

TRANSMITTAL

0150-11306-0001

TO
Eugene D. Seroka, Executive Director
Harbor Department

DATE
3/28/19

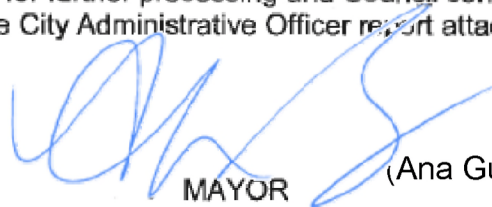
COUNCIL FILE NO.

FROM
The Mayor

COUNCIL DISTRICT
15

**PROPOSED FIRST AMENDMENT TO LEASE AGREEMENT NO. 08-2678
WITH CLEAN ENERGY CORPORATION**

Transmitted for further processing and Council consideration.
See the City Administrative Officer report attached.



MAYOR

(Ana Guerrero) for

RHL:ABN:10190096t

REPORT FROM

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

Date: March 28, 2019

CAO File No. 0150-11306-0001

Council File No.

Council District: 15

To: The Mayor

From: Richard H. Llewellyn, Jr., City Administrative Officer

Reference: Correspondence from the Harbor Department dated March 4, 2019; referred by the Mayor for report on March 6, 2019

Subject: **PROPOSED FIRST AMENDMENT TO LEASE AGREEMENT NO. 08-2678 WITH CLEAN ENERGY CORPORATION**

RECOMMENDATIONS

1. Approve Harbor Department (Port) Resolution No. 19-8432 authorizing a proposed First Amendment to Lease Agreement No. 08-2678 with the Clean Energy Corporation; and,
2. Return the document to the Port for further processing, including Council consideration.

SUMMARY

The Harbor Department (Port) Board of Harbor Commissioners (Board) requests approval of Resolution No. 19-8432 to authorize a proposed First Amendment (Amendment) to Agreement No. 08-2678 (Agreement) with the Clean Energy Corporation (Clean Energy). In 2009, the Port approved an initial Agreement with Clean Energy for the construction and maintenance of a new Liquefied Natural Gas (LNG) fueling station facility on property jointly owned by the Port of Los Angeles (POLA) and Port of Long Beach (POLB). The Port states that the proposed Amendment will modify the lease terms of the Agreement, extend the contract options and compensation schedule, and increase the variety of fuels at the fueling station. The Amendment will allow for additional fuel types to be dispensed at the fueling stations, as requested by the tenants. The additional fuel types will include diesel fuels and compressed natural gas. According to the Port, all other terms and conditions of the Agreement will remain the same.

The POLA and POLB developed the fueling station facility in response to the goal of the Clean Air Action Plan (CAAP) to support the use of fuels for cleaner emission trucks. Fuel from the LNG fueling station was made available to firms and trucks that are part of the LNG truck program. One of the primary objectives of programs under the Port's CAAP is to replace older, heavily polluting heavy-duty trucks with emission compliant, newer LNG fueled trucks. The heavy-duty trucks and equipment serving the Ports were sources of pollution in the South Coast region. The LNG Truck Program was approved to reduce truck-related emissions by providing financial incentives to assist in the purchase and operations of LNG-Powered trucks for firms servicing the POLA and POLB.

Clean Energy was selected through a competitive bid process administered by the POLB with the participation of the POLA. The Ports selected Clean Energy because of its experience and expertise in providing LNG fueling stations. Clean Energy operates natural gas fueling stations throughout the United States and Canada. In 2009, the initial Agreement term was for ten years, with two additional five year options, for a total up to 20 years. Clean Energy is required to provide safety measures, insurance, maintenance, repairs and construction work on the property as needed or contained in the Agreement. Upon an early lease termination, the Ports will have the option to acquire part or all of the improvements made to the property.

The POLA and POLB jointly entered into an Agreement with Clean Energy for the construction and operations of the LNG fueling station on approximately 2.8 acres of land. POLA and POLB are joint owners, as tenants in common, of 1.1 acres adjacent to each other. In 2003, the two Ports entered into the tenants in common agreement to equally share ownership costs, expenses, and income generation from the properties. These provisions apply only to the 1.1 acres jointly owned by the Ports, which is 40 percent of the total square footage of the site. As a result, POLA will receive 20 percent of the total revenue from the LNG fueling station, as does POLB. In accordance with the Agreement, Clean Energy currently pays \$0.01 per gallon of fuel sold through the fueling station with no provision for base rent. The Port states that the \$0.01 per gallon amount is consistent with the rate commonly charged for fueling stations. The 20 percent compensation revenue share for the POLA was approximately \$5,019 in the 2018 fiscal year.

PROPOSED AMENDMENT WITH CLEAN ENERGY

The Port states that the under the initial Agreement with Clean Energy, the fueling stations facility was developed in response to the CAAP to support clean trucks. The Agreement was subsidized by the POLA and POLB with the minimum rent charges and \$0.01 per gallon to allow Clean Energy time to establish their new business and to achieve the CAAP goals.

The proposed Amendment will require Clean Energy to increase its compensation amount to the Port from \$0.01 to \$0.03 per gallon of fuel sold. In addition, Clean Energy will no longer have its rent subsidized and will begin to pay a base rent amount to the Port over the proposed five-year term of the Amendment. The lease adjustment will be based upon the fair rental value of the land and other elements contained in the Agreement. The base rental amount will be approximately \$33,005 per year. According to the Port, if the annual fuel sales are 3,750,000 gallons, compensation from the fuels sales at \$0.03 per gallon will equal approximately \$112,500. The POLA 20 percent share of compensation from this amount is expected to be \$22,500 per year. With the inclusion of an average annual base rent of approximately \$33,005, the annual base rent and fuel compensation amount will total approximately \$55,505 per year.

The City Attorney has approved the proposed Amendment as to form and legality. The Agreement with Clean Energy is in compliance with all the applicable provisions of the City Ordinances and contracting requirements. In accordance with Charter Section 606, the Agreement requires Council approval because the lease extends beyond five years. The Port has determined that the proposed Amendment is an administrative activity and therefore exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with Article II, Section 1(14) of the City's CEQA Guidelines.

FISCAL IMPACT STATEMENT

Approval of the Harbor Department (Port) proposed First Amendment with Clean Energy will increase the compensation amount paid to the Port from \$0.01 to \$0.03 per gallon of fuel sold in a fuel station facility on land rented from the Port of Los Angeles. Clean Energy will no longer have its rent subsidized and must begin to pay a base rent amount to the Port during the five years of the Amendment. The lease adjustment will be based upon the fair rental value of the land and other elements in Agreement. The estimated compensation from fuel sales at \$0.03 per gallon is expected to be \$22,500 per year and the average annual base rent of approximately \$33,005 will total approximately \$55,505 per year. There is no impact on the City General Fund and funds collected will be deposited in the Harbor Revenue Fund.

RHL:ABN:10190096