

Execution Version

INTERCREDITOR AND COLLATERAL AGENCY AGREEMENT,

dated as of June 29, 2016,

by and among

**WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Collateral Agent,**

**THE PPA PROVIDERS
FROM TIME TO TIME
PARTY HERETO,**

and

PENINSULA CLEAN ENERGY AUTHORITY

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INTERCREDITOR AND COLLATERAL AGENCY AGREEMENT

This **INTERCREDITOR AND COLLATERAL AGENCY AGREEMENT**, dated as of June 29, 2016 (this "**Agreement**"), is entered into by and among (i) **Wilmington Trust, National Association**, not in its individual capacity, but solely in its capacity as Collateral Agent ("**Collateral Agent**"), (ii) each of the creditors from time to time signatory hereto that are party to a Power Purchase Agreement (each such creditor defined below as a "**PPA Provider**") and (iii) Peninsula Clean Energy Authority, a California joint powers authority ("**PCEA**").

RECITALS:

A. PCEA has (i) on the date hereof entered into the Master Agreement (as defined below) with Energy America, LLC ("**Seller**") for the purchase of Product (as defined below), and (ii) may in the future enter into, a Power Purchase Agreement (as defined below) with a PPA Provider pursuant to which PCEA has agreed, or will agree, to purchase the Product from such PPA Provider.

B. PCEA shall sell the Product it purchases from PPA Providers to PCEA's customers at rates established by PCEA from time to time.

C. PCEA herein pledges to Collateral Agent, for the benefit of the PPA Providers, as Secured Creditors, a first priority continuing security interest in and to the Collateral (as defined below).

D. PCEA's customers are billed by PG&E (as defined below) and instructed to remit to PG&E sums they owe for the Product provided by PCEA.

E. As of the date hereof, PCEA has directed PG&E to remit all present and future collections on accounts receivable now or hereafter billed by PG&E on behalf of PCEA to Collateral Agent for remittance to a Lockbox Account (as defined below), which direction is irrevocable unless both Collateral Agent, at the direction of the Required Secured Creditors (as defined below), and PCEA direct PG&E otherwise.

F. Collateral Agent shall have, for the benefit of the Secured Creditors, a first priority continuing security interest in and lien on such receivables, deposit accounts and related Collateral pledged to Collateral Agent for the benefit of the Secured Creditors, as provided in the Security Agreement.

G. Distributions from such Collateral shall be made by Collateral Agent as provided in this Agreement and the Security Agreement, with PPA Providers having a senior right to distributions from the Collateral.

H. Secured Creditors desire in this Agreement to appoint Wilmington Trust, National Association as Collateral Agent to act on their behalf regarding the administration, collection and enforcement of the Collateral, all as more fully provided herein.

I. Secured Creditors also desire to enter into this Agreement to define the rights, duties, authority and responsibilities of Collateral Agent.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto hereby agree as follows:

SECTION 1. DEFINITIONS

Section 1.1. Definitions

Each capitalized term used herein and not defined herein shall have the meaning given to such term in the Security Agreement. The following terms shall have the meanings assigned to them in this Section 1.1 or in the provisions of this Agreement referred to below:

“Affiliate” means, at any time, and as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, “control” of a Person means the power, directly or indirectly, either to (a) vote 50% or more of the securities having ordinary voting power for the election of directors (or persons performing similar functions) of such Person or (b) direct or cause the direction of the management and policies of such Person, whether by contract or otherwise.

“Agreement” shall have the meaning assigned thereto in the Preamble hereof.

“Applicable Law” means any applicable law, including without limitation any: (a) federal, state, territorial, county, municipal or other governmental or quasi-governmental law, statute, ordinance, rule, regulation, requirement or use or disposal classification or restriction, whether domestic or foreign; (b) judicial, administrative or other governmental or quasi-governmental order, injunction, writ, judgment, decree, ruling, interpretation, finding or other directive, whether domestic or foreign; (c) common law or other legal or quasi-legal precedent; (d) any binding arbitrator’s, mediator’s or referee’s decision, finding, award or recommendation; or (e) charter, rule, regulation or other organizational or governance document of any national securities exchange or market or other self-regulatory organization.

“Bankruptcy Code” means the Bankruptcy Reform Act of 1978, as codified under Title 11 of the United States Code, and the rules promulgated thereunder, as the same may be in effect from time to time.

“Bankruptcy Proceeding” means, with respect to any Person, the institution by or against such Person of any proceeding seeking relief as a debtor, or seeking to adjudicate such Person as bankrupt or insolvent, or seeking the reorganization, arrangement, adjustment or composition of such Person or its debts, under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for such Person or for any substantial part of its property, or a general assignment by such Person for the benefit of its creditors.

“Business Day” means any day other than a Saturday, a Sunday or a day on which commercial banks in the States of California or Delaware are required or authorized to be closed.

“Collateral” has the meaning given to such term in the Security Agreement.

“Collateral Agent” means the party identified as such in the Preamble hereof, and its successors and permitted assigns in such capacity.

“Control Agreement” means the Account Control Agreement, dated as of the date hereof, among the Depository Bank, PCEA and Collateral Agent and any other agreements entered into among PCEA and Depository Bank which shall designate the Deposit Accounts as blocked accounts under the “control” of Collateral Agent, for the benefit of Secured Creditors, as provided in the UCC, as each such agreement may be amended, supplemented, restated or replaced from time to time.

“Customer” means any customer of PCEA who purchases Product from PCEA but is invoiced by PG&E, or any other obligor(s) responsible for payment of a Receivable.

“Deposit Accounts” has the meaning given to such term in the Security Agreement.

“Depository Bank” has the meaning given to such term in the Security Agreement.

“Distribution Date” has the meaning given to such term in the Security Agreement.

“Distribution Date Certificate” has the meaning given to such term in the Security Agreement.

“Joinder” has the meaning given to such term in Section 6.5.

“Lien” means any mortgage, pledge, hypothecation, deposit arrangement, encumbrance, lien (statutory or other), assignment, charge or other security interest or any preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any sale governed by Article 9 of the UCC, any conditional sale or title retention agreement, or any capital lease having substantially the same economic effect as any of the foregoing).

“Lockbox Account” has the meaning given to such term in the Security Agreement.

“Master Agreement” means the Master Power Purchase and Sale Agreement, dated as of June 24, 2016, between Seller and PCEA, and a Confirmation, dated as of June 29, 2016, between Seller and PCEA, together with the exhibits, schedules, transactions, confirmations, and any written amendments, modifications, restatements, extensions or supplements thereto or replacements thereof.

“Obligations” has the meaning given to such term in the Security Agreement.

“PCEA” means the party identified as such in the Preamble hereof, and its successors and permitted assigns, and includes PCEA in its capacity as a debtor in possession under the Bankruptcy Code.

“**Person**” means an individual, partnership, corporation, limited liability company, association, trust, unincorporated organization, or a government or agency or political subdivision thereof.

“**PG&E**” means the Pacific Gas and Electric Company, its successors and assigns or any other Person that is the host utility that bills Customers in PCEA’s service territory and collects payments for Product from such Customers on behalf of PCEA.

“**Product**” means one or more of the following: energy, renewable energy attributes, capacity attributes or resource adequacy benefits.

“**Power Purchase Agreement**” means each agreement, including the Master Agreement, together with the exhibits, schedules, transactions, confirmations, and any written amendments, modifications, restatements, extensions or supplements thereto or replacements thereof, pursuant to which a PPA Provider sells the Product to PCEA, as amended, modified, supplemented, restated, extended or replaced from time to time.

“**PPA Provider**” means each seller of Product under a Power Purchase Agreement that is a party to this Agreement, and its respective successors and assigns.

“**Receivable**” means an Account evidencing PCEA’s rights to payment for Product, billed in an invoice sent to a Customer by PG&E, together with all late fees and other fees which PG&E and PCEA agree are to be charged in such invoice to the Customer by PG&E on behalf of PCEA.

“**Regular Charges**” has the meaning given to such term in the Security Agreement.

“**Required Secured Creditors**” means, as of any date, the Secured Creditor, or Secured Creditors, that, as of such date, have at least seventy five percent (75%) of the total aggregate Sharing Percentage, as calculated on such date.

“**Secured Creditors**” means each PPA Provider that is a party to this Agreement, and its respective successors and assigns.

“**Security Agreement**” means the Security Agreement, dated as of even date herewith, between PCEA and Collateral Agent for the benefit of Secured Creditors, granting a security interest in the Collateral to secure the Obligations, as amended, supplemented, restated or replaced from time to time.

“**Sharing Percentage**” means, as of any date, with respect to each PPA Provider as calculated by PCEA, the percentage equivalent of a fraction, (a) the numerator of which is the sum of (i) the outstanding amount of the Obligations of such PPA Provider, as of such date, and (ii) the calculated amount of the Termination Payment, if any, that would be owed to such PPA Provider if a Termination Event occurred on such date, and (b) the denominator of which is the sum of (i) the outstanding aggregate amount of the Obligations of all PPA Providers as of such date, and (ii) the calculated aggregate amount of the Termination Payments, if any, that would be owed to all PPA Providers if a Termination Event occurred on such date.

“Supplemental Payment” has the meaning given to such term in the Security Agreement.

“Termination Event” means, with respect to any Power Purchase Agreement, the termination and/or acceleration thereof in accordance with the terms of such Power Purchase Agreement.

“Termination Payment” means, with respect to any Power Purchase Agreement, any and all Obligations arising upon or in connection with a Termination Event under such Power Purchase Agreement, including any termination fees and payments or other amounts owed by PCEA thereunder, as of the date of such Termination Event, as calculated in a commercially reasonable manner by the PPA Provider to such Power Purchase Agreement.

“Transaction Agreements” means the Master Agreement, any other Power Purchase Agreements, the Control Agreement, the Security Agreement, this Agreement and all other agreements, instruments or documents to which PCEA is a party and which are executed and delivered from time to time in connection with or as security for PCEA’s obligations under the Master Agreement, any other Power Purchase Agreements and any other Transaction Agreements, as the same may be amended, restated, modified, replaced, extended or supplemented from time to time.

“UCC” means the Uniform Commercial Code in effect in the State of California from time to time.

Section 1.2. Other Interpretive Provisions

References to “Sections” shall be to Sections of this Agreement unless otherwise specifically provided. For purposes hereof, “including” is not limiting and “or” is not exclusive. All capitalized terms defined in the UCC and not otherwise defined herein or in the Security Agreement shall have the respective meanings provided for by the UCC. Any of the terms defined in this Agreement may, unless the context otherwise requires, be used in the singular or the plural depending on the reference. All references to statutes and related regulations shall include any amendments of same and any successor statutes and regulations. References to any instrument, agreement or document shall include such instrument, agreement or document as supplemented, modified, amended or restated from time to time to the extent permitted by this Agreement or the Security Agreement, as applicable. References to any Person include the successors and permitted assigns of such Person. References to any statute or act shall include all related current regulations and all amendments and any successor statutes, acts and regulations. References to any statute or act, without additional reference, shall be deemed to refer to federal statutes and acts of the United States. References to any agreement, instrument or document shall include all schedules, exhibits, annexes and other attachments thereto.

SECTION 2. RELATIONSHIPS AMONG SECURED CREDITORS

Section 2.1. Liens in the Collateral

At all times, whether before, after or during the pendency of any Bankruptcy Proceeding and notwithstanding the priorities which would ordinarily result from the order of

granting of any Liens, the order of attachment or perfection thereof, or the order of filing or recording of any financing statements or other instrument, or the priorities that would otherwise apply under Applicable Law, Collateral Agent, for the benefit of the Secured Creditors, shall have a first priority lien in the Collateral to secure the Obligations. No Secured Creditor will acquire in its own name a Lien in the assets of PCEA to secure any Obligations arising under a Power Purchase Agreement other than Liens arising by operation of law such as setoff rights. Secured Creditors shall share in the Proceeds of the Collateral as provided for in Section 4.6.

Section 2.2. No Debt Subordination

Nothing in this Agreement shall be construed to be or operate as a subordination of any of the Obligations owed to a Secured Creditor in right of payment to the Obligations owed to any other Secured Creditor.

Section 2.3. Restrictions on Enforcement Action

So long as any Obligation is outstanding and the Security Agreement remains in effect, the provisions of this Agreement and the Security Agreement shall provide the exclusive method by which Collateral Agent or any Secured Creditor may exercise rights in or assert claims against the Collateral or PCEA pertaining to the Obligations. Notwithstanding the foregoing, nothing in this Agreement shall prohibit or otherwise restrict a Secured Party from exercising any right of termination, acceleration or similar right in accordance with its Power Purchase Agreement, or prohibit or otherwise restrict a Secured Party from exercising any set-off rights it may have with respect to the Obligations owing to it.

Section 2.4. No Restriction on Terms of Power Purchase Agreements

This Agreement does not impose any restriction on the terms of a Power Purchase Agreement. PCEA and any PPA Provider are free to agree on any and all of the terms for charges that may be provided for under its Power Purchase Agreement, such as the price for the Product, late fees, and early termination fees. Without limiting the foregoing, no PPA Provider shall be restricted as to the amount or output of the Product it sells to PCEA or the length of such Power Purchase Agreement, or any amendment thereof. Upon request by the Collateral Agent, each PPA Provider will disclose to Collateral Agent the Obligations then due and owing to such PPA Provider in an itemized manner, and PCEA consents to such disclosure to such Person or any party hereto.

Section 2.5. Representations and Warranties

Each Secured Creditor represents and warrants to the other parties hereto that:

- (a) the execution, delivery and performance by such Secured Creditor of this Agreement has been duly authorized by all necessary corporate or similar proceedings and does not and will not contravene any provision of law, its charter or by-laws or any amendment thereof, or of any indenture, agreement, instrument or undertaking binding upon such Secured Creditor;

(b) the execution, delivery and performance by such Secured Creditor of this Agreement will result in a valid and legally binding obligation of such Secured Creditor enforceable against such Secured Creditor in accordance with its terms; and

(c) any Termination Payment calculated by it and provided to the Collateral Agent or the other Secured Creditors shall be calculated in good faith, in accordance with its Power Purchase Agreement, and consistent with such Secured Creditor's current practices.

Section 2.6. Cooperation; Accountings

Each Secured Creditor will, upon the reasonable request of the Collateral Agent, from time to time execute and deliver or cause to be executed and delivered such further instruments, and do and cause to be done such further acts as may be reasonably necessary or proper to carry out more effectively the provisions of this Agreement. Each Secured Creditor agrees to provide to the Collateral Agent upon reasonable request a statement of all payments received by it in respect of the Obligations pertaining to its Power Purchase Agreement.

SECTION 3. AGENCY PROVISIONS

Section 3.1. Appointment and Authorization of Collateral Agent

(a) Each Secured Creditor hereby designates and appoints Wilmington Trust, National Association, as Collateral Agent of such Secured Creditor under this Agreement and Wilmington Trust, National Association, hereby accepts such designation and appointment.

(b) Notwithstanding any provision to the contrary elsewhere in this Agreement, Collateral Agent shall not have any duties or responsibilities except those expressly set forth herein and in the Security Agreement, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or otherwise exist against Collateral Agent. The right or power of Collateral Agent to perform any discretionary act hereunder shall not be construed as a duty. Collateral Agent is hereby authorized, empowered and instructed to execute, deliver and perform its obligations under this Agreement, the Security Agreement, the Control Agreement and each other document as may be necessary or convenient in connection with the foregoing; provided, however, that the Collateral Agent shall not amend, modify or terminate the Control Agreement without the prior written consent of the Secured Creditors.

Section 3.2. Collateral Held in Trust

(a) Deposit Accounts Subject to Collateral Agent's Control.

Collateral Agent agrees that its security interest and right of setoff in and to the Deposit Accounts is held for the benefit of all the Secured Creditors and itself as Collateral Agent, and that Collateral Agent will comply with this Agreement and the Security Agreement in distributing monies received from such Deposit Accounts.

(b) Collateral Held in Trust by Secured Creditors.

Each Secured Creditor hereby acknowledges that if any Secured Creditor (individually or through its own custodian) shall hold or control, at any time, any assets comprising Collateral, such possession or control is also held for the benefit of Collateral Agent for the benefit of the Secured Creditors. The foregoing sentence shall not be construed to impose any duty on a Secured Creditor (or any third party acting on its behalf) with respect to such Collateral if it is not perfected by possession or control.

Section 3.3. Delegation of Duties

Collateral Agent may exercise its powers and execute any of its duties under this Agreement by or through employees, agents, and attorneys-in-fact, and shall be entitled to take and to rely on advice of counsel concerning all matters pertaining to such powers and duties. Subject to Section 3.4, Collateral Agent shall not be responsible for the negligence or misconduct of any agents, or attorneys-in-fact unless Collateral Agent acted in bad faith or gross negligence in the selection of such agents or attorneys-in-fact. Collateral Agent may utilize the services of such Persons as Collateral Agent in its reasonable discretion may determine, and shall be entitled to indemnity hereunder for all reasonable fees and expenses of such Persons.

Section 3.4. Exculpatory Provisions

Neither Collateral Agent (as such or in its individual capacity) nor any of Collateral Agent's officers, directors, employees, agents, attorneys-in-fact, or Affiliates shall be (a) liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection with this Agreement (except for its or such Person's own bad faith, gross negligence (or ordinary negligence in the handling or disbursement of funds actually received by it pursuant to the terms hereof) or willful misconduct, respectively) or (b) responsible in any manner to PCEA or any of the Secured Creditors for any recitals, statements, representations, warranties or covenants made by PCEA or any Secured Creditor or any officer thereof contained in any certificate, report, statement or other document referred to or provided for in, or received by, Collateral Agent under or in connection with this Agreement or any other document in any way connected therewith, or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of any Lien or the perfection or priority of any such Lien (including any Lien in the Collateral), or for any failure of PCEA to perform its obligations thereunder.

Section 3.5. Reliance by Collateral Agent

Collateral Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing (in electronic or physical form), resolution, notice, consent, certificate, affidavit, letter, cablegram, telegram, telecopy, telex or teletype message, statement, order or other document or conversation reasonably believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including, without limitation, counsel to PCEA), independent accountants and other experts selected by Collateral Agent. Collateral Agent shall be fully justified in failing or refusing to take action not provided for under this Agreement unless it shall first be indemnified to its reasonable satisfaction by PCEA against any and all liability and expense which may be

incurred by it by reason of taking, continuing to take or refraining from taking any such action. Collateral Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement in accordance with the provisions of Section 4 hereof, and any action taken or failure to act pursuant thereto shall be binding upon all the Secured Creditors.

Section 3.6. Knowledge

Collateral Agent shall not be deemed to have knowledge or notice of any facts regarding the Collateral or the Obligations unless Collateral Agent has received written notice from the Secured Creditor or PCEA referring to this Agreement, describing such facts in reasonable detail.

Section 3.7. Non-Reliance on Collateral Agent and Secured Creditors

Each Secured Creditor expressly acknowledges that except as expressly set forth in this Agreement, neither Collateral Agent (as such or in its individual capacity) nor any of Collateral Agent's officers, directors, employees, agents, attorneys-in-fact, or Affiliates has made any representations or warranties to it and that no act by Collateral Agent hereinafter taken shall be deemed to constitute any representation or warranty by Collateral Agent (as such or in its individual capacity) to any Secured Creditor.

Section 3.8. Reporting

Collateral Agent will provide the Secured Creditors with a copy of the bank statement for the Lockbox Account no later than five (5) Business Days following receipt thereof by the Collateral Agent. Collateral Agent shall have no duty or responsibility to provide the Secured Creditors with, or otherwise monitor or review in any respect, any credit or other information concerning the business, operations, property, financial and other condition or creditworthiness of PCEA which may come into the possession of Collateral Agent or any of its officers, directors, employees, agents, attorneys-in-fact, or Affiliates. Collateral Agent shall provide to Secured Creditors copies of all notices received by it regarding the Collateral, the Security Agreement or this Agreement; provided that the failure to provide such copies shall not cause Collateral Agent (as such or in its individual capacity) to incur liability to any Person. Collateral Agent shall promptly (but in no event more than 3 Business Days) after Collateral Agent's receipt of a written request from a Secured Creditor provide a report to all Secured Creditors regarding the status of any matter relating to payments or distributions of Collateral received by Collateral Agent.

Section 3.9. Indemnification

PCEA shall indemnify Collateral Agent (as such and in its individual capacity) from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever which may at any time be imposed on, incurred by or asserted against Collateral Agent (as such or in its individual capacity) arising out of actions or omissions of Collateral Agent specifically required or permitted by this Agreement; provided that neither PCEA nor the Secured Creditors shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting solely from Collateral

Agent's fraud, willful misconduct, gross negligence or bad faith. The agreements in this Section 3.9 shall survive the repayment of the Obligations and the termination of this Agreement.

Section 3.10. Collateral Agent May Act in its Individual Capacity

Wilmington Trust, National Association, and its Affiliates may make loans to, accept deposits from and generally engage in any kind of business with PCEA and its Affiliates as though it was not Collateral Agent hereunder.

Section 3.11. Successor Collateral Agent

(a) Collateral Agent may resign at any time upon 60 days' prior written notice to the Secured Creditors and PCEA, or may be removed by the demand of the Required Secured Creditors for cause at any time if Collateral Agent has failed to take any action that Collateral Agent is required to take hereunder after request by a Secured Creditor, or Collateral Agent has taken any action hereunder that Collateral Agent is not authorized to take hereunder or that violates the terms hereof and, in either case, has not remedied such failure or violation with reasonable promptness after a written request for corrective action is delivered to Collateral Agent. After any resignation or removal hereunder of Collateral Agent, the provisions of this Section 3 shall continue to be binding upon and inure to its benefit as to any actions taken or omitted to be taken by it in its capacity as Collateral Agent hereunder while it was Collateral Agent under this Agreement.

(b) Upon receiving written notice of any such resignation or removal, a successor Collateral Agent, reasonably acceptable to PCEA, shall be appointed by the Secured Creditors provided, if an Event of Default as to PCEA has occurred no such acceptance of the successor Collateral Agent by PCEA shall be required. If a successor Collateral Agent shall not have been appointed pursuant to this Section 3.11(b) within 60 days after Collateral Agent's notice of resignation or upon removal of Collateral Agent, then any Secured Creditor or Collateral Agent (unless Collateral Agent is being removed) may petition a court of competent jurisdiction for the appointment of a successor Collateral Agent (it being expressly understood and agreed that any such petition by the Collateral Agent shall be at the expense of the Secured Creditors, jointly and severally) and the Collateral Agent shall continue its functions in accordance with subsection (c) below. The appointment of a successor Collateral Agent pursuant to this Section 3.11(b) shall become effective upon the acceptance of the appointment as Collateral Agent hereunder by a successor Collateral Agent. Upon such effective appointment, the successor Collateral Agent shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent.

(c) The resignation or removal of a Collateral Agent shall take effect on the day specified in the notice described in Section 3.11(a), unless previously a successor Collateral Agent shall have been appointed and shall have accepted such appointment, in which event such resignation or removal shall take effect immediately upon the acceptance of such appointment by such successor Collateral Agent, and provided, further, that no resignation or removal shall be effective hereunder unless and until a

successor Collateral Agent shall have been appointed and shall have accepted such appointment.

(d) Upon the effective appointment of and acceptance by a successor Collateral Agent, the successor Collateral Agent shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent and the predecessor Collateral Agent hereby appoints the successor Collateral Agent the attorney-in-fact of such predecessor Collateral Agent to accomplish the purposes hereof, which appointment is coupled with an interest. Such appointment and designation shall be full evidence of the right and authority to act as Collateral Agent hereunder and all power, trusts, duties, documents, rights and authority of the previous Collateral Agent shall rest in the successor, without any further deed or conveyance. The predecessor Collateral Agent shall, nevertheless, on the written request of the Secured Creditors or successor Collateral Agent, execute and deliver any other such instrument transferring to such successor Collateral Agent all the Collateral, properties, rights, power, trust, duties, authority and title of such predecessor. In connection with the resignation or removal of Collateral Agent, PCEA, to the extent requested by the Secured Creditors or Collateral Agent, shall procure and execute any and all documents, conveyances or instruments requested, including any documentation appropriate to reflect the transfer of the Lien or other rights granted herein to such successor Collateral Agent.

SECTION 4. ACTIONS BY COLLATERAL AGENT

Section 4.1. Duties and Obligations

The duties and obligations of Collateral Agent are only those set forth in this Agreement. The Collateral Agent shall not have any duty or obligation to manage, control, use, sell, dispose of or otherwise deal with the Collateral, or to otherwise take or refrain from taking any action hereunder, except as expressly provided by the terms hereof or in written instructions received pursuant hereto, and no implied duties or obligations shall be read into this Agreement against the Collateral Agent. Upon the written instruction at any time and from time to time of the Required Secured Creditors, the Collateral Agent shall take such action or refrain from taking such action, not inconsistent with the provisions of this Agreement, as may be specified in such instruction. Notwithstanding the foregoing, Collateral Agent shall not be required to take, or refrain from taking, any action that, in its opinion or in the opinion of its counsel, may expose Collateral Agent (as such or in its individual capacity) to liability. Collateral Agent (as such or in its individual capacity) shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers; provided, however, that such action or omission by Collateral Agent does not constitute willful misconduct, gross negligence or bad faith. The Collateral Agent shall not be obligated to expend its own funds or to incur any obligation in its individual capacity in the performance of any of its obligations under or in connection with this Agreement, the Security Agreement, the Control Agreement or any related document.

Section 4.2. Voting; Amendments to Transaction Agreements

Collateral Agent shall act at the written instruction of the Required Secured Creditors in connection with all material actions, matters or decisions, or any actions, matters or decisions requiring a vote or instruction under this Agreement, under any Control Agreement or the Security Agreement, including with respect to Section 5.01 of the Security Agreement. Notwithstanding the foregoing or anything in any Transaction Agreement to the contrary, without the prior written consent of all of the Secured Creditors, Collateral Agent shall not enter into any amendments, modifications, restatements, extensions or supplements of this Agreement, the Control Agreement or the Security Agreement.

Section 4.3. Actions Pertaining to the Collateral

Collateral Agent has the sole and exclusive standing and right to assert claims relating to the Collateral, and no Secured Creditor may enforce or assert against PCEA, the Deposit Accounts, the Depository Bank, or any other Person, any claims relating to the Collateral. Collateral Agent shall only act at the written instruction of the Required Secured Creditors in (a) taking any action under this Agreement, the Security Agreement or any Control Agreement with respect to the Collateral following an Event of Default and (b) asserting any claim under this Agreement, the Security Agreement or any Control Agreement. Notwithstanding the foregoing, if Collateral Agent deems it prudent to take reasonable actions, without the instruction of a Secured Creditor, to protect the Collateral, it may (but shall be under no obligation to) do so and thereafter provide written notice to all the Secured Creditors of such actions, and no provision of this Agreement shall restrict Collateral Agent from exercising such rights and no liability shall be imposed on Collateral Agent for omitting to exercise such rights.

Section 4.4. Duty of Care

Collateral Agent shall have no duty or obligation as to the collection or protection of the Collateral or any income thereon, nor as to the preservation of rights against prior parties, nor as to the preservation of rights pertaining to the Collateral beyond the safe custody of any Collateral in Collateral Agent's actual possession. Without limiting the generality of the foregoing, Collateral Agent shall have no duty or obligation (a) other than to instruct PCEA as set forth in Section 4.05 of the Security Agreement, to see to any recording or filing of any financing statement evidencing a security interest in the Collateral, or to see to the maintenance of any such recording or filing, (b) to see to the payment or discharge of any tax, assessment or other governmental charge or any Lien or encumbrance of any kind owing with respect to, assessed or levied against any part of the Collateral, (c) to confirm or verify the contents of any reports or certificates delivered to Collateral Agent reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties, or (d) to ascertain or inquire as to the performance of observance by any other Person of any representations, warranties or covenants. Collateral Agent may require an officer's certificate or an opinion of counsel before acting or refraining from acting, and Collateral Agent shall not be liable for any action it takes or omits to take in good faith in reliance on an officer's certificate or an opinion of counsel.

Section 4.5. Further Assurances

PCEA and each Secured Creditor shall take such actions and cooperate with Collateral Agent as may be reasonably requested, and execute such documents as may be reasonably necessary, to carry out or effect the intent of the parties hereto.

Section 4.6. Distribution of Proceeds of Collateral

Collateral Agent shall distribute the Proceeds of the Collateral as provided in Section 6.02 of the Security Agreement. Collateral Agent shall rely on the provisions in Section 6 of the Security Agreement for calculating the Obligations payable from such Proceeds. Collateral Agent has no duty or obligation to make an independent inquiry regarding the foregoing calculations or the facts on which such calculations are based.

Section 4.7. Deposit Accounts

Subject to distributions permitted under the Security Agreement or this Agreement, the Proceeds of Collateral shall be maintained in the Deposit Accounts, and no such account shall be required to be interest bearing. Notwithstanding the forgoing, Collateral may be invested in Permitted Investments as provided for in the Security Agreement. Collateral Agent shall not be responsible for any loss of funds invested in accordance with this Section.

Section 4.8. Restoration of Obligations

In the event any payment of, or any application of any amount, asset or property to, any of the Obligations owed to any Secured Creditor or any obligations owed to Collateral Agent under the Security Agreement or this Agreement, or any part thereof, made at any time (including, without limitation, made prior to any applicable Bankruptcy Proceeding) is rescinded or are otherwise be restored or returned by such Secured Creditor or Collateral Agent at any time after such payment or application, whether by order of any court, by settlement, or otherwise, then the respective obligations and the security interests of such Person shall be reinstated, all as though such payment or application had never been made.

Section 4.9. Privileged Materials

With respect to all materials and communications relating to the Collateral with or in the possession of Collateral Agent or its counsel that are subject to any claim of privilege in favor of Collateral Agent, each Secured Creditor agrees that Collateral Agent shall not be required to take any action under this Agreement that compromises the privileged nature of such conversations or materials, and all such privileges shall be preserved.

Section 4.10. Action Upon Instruction

Whenever the Collateral Agent is unable to decide between alternative courses of action permitted or required by the terms of this Agreement or any document, or is unsure as to the application, intent, interpretation or meaning of any provision of this Agreement or any other document, or any such provision may be ambiguous as to its application or in conflict with any other applicable provision, permits any determination by the Collateral Agent, or is silent or

incomplete as to the course of action that the Collateral Agent is required to take with respect to a particular set of facts, then the Collateral Agent may give notice (in such form as shall be appropriate under the circumstances) to the Secured Creditors requesting instruction as to the course of action to be adopted, and, to the extent the Collateral Agent acts or refrains from acting in good faith in accordance with any such written instruction of the Required Secured Creditors received, the Collateral Agent shall not be personally liable on account of such action or inaction to any Person. If the Collateral Agent shall not have received appropriate instruction from the Secured Creditors within ten (10) days of such notice (or within such shorter period of time as reasonably may be specified in such notice or may be necessary under the circumstances) it may, but shall be under no duty to, take or refrain from taking such action which is consistent, in its view, with this Agreement, the Security Agreement, and Control Agreement or other documents, and as it shall deem to be in the best interests of the Secured Creditors, and the Collateral Agent shall have no personal liability to any Person for any such action or inaction.

SECTION 5. BANKRUPTCY PROCEEDINGS

The following provisions shall apply during any Bankruptcy Proceeding of PCEA:

(a) Collateral Agent shall represent all Secured Creditors in connection with all matters directly relating solely to the Collateral, use of cash collateral, relief from the automatic stay and adequate protection. In such Bankruptcy Proceeding, Collateral Agent shall act on the instruction of the Required Secured Creditors.

(b) Each Secured Creditor shall be free to act independently on any issue not directly relating solely to the Collateral.

(c) Each Secured Creditor shall file its own proof of claim in respect of the Obligations owing to it. Collateral Agent shall have the right to file (but has no obligation to file) a proof of claim in its capacity as Collateral Agent in respect of any or all of the Obligations.

(d) Each Secured Creditor shall have the sole right to vote the claims pertaining to the Obligations owing to it by PCEA.

(e) Any Collateral or proceeds thereof received by any Secured Creditor as a result of, or during, any Bankruptcy Proceeding will be delivered promptly to Collateral Agent for distribution in accordance with Section 4.6.

SECTION 6. MISCELLANEOUS

Section 6.1. Amendments to this Agreement and Assignments

This Agreement may not be modified, altered or amended, except by an agreement in writing signed by Collateral Agent, PCEA and all the Secured Creditors. This Agreement is assignable by a Secured Creditor. Collateral Agent shall only transfer or assign its rights hereunder by operation of law or in connection with a resignation or removal from its capacity as Collateral Agent in accordance with the terms of this Agreement and, if required by the successor Collateral Agent, the parties agree to execute and deliver a restated Agreement in

the event there is a replacement of Collateral Agent. PCEA shall not assign, transfer or delegate its rights or obligations hereunder without the prior written consent of all the Secured Creditors and Collateral Agent. Any assignee of a PPA Provider under a Power Purchase Agreement shall comply with Section 6.5.

Section 6.2. Marshalling

Collateral Agent shall not be required to marshal any present or future security for (including, without limitation, the Collateral), or guaranties of the Obligations or to resort to such security or guaranties in any particular order; and all of each of such Person's rights in respect of such security and guaranties shall be cumulative and in addition to all other rights, however existing or arising.

Section 6.3. Governing Law; Jurisdiction

THIS AGREEMENT SHALL BE GOVERNED BY, CONSTRUED IN ACCORDANCE WITH, AND ENFORCED UNDER, THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAW OF SUCH STATE. EACH PARTY TO THIS AGREEMENT HEREBY IRREVOCABLY AGREES THAT ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR ANY OTHER TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY BE BROUGHT IN THE COURTS OF THE UNITED STATES OF AMERICA FOR THE NORTHERN DISTRICT OF CALIFORNIA OR, IF SUCH COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION, THE COURTS OF THE STATE OF CALIFORNIA AND HEREBY EXPRESSLY SUBMITS TO THE PERSONAL JURISDICTION AND VENUE OF SUCH COURTS FOR THE PURPOSES THEREOF AND EXPRESSLY WAIVES ANY CLAIM OF IMPROPER VENUE AND ANY CLAIM THAT ANY SUCH COURT IS AN INCONVENIENT FORUM. EACH PARTY HEREBY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO ITS NOTICE ADDRESS APPLICABLE TO THIS AGREEMENT, SUCH SERVICE TO BECOME EFFECTIVE 10 DAYS AFTER SUCH MAILING.

Section 6.4. Waiver of Jury Trial

EACH PARTY TO THIS AGREEMENT HEREBY WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT, ANY RIGHTS OR OBLIGATIONS HEREUNDER, OR THE PERFORMANCE OF SUCH RIGHTS AND OBLIGATIONS.

Section 6.5. Joinder

Each time PCEA enters into a new Power Purchase Agreement as to which the counterparty thereto is to share in the Collateral, such counterparty shall execute and deliver to Collateral Agent a Joinder to Intercreditor and Collateral Agency Agreement in the form of Exhibit A hereto (a "**Joinder**") at the same time as such counterparty executes the Power Purchase Agreement. Further, no PPA Provider may assign or transfer its rights hereunder or

under a Power Purchase Agreement without such assignees or transferees delivering an executed Joinder to Collateral Agent. By executing a Joinder, such counterparty agrees to be bound by the terms of this Agreement as though named herein and shall share in the Collateral in accordance with the provisions of this Agreement. Each such counterparty that is an assignee shall upon execution and delivery of a Joinder be the PPA Provider and Secured Creditor under this Agreement representing the holder of the assigned Obligations and shall be obligated for all obligations to Collateral Agent of its transferor, and such transferor shall cease forthwith to be a Secured Creditor hereunder.

Section 6.6. Counterparts

This Agreement and any related amendment or waiver may be executed in several counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original, but all of which together shall constitute one instrument. In proving this Agreement it shall not be necessary to produce or account for more than one such counterpart signed by the party against whom enforcement is sought. A facsimile of a signature page hereto or to any Joinder shall be as effective as an original signature.

Section 6.7. Termination

Unless earlier terminated by the parties hereto, upon termination of the Security Agreement in accordance with its terms and upon payment of all obligations owed to Collateral Agent, this Agreement shall terminate, except for those provisions hereof that by their express terms shall survive the termination of this Agreement; provided, however, if all or any part of the Obligations are reinstated pursuant to Section 4.8, then this Agreement shall be renewed as of such date and shall thereafter continue in full force and effect to the extent of the Obligations so invalidated, set aside or repaid, or that remain outstanding.

Section 6.8. Controlling Terms

In the event of any inconsistency between this Agreement and the Security Agreement, the Security Agreement shall control.

Section 6.9. Notices

Except as otherwise expressly provided herein, all notices, consents and waivers and other communications made or required to be given pursuant to this Agreement shall be in writing and shall be delivered by hand, mailed by registered or certified mail or prepaid overnight air courier, or by facsimile communications, addressed as provided below their signatures to this Agreement or at such other address for notice as Collateral Agent or such Secured Creditor shall last have furnished in writing to the Person giving the notice. A notice addressed as provided herein that (i) is delivered by hand or overnight courier is effective upon delivery, (ii) is sent by facsimile communication is effective if made by confirmed transmission at a telephone number designated as provided herein for such purpose, and (iii) is sent by registered or certified mail is effective on the earlier of acknowledgement of receipt as shown on the return receipt or three (3) Business Days after mailing.


Section 6.10. No Recourse Against Constituent Members of PCEA

PCEA hereby represents, warrants and agrees that (i) PCEA is organized as a joint powers authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to the Joint Powers Agreement and is a public entity separate from its constituent members, (ii) PCEA will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement, the Security Agreement and any other agreement entered into in connection therewith. In light of the foregoing, the Collateral Agent and the Secured Creditors will have no rights and will not make any claims, take any actions or assert any remedies against any of PCEA's constituent members, or the officers, directors, advisors, contractors, consultants or employees of PCEA or PCEA's constituent members, in connection with this Agreement, the Security Agreement and any other agreement entered into in connection therewith.

[Signatures on following pages]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as an instrument under seal by their authorized representatives as of the date first written above.

WILMINGTON TRUST, NATIONAL ASSOCIATION, not in its individual capacity, but solely as Collateral Agent

By: 
Name: **Steve Barone**
Title: **Assistant Vice President**


Notice Address:

Wilmington Trust, National Association
650 Town Center Drive, Suite 600
Costa Mesa, CA 92626
Reference: Peninsula Clean Energy Authority
Fax: +1 714-384-4151

With a copy to:

Wilmington Trust, National Association
1100 North Market Street
Wilmington, Delaware 19890
Attention: Adam Vogelsong
Reference: Peninsula Clean Energy Authority
Fax: +1 302-636-4140/4141

ENERGY AMERICA, LLC,
as Secured Creditor

SA By: 
Name: Doug Adair
Title: Director, Credit Risk

Notice Address:

Energy America, LLC
12 Greenway Plaza, Suite 250
Houston, TX 77046
Attention: VP Commercial Legal

**PENINSULA CLEAN ENERGY
AUTHORITY**

By: _____
Name:
Title:

Notice Address:

Peninsula Clean Energy Authority
400 County Center, Sixth Floor
Redwood City, CA 94063
Attention: Peninsula Clean Energy Finance
Fax:

ENERGY AMERICA, LLC,
as Secured Creditor

By: _____

Name:

Title:

Notice Address:

Energy America, LLC
12 Greenway Plaza, Suite 250
Houston, TX 77046
Attention: VP Commercial Legal

**PENINSULA CLEAN ENERGY
AUTHORITY**

By: _____

Name:

Title:

Janis C. Pepper
Janis C. Pepper
CEO

Notice Address:

Peninsula Clean Energy Authority
400 County Center, Sixth Floor
Redwood City, CA 94063
Attention: Peninsula Clean Energy Finance
Fax:

EXHIBIT A

JOINDER TO INTERCREDITOR AND COLLATERAL AGENCY AGREEMENT

Wilmington Trust, National Association, in its capacity as Collateral Agent
650 Town Center Drive, Suite 600
Costa Mesa, CA 92626

With a copy to:

Wilmington Trust, National Association
1100 North Market Street
Wilmington, Delaware 19890
Attention: Adam Vogelsong
Reference: Peninsula Clean Energy Authority

Reference is made to the Intercreditor and Collateral Agency Agreement, dated as of June 29, 2016 (as amended or restated from time to time, the “**Intercreditor Agreement**”; capitalized terms used but not otherwise defined herein shall have the meaning ascribed thereto in the Intercreditor Agreement), among Wilmington Trust, National Association, as Collateral Agent, and the PPA Providers party thereto, relating to Peninsula Clean Energy Authority, a California joint powers authority (“**PCEA**”).

By executing and delivering this Joinder to Intercreditor and Collateral Agency Agreement (this “**Joinder**”), the undersigned holder of the Obligations arising under that certain Power Purchase Agreement between PCEA and the undersigned, a copy of which is enclosed with this Joinder, (1) agrees to the appointment of Wilmington Trust, National Association as its Collateral Agent in accordance with Section 3.1 of the Intercreditor Agreement, and (2) agrees to be bound by all of the terms and provisions of the Intercreditor Agreement. The address set forth under the signature of the undersigned constitutes its address for the purposes of Section 6.9 of the Intercreditor Agreement.

Dated as of: _____, 20__.

By: _____
Name:
Title:

[Insert address for notices]