

EXHIBIT L

BUYER LIABILITY PASS THROUGH AGREEMENT

This Buyer Liability Pass Through Agreement (this “**BLPTA**”) is entered into as of **[Effective Date]** (the “**BLPTA Effective Date**”) by and between the **[Member Name]**, a California **[joint powers authority]** (togetherwith its successors and permitted assigns “**Project Participant**”), California Community Power, a California joint powers authority (“**CC Power**”), and GEM A-CAES LLC, a Delaware limited liability company (together with its successors and permitted assigns “**Seller**”). Seller, CC Power, and Project Participant are sometimes referred to herein individually as a “**Party**” and jointly as the “**Parties.**”

RECITALS

WHEREAS, CC Power and Seller have entered into that certain Resource Adequacy and TB4 Agreement (as amended, restated or otherwise modified from time to time, the “**Offtake Agreement**”) dated as of **[Offtake Agreement Effective Date]**;

WHEREAS, Project Participant is entering into this BLPTA to secure, in part, California Community Power’s obligations under the Offtake Agreement;

WHEREAS, Project Participant is named as a Project Participant under the Offtake Agreement and will derive substantial direct and indirect benefits from the execution and delivery of the Offtake Agreement;

WHEREAS, Seller and CC Power will derive substantial and direct benefits from the execution and delivery of this BLPTA; and

WHEREAS, initially capitalized terms used but not defined herein have the meaning set forth in the Offtake Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

AGREEMENT

1. Project Participant Covenants. For value received, Project Participant does hereby unconditionally, absolutely, and irrevocably guarantee, as obligor and not as a surety, to Seller the complete and prompt payment of **[Project Participation Entitlement Share]%** (the “**Liability Share**”), as the same may be adjusted pursuant to Section 4, of all obligations and liabilities for payment now or hereafter owing from CC Power to Seller under the Offtake Agreement, including liabilities for Monthly Capacity Payments, the Damage Payment or Termination Payment, as applicable, and any other damage payments or reimbursement amounts (each such obligation or liability of CC Power under the Offtake Agreement, a “**Guaranteed Amount**”). Any payment made directly from CC Power to Seller under the Offtake Agreement shall reduce Project Participant’s liability hereunder by reducing the total amount that is used to calculate the Guaranteed Amount pursuant to the preceding sentence. This BLPTA is an

irrevocable, absolute, unconditional, and continuing guarantee of the punctual payment and performance, and not of collection, of Project Participant's Liability Share of the Guaranteed Amount. In the event CC Power shall fail to duly, completely, or punctually pay any amount owed by Buyer pursuant to the terms and conditions of the Offtake Agreement, and such failure is not remedied within ten (10) Business Days after Notice thereof pursuant to Sections 11.1 or 11.4 of the Offtake Agreement, as applicable, Project Participant shall promptly pay Project Participant's Liability Share of the Guaranteed Amount, as required herein.

2. Seller Waiver. In consideration of the foregoing, Seller unconditionally waives all right to recover directly from CC Power any Damage Payment or Termination Payment that is not paid by CC Power pursuant to Sections 11.3 and 11.4 of the Offtake Agreement, but the foregoing waiver does not apply to any other right or remedy of Seller under the Offtake Agreement, including the right to recover accrued Monthly Capacity Payments, other amounts payable or reimbursable under the Offtake Agreement or any other amounts incurred or accrued prior to termination of the Offtake Agreement and the right to terminate the Offtake Agreement as the result of an Event of Default by Buyer.

3. Demand Notice. For avoidance of doubt, Seller may demand payment from Project Participant for purposes of this BLPTA only when and if a payment is not duly, completely, or punctually paid by CC Power pursuant to the terms and conditions of the Offtake Agreement and such failure is not remedied by CC Power within ten (10) Business Days after Notice thereof is issued pursuant to Sections 11.1 or 11.4 of the Offtake Agreement, as applicable. If CC Power fails to pay any amount when due pursuant to the Offtake Agreement, and such failure is not remedied by CC Power within ten (10) Business Days after Notice thereof, then Seller may exercise its rights under this BLPTA and make a payment demand upon Project Participant to pay Project Participant's Liability Share of the unpaid Guaranteed Amount (a "**Payment Demand**"). A Payment Demand shall be in writing and shall reasonably specify (a) in what manner and what amount CC Power has failed to pay, (b) an explanation of why such payment is due and owing, (c) a calculation of the Guaranteed Amount due from Project Participant, and (d) a specific statement that Seller is requesting that Project Participant pay its Guaranteed Liability Share of the unpaid Guaranteed Amount under this BLPTA. Project Participant shall, within fifteen (15) Business Days following its receipt of the Payment Demand, pay to Seller Project Participant's Liability Share of the unpaid Guaranteed Amount.

4. Step-Up Events. Within thirty (30) days after the occurrence of a Step-Up Event, Project Participant and CC Power will tender to Seller a duly executed and binding replacement Buyer Liability Pass Through Agreement in the same form as this Agreement, but for a Liability Share equal to the Project Participant's Revised Liability Share. Upon receipt of such executed replacement Buyer Liability Pass Through Agreement, Seller will cancel this Buyer Liability Pass Through Agreement, effective upon the effectiveness of the replacement Buyer Liability Pass Through Agreement. For the avoidance of doubt, the cancellation of an existing Buyer Liability Pass Through Agreement shall not be effective unless and until the replacement Buyer Liability Pass Through Agreement has become effective and binding. Following delivery of such replacement Buyer Liability Pass Through Agreement and cancellation of this Buyer Liability Pass Through Agreement, Exhibit S to the Offtake Agreement will be deemed amended to reflect the Project Participant's Revised Liability Share; *provided* that the Project Participant's Revised Liability Share shall not exceed one hundred twenty-five percent (125%) of the Project

Participant's Initial Liability Share.

5. Scope and Duration of BLPTA. The obligations under this BLPTA are independent of the obligations of CC Power under the Offtake Agreement, and an action may be brought to enforce this BLPTA whether or not action is brought against CC Power under the Offtake Agreement. This BLPTA shall continue in full force and effect from the BLPTA Effective Date until both of the following have occurred: (a) the Delivery Term of the Offtake Agreement has expired or terminated early, and (b) either (i) all payment obligations of CC Power due and payable under the Offtake Agreement are paid in full (whether directly or indirectly such as through set-off or netting) or (ii) Project Participant has paid the maximum Guaranteed Amount (i.e. based on its maximum Revised Liability Share as provided in Section 4) in full. This BLPTA shall also continue to be effective or be reinstated, as the case may be, if at any time any payment of any Guaranteed Amount by CC Power is rescinded or must otherwise be returned by Seller upon the insolvency, bankruptcy or reorganization of CC Power or similar proceeding, all as though such payment had not been made, and Project Participant's Liability Share of such Guaranteed Amount shall be subject to payment following a Payment Demand issued pursuant to this BLPTA. Without limiting the generality of the foregoing, and to the extent that the Project Participant has not paid its maximum Guaranteed Amount in full, the obligations of the Project Participant hereunder shall not be released, discharged, or otherwise affected, and this BLPTA shall not be invalidated or impaired or otherwise affected for the following reasons:

(a) The extension of time for the payment of any Guaranteed Amount; or

(b) Any amendment, modification or other alteration of the Offtake Agreement;

or

(c) Any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount; or

(d) Any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting CC Power, including but not limited to any rejection or other discharge of CC Power's obligations under the Offtake Agreement imposed by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation, in each such event in any such proceeding; or

(e) Any reorganization of CC Power or Project Participant, or any merger or consolidation of CC Power or Project Participant into or with any other Person; or

(f) The receipt, release, modification or waiver of, or failure to pursue or seek relief under or with respect to, any other BLPTA, guaranty, collateral, pledge or security device whatsoever; or

(g) CC Power's inability to pay any Guaranteed Amount or perform its obligations under the Offtake Agreement; or

(h) Any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and

accord and satisfaction; *provided* that Project Participant reserves the right to assert for itself any defenses, setoffs or counterclaims that CC Power is or may be entitled to assert against Seller, including with respect to disputes regarding the calculation of a Guaranteed Amount.

6. Waivers by Project Participant. Project Participant hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraphs 2 and 3, (a) notice of acceptance, presentment or protest, notice of any of the events described in Paragraph 5, or any other notice or demand of any kind with respect to the Guaranteed Amounts and this BLPTA, (b) any requirement that Seller pursue or exhaust any right, power or remedy or proceed against CC Power under the Offtake Agreement or against any other Person, including any obligation to pursue any other BLPTAs, or to marshal assets, (c) any defense based on any of the matters described in Paragraph 4, (d) all rights of subrogation or other rights to pursue CC Power for payments made under this BLPTA until all amounts owing under the Offtake Agreement have been paid in full, and (e) any duty of Seller to disclose any information or other matters relating to the business, operations or finances or other condition of CC Power or any other Person who has provided a BLPTA or other security or guaranty with respect to the Offtake Agreement now or hereafter known to Seller. Project Participant further acknowledges and agrees that it is and will be bound by actions taken and elections made by CC Power under the Offtake Agreement and waives any defense based on CC Power's authority or lack thereof or the validity, regularity or advisability of the actions taken or elections made.

7. Project Participant Representations and Warranties. Project Participant hereby represents and warrants that (a) it has all necessary and appropriate powers and authority and the legal right to execute and deliver, and perform its obligations under, this BLPTA, (b) this BLPTA constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this BLPTA does not and will not contravene Project Participant's organizational documents, any applicable Law or any contractual provisions binding on or affecting Project Participant, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Project Participant, threatened, against or affecting Project Participant or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Project Participant to enter into or perform its obligations under this BLPTA, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any member of the Project Participant), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this BLPTA by Project Participant. Project Participant agrees that, solely to the extent it is acting in its capacity as a Community Choice Aggregator, it will not claim governmental immunity to avoid its contractual obligations under this BLPTA. Project Participant agrees that the courts identified in Section 11 have jurisdiction to enforce this BLPTA. Notwithstanding the foregoing, any claims against Project Participant shall be filed in accordance with the California Government Claims Act (Cal. Gov't Code § 810 et. seq.), as applicable. Except as provided in the first sentence, Project Participant retains all other immunities and defenses against claims alleging its breach of this BLPTA.

8. Seller Representations and Warranties. Seller hereby represents and warrants that (a) it has all necessary and appropriate powers and authority and the legal right to execute and deliver, and perform its obligations under, this BLPTA, (b) this BLPTA constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this BLPTA does not and will not contravene Seller's organizational documents, any applicable Law or any contractual provisions binding on or affecting Seller, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of Seller, threatened, against or affecting Seller or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Seller to enter into or perform its obligations under this BLPTA, (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of Seller), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this BLPTA by Seller, and (f) Seller agrees that the courts identified in Section 11 have jurisdiction to enforce this BLPTA.

9. CC Power Representations and Warranties. CC Power hereby represents and warrants that (a) it has all necessary and appropriate powers and authority and the legal right to execute and deliver, and perform its obligations under, this BLPTA, (b) this BLPTA constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this BLPTA does not and will not contravene CC Power's organizational documents, any applicable Law or any contractual provisions binding on or affecting CC Power, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the CC Power, threatened, against or affecting CC Power or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of CC Power to enter into or perform its obligations under this BLPTA, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any member of CC Power), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this BLPTA by CC Power.

10. Notices. Notices under this BLPTA shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four (4) Business Days after mailing if sent by certified, first-class mail, return receipt requested. Any Party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 10.

If delivered to Seller:

Attn: Jordan Cole, Chief Commercial Officer
333 Bay Street, Suite 520
Toronto, ON M5H 2R2, Canada
Phone: +1 (416) 409-8549

Email: jordan.cole@hydrostor.ca

If delivered to Project Participant:

[Project Participant Notice Provisions]

If delivered to CC Power:

Attn: General Manager California Community Power
901 H Street, Suite 120
PMB 157
Sacramento, CA 95814
Phone: 310-617-3441
amorris@cacommunitypower.org
with cc to: joshua.nelson@bbklaw.com

11. Governing Law and Forum Selection. This BLPTA shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any Party (or its affiliates or designees) with respect to or arising out of this BLPTA shall be brought in the federal courts of the United States or the courts of the State of California sitting in the county of **[Sacramento] [San Francisco]**.

12. Miscellaneous. This BLPTA shall be binding upon the Parties and their respective successors and assigns and shall inure to the benefit of the Parties and their successors and permitted assigns. No provision of this BLPTA may be amended or waived except by a written instrument executed by Seller, CC Power, and Project Participant. No provision of this BLPTA confers, nor is any provision intended to confer, upon any third party (other than the Parties' successors and permitted assigns) any benefit or right enforceable at the option of that third party. This BLPTA embodies the entire agreement and understanding of the Parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the Parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this BLPTA is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly as possible, the original intention of the Parties hereto, and (ii) such determination shall not affect any other provision of this BLPTA and all other provisions shall remain in full force and effect. This BLPTA may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This BLPTA may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

13. Assignment. Except as provided below in this Paragraph 13, no Party may assign this BLPTA or its rights or obligations under this BLPTA, without the prior written consent of the other Parties, which consent shall not be unreasonably withheld, conditioned or delayed. Seller may, without the prior written consent of Project Participant and CC Power, transfer or assign this BLPTA to any Person to whom Seller may assign its rights or obligations under the Offtake

Agreement, including assignments for financing purposes, including a Portfolio Financing; *provided*, Seller shall give Project Participant and CC Power Notice at least fifteen (15) Business Days before the date of such proposed assignment and, except in the case of a collateral assignment or other assignment for financing purposes, provide Project Participant and CC Power a written agreement signed by the Person to which Seller wishes to assign its interests that provides that such Person will fully assume all of Seller's obligations and liabilities under this BLPTA, including obligations and liabilities that arose prior to the date of transfer or assignment, upon such transfer or assignment. Project Participant may, without the prior written consent of Seller and CC Power, transfer or assign this BLPTA to any member of CC Power that (A) has a Credit Rating of at least BBB- from S&P or Baa3 from Moody's, and (B) is a load serving entity; *provided*, Project Participant shall give Seller and CC Power Notice at least fifteen (15) Business Days before the date of such proposed assignment and provide to Seller and CC Power a written agreement signed by the Person to which Project Participant wishes to assign its interests that provides that such Person will fully assume all of Project Participant's obligations and liabilities, including obligations and liabilities that arose prior to the date of transfer or assignment, under this BLPTA upon such transfer or assignment.

14. No Recourse to Members of Project Participant. Project Participant is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (California Government Code Section 6500 *et seq.*) pursuant to its joint powers agreement and is a public entity separate from its constituent members. Project Participant shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this BLPTA. Seller and CC Power shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Project Participant's constituent members, or the officers, directors, advisors, contractors, consultants or employees of Project Participant or its constituent members, in connection with this BLPTA.

15. No Recourse to Members of CC Power. CC Power is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (California Government Code Section 6500 *et seq.*) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Except as expressly set forth in the Offtake Agreement and this BLPTA, CC Power shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this BLPTA, and as such, Seller and Project Participant shall have no rights and shall not make any claims, take any actions or assert any remedies against any of CC Power's constituent members, or the officers, directors, advisors, contractors, consultants or employees of Project Participant or its constituent members, in connection with this BLPTA.

16. CleanPowerSF as Project Participant. Paragraph 14 shall not apply if CleanPowerSF is the Project Participant, but the following shall apply:

(a) **Designated Fund.** CleanPowerSF payment obligations under this BLPTA are special limited obligations of CleanPowerSF payable solely from the revenues of CleanPowerSF. CleanPowerSF's payment obligations under this BLPTA are not a charge upon the revenues or general fund of the San Francisco Public Utility Commission ("**SFPUC**") or the City and County of San Francisco or upon any non-CleanPowerSF moneys or other property of the SFPUC or the City and County of San Francisco ("**San Francisco**").

(b) Controller Certification. CleanPowerSF's obligations hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of CleanPowerSF are not authorized to request, and CleanPowerSF is not required to reimburse Seller for, commodities or services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of CleanPowerSF are not authorized to offer or promise, nor is CleanPowerSF required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

(c) Biennial Budget Process. For each City and County of San Francisco biennial budget cycle during the term of this BLPTA, CleanPowerSF agrees to take all necessary action to include the maximum amount of its annual payment obligations under this BLPTA in its budget submitted to the City and County of San Francisco's Board of Supervisors for each year of that budget cycle.

(d) Compliance with Laws. Each Party shall keep itself fully informed of all applicable federal, state, and local laws in any manner affecting the performance of its obligations under this BLPTA, and must at all times materially comply with such applicable laws as they may be amended from time to time.

(e) Prohibition on Political Activity with City Funds. In performing any services required under this BLPTA, Seller shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by San Francisco for this BLPTA from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure in San Francisco.

(f) Non-discrimination in Contracts. Seller shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Seller shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Seller is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

(g) Non-discrimination in the Provision of Employee Benefits. San Francisco Administrative Code 12B.2. Seller does not as of the date of this BLPTA, and will not during the term of this BLPTA, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for San Francisco elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

(h) Submitting False Claims. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to San Francisco for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to San Francisco if the contractor or subcontractor: (1) knowingly

presents or causes to be presented to an officer or employee of San Francisco a false claim or request for payment or approval; (2) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by San Francisco; (3) conspires to defraud San Francisco by getting a false claim allowed or paid by San Francisco; (4) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to San Francisco; or (5) is a beneficiary of an inadvertent submission of a false claim to San Francisco, subsequently discovers the falsity of the claim, and fails to disclose the false claim to San Francisco within a reasonable time after discovery of the false claim.

(i) Consideration of Salary History. Seller shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or “Pay Parity Act.” Seller is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this BLPTA or in furtherance of this BLPTA, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in San Francisco or on San Francisco property.

(j) Consideration of Criminal History in Hiring and Employment Decisions. Seller agrees to comply fully with and be bound by all of the provisions of Chapter 12T, “City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions,” of the San Francisco Administrative Code, including the remedies provided, and implementing regulations, as may be amended from time to time. The requirements of Chapter 12T shall only apply to Seller’s operations to the extent those operations are in furtherance of the performance of this BLPTA, shall apply only to applicants and employees who would be or are performing work in furtherance of this BLPTA, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within San Francisco. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

(k) Conflict of Interest. By executing this BLPTA, Seller certifies that it does not know of any fact which constitutes a violation of Section 15.103 of San Francisco’s Charter; Article III, Chapter 2 of City’s Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify San Francisco if it becomes aware of any such fact during the term of this BLPTA.

(l) Campaign Contributions. By executing this BLPTA, Seller acknowledges its obligations under Section 1.126 of San Francisco’s Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of San Francisco for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any

time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date San Francisco approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Seller's board of directors; Seller's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in Seller; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Seller. Seller shall inform the relevant persons of the limitation on contributions imposed by Section 1.126.

(m) MacBride Principles – Northern Ireland. Pursuant to San Francisco Administrative Code § 12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride principles.

(n) Tropical Hardwood and Virgin Redwood Ban. The City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood product, virgin redwood or virgin redwood product. If this order is for wood products or a service involving wood products, (a) Chapter 8 of San Francisco's Environment Code is incorporated herein and by reference made a part hereof as though fully set forth; (b) except as expressly permitted by the application of Sections 802(B), 803(B), and 804(B) of San Francisco's Environment Code, Seller shall not provide any items to San Francisco in performance of this BLPTA which are tropical hardwoods, tropical hardwood products, virgin redwood or virgin redwood products; and (c) failure of Seller to comply with any of the requirements of Chapter 8 of San Francisco's Environment Code shall be deemed a material breach of contract.

(o) Effect on Payment Obligations. The Parties agree that, although breach of an obligation set forth in Sections 16(d) through 16(n) may result in Seller incurring liability for such breach, any such liability will be independent of Project Participant's liability hereunder, and no breach of or default by Seller under Sections 16(d) through 16(n) will relieve Project Participant of its liability for its Liability Share of all Guaranteed Amounts, nor may any such breach or default, or claim of breach or default, be permitted or asserted as a defense to or offset against payment of any amounts owed by Project Participant to Seller hereunder.

17. City of San José (San José Clean Energy) as Project Participant. Paragraph 14 shall not apply if the City of San José, as administrator of San José Clean Energy ("**SJCE**") is the Project Participant, but the following shall apply:

(a) Designated Fund. The City of San José is a municipal corporation and is precluded under the California State Constitution and applicable law from entering into obligations that financially bind future governing bodies without an appropriation for such obligation, and, therefore, nothing in the Agreement shall constitute an obligation of future legislative bodies of the City of San José to appropriate funds for purposes of the Agreement; *provided, however*, that the City of San José has created and set aside a designated fund (being the San Jose Energy Operating Fund established pursuant to City of San Jose Municipal Code, Title 4, Part 63, Section 4.80.4050 *et. seq.*) ("**Designated Fund**") for payment of its obligations under its agreements

including this BLPTA. Subject to the requirements and limitations of applicable law and taking into account other available money specifically authorized by the San José City Council and allocated and appropriated to the SJCE's obligations, SJCE agrees to establish rates and charges that are sufficient to maintain revenues in the Designated Fund necessary to pay its obligations under this BLPTA.

(b) Limited Obligations. SJCE's payment obligations under this BLPTA are special limited obligations of the SJCE payable solely from the Designated Fund and are not a charge upon the revenues or general fund of the City of San José or upon any non- San José Clean Energy moneys or other property of the Community Energy Department or the City of San José.

(c) Nondiscrimination/Non-Preference. In performing its obligations under this BLPTA, Seller shall not, and shall not cause or allow its subcontractors to, discriminate against or grant preferential treatment to any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin. This prohibition applies to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing. Seller will inform all subcontractors of these obligations. This prohibition is subject to the following conditions: (i) the prohibition is not intended to preclude Seller from providing a reasonable accommodation to a person with a disability; (ii) the City of San José's Compliance Officer may require Seller to file, and cause any Seller's subcontractor to file, reports demonstrating compliance with this section. Any such reports shall be filed in the form and at such times as the City of San José's Compliance Officer designates. They shall contain such information, data and/or records as the City of San José's Compliance Officer determines is needed to show compliance with this provision.

(d) Conflict of Interest. Seller represents that it is familiar with the local and state conflict of interest laws and agrees to comply with those laws in performing this BLPTA. Seller certifies that, as of the Effective Date, it was unaware of any facts constituting a conflict of interest or creating an appearance of a conflict of interest. Seller shall avoid all conflicts of interest or appearances of conflicts of interest in performing this BLPTA. Seller has the obligation of determining if the manner in which it performs any part of this BLPTA results in a conflict of interest or an appearance of a conflict of interest and shall immediately notify SJCE in writing if it becomes aware of any facts giving rise to a conflict of interest or the appearance of a conflict of interest. Seller's violation of this subsection (d) is a material breach.

(e) Environmentally Preferable Procurement Policy. Seller shall perform its obligations under this BLPTA in conformance with San José City Council Policy 1-19, entitled "Prohibition of City Funding for Purchase of Single serving Bottled Water," and San José City Council Policy 4-6, entitled "Environmentally Preferable Procurement Policy," as those policies may be amended from time to time. The Parties acknowledge and agree that in no event shall a breach of this Section 17(e) be a material breach of this BLPTA or otherwise give rise to an Event of Default or entitle SJCE to terminate this BLPTA.

(f) Gifts Prohibited. Seller represents that it is familiar with Chapter 12.08 of the San José Municipal Code, which generally prohibits a City of San José officer or designated employee from accepting any gift. Seller shall not offer any City of San José officer or designated

employee any gift prohibited by Chapter 12.08. Seller's violation of this subsection (iv) is a material breach.

(g) Disqualification of Former Employees. Seller represents that it is familiar with Chapter 12.10 of the San José Municipal Code, which generally prohibits a former City of San José officer and former designated employee from providing services to the City of San José connected with his/her former duties or official responsibilities. Seller shall not use either directly or indirectly any officer, employee or agent to perform any services if doing so would violate Chapter 12.10.

(h) Effect on Payment Obligations. The Parties agree that, although breach of an obligation set forth in Sections 17(d) through 17(g) may result in Seller incurring liability for such breach, any such liability will be independent of Project Participant's liability hereunder, and no breach of or default by Seller under Sections 17(c) through 17(h) will relieve Project Participant of its liability for its Liability Share of all Guaranteed Amounts, nor may any such breach or default, or claim of breach or default, be permitted or asserted as a defense to or offset against payment of any amounts owed by Project Participant to Seller hereunder.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties have caused this BLPTA to be duly executed and delivered by their duly authorized representatives on the date first above written.

**[PROJECT PARTICIPANT],
a California [joint powers authority]**

By: _____

Printed Name: _____

Title: _____

**CALIFORNIA COMMUNITY POWER,
a California joint powers authority**

By: _____

Printed Name: _____

Title: _____

**GEM A-CAES LLC,
a Delaware limited liability company**

By: _____

Printed Name: _____

Title: _____