



DocId:8003161

Tx:4002213

FILED FOR RECORD  
08/15/2023 12:06 PM  
VICKI HUGHES  
REGISTER OF DEEDS  
FRANKLIN COUNTY, KANSAS  
INSTRUMENT # 2023-02597  
RECORDING FEE 191.00

Recording Requested By and  
When Recorded Return to:

Orion Power Generation, LLC  
c/o Orion Renewable Energy Group LLC  
155 Grand Avenue, Suite 706  
Oakland, CA 94612  
(510) 267-8921  
Attn: General Counsel

No Real Estate Sales Validation  
Questionnaire Required  
Pursuant to KSA 79-1437e (13)

#KS-MCS1-106T  
Franklin County, Kansas

**GRANT OF EASEMENT AND EASEMENT AGREEMENT  
FOR COLLECTION FACILITIES**

THIS GRANT OF EASEMENT AND EASEMENT AGREEMENT FOR COLLECTION FACILITIES (this "Agreement") is made, dated and effective as of July 31, 2023 (the "Effective Date"), between **John W. Wray and Brenda A. Wray, husband and wife** ("Owner"), and **Orion Power Generation, LLC, a Delaware limited liability company** ("Grantee"). Owner and Grantee are sometimes referred to in this Agreement as a "Party" or collectively as the "Parties".

Grantee is developing a solar farm in Franklin County, Kansas ("Solar Farm"), and Owner is the sole owner of certain real property containing approximately 72.09 acres of land and located in Franklin County, Kansas, as more particularly described in Exhibit A attached hereto and made part hereof (the "Property").

For good and valuable consideration, the legal sufficiency of which is hereby acknowledged by the Parties, Owner and Grantee agree as follows:

1. Addresses. All notices, requests and communications in connection with this Agreement shall be addressed as follows:

If to Owner: John W. Wray and Brenda A. Wray  
2428 Nebraska Road  
Ottawa, KS 66067

If to Grantee: Orion Power Generation, LLC  
155 Grand Avenue, Suite 706  
Oakland, CA 94612  
Attention: General Counsel

2. Grant of Collection Easement. Owner grants to Grantee an easement ("Collection Easement") in, on, under, along and across a fifty (50) feet wide portion of the Property

("Collection Easement Area") located in approximately the area depicted as "Collection Easement Area" on Exhibit A-1 attached hereto and incorporated herein, for the right to construct, reconstruct, replace, relocate, remove, maintain and use the following from time to time: underground wires and cables, for the collection and transmission of electrical energy and/or for communication purposes, and all necessary and proper appliances, fixtures and surface markers for use in connection with said wires and cables in, on, under, along and across the Collection Easement Area. Said wires, cables, appliances, fixtures, surface markers, and related facilities are herein collectively called the "Collection Facilities." In the event Grantee commences construction of any Collection Facilities within the Collection Easement Area, then Grantee will also commence construction (and comply with all minimum acreage requirements) under both (i) that certain Solar Lease Agreement between Grantee and Owner (known as KS-MCS1-106), and (ii) that certain Solar Lease Agreement between Grantee and Theron J. Wray as Trustee of the Theron J. Wray Revocable Trust dated August 19, 1996 (known as KS-MCS1-110) (the "Related Leases").

3. Payment. In consideration of the rights granted hereunder, Grantee agrees to pay Owner during the Term the amounts set forth in the Fee Schedule attached hereto ("Fee Schedule").

4. Early Termination. If Grantee has not commenced construction of the Solar Farm ("Start of Construction") prior to the fifth (5<sup>th</sup>) anniversary of the Effective Date, this Agreement will automatically terminate. Upon such termination, Owner may execute and record a termination of this Agreement in the real property records of the county in which the Property is located ("County Records"). Grantee shall notify Owner of the commencement and completion of construction of Collection Facilities or the Solar Farm.

5. Term and Termination. Unless earlier terminated, this Agreement shall be for an initial term ("Initial Term") commencing on the Effective Date and continuing until the later of (a) 30 years after the first day of the calendar month following the month in which the Solar Farm begins delivering commercial quantities of electricity to the electric utility grid (the "Commercial Operation Date"), or (b) 35 years after the Effective Date. Unless earlier terminated, Grantee may elect to extend the Initial Term for one or two additional 10-year terms commencing on the last day of the Initial Term or the 10<sup>th</sup> anniversary of such day, respectively, upon at least 90 days' notice to Owner. The Initial Term plus either or both of such additional 10-year terms are called the "Term." An "Event of Default" shall exist under this Agreement if: (1) (A) Grantee fails to pay Owner any amount due hereunder, or (B) Grantee defaults in the performance of any other covenant or agreement contained in this Agreement, and (2) either such default in (A) and (B) hereof continues uncured for a period of 60 days (30 days for monetary defaults) after written notice thereof from Owner to Grantee, unless such non-monetary default cannot be reasonably cured within such 60-day period, in which case no Event of Default shall exist if Grantee, within such 60-day period, commences to cure such default and thereafter prosecutes the cure of such default in good faith and with due diligence. Subject to Section 14.2, upon the occurrence of an Event of Default, Owner may terminate this Agreement by recording in the County Records a declaration stating that this Agreement has terminated by reason of the occurrence of an Event of Default. Grantee may terminate this Agreement as to all or any part of the Property at any time upon notice to Owner. Upon the expiration or earlier termination of this Agreement, Grantee shall promptly de-energize any electrical lines or facilities in, on or over the Collection Easement Area, and within twelve (12) months remove all Collection Facilities from the surface and, at Owner's

request, also remove the Collection Facilities from the subsurface and restore said surface to approximately the same condition as the Collection Easement Area were in on the date construction of Collection Facilities commenced on the Property.

6. Construction Activities.

6.1. Construction Activities. During construction of the Collection Facilities and the Solar Farm, Grantee may use for construction purposes an additional 40 feet of land on the south side of the Collection Easement Area. Grantee will use commercially reasonable efforts to minimize surface disturbance on the portion of the Property lying more than five feet from the edge of the Collection Easement Area during construction.

6.2. Drainage Tiles.

(a) If Owner installs drainage tiles on the Property prior to the Start of Construction on the Property then at Grantee's option, either (i) Grantee will hire a reputable local tiling firm to do any trenching work on the Property in connection with the installation of Collection Facilities, or (ii) Grantee will allow all of the landowners in the Project collectively to select a local tiling consultant to be present during trenching work for the Project, and Grantee will pay such consultant directly at standard local long-term rates. Grantee will install its underground power lines at least four feet below the soil surface so long as soil conditions do not make it commercially impracticable to do so, unless Owner consents to a lesser depth.

(b) After the Commercial Operation Date, Grantee shall provide Owner with a site map showing the "as built" location of the underground lines on the Property (using GPS coordinates), and such "as built" site map shall include, if applicable, notations identifying the depth of all underground tiles and underground lines at any location where such items cross (using GPS coordinates). Grantee will also place field markers at the edge of fields and take any other measures that are required by the applicable law or county permits to mark the location of any underground lines. After Owner's receipt of the "as built" site map, Owner shall notify Grantee at least seven days in advance of installing or repairing underground drainage tiles or doing other soil-disturbing activities within the Collection Easement Area at a depth greater than two feet below the soil surface in a location above or near Grantee's underground lines. Within seven days of Grantee's receipt of such notice from Owner (or promptly, in the case of an emergency described by Owner), Grantee, using its "as built" site maps, shall confirm for Owner the actual depth of the marker tape and any underground lines in the location of the proposed installation or repair work. If the entirety of Owner's proposed installation or repair work will be conducted at a depth above the marker tape, then Owner may conduct such work without a representative of Grantee present and without further notice to Grantee, and Grantee shall be responsible for any damage to underground lines caused directly and solely by any inaccuracies in Grantee's notification of the depth of the marker tape and underground lines in the location of the work. If any of Owner's proposed installation or repair work will be conducted at a depth below the marker tape, then within 30 days of such notification, Grantee will send out a field representative to uncover the affected Grantee underground lines so that Owner can complete its soil-disturbing activities in a safe and professional manner; provided that Grantee shall not be required to so uncover its underground lines in response to Owner's notification more than two times per year (except in the case of an emergency). Owner shall deliver to Grantee's field representative a signed

acknowledgement as soon as Grantee's field representative uncovers each such underground line, whereupon Owner shall indemnify Grantee for any damage to or interruption in service of such underground line(s). Owner shall be responsible for replacing all marker tape in the trenches for the underground lines so that such marker tape remains in the same location as it was located prior to Owner's work.

(c) Upon completion of construction on the Property, Grantee will promptly repair any damage to the underground drainage tiles or waterways caused by the construction activities of Grantee pursuant to Section 12 below. Such repair shall in any event be completed within six (6) months from the date such damage occurred; *provided, however*, that if water is flowing through any damaged tile, the tile will be temporarily repaired or rerouted until such time that more permanent repairs can be made. Prior to and during repair, exposed tile lines will be screened or otherwise protected to prevent the entry of foreign materials and small mammals into the tile. Grantee shall have a continuing obligation to effect repairs to drainage tiles for any damage which persists beyond such period provided that such damage is related to the construction activities of Grantee.

6.3. Soil. Upon completion of any construction on the Property, Grantee will restore the soil surface on any portion of the Property disturbed by Grantee to substantially the same condition as on the date construction of Collection Facilities commenced thereon. If Grantee causes compaction of any cultivated part of the Property, as determined by a third-party crop adjustor, Grantee will either "rip" such portion of the Property in at least three passes to a depth of at least 18 inches, or, if elected by Owner, allow Owner to perform such necessary activities and receive from Grantee reasonable compensation therefor.

7. Access. The Collection Easement is also for the right of ingress to and egress from the Collection Easement Area.

8. Ownership of Collection Facilities; Taxes. Owner shall have no ownership or other interest in any Collection Facilities installed on the Property. Grantee may remove any or all Collection Facilities at any time in accordance with the terms hereof. Grantee shall pay personal property taxes, if any, attributable to Collection Facilities and other improvements to the Property installed by Grantee. Grantee shall also pay or reimburse Owner for any increase in real property taxes levied against the Property as a result of Grantee's installations. Owner shall pay all taxes, assessments or other fees attributable to facilities installed by Owner or others on the Property or to the underlying value of the Property itself.

9. Owner's Right to Use the Property; No Interference. Any right not granted herein to Grantee is reserved by Owner. Owner retains the right to use the Property for all purposes not inconsistent with the rights granted to Grantee by this Agreement, *provided* that Owner's activities and any grant of rights Owner makes to any person or entity, whether located on the Property or elsewhere, shall not currently or prospectively interfere with: the development, construction, installation, maintenance, or operation of Collection Facilities, whether located on the Property or elsewhere; access over the Property to Collection Facilities; or the undertaking of any other activities permitted hereunder.



10. Costs and Maintenance. All costs and expenses incident to the construction, reconstruction, replacement, relocation, removal, maintenance and use of the Collection Facilities, including the trimming and cutting of any tree roots and underbrush shall be borne by Grantee. Grantee shall have the right to make all foreseen and unforeseen and ordinary and extraordinary changes and repairs which may be required to the Collection Facilities, and to maintain and keep the Collection Easement Area in good order, repair and condition, including but not limited to trimming, cutting and removing trees roots and underbrush as reasonably necessary if any roots or other parts are within the Collection Easement Area. When Grantee performs such maintenance activities, Grantee shall remove all debris created (such as, but not limited to, tree roots, underbrush, etc.) and dispose of such debris offsite.

11. Compliance with Laws; Setback Waiver. Grantee shall comply with all laws, regulations and rules governing the construction, reconstruction, relocation, replacement, removal, maintenance and use of the Collection Facilities, including, as applicable, the Kansas Underground Utility Damage Prevention Act. Owner hereby waives any setbacks that otherwise restrict the location of any solar equipment or Collection Facilities to be installed on the Property or on adjacent properties, including but not limited to waiver of all property line setbacks, pursuant to state or county rules, regulations or ordinances (that is, Owner approves a reduction of each such setback to zero), and Owner shall cooperate with Grantee in obtaining written waivers of such setbacks and shall execute any documents reasonably requested by Grantee to evidence Owner's waiver of such setbacks.

12. Indemnity. Grantee shall, at all times, save and hold harmless and indemnify Owner, its officers, partners, agents, contractors and employees, from and against all losses, damages, expenses, claims, demands, suits and actions to the extent caused by the operations or activities of Grantee, its officers, partners, agents, contractors and employees. Owner shall, at all times, save and hold harmless and indemnify Grantee, its officers, partners, agents, contractors and employees, from and against all losses, damages, expenses, claims, demands, suits and actions, to the extent caused by the operations or activities of Owner, its officers, partners, agents, contractors and employees.

13. Assignment. Grantee may assign this Agreement or its rights with respect to the Collection Easement, in whole or in part, without the need for Owner's consent to any third party provided the Related Leases are also included in such assignment. This Agreement and all easements and rights granted herein, including the Collection Easement, shall burden the Property and shall run with the Property. This Agreement and the Collection Easement shall inure to the benefit of, and be binding upon, Owner and Grantee and their respective transferees, heirs, successors and assigns and all persons claiming under them. Any sale or other transfer of the Property by Owner shall be subject to the Collection Easement and this Agreement. References to Grantee in this Agreement shall be deemed to include its assignees in possession of the Property. The Parties agree and intend that the provisions of this Agreement shall be covenants running with the land. The Parties agree and intend that any conveyance, assignment, sale or other transfer of all or a portion of either party's rights or interests covered by and permitted under this Agreement shall include and be subject thereto because the provisions of this Agreement are covenants that run with the land. As covenants running with the land, the Parties intend that should either no longer share privity of estate with the other, its rights and obligations in this Agreement pass to the person or entity that shares privity of estate and assumes the role of Owner or Grantee. As a result,

any Party who ceases to have privity of estate under this Agreement shall bear no liability or any obligation for the terms hereunder for events occurring after the date on which privity ends. The privity of contract between the current Parties shall not change this result because the Parties do not intend the use of identifiers like Owner or Grantee to bind those specific Parties upon any transfer, conveyance, assignment, sale, or other transfer covered by and permitted under this Agreement.

14. Financing.

14.1. Grantee may collaterally assign, mortgage or otherwise encumber its interest in this Agreement to a Financing Party (as hereinafter defined) under a Mortgage (as hereinafter defined). The term "Financing Party" means (i) any institution (including any trustee or agent of behalf of such institution) providing debt or other financing (including easement financing) to or for the benefit of Grantee or its successors or assigns, (ii) any counterparty under a power purchase agreement, renewable energy agreement or similar agreement that has been provided a Mortgage (as defined herein) by Grantee to secure obligations owing to such counterparty, and (iii) any tax equity investor in Grantee (until the "DRO Zero Date" or similar date that such tax equity investor has received a specified after-tax rate of return on its investment and has a balance in its respective capital account of at least zero). The term "Mortgage" shall mean any mortgage, deed of trust, deed to secure debt or other security instrument by which Grantee's interest in this Agreement, the Collection Facilities, or the Property is collaterally assigned, mortgaged, pledged, conveyed, assigned or otherwise transferred or encumbered to secure a debt or other obligation to a Financing Party. A Financing Party who provides written notice to Owner of its Mortgage (if applicable), or of its position as a Financing Party, along with its address for notices, shall be referred to as "Lender."

14.2. Owner, upon providing Grantee any notice of (i) default under this Agreement or (ii) termination of this Agreement, shall at the same time provide a copy of such notice to each Lender (provided Grantee has provided notice to Owner of such Lender and such Lender's contact information). Such Lender shall have the same period, after the giving of such notice, for remedying any default or causing the same to be remedied (but shall have no obligation to remedy or cause the remedy of any default), as is given Grantee after the giving of such notice to Grantee to remedy the default specified in any such notice. Owner shall accept such performance by or at the instigation of such Lender as if the same had been done by Grantee.

14.3. Owner shall execute such estoppel certificates (certifying as to such matters as Grantee may reasonably request, including, without limitation, that no default then exists under this Agreement to Owner's knowledge, if such be the case) and/or non-disturbance agreements and/or documents reasonably required by a title insurance company, as Grantee or any Lender may reasonably request from time to time.

15. Miscellaneous.

15.1. Notices. All notices, requests and communications ("Notice") under this Agreement shall be given in writing, by (i) personal delivery (confirmed by the courier delivery service), (ii) facsimile and confirmed in writing by mail, or (iii) first class certified mail, postage prepaid, certified, to the individuals and addresses indicated in Section 1 above. Any Notice to

Lender of an Event of Default or termination shall be delivered to the address indicated in Lender's notice sent to Owner under Section 14.1 hereof. Except as expressly provided herein, any Notice provided for herein shall become effective only upon and at the time of first receipt by the party to whom it is given, unless such Notice is only mailed by certified mail in which case it shall be deemed to be received five business days after the date that it is mailed. Any party may, by proper written notice hereunder to the other party, change the individual address to which such Notice shall thereafter be sent.

15.2. Governing Law; Legal Matters. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Kansas. The Parties agree that any rule of construction to the effect that ambiguities are to be resolved in favor of either party shall not be employed in the interpretation of this Agreement, and is hereby waived. **Each party waives all right to trial by jury and specifically agrees that trial of suits or causes of action arising out of this Agreement shall be to the Court. In no event shall either party be liable under this Agreement for consequential, punitive, special, incidental or indirect damages.**

15.3. Integration; Amendment. This Agreement, when executed, approved and delivered, together with all exhibits attached hereto, shall constitute the entire agreement between the Parties and there are no other representations or agreements, oral or written, except as expressly set forth herein. This Agreement may not be amended or modified except by a written agreement signed by the Parties.

15.4. Recording; Easement Area. Owner and Grantee agree that this Agreement (without the Fee Schedule) shall be recorded in the County Records. From time to time, Grantee may send written notice to Owner containing a legal description of the Collection Easement Area, and Grantee may record such legal description of the Collection Easement Area (which will be attached hereto as Exhibit B) in the County Records without the need for Owner's consent. In the event of any inaccuracy or insufficiency in the description of the Property or Collection Easement Area in Exhibit A or Exhibit B, respectively, or in the description of the parties in whom title to the Property is vested, Grantee may record an amendment or correction of this Agreement to correct such inaccuracy or insufficiency.

15.5. Counterparts. This Agreement may be executed in multiple counterparts, no one of which need be executed by all Parties, each of which shall constitute an original. Counterparts thus executed shall together constitute one and the same instrument.

[Signatures on following page.]

IN WITNESS WHEREOF, Owner and Grantee have caused this Agreement to be executed and delivered by their duly authorized representatives as of the Effective Date.

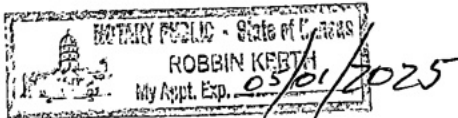
"OWNER"

John W. Wray  
Name: John W. Wray

Brenda A. Wray  
Name: Brenda A. Wray

STATE OF KANSAS §  
COUNTY OF FRANKLIN §

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of July, 2023, by **John W. Wray**



(SEAL)

Robbin Keeth  
Notary Public

My appointment expires: 05/01/2025

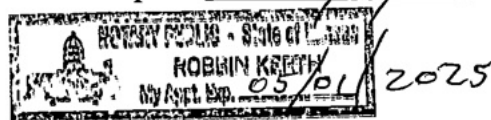
STATE OF KANSAS §  
COUNTY OF FRANKLIN §

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of July, 2023, by **Brenda A. Wray**

(SEAL)

Robbin Keeth  
Notary Public

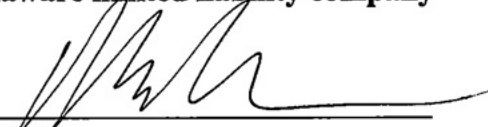
My appointment expires: 05/01/2025





**"GRANTEE"**

**Orion Power Generation, LLC**  
**a Delaware limited liability company**

By   
Name: MICHAEL HAAS  
Title: PRESIDENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

§  
§  
§

COUNTY OF ALAMEDA

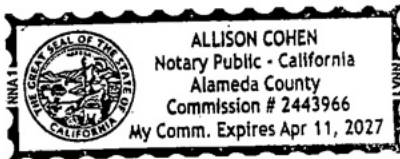
On July 31, 2023, before me, ALLISON COHEN,  
Notary Public, personally appeared MICHAEL HAAS


proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

[Notary Stamp/Seal]



  
Notary Public in and for the State of California

**Exhibit A**

**Description of Property**

ALL THAT CERTAIN real estate lying and being situated in Franklin County, Kansas, being more particularly bounded and described as follows:

Real Property Tax Parcel No. 030-124-19-0-00-00-008.00-0 consisting of 72.09 acres, and described as:

The South half of the Northeast Quarter of Section 19, Township 17 South, Range 20 East of the 6<sup>th</sup> P.M., Franklin County, Kansas, EXCEPT the South 438.9 feet of the East 706.2 feet thereof.

(In the event of any inaccuracies or insufficiencies in the above legal description, Grantee may modify this Exhibit A to correct such inaccuracies or insufficiencies)



**Exhibit A-1**  
**Map of Property and Collection Easement Area**




1 inch = 359 feet

0 300 600 Feet

**Exhibit A-1 - John & Brenda Wray;**  
**KS-MCSI-106T**

-  Property - 72.09Ac  
 Easement Area - approx 3,022 ft length

 Section

**Franklin Co., KS**

3/1/2023

**Confidential**

