar facilities. However, MPAC has indicated they will likely assign an industrial classification to their use. That said, a solar panel installation may impact the tax classification and/or assessed value of your property, increasing your property taxes.

You will want to know any property tax implications, particularly where the installation results in a mix of industrial and commercial uses, where the lower rate single use formerly applied.

Load bearing capacity of rooftop

Next, determine if your roof has load bearing capacity and what type of facilities may be appropriate, given issues such as weight limitations, wind velocities, placement of existing rooftop mechanicals and the orientation of the building on the property. It's a good idea to get an engineering firm to conduct this review.

Write a lease that is customized for the specific operational requirements of your rooftop

The last step is to prepare a lease of the rooftop space that is appropriate for, and particularized to, the operational requirements of the property. Some solar power companies may ask that you sign a letter of intent or an offer to lease. They often do this before investigations into feasibility have been commenced and many of these documents purport to bind the landlord to a "standard form of lease." Property owners should avoid signing a letter of intent, an offer to lease, or standard lease form before it is reviewed by their lawyers.

Any lease should address not only where the panels will be located, but also their long-term impact on the roof and the allocation of responsibility for maintaining, repairing, upgrading, replacing, and insuring the panels and the roof.

The landlord should consider indemnities for damage to the roof by the solar tenant, nuisance and insurance issues, as well as relocation and interruption clauses that limit landlord liability in the event that the roof needs to be replaced (to protect the premises of other tenants) or other circumstances that may require the relocation and interruption of the solar panel system.

There are many other matters to think about before agreeing to lease your rooftop. In the end, the lease of rooftop space may not be compatible with your other commercial uses of the property. In cases where such a lease is appropriate, lease terms should be tailored to the requirements of the specific property and the property owner should avoid signing a letter of intent, an offer to lease or standard lease form before it is reviewed by legal counsel. **B**

Pamela Green is a partner, and David Forgione is a lawyer in the Commercial Real Estate Practice at Pallett Valo LLP, Mississauga's largest law firm. Pamela can be reached at pgreen@pallettvalo.com and David at dforgione@pallettvalo.com, or at (905) 273-3022.