Ordinance

Ordinance No. 01 OF THE Date 1-18-2012

CITY OF ATLANTIC CITY, N.J. Date to Mayor 2-23-2012

Approved as to Form and Legality on Basis of Facts Set Forth

City Solicitor /s/ G. Bruce Ward

Factual contents certified to by

Business Administrator /s/ Michael A. Scott

Prepared by the City Solicitor's Office

Council Member Marsh & TIBBITT, SMALL Presents the following Ordinance:

An Ordinance authorizing of a lease of municipal property located at 1100 Albany Avenue to **CLEAN ENERGY A CALIFORNIA CORPORATION ("CE")** to design, construct, operate and maintain a compressed natural gas fueling station.

Section One. The Mayor is hereby authorized to award to Clean Energy under the aforementioned request for Proposal and to enter into a lease with Clean Energy to design, construct, operate, and maintain the compressed natural gas fueling station. See attached lease

Section Two. The Mayor is authorized to subdivide a portion of municipal property located at 1100 Albany Avenue. See attached map and to lease the subdivision portion to Clean Energy.

WHEREAS, the City has advertised for a Request for Proposals for a **COMPRESSED NATURAL GAS FUELING STATION** and has received a sealed proposal from **CLEAN ENERGY** to install, design, construct, operate and maintain **COMPRESSED NATURAL GAS FUELING STATION** to be located on a subdivision portion of 1110 Albany Avenue (City of Atlantic City Public Works Building.

WHEREAS, the City of Atlantic City has need to award a qualified proposer under the request for Proposals for the **COMPRESSED NATURAL GAS FUELING STATION** to be located at the City's Public Works Building located at 110 Albany Avenue; and

WHEREAS, the City has reviewed the submitted proposal by **CLEAN ENERGY** under the design criteria and evaluation criteria and has found **CLEAN ENERGY** to be the most qualified and responsive proposer; and

WHEREAS, the **COMPRESSED NATURAL GAS FUELING STATION** cost design, construct, operate and maintain shall be set forth in a Lease Agreement, and shall be the responsibility of Clean Energy.

NOW, THEREFORE, BE IT ORDAINED, by the Mayor and City Council of the City of Atlantic City as follows.

ADJOURNED 2-08-2012

tc February 23, 2012 8:40 AM 1-A

DO NOT USE SPACE BELOW THIS LINE

RECORD OF COUNCIL VOTE ON FINAL PASSAGE

COUNCIL MEMBER	AYE	NAY	N.V	A.B.	MOT.	SEC.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	MOT.	SEC.
DELGADO	X						MOORE	X					
GILLIAM				X			RANDOLPH	X					X
MALIK	X						SMALL	X				X	
MANCUSO	X						TIBBITT				X		
							MARSH , PRESIDENT	X					

X-Indicates Vote NV-Not Voting AB-Absent MOT-Motion SEC-Second

Adopted on first reading at a meeting of the Council of the City of Atlantic City, N.J. on …JANUARY 18, 2012.....

Adopted on second and final reading after hearing on……FEBRUARY 22, 2012.....

Approved By……Date 2-23-12……By Council……Reconsidered Over Ride

Aye Nay

Mayor

This is a Certified True copy of the Original Ordinance on file in the City Clerk's Office.

……City Clerk

A-7402
3R

COMPRESSED NATURAL GAS VEHICLE FUELING STATION LEASE AGREEMENT

This Agreement (the "Agreement") is made and entered into as of _____ ___, 2011 by and between CITY OF ATLANTIC CITY, a New Jersey municipal corporation ("City") and CLEAN ENERGY, a California corporation ("CE"). City and CE are sometimes referred to in this Agreement individually as a "Party" or jointly as "Parties".

In consideration of the mutual promises, covenants, and agreements herein contained, the sufficiency of which is hereby agreed to by the Parties, the Parties hereto agree as follows:

ARTICLE 1
SCOPE OF AGREEMENT AND DEFINITIONS

1.1 Intent. This Agreement expresses the terms and conditions pursuant to which the City authorizes CE to_ design, construct, operate and maintain a compressed natural gas fueling station on the Premises for use by the City and other Third Party Users, and for no other purpose.

1.2 Definitions. As used in this Agreement, the following terms and expressions shall have the indicated meanings:

"Agreement" means this document and any and all exhibits attached hereto.

"BTU" means British Thermal Unit.

"CE" means Clean Energy acting by and through its employees, officers, affiliates, subcontractors and authorized agents, with its principal office at 3020 Old Ranch Parkway, Suite 400, Seal Beach, CA 90740.

"City" means City of Atlantic City, acting by and through its employees, officers and authorized agents, with its principal office at City Hall, Tennessee Avenue and Bacharach Boulevard, Atlantic City, NJ 08401.

"City Vehicles" means CNG Vehicles owned and/or operated by the City.

"CNG" means pipeline quality natural gas, compressed for vehicle use.

"CNG Vehicle(s)" means motor vehicles powered by internal combustion engines using CNG as a primary fuel.

"Commercially Operational" means that the CNG Facility:

(a) has obtained all necessary and appropriate approvals from all governmental authorities;

(b) is fully constructed in a sound engineering manner, and has been inspected by the City;

(c) is capable of providing CNG to CNG Vehicles; and

(d) has obtained all necessary insurance coverages as hereinafter provided.

"Completion Date" means the date on which the Station is Commercially Operational.

"Force Majeure" means nonperformance of either party, except nonperformance of payment obligations, will be excused to the extent that performance is rendered impossible by any act of God or circumstances beyond the reasonable control of a Party and without its fault or negligence, including without limitation, fire, war, riots, flood, snow or rain emergencies, earthquake, governmental acts or orders or restrictions, delays caused by utility providers, or power or communications failure (a "Force Majeure Event"), provided that the non-performing Party gives prompt notice of such Force Majeure Event to the other Party and makes all reasonable efforts to remove such causes of nonperformance promptly and perform whenever such Force Majeure Event has ceased. Economic conditions or financial inability to pay shall not be considered a Force Majeure.

"Gasoline Gallon Equivalent" ("GGE") means a conversion of one gallon of gasoline to its energy equivalent as a measure of volume of natural gas, which is 124,800 BTU/gallon.

"Party" or "Parties" means CE and City, in their respective capacities as parties to this Agreement.

"Premises" means an approximately 18,000 square foot portion of the real property owned by City and located at 1100 Albany Avenue, Atlantic City, New Jersey upon which the Station will be constructed and operated as set forth in Exhibit I.

"Station" means the facility for refueling CNG Vehicles designed, constructed, operated and maintained by CE as more fully described in Exhibit II.

"Therm" means 100,000 British Thermal Units.

"Third Party Users" means CNG Vehicles owned and/or operated by entities other than the City.

ARTICLE 2
RESPONSIBILITIES OF CE

2.1 Station. At its sole cost, CE shall design, construct, operate and maintain the Station on the Premises, and shall be responsible for obtaining, complying with and implementing all required land use, zoning and traffic-related approvals, as well as all local, state and federal permits relating to the design, construction, operation and maintenance of the Station (the "Approvals"). CE shall use all commercially reasonable efforts to obtain the Approvals, and shall notify the City immediately upon receipt of said Approvals (the "Approval Date"). The Station shall be located on the Premises as shown in Exhibit I. The Station shall include a dispenser designed for public access (the "Public Dispenser") for Third Party Users, as shown in Exhibit I. All expenses to develop the Premises for the Station (i.e., installation of fencing, landscaping, and parking/traffic stripping) are the sole responsibility of CE. CE will be responsible for providing a site plan that meets all the City's land development requirements to the City for its approval. In the event that CE chooses to present its plans to the Department of Public Works or such other City-related entity in order to obtain concurrence in the site plan prior to its formal submission to the City for approval, the City and its departments will use reasonable efforts to expeditiously provide comments and advise with respect to such site plans.

2.2 CNG Service to City.- For the duration of this Agreement, CE shall be solely responsible for the procurement and compression of natural gas to provide the Station with CNG to fuel City's Vehicles and will invoice the City in accordance with the rates set forth in Exhibit III.

2.3 CNG Service to Third-Party Users. CE shall provide the Station with CNG to fuel Third Party User vehicles and will bill the Third-Party Users at rates set in CE's sole and absolute discretion.

2.4 Maintenance. CE shall maintain the Station in accordance with the following requirements:

2.4.1 Routine Maintenance. CE shall provide scheduled, routine maintenance service for the term of this Agreement and shall repair, or replace, any defective parts or equipment at its expense. CE shall also perform other necessary maintenance or repairs, including emergency repairs, at its expense, in order to keep the Station operating. However, any maintenance or repair costs incurred solely due to damage, abuse or neglect by City's personnel shall be billed to City at CE's then-existing rates.

2.4.2 Scheduling. CE and City shall mutually agree on times for maintenance services that require the Station to be out of operation for more than four (4) hours, and CE further agrees to use best efforts to restore full service at the Station within four (4) hours of being notified of any unanticipated shut down, unless due to a Force Majeure Event.

2.4.3 Service Calls. CE shall be available to provide emergency repair service on a 24-hour, 7-day per week basis, and will provide an emergency contact telephone

number to City. In the event of an emergency at the Station, CE shall respond as soon as is commercially reasonable following notification by City, and will use commercially reasonable efforts to restore the operation of the Station as soon as is feasible._

2.5 Training. CE shall offer reasonable training programs to educate City's personnel as to the procedures for the safe and efficient use of the Station, including, without limitation, procedures relating to safe vehicle fueling, troubleshooting and appropriate emergency procedures.

2.6 Compliance with Law. In performing the obligations under this Agreement, CE shall comply in all material respects with all applicable federal, state and local laws, regulations, ordinances and rulings, including (but not limited to) those pertaining to land development, signage, health, safety, employment and environmental matters. CE shall be solely responsible for obtaining all necessary approvals, permits, tariffs, licenses and approvals, as well as for payment of all relevant fees relating to the siting, development, operation and maintenance of the Premises and the Station thereupon. The City shall at no cost to itself, reasonably cooperate with CE to execute necessary documents in furtherance of this provision.

2.7 Utilities. CE shall pay any connection or installation fees associated with installing utility service at the Station, including gas, electricity, and telephone lines. In addition, CE shall be responsible for payment of all utility service charges for utility service consumed at the Station during the Term (including, without limitation, natural gas, electricity, water, waste disposal, refuse collection and other utility-type services furnished to CE or the Station). In the event CE or the Station require additional utility infrastructure or facilities, CE shall be solely liable for the costs thereof, and shall obtain the City's written consent therefor, which consent shall not be unreasonably withheld, conditioned or delayed.

2.8 CE's Costs. CE shall be responsible for any additional property, ad valorem, sales and/or possessory taxes assessed with respect to the Premises solely as a result of CE's operations and facilities thereupon. Except as specified in this Article 2 and in Exhibit III, or as may be separately agreed to by City and CE, CE shall not charge City for other costs incurred in providing the services described in this Article.

2.9 Access to Records. Within forty-eight (48) of a written request from the City, CE shall provide the City with reasonable access to its invoicing and fuel consumption records for the Station.

ARTICLE 3
CITY'S RESPONSIBILITIES

3.1 Maintenance of Premises. City shall maintain the Premises and the real property in the vicinity of the Station in a clean, safe, and commercially reasonable condition suitable for CNG Vehicle refueling use, including the ingress to, and egress from, the Station.

3.2 Protection of CE Property. City shall use commercially reasonable efforts to protect the Premises and the Station, including storage of spare parts for the Station and the

Station itself (on the Premises), provided, however, that City shall have no obligation to insure the same or to indemnify CE for loss or damage thereof, except as expressly provided in the indemnification provision provided below.

3.3 Refueling Vehicles. City employees shall refuel its CNG Vehicles. City will provide appropriate training and supervision for employees, including, but not limited to, scheduling attendance at all appropriate training sessions provided by CE.

3.4 Compliance with Law. In performing its obligations under this Agreement, City shall comply in all material respects with all applicable federal, state and local laws, regulations, ordinances and rulings, including, but not limited to, those pertaining to health, safety, employment and environmental matters.

3.5 Payment of CE Billings. City shall pay each invoice submitted by CE within thirty (30) days following receipt of the invoice by City. For purposes of this Section, receipt shall be defined as three (3) days after the invoice is mailed by CE. Any payments not made when due shall accrue interest on the unpaid amount at a rate of 12% per annum, calculated from the date payment is due to and including the date payment is received by CE.

3.6 City's Costs. Except as otherwise specified in this Article, or as may be separately agreed to in writing by City and CE, City shall not charge CE for the materials or labor utilized in providing the services provided in this Article. Except as set forth in Article 6 hereof, City shall be responsible for all taxes (including, without limitation, any real property taxes and assessments) relating to the Premises, as well as any and all maintenance and repair costs, as contemplated in this Article.

ARTICLE 4
LICENSE TO USE PREMISES

4.1 Permitted Use. To enable CE to fulfill its obligations set forth herein, City hereby licenses and permits CE to use the Premises and grants the right of ingress to and egress from the Premises to CE, CE's employees, agents, servants, customers, vendors, suppliers, patrons and invitees for the purposes contemplated hereby in accordance with the terms and conditions of this Agreement. City shall not, and shall not permit others to, levy any rent, charge, lien or encumbrance not expressly provided for in this Agreement against CE for the use of the Premises or the Station.

4.2 Clear Title. City is, and shall remain during the Term (as defined in Section 5.1) of this Agreement, the owner or lessee of the Premises, and shall not allow any lien or encumbrance affecting the Station or CE's performance hereunder. CE shall be the owner of the Station, and its parts and equipment. CE shall have the right to grant a lien or encumbrance against its right, title and interest in the Station or its equipment to a third party for financing purposes; provided, however, that CE shall not permit any liens or encumbrances of any kind to be placed on the Premises, and shall promptly discharge, at its expense, any and all mechanic's, laborer's or materialman's liens, encumbrances or charges against the Premises or the Station related to its performance under this Agreement.

4.3 Memorandum of Agreement. Upon CE's request, City shall execute a memorandum reflecting this Agreement and the property interest of CE in recordable form to reflect CE's interest in the Station and the Premises. CE shall be responsible for all reasonable costs related thereto.

4.4 Sale, Abandonment or Removal. Unless otherwise agreed to by the Parties in writing, upon termination or expiration of this Agreement, CE shall: (i) sell the Station to City on mutually agreeable terms; (ii) remove the Station at CE's sole expense (including any and all merchandise, equipment, furnishings, fixtures, machinery and tools relating to the Station), from the Premises, which shall be restored in all material respects to their condition as of the date of this Agreement, excluding the removal of any underground piping which may be left in place by CE; or (iii) with the City's consent, CE may abandon the same in place by quitclaiming all of its right, title and interest therein to City. Thereafter, CE shall have no further rights or obligations under this Agreement with respect to the Premises.

4.5 Pre-Existing Conditions. The Premises shall be clear of pre-existing underground hazards, which shall include, but not be limited to underground storage tanks, soil conditions and soil contaminants that would impact the construction of the Station (hereinafter "Pre-Existing Environmental Conditions"). If it is determined that a Pre-Existing Environmental Condition exists, or that a hazardous substance has migrated onto the Premises from an adjacent property that either (a) requires removal, replacement, and disposal of soils or materials, (b) requires remediation, or (c) requires unanticipated soil or foundation preparation work, CE shall not be financially and legally responsible for such remediation, removal, replacement preparation work, and/or disposal. If City does not commence, within thirty (30) days after discovery of any such conditions to correct such Pre-Existing Environmental Condition or seek to have the adjacent property owner correct any migration of a hazardous substance onto the Premises, if applicable, and thereafter to comply with the Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq., and any other applicable laws to prosecute to completion the correction of such migration and/or Pre-Existing Environmental Condition(s), CE may, without further obligation or penalty, terminate this Agreement for cause by written notice to City, and the City shall reimburse CE for any and all reasonable costs related to the construction or removal of the Station paid or committed to by CE prior to determination of the site being unsuitable. For the avoidance of doubt, the City shall not be responsible for the removal, remediation or other response action associated with the migration of any hazardous substance onto the Premises from an adjacent property. This Section 4.5 shall survive termination of this Agreement.

4.6 City's Right of Entry. In addition to the City's use of the Premises as provided in Section 2.2 hereof and provided that the City does not unreasonably interfere with CE's operation of the Station, the City shall have the right to enter the Premises, with not less than twenty-four (24) hours prior written notice to CE, for any of the following purposes:

4.6.1 To determine if the Premises is in good condition and that CE is in compliance with this Agreement;

4.6.2 To perform necessary emergency maintenance of the Premises

and/or to restore the Premises as necessary:

4.6.3 To show to the Premises to interested parties.

ARTICLE 5
TERM AND TERMINATION

5.1 Term. The initial term of this Agreement shall commence on the date this Agreement is signed by the Parties (the "Effective Date") and end on the fifteenth (15th) anniversary of the Completion Date, which shall not be later than three (3) months from the date that CE has obtained all necessary approvals and permits for the construction of the Station. CE shall notify City of the Completion Date in writing. This Agreement shall automatically renew under the same terms and conditions for consecutive five (5) year terms unless CE or City gives notice of cancellation to the other party at least six (6) months prior to such renewal date. The initial term and any renewal terms are referred to herein as the "Term."

5.2 Termination. Notwithstanding the above, upon a material breach of this Agreement, either Party shall have the right to terminate this Agreement, for cause, upon fifteen (15) days written notice and opportunity to cure to the other Party; provided, however, that where it is not commercially reasonable to fully effect a cure to the other Party within the fifteen (15) day period set forth above, the Party in breach shall not be deemed to be in default of the Agreement and subject to termination for cause where it commences implementation of the cure within such fifteen (15) day period and thereafter proceeds diligently to cure the breach. In addition, the City shall have the right to terminate for the following events:

5.2.1. CE fails to make any payment when due, and payable hereunder within ten (10) days of receiving written notice from the City of such failure;

5.2.2 CE fails to obtain the requisite insurance coverage specified herein within ten (10) days of receiving written notice from the City of such failure; and/or

5.2.3 CE has not issued notice of the Completion Date within five (5) months of the Approval Date hereof; and/or

5.2.4 The initiation of an involuntary proceeding against CE under the bankruptcy or insolvency laws, which involuntary proceeding remains undismissed for sixty (60) consecutive days; the adjudication of CE as bankrupt; CE makes a general assignment for the benefit of creditors; CE dissolves or liquidates; the initiation by CE of a voluntary proceeding under the bankruptcy or insolvency laws; and/or the failure by CE to discharge and remove or diligently proceed to discharge and remove any lien claimed, filed or recorded against the Premises within ninety (90) days of such lien.

ARTICLE 6
USE OF PUBLIC DISPENSER

6.1 Use of Station by Non-City Vehicles. During the Term, CE will use commercially reasonable efforts to market the Station to Third Party Users and sell CNG fuel to the Third Party Users at a price determined by CE in its sole and absolute discretion (the "Retail Rate"). The Parties agree to reasonably cooperate with respect to joint marketing efforts and activities for the recruitment of Third Party Users.

6.2 Rent & Royalty. Each month during the Term, CE shall pay to the City Rent in an amount equal to the monthly amount of Atlantic City real property taxes applicable to the Premises, which the Parties hereby agree is and shall remain throughout the Term valued at two-million dollars ($2,000,000) ("Rent"). In addition to the Rent, if CE sells more than 20,000 GGE's of CNG at the Station in any one calendar month during the Term, CE shall pay to the City a Royalty payment in the amount of $0.05 for each GGE of CNG over the first 20,000 GGEs sold at the Station ("Royalty"). Rent and Royalty payments relating to this Article shall be made by CE on a quarterly basis within thirty (30) days following the end of each calendar quarter. Rent payments for any partial months shall be prorated. Any Rent payments not made when due shall accrue interest on the unpaid amount at a rate of 12% per annum, calculated from the date payment is due to and including the date payment is received by the City.

ARTICLE 7
PURCHASE OF CNG AND VOLUMETRIC EXCISE TAX CREDIT

7.1 Pricing of CNG. CE shall provide City with CNG at a price per Gasoline Gallon Equivalent as described on Exhibit III. By signing this Agreement, City hereby represents to CE that it will use the CNG purchased from the Station solely for vehicle use.

7.2 Volumetric Excise Tax Credit. The legislation authorizing VETC expired on December 31, 2011 and no VETC revenue will be realized after December 31, 2011 without renewal of the legislation. Subject to the availability of the Volumetric Excise Tax Credit ("VETC"), CE, during the Term hereof, shall file for VETC for CNG purchased by the City and Third Party User from the Stations and shall be entitled to retain one hundred percent (100%) of such VETC proceeds.

ARTICLE 8
EXCISE, SALES AND USE TAXES

8.1 CE is currently required to, or may be required in the future to, collect and remit certain federal, state and local taxes, including fuel use taxes, on CNG sold at the Station, subject to certain exemptions. City shall be responsible for all such applicable excise, sales and use taxes related to its purchases of CNG under this Agreement. If City qualifies for an exemption from one or all of these taxes, City shall furnish to CE appropriate certification authorizing non-payment of the applicable tax or taxes. If City fails to maintain its exemption status, or for any other reason City's exemption becomes invalid without notifying CE thereof, City shall indemnify CE for all taxes, penalties and interest on any nonpayments and underpayments of taxes.

ARTICLE 9

INDEMNIFICATION AND LIMITATION OF LIABILITY

9.1 To the extent that liabilities arise from a Pre-Existing Environmental Condition, solely from City's or its employees, agents, contractors or subcontractors' gross negligence or willful misconduct, or as otherwise provided in this Section 9.1, City agrees to indemnify, defend and protect CE and its officers, directors, agents and employees from and against and hold CE and its officers, directors, agents and employees harmless and free from any and all liability, loss, cost, expense or obligation, including without limitation reasonable attorneys' fees, court costs and other expenses, including without limitation, those of appeal, on account of or arising out of, injury to or death of any person or persons or damage to or loss of use of property, occurring during the Term related in any way to the gross negligence or willful misconduct by City or its employees or agents, Pre-Existing Environmental Conditions or material breaches of this Agreement by City.

9.2 Except to the extent that liabilities arise from City's or its employees, agents, contractors or subcontractors' negligence or willful misconduct, CE agrees to indemnify, defend and protect City and its officers, directors, agents and employees from and against and hold City and its officers, directors, agents and employees harmless and free from any and all liability, loss, cost, expense or obligation, including without limitation reasonable attorneys' fees, court costs and other expenses, including without limitation, those of appeal, on account of or arising out of, injury to or death of any person or persons or damage to or loss of use of property, from whatever cause, occurring during the Term related in any way to the construction, use, operation or maintenance of the Station by CE, and/or the negligence or willful misconduct by CE or its employees or agents.

9.3 Indemnification Procedure. In the event any action is commenced or claim is made or threatened against an indemnified party, hereunder ("Indemnitee") as to which the other party ("Indemnitor") is obligated to indemnify Indemnitee or hold it harmless, Indemnitee shall promptly notify Indemnitor of such event and Indemnitor shall assume the defense of, and may settle, that part of any such claim or action commenced or made against Indemnitee which relates to Indemnitor's indemnification and Indemnitor may take such other steps as may be necessary to protect itself. Indemnitor shall not be liable to Indemnitee on account of any settlement of any such claim or litigation affected without Indemnitor's consent. The right of Indemnitor to assume the defense of any action shall be limited to that part of the action commenced against Indemnitee which relates to Indemnitor's obligation of indemnification and holding harmless.

9.4 Neither Party shall have any liability to the other Party for special, consequential, or incidental damages, except however in connection with a claim made against either party by a third party, provided that such claim arises out of or results from the negligence or willful misconduct or any other claim within the scope of the indemnity obligation of CE or City, as applicable, under this Agreement.

9.5 Dispute Resolution Procedures. In the event a dispute arises between the Parties related to this Agreement, the Parties may seek redress in a court of competent jurisdiction.

9.6 Force Majeure. In the event that either Party is prevented from performing its duties and obligations hereunder due to a Force Majeure Event, then such party shall be excused from performance hereunder during the period of such disability. If CE claims Force Majeure, CE shall notify City within 24 hours after it learns of the existence of a Force Majeure condition, and will also provide City with an estimate, if one can be reasonably made, of the anticipated Force Majeure Period. CE will also notify City within 24 hours after the Force Majeure condition has terminated. In the event that the Force Majeure Event continues for greater than sixty (60) days, either party may terminate this Agreement upon written notice to the other party.

ARTICLE 10
INSURANCE

CE shall procure at its expense, and maintain in full force and effect during the term of this Agreement, including any renewals, with insurance carriers rated at least A- VII or Better in A.M. Best's Insurance Report and admitted to do business in the state where the Station is located, the following primary insurance in at least the minimum amounts specified, with the City named in the commercial general liability policy (or excess liability or umbrella liability policy, if applicable) and the automotive liability policy as an additional insured and including a transfer of rights or waiver of subrogation endorsement. Such insurance shall be endorsed to require at least thirty (30) days' written notice to the City prior to any cancellation CE shall each provide the City with a reasonably satisfactory contractual liability indemnity endorsement relating to the Station and the potential liabilities relating thereto, and CE shall demonstrate its compliance herewith within ten (10) days of the Effective Date.

(a) Comprehensive Commercial General Liability Insurance, including coverage at least as broad as the latest version of the Insurance Service Office Commercial General Liability coverage (occurrence form CG001) to a combined single limit of not less than $15,000,000. Excess liability or umbrella liability coverage may be used to evidence or provide limits in addition to primary limits of no less than $1,000,000 on the commercial general liability policy.

(b) Comprehensive Commercial Automobile Liability Insurance, including owned, non-owned and hired automobiles covering bodily injury and property damage, to a combined single limit of $1,000,000.

(c) Workers Compensation and Employers Liability

(i) Workers compensation in compliance with applicable state and federal laws.

(ii) Employers liability with a limit of not less than $1,000,000.

The requirements for carrying the foregoing insurance shall not derogate from the

provisions of indemnification as set forth in this Agreement.

CE shall send certificates of insurance evidencing such coverage within thirty (30) days after the date of this Agreement to:

City: Nancy Egrie
Risk manager
City Hall Suite 503
1301 Bacharach Boulevard
Atlantic City NJ 08401
Telephone: (609) 347-5531
Fax: (609) 347-6845

ARTICLE 11
DESIGNATED REPRESENTATIVES AND NOTICES

11.1 Representatives. Each Party hereby designates the following as its representative (and its "Designated Representative" for dispute resolution purposes) for the administration of this Agreement:

CE: Peter J. Grace
3020 Old Ranch Parkway
Suite 400
Seal Beach, CA 90740
Telephone: (562) 493-2804
Fax: (562) 493-4532

CITY: Michael J. Perugini
Assistant City Solicitor
City Hall Suite 406
1301 Bacharach Boulevard
Atlantic City, NJ 08401
Telephone: (609) 347-5540
Fax: (609) 347-5210

11.2 Notices. Except for CITY's request for service calls, which may be made by telephone, notices pertaining to this Agreement shall be in writing and shall be transmitted either by personal delivery, facsimile, or by overnight delivery carrier and shall be deemed to be delivered up receipt. The addresses set forth below shall be the addresses used for notice purposes unless written notice of a change of address is given:

CE: Clean Energy
3020 Old Ranch Parkway
Suite 400
Seal Beach, CA 90740
Attn: Mr. Peter J. Grace
Fax: (562) 493-4532

City: Michael J. Perugini
Assistant City Solicitor
City Hall Suite 406
1301 Bacharach Boulevard
Atlantic City NJ 08401
Telephone: (609) 347-5540
Fax: (609) 347-5210

ARTICLE 12
MISCELLANEOUS

12.1 Assignment. Neither Party shall have the right to assign its rights or obligations hereunder without obtaining the prior written consent of the other Party (which consent shall not be unreasonably withheld), and any attempted assignment without such prior written consent shall be void; provided that such consent shall not be necessary in the context of an acquisition of either party by asset sale, merger, change in control or operation of law if the acquiring entity has a creditworthiness at least equivalent to the acquired entity. Permitted assigns and successors in interest shall have the benefit of, and shall be bound by, all terms and conditions of this Agreement. Notwithstanding anything contained herein to the contrary, either Party may assign this Agreement to such Party's parent corporation, an entity under common control with the Party, or a wholly-owned subsidiary of the Party without the consent of the other Party.

12.2 Headings. The headings in this Agreement are for convenience and reference only, and shall not affect the interpretation of this Agreement.

12.3 No Joint Venture. CE shall perform its duties herein as an independent contractor. Nothing contained herein shall be considered to create the relationship of employer and employee, partnership, joint venture or other association between the Parties, except as principal and independent contractor agent.

12.4 Waiver. No waiver by either Party of any one or more defaults by the other Party in the performance of any provisions of this Agreement shall operate or be construed as a waiver of any other default or defaults, whether of a like or different character. No waiver or modification of this Agreement shall occur as the result of any course of performance or usage of trade.

12.5 Severability. If any provision of this Agreement or the application thereof to any person or circumstances shall to any extent be held in any proceeding to be invalid or unenforceable, the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law, but only if, and to the extent, such enforcement would not materially and adversely alter the Parties' essential objectives as expressed herein.

12.6 Governing Law, Forum and Venue. This Agreement shall be subject to and construed in accordance with the laws of the State of New Jersey with the courts of that State having jurisdiction to resolve all disputes which may arise under or which relate to this Agreement.

12.7 Counterparts and Facsimile Execution. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be deemed an original, and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement by facsimile shall be equally as effective as delivery of a manually executed counterpart. Any Party hereto delivering an executed counterpart of this Agreement by facsimile shall also deliver a manually executed counterpart, but the failure to do so shall not affect the validity, enforceability or binding effect of the counterpart executed and delivered by facsimile.

12.8 Additional Documents. The Parties agree to execute and to deliver to each other any and all other additional documents and to take any additional steps reasonably necessary to complete, to document and to carry out the business transaction contemplated by this Agreement.

12.9 Negotiated Transaction. The drafting and negotiation of this Agreement has been participated in by all of the Parties. For all purposes, this Agreement shall be deemed to have been drafted jointly by each of the Parties.

12.10 Representation regarding Authority to Sign Agreement. Each of the representatives of the Parties signing this Agreement warrants and represents to the other that he, she or it has the actual authority to sign this Agreement on behalf of the Party for whom he, she or it is purporting to represent.

12.11 Entire Agreement. This Agreement and its exhibits contain the entire agreement between the Parties and it supersedes any prior written or oral agreements between the Parties concerning the subject matter of this Agreement. There are no representations, agreements, or understandings between the Parties relating to the subject matter of this Agreement which are not fully expressed within this Agreement and its exhibits.

12.12 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the respective heirs, successors, assigns, affiliates and personal representatives of the Parties.

12.13 Modification. This Agreement shall not be modified, amended, or changed except in a writing signed by each of the Parties affected by such modification,

amendment or change.

12.14 Further Assurances. All of the Parties to this Agreement agree to perform any and all further acts as are reasonably necessary to carry out the provisions of this Agreement.

[The remainder of this page has intentionally been left blank.]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be signed by their duly authorized representatives, effective as of the date first set forth above.

CLEAN ENERGY

By: _____

Peter J. Grace, Senior Vice President, Sales & Finance

IN WITNESS WHEREOF, the CITY and COUNSEL have caused this Agreement to be executed on or as of the day and year first below written.

ATTEST:

Rhonda Williams, City Clerk

CITY OF ATLANTIC CITY

By: _____
Lorenzo T. Langford, Mayor

DATE: 4-24-12

WITNESS:

_____

By: _____

(PLEASE PRINT NAME ABOVE)

Date: _____

The within Agreement approved as to form and execution.

Date: 4/2/12

By: _____
Michael J. Perugini
Assistant City Solicitor

EXHIBIT A

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE

(N.J.S.A 10.5-31 et seq)
(N.J.A.C. 17:27)

GOODS and SERVICES and PROFESSIONAL SERVICE CONTRACTS

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. The contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed., color, national origin, ancestry, marital status, sex, affectional or sexual orientation. Such action shall include, but not be limited to the following: employment~ upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable, will in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation.

The contractor or subcontractor, where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with the regulations promulgated by the Treasurer pursuant to P.L. 1975, c. 27, as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to attempt in good faith to employ minority and female workers consistent with the applicable county employment goals prescribed by N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L.1975, c. 127, as amended and supplemented from time to time or in accordance with a binding determination of the applicable county employment goals determined by the Div. of Contract Compliance & EEO pursuant to N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L.1975, c. 127, as amended and supplemented from time to time.

The contractor or subcontractor agrees to inform in writing appropriate recruitment agencies in the area, including employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

The contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, and conform with the applicable employment goals, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor and its subcontractors shall furnish such reports or other documents to the Div. of Contract Compliance & EEO as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Div. of Contract Compliance &

EEO for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (NJAC 17:27).

Bidder must write/contact the Public Agency Compliance Officer at (609) 347-5540 Fax #(609) 347-5210 located in City Hall, 1301 Bacharach Blvd., Room 406, Atlantic City, New Jersey 08401, if assistance is needed.

_____

DATE: _____ (PLEASE PRINT NAME ABOVE)

STATE OF)

) ss.

COUNTY OF)

I CERTIFY that on _____, 201 ,

_____, the Secretary or Assistant Secretary of the Corporation, personally came before me, and this person acknowledged under oath, to my satisfaction, that:

(a) this person is the secretary or assistant secretary of

_____

(the corporation named in this document);

(b) this person is the attesting witness to the signing of this document by the proper corporate officer of the corporation;

(c) this document was signed and delivered by the corporation as its voluntary act duly authorized by a proper resolution of its Board of Directors and;

(d) this person signed this proof to attest to the truth of these facts.

Signed and sworn to before me on _____

Secretary or Asst. Secretary

_____, 201

_____

Notary Public of New Jersey
(Seal attached)

Exhibit I
The Premises and Station Location

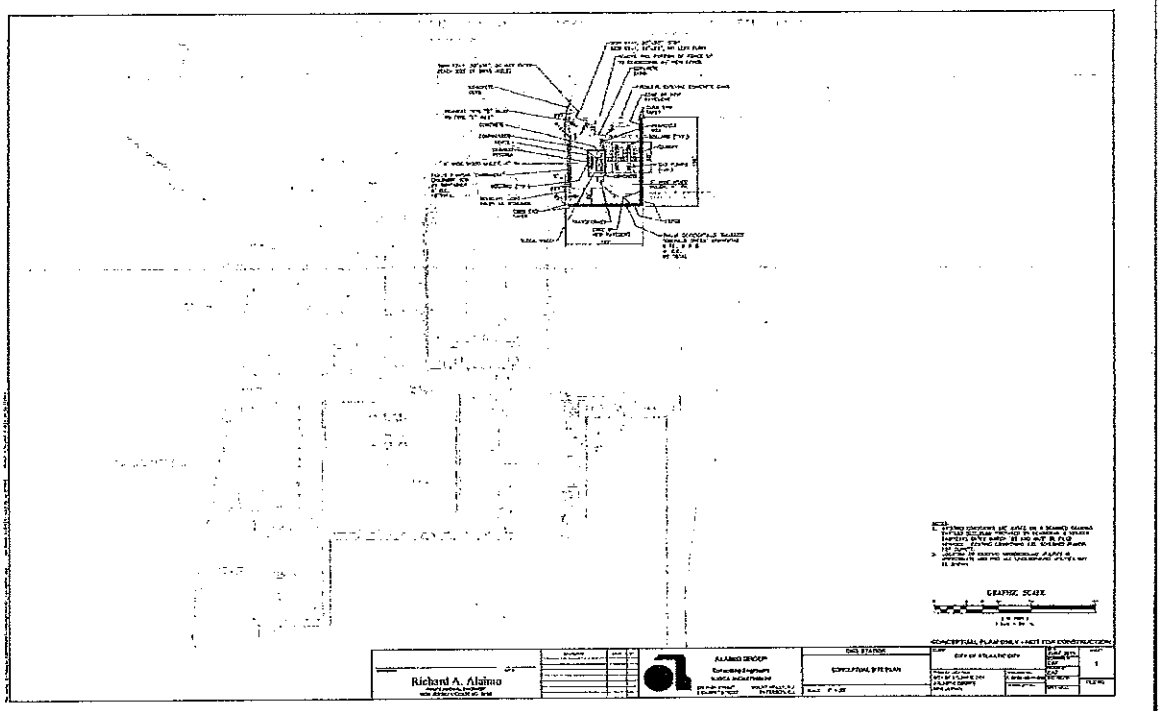

Exhibit II
Station Equipment

- Two (2) IMW compressors – 4 stage, electric driven, 250 hp, 95 psig inlet pressure design, 1,250 SCFM output total
- Compressor enclosure(s) with standard sound attenuation, approximately 75 dba at 15 feet
- One (1) PSB 10-3 single tower natural gas dryer with on-skid regeneration
- One (1) electronic, three line, 3/4" valved, high flow ESD/Priority control panel
- Three (3) ASME storage vessels (11,500 scf each)
- Two (2) Kraus Encore "S" high flow, CRIND, video equipped, three line, twin hose dispensers piped with ½ inch tubing
- Switch gear and motor control center (MCC)
- One (1) canopy covering both fueling islands
- Equipment start up and testing

Exhibit III
CNG Pricing for City

The price per GGE for the City's purchases of CNG for City Vehicles shall be determined by the following formula:

Delivered Cost of Gas ("DCOG") + a Wholesale Fee + all federal, state and local taxes = City's price per GGE of CNG.

The DCOG will consist of the commodity cost plus all costs incurred to deliver the natural gas to the Station including, but not limited to transportation charges, utility charges, and all associated charges, taxes, and fees. The DCOG will vary month-to-month depending on natural gas market conditions. To calculate DCOG, CE shall divide the total cost of gas delivered (based on gas utility and gas supplier invoices) for a given month by the GGE delivered. Backup documentation of the calculated DCOG shall be provided with the City's monthly invoice from CE.

The Wholesale Fee shall be $1.00 on the Effective Date and is subject to annual CPI increases as follows:

Beginning January 1, 2012, and on each January 1st thereafter during the Term of this Agreement, including any renewals, the Wholesale Fee per GGE of CNG charged by CE shall be increased by the change in the United States Bureau of Labor Statistics Consumer Price Index for All Urban Consumers, Northeast Urban, All Items (1982-84=100) from the Effective Date of this Agreement for the first such adjustment, or the date of the last adjustment for each subsequent adjustment, through the date of the current adjustment.

Ordinance

Ordinance No. 01..... OF THE Date 1-18-2012.....
CITY OF ATLANTIC CITY, N.J. Date to Mayor.....

Approved as to Form and Legality on Basis of Facts Set Forth

City Solicitor /s/ G. Bruce Ward

Factual contents certified to by

Business Administrator /s/ Michael A. Scott

Prepared by the City Solicitor's Office

Council Member Marsh & TIBBITT Presents the following Ordinance:

An Ordinance authorizing of a lease of municipal property located at 1100 Albany Avenue to **CLEAN ENERGY A CALIFORNIA CORPORATION ("CE")** to design, construct, operate and maintain a compressed natural gas fueling station.

Section One. The Mayor is hereby authorized to award to Clean Energy under the aforementioned request for Proposal and to enter into a lease with Clean Energy to design, construct, operate, and maintain the compressed natural gas fueling station. See attached lease

Section Two. The Mayor is authorized to subdivide a portion of municipal property located at 1100 Albany Avenue. See attached map and to lease the subdivision portion to Clean Energy.

WHEREAS, the City has advertised for a Request for Proposals for a **COMPRESSED NATURAL GAS FUELING STATION** and has received a sealed proposal from **CLEAN ENERGY** to install, design, construct, operate and maintain **COMPRESSED NATURAL GAS FUELING STATION** to be located on a subdivision portion of 1110 Albany Avenue (City of Atlantic City Public Works Building.

WHEREAS, the City of Atlantic City has need to award a qualified proposer under the request for Proposals for the **COMPRESSED NATURAL GAS FUELING STATION** to be located at the City's Public Works Building located at 110 Albany Avenue; and

WHEREAS, the City has reviewed the submitted proposal by **CLEAN ENERGY** under the design criteria and evaluation criteria and has found **CLEAN ENERGY** to be the most qualified and responsive proposer; and

WHEREAS, the **COMPRESSED NATURAL GAS FUELING STATION** cost design, construct, operate and maintain shall be set forth in a Lease Agreement, and shall be the responsibility of Clean Energy.

NOW, THEREFORE, BE IT ORDAINED, by the Mayor and City Council of the City of Atlantic City as follows.

ADJOURNED 2-08-2012

tc April 26, 2012 3:52 PM 1-A

DO NOT USE SPACE BELOW THIS LINE

RECORD OF COUNCIL VOTE ON FINAL PASSAGE

COUNCIL MEMBER	AYE	NAY	N.V	A.B.	MOT.	SEC.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	MOT.	SEC.
DELGADO	X						MOORE	X					
GILLIAM				X			RANDOLPH	X					X
MALIK	X						SMALL	X				X	
MANCUSO	X						TIBBITT				X		
							MARSH , PRESIDENT	X					

X-Indicates Vote NV-Not Voting AB-Absent MOT-Motion SEC-Second

Adopted on first reading at a meeting of the Council of the City of Atlantic City, N.J. on …JANUARY 18, 2012.....

Adopted on second and final reading after hearing on……FEBRUARY 22, 2012.....

Reconsidered Over

Approved By…/s/…LORENZO T. LANGFORD….Date…2-23-2012….By Council……Ride _____ _____

Mayor Aye Nay

This is a Certified True copy of the Original Ordinance on file in the City Clerk's Office.

…/s/…RHONDA WILLIAMS, City Clerk

A-7402

MUTUAL TERMINATION AGREEMENT

This Mutual Termination Agreement (the "**Termination Agreement**") is entered into as of the 14th of July, 2022 by and between City of Atlantic City, a New Jersey municipal corporation ("**City**"), and Clean Energy, a California corporation ("**CE**").

City and CE are, from time to time, referred to herein collectively as the "Parties". Capitalized terms used, but not defined herein, shall have the meaning ascribed to such term in the Lease Agreement (as defined below).

WHEREAS, the Parties entered into that certain Compressed Natural Gas Vehicle Fueling Station Lease Agreement, dated April 24, 2012 (the "**Lease Agreement**"); and

WHEREAS, the Parties hereto now desire to terminate the Lease Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and obligations of the Parties herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Termination. The Parties hereby agree that the Lease Agreement shall terminate on September 30, 2022 (the "Termination Date") and thereafter shall be of no further force or effect. Within ninety (90) days of the Termination Date, CE shall remove the Station, at CE's sole expense (including any and all merchandise, equipment, furnishings, fixtures, machinery and tools relating to the Station), from the Premises, which shall be restored in all material respects to their condition as of the date of the Lease Agreement, excluding the removal of any underground piping which may be left in place by CE. For the avoidance of doubt, CE may commence the removal of the Station prior to the Termination Date.

2. Further Assurances. City and CE each agree to promptly execute, acknowledge, deliver, file and record such additional documents, instruments and certificates, and to do all such other acts, as are necessary or desirable to evidence the termination of the Lease Agreement as set forth in this Termination Agreement.

3. Governing Law. This Termination Agreement shall be subject to and construed in accordance with the laws of the State of New Jersey.

4. Counterparts. This Termination Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be deemed an original, and all of which, taken together, shall constitute one and the same agreement. Signatures to this Termination Agreement transmitted by facsimile, email, portable document format (or .pdf) or by any other electronic means intended to preserve the original graphic and pictorial appearance of this Termination Agreement shall have the same effect as the physical delivery of the paper document bearing original signature.

5. Representation Regarding Authority to Sign Agreement. Each of the representatives of the Parties signing this Termination Agreement warrants and represents to the other that he, she, or it has the actual authority to sign this Termination Agreement on behalf of the Party for whom he, she, or it is purporting to represent.

6. Modification. This Termination Agreement shall not be modified, amended, or changed except in a writing signed by each of the Parties.

7. Entire Agreement. This Termination Agreement represents the entire understanding between the Parties with respect to the subject matter hereof and supersedes all prior communications, agreements and understanding relating thereto.

A-7402

IN WITNESS WHEREOF, the Parties have caused this Termination Agreement to be signed as of the date first written above.

ATTEST

Paula Geletei, City Clerk

Date: 7/15/2022

CITY OF ATLANTIC

Marty Small, Sr., Mayor

CLEAN ENERGY

Date: July 13, 2022

Mitchell W. Pratt
COO & Corporate Secretary

The within Agreement approved as to form and execution.

Date: 7/14/22

Karl Timbers, Assistant City Solicitor

ID # 4859