

RECOMMENDATION APPROVED;
RESOLUTION NO. 19-8432 ADOPTED; AND
AGREEMENT 19-2678-A APPROVED
BY THE BOARD OF HARBOR COMMISSIONERS

February 21, 2019



AMBER M. KLESGES
Board Secretary



Executive Director's

Report to the

Board of Harbor Commissioners

2/21/19
#5

DATE: FEBRUARY 5, 2019
FROM: CARGO & INDUSTRIAL REAL ESTATE
SUBJECT: RESOLUTION NO. 19-8432 - APPROVE FIRST AMENDMENT TO AGREEMENT NO. 08-2678 CLEAN ENERGY

SUMMARY:

Staff requests approval of the First Amendment to Agreement No. 08-2678 with Clean Energy, a California corporation, to modify the term of the lease, the extension options, and compensation schedule, as well as additional uses for the fueling station. All other terms and conditions of Agreement No. 08-2678 will remain the same.

Clean Energy currently pays compensation of \$0.01 per gallon of fuel sold through its fueling station with no provision for base rent. Because 40 percent of the fueling station premises is located on land jointly owned by the Harbor Department and the Port of Long Beach (POLB), the Harbor Department receives 20 percent of the total compensation paid by Clean Energy. For the fiscal year (FY) that ended June 30, 2018, the Harbor Department received \$5,018.81 from Clean Energy.

Under the proposed First Amendment, Clean Energy would pay compensation of \$0.03 per gallon of fuel sold as well as base rent over the proposed five-year term of the First Amendment. Assuming annual fuel sales of 3,750,000 gallons and the receipt of annual base rent, the Harbor Department's 20 percent share of compensation is estimated to average \$55,504.80 annually if the First Amendment is approved.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners (Board):

1. Find that the Director of Environmental Management has determined that the proposed action is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) under Article III Class 1(14) of the Los Angeles City CEQA Guidelines;
2. Approve the First Amendment to Agreement No. 08-2678 with Clean Energy;
3. Direct the Board Secretary to transmit the First Amendment to the City Council pursuant to City Charter Section 606;
4. Authorize the Executive Director to execute and the Board Secretary to attest to the First Amendment upon approval by City Council; and
5. Adopt Resolution No. 19-8432.

SUBJECT: FIRST AMENDMENT TO AGREEMENT NO. 08-2678 WITH CLEAN ENERGY

DISCUSSION:

Background – The Harbor Department and the Port of Long Beach (POLB, jointly Ports) entered into an Agreement with Clean Energy for the construction and operation of a liquefied natural gas (LNG) fueling station on approximately 2.78 acres, of which 1.1 acres are jointly-owned with POLB. The fueling station is located at 3400 E. “I” Street in the City of Long Beach (Transmittal 1).

In December 2003, the Ports entered into Tenancy in Common Agreement No. 2304. Pursuant to the provisions of this Agreement, ownership costs and expenses related to properties owned by the Ports, and income generated from properties owned by the Ports, will be shared equally by both Ports. These provisions apply only to the 1.1 acre parcel jointly owned by the Ports, which is 40 percent of the total square footage of the site. As such, the Harbor Department receives 20 percent of the total revenue from the LNG fueling station.

This fueling facility was developed in response to the Clean Air Action Plan (CAAP) goal of supporting “clean” trucks with the fuel necessary to operate, thus the agreement was heavily subsidized by both the Ports. The compensation was based on a minimum rent of \$0.01 per gallon and was established at that level to allow Clean Energy time to establish their new business, which at that time was seen as necessary to the Ports meeting their CAAP goals.

The Agreement became effective on November 6, 2009 for a term of ten years, with two five-year options. The First Amendment (Transmittal 2) will extend the original term from 10 years to 14 years and 8 months and allow for additional fuel types to be dispensed as requested by the tenants and negotiated by the City of Long Beach.

The terms as amended are:

1. Paragraph 39 (Options) – Modify the term of the permit and option periods as described below:

Current Option Periods	Effective Date
1 st Option (5 Years)	11/6/2019 – 11/5/2024
2 nd Option (5 Years)	11/6/2024 – 11/5/2029

Proposed Option Periods	Effective Date
1 st Option (5 Years)	7/1/2023 – 6/30/2028
2 nd Option (2 Years)	7/1/2028 – 6/30/2030

2. Paragraph 5 (Uses) – Change allows for CNG and Diesel to the current LNG only operations.
3. Paragraph 6 (Compensation) – Proposed rent to be adjusted effective July 1, 2018.
4. Paragraph 11 – Add the additional permitted use of dispensing diesel fuel.

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The agreement was negotiated by POLB, with the primary changes being that the Ports will no longer subsidize Clean Energy's rent. In order to bring the compensation to market rates, a monthly base rent has been established that will escalate over a five-year period per the table below. In addition, the rate per gallon is being increased from \$0.01 to \$0.03 per gallon.

Effective Date	Monthly Base Rent	Rate Per Gallon
7/1/2018 – 6/30/2019	\$8,333	\$0.03
7/1/2019 – 6/30/2020	\$8,333	\$0.03
7/1/2020 – 6/30/2021	\$12,500	\$0.03
7/1/2021 – 6/30/2022	\$16,677	\$0.03
7/1/2022 – 6/30/2023	\$22,917	\$0.03

ENVIRONMENTAL ASSESSMENT:

The proposed action is the approval of a First Amendment to Agreement No. 08-2678 with Clean Energy, which is an activity involving an amendment to a permit to use an existing facility. Therefore, the Director of Environmental Management has determined that the proposed action is categorically exempt from the requirements of CEQA in accordance with Article III Class 1(14) of the Los Angeles City CEQA Guidelines.

FINANCIAL IMPACT:

The proposed First Amendment will require Clean Energy to pay a monthly base rent in addition to paying compensation per gallon of fuel sold through the LNG fueling station. The proposed First Amendment will also increase compensation per gallon of fuel sold from \$0.01 to \$0.03 per gallon. Assuming average annual fuel sales of 3,750,000 gallons, the Harbor Department's 20 percent share of compensation from fuel sales at \$0.03 per gallon is expected to be \$22,500 per year. Over the five-year term of the proposed First Amendment, average annual base rent will be \$33,004.80.

Total estimated compensation is summarized as follows:

Effective Date	Monthly Rent	Annual Rent	Multiply by 20%	POLA Share
7/1/2018-6/30/2019	\$ 8,333	\$ 99,996	20%	\$ 19,999.20
7/1/2019-6/30/2020	\$ 8,333	\$ 99,996	20%	\$ 19,999.20
7/1/2020-6/30/2021	\$ 12,500	\$ 150,000	20%	\$ 30,000.00
7/1/2021-6/30/2022	\$ 16,677	\$ 200,124	20%	\$ 40,024.80
7/1/2022-6/30/2023	\$ 22,917	\$ 275,004	20%	\$ 55,000.80
Total Base Rent over Five Years				\$ 165,024.00
Divide by: 5 years				5
Equals: Annual Average Base Rent				\$ 33,004.80
Plus: Annual Fuel Compensation		\$ 112,500	20%	\$ 22,500.00
Equals: Annual Base Rent and Fuel Compensation				\$ 55,504.80

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CITY ATTORNEY:

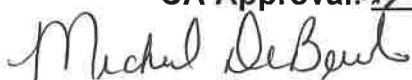
The First Amendment to Agreement No. 08-2678 has been approved as to form and legality by the Office of the City Attorney.

TRANSMITTALS:

1. Site Map
2. First Amendment


JACK C. HEDGE
Director of Cargo & Industrial Real Estate

FIS Approval: 
CA Approval: 


MICHAEL DiBERNARDO
Deputy Executive Director

APPROVED:

 FOR

EUGENE D. SEROKA
Executive Director

ES:JH::PA:TY:jg
Author: Tony Yeh
BL769jg Clean Energy Amendment