
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

FORM 8-K

**CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(d)
OF THE SECURITIES EXCHANGE ACT OF 1934**

Date of Report (Date of Earliest Event Reported): March 28, 2024

CLEANSARK, INC.
(Exact name of Registrant as specified in its charter)

Nevada
(State or Other Jurisdiction
of Incorporation)

001-39187
(Commission
File Number)

87-0449945
(IRS Employer
Identification No.)

10624 S. Eastern Ave, Suite A - 638
Henderson, Nevada
(Address of Principal Executive Offices)

89052
(Zip Code)

(702) 989-7692
(Registrant's Telephone Number, Including Area Code)

N/A
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.001 per share	CLSK	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Item 1.01 Entry into a Material Definitive Agreement.

As previously reported, on January 5, 2024, CleanSpark, Inc., a Nevada corporation (the “Company”), entered into an At the Market Offering Agreement (the “Original ATM Agreement”) with H.C. Wainwright & Co., LLC (the “Agent”), to create an at-the-market equity program (the “ATM Program”) under which the Company may, from time to time, offer and sell shares of its common stock, par value \$0.001 per share (the “Common Stock”).

On March 28, 2024, the Company entered into Amendment No. 1 to the At the Market Offering Agreement with the Agent (the “ATM Agreement Amendment”) and, together with the Original ATM Agreement, the “ATM Agreement”). Under the ATM Agreement, the Company may, but has no obligation to, following the filing date of the Prospectus Supplement (as defined below), issue and sell up to the lesser number of shares (the “Shares”) of the Company’s Common Stock, that does not exceed (a) \$800,000,000 of shares of Common Stock (exclusive of the amount of shares of Common Stock previously sold under the Original ATM Agreement), or (b) the number of authorized but unissued shares of Common Stock (less the number of shares of Common Stock issuable upon exercise, conversion or exchange of any outstanding securities of the Company or otherwise reserved from the Company’s authorized capital stock) (the “ATM Upsized Offering”).

Any Shares sold to or through the Agent will be issued pursuant to a prospectus supplement, dated March 28, 2024 filed with the SEC (the “Prospectus Supplement”), in connection with one or more offerings of the Shares pursuant to the Prospectus Supplement. Subject to the terms and conditions of the ATM Agreement, the Agent will use its commercially reasonable efforts consistent with its normal trading and sales practices and applicable state and federal law, rules and regulations to sell the Shares from time to time, based upon the Company’s instructions. Sales of the Shares, if any, under the ATM Agreement may be made in transactions that are deemed to be “at the market offerings” as defined in Rule 415 under the Securities Act of 1933, as amended (the “Act”), including sales made by means of ordinary brokers’ transactions (including directly on the Nasdaq Capital Market), at market prices or as otherwise agreed between the Company and the Agent. The Agent is not under any obligation to purchase any of the Shares on a principal basis pursuant to the ATM Agreement, except as otherwise agreed by the Agent and the Company in writing pursuant to a separate terms agreement. The Company has no obligation to sell any of the Shares and may at any time suspend offers under the ATM Agreement or terminate the ATM Agreement.

The Company has provided the Agent with customary indemnification rights, and the Agent will be entitled to a commission at a commission rate of up to 3.0% of the gross sales price of any Shares sold in the ATM Program. The ATM Agreement has been included to provide investors and security holders with information regarding its terms. It is not intended to provide any other factual information about the Company. The ATM Agreement contains customary representations, warranties and covenants by the Company, customary conditions to the obligations of the Agent, other obligations of the parties, indemnification obligations of the Company and the Agent, including for liabilities under the Securities Act of 1933, as amended, and the Securities and Exchange Act of 1934, as amended, and termination provisions. The representations, warranties and covenants contained in the ATM Agreement were made only for purposes of such agreement and as of specific dates, were solely for the benefit of the parties to such agreement, and may be subject to limitations agreed upon by the contracting parties, including being qualified by confidential disclosures exchanged between the parties in connection with the execution of the ATM Agreement. The representations and warranties may have been made for the purposes of allocating contractual risk between the parties to the agreement instead of establishing these matters as facts and may be subject to standards of materiality applicable to the contracting parties that differ from those applicable to investors. Investors are not third-party beneficiaries under the ATM Agreement and should not rely on the representations, warranties and covenants or any descriptions thereof as characterizations of the actual state of facts or condition of the Company or any of its subsidiaries or affiliates. Moreover, information concerning the subject matter of the representations and warranties may change after the date of the ATM Agreement, and this subsequent information may or may not be fully reflected in the Company’s public disclosures.

From time to time, the Agent and its affiliates have provided, and may provide in the future, various advisory, investment and commercial banking and other services to the Company in the ordinary course of business, for which it has received and may continue to receive customary fees and commissions.

The description of the ATM Agreement Amendment set forth above in this Item 1.01 does not purport to be complete and is qualified in its entirety by reference to the full text of the ATM Agreement Amendment, a copy of which is attached to this Current Report on Form 8-K (“Current Report”) as Exhibit 1.1 and is incorporated by reference herein.

This Current Report shall not constitute an offer to sell or the solicitation of an offer to buy any securities, nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation, or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
1.1	<u>Amendment No. 1 to the At the Market Offering Agreement, dated March 28, 2024, between CleanSpark, Inc. and H.C. Wainwright & Co., LLC</u>
5.1	<u>Opinion of Brownstein Hyatt Farber Schreck, LLP</u>
23.1	<u>Consent of Brownstein Hyatt Farber Schreck, LLP (included in Exhibit 5.1)</u>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

CLEANS PARK, INC.

Dated: March 28, 2024

By:

/s/ Gary Vecchiarelli

Gary Vecchiarelli
Chief Financial Officer

CLEANSARK, INC.
AMENDMENT NO. 1
TO
AT THE MARKET OFFERING AGREEMENT

March 28, 2024

H.C. Wainwright & Co., LLC
 430 Park Avenue
 New York, New York 10022
 As Manager

Ladies and Gentlemen:

Reference is made to that certain At the Market Offering Agreement, dated as of January 5, 2024 (the “Sales Agreement”), between CleanSpark, Inc., a corporation organized under the laws of Nevada (the “Company”), and H.C. Wainwright & Co., LLC (the “Manager”) with respect to the issuance and sale by the Company through or to the Manager, as sales agent and/or principal, from time to time of shares (the “Shares”) of the Company’s common stock, \$0.001 par value per share (“Common Stock”). All capitalized terms used in this Amendment No. 1 to the Sales Agreement (this “Amendment”) and not otherwise defined herein shall have the respective meanings assigned to such terms in the Sales Agreement. From and after the date hereof (such date, the “March 2024 ATM Prospectus Supplement Filing Date”), all references to (i) the “Agreement” in the Sales Agreement and (ii) the Sales Agreement in any document related to the transactions contemplated by the Sales Agreement shall, in each case, be to the Sales Agreement as amended by this Amendment.

On the March 2024 ATM Prospectus Supplement Filing Date, the Company has filed or will file a Prospectus Supplement relating to the offering of an additional \$800,000,000 of Shares of Common Stock (the “March 2024 ATM Prospectus Supplement”), to the base prospectus, dated January 5, 2024, contained in the registration statement on Form S-3 (Registration No. 333-276409).

Pursuant to Section 14 (*Amendments; Waivers*) of the Sales Agreement, the Company and the Manager (collectively, the “parties hereto”) agree as follows:

A. Amendments to Sales Agreement.

1. The first sentence of Section 2 (*Sale and Delivery of Shares*) of the Sales Agreement is hereby amended and restated as follows, including the defined terms established therein:

The Company proposes to issue and sell through or to the Manager, as sales agent and/or principal, from time to time, during the period commencing immediately following the March 2024 ATM Prospectus Supplement Filing Date (as defined in the Amendment) and continuing through the term of this Agreement (the “Term”) and on the terms set forth herein, up to the lesser of such number of shares (the “Shares”) of the Company’s common stock, \$0.001 par value per share (“Common Stock”), that does not exceed (a) \$800,000,000 of shares of Common Stock registered on the Registration Statement pursuant to the March 2024 ATM Prospectus Supplement, or (b) the number of authorized but unissued shares of Common Stock (less the number of shares of Common Stock issuable upon exercise, conversion or exchange of any outstanding securities of the Company or otherwise reserved from the Company’s authorized capital stock) (the lesser of (a) and (b), the “Maximum Amount”).

2. Section 2(d) of the Sales Agreement is hereby amended and restated to read in its entirety as follows:

Maximum Number of Shares. Under no circumstances shall the Company, during the Term and after the March 2024 ATM Prospectus Supplement Filing Date, cause or request the offer or sale of any Shares if, after giving effect to the sale of such Shares, the aggregate amount of Shares to be sold pursuant to this Agreement would exceed the lesser of (A) together with all Shares sold under this Agreement during the Term, the Maximum Amount, and (B) the amount authorized from time to time on or after the March 2024 ATM Prospectus Supplement Filing Date to be issued and sold under this Agreement by the Board, a duly authorized committee thereof or a duly authorized executive committee, and notified to the Manager in writing. Under no circumstances shall the Company cause or request the offer or sale of any Shares pursuant to this Agreement at a price lower than the minimum price authorized from time to time by the Board, a duly authorized committee thereof or a duly authorized executive officer, and notified to the Manager in writing.

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- B. Additional Representations and Warranties. The Company represents and warrants to, and agrees with, the Manager, as of the date of this Amendment, as follows:
1. The representations and warranties contained in Section 3 (*Representations and Warranties*) of the Sales Agreement are true and correct; provided that all references to the “Agreement” therein shall be to the Sales Agreement, as amended by this Amendment.
 2. For the avoidance of doubt, any reference to “Prospectus” in the Sales Agreement shall be deemed to include the March 2024 ATM Prospectus Supplement.
- C. Notices. From and after the date hereof, all communications will be in writing and effective only on receipt, and will be mailed, delivered or e-mailed to the addresses of the Company and the Manager, respectively, set forth on the signature pages hereto.
- D. No Other Amendments; Integration. The parties hereto agree that, except as set forth in, and amended by, Section A above, all the terms and provisions of the Sales Agreement shall remain in full force and effect. The Sales Agreement, as amended by this Amendment, supersedes all prior agreements and understandings (whether written or oral) between the Company and the Manager with respect to the subject matter hereof; provided, however, that certain engagement letter, dated as of October 19, 2023, by and between the Company and the Manager remains in full force and effect and shall continue to govern the subject matter thereof and supersedes any inconsistent provision hereof.
- E. Counterparts and Electronic Signatures. This Amendment may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to each other party, it being understood that the parties hereto need not sign the same counterpart. Counterparts may be delivered via electronic mail (including email delivery of a “.pdf” format data file or any electronic signature covered by the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act, the Electronic Signatures and Records Act or other applicable law) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.
- F. Headings. The section headings used in this Amendment are for convenience only and shall not affect the construction hereof.

[Signature Pages Follow]

If the foregoing is in accordance with your understanding of our agreement, please sign and return to us the enclosed duplicate hereof, whereupon this letter and your acceptance shall represent a binding agreement among the Company and the Manager.

Very truly yours,

CLEANSARK, INC.

By: /s/ Zachary Bradford

Name: Zachary Bradford

Title: Chief Executive Officer

Address for Notice:

10624 S. Eastern Ave.

Suite A—638

Henderson, NV 89052

Attention: Zachary Bradford, CEO

Email: zach@cleanspark.com

With a copy (which shall not constitute notice) to:

Katten Muchin Rosenman LLP

525 West Monroe Street

Chicago, Illinois 60661

Attention: Mark D. Wood

Email: mark.wood@katten.com

[Signature Page to Amendment No. 1 to the At-the-Market Offering Agreement]

The foregoing agreement is hereby confirmed and accepted
as of the date first written above.

H.C. WAINWRIGHT & CO., LLC

As Manager

By: /s/ Mark W. Viklund

Name: Mark W. Viklund

Title: Chief Executive Officer

Address for Notice:

430 Park Avenue

New York, New York 10022

Attention: Chief Executive Officer

Email: notices@hewco.com

With a copy (which shall not constitute notice) to:

Skadden, Arps, Slate, Meagher & Flom LLP

One Manhattan West

New York, New York 10001

Attention: Michael J. Zeidel, Esq.

Email: michael.zeidel@skadden.com

[Signature Page to Amendment No. 1 to the At-the-Market Offering Agreement]



Brownstein Hyatt Farber Schreck, LLP
 702.382.2101 main
 100 North City Parkway, Suite 1600
 Las Vegas, Nevada 89106

March 28, 2024

CleanSpark, Inc.
 10624 S. Eastern Ave., Suite A - 638
 Henderson, Nevada 89052

To the addressee set forth above:

We have acted as local Nevada counsel to CleanSpark, Inc., a Nevada corporation (the “Company”), in connection with the transactions contemplated by that certain At The Market Offering Agreement, dated as of January 5, 2024 (the “Original Sales Agreement”), by and between the Company and H.C. Wainwright & Co., LLC, as manager (the “Manager”), as amended by that certain Amendment No. 1 to At The Market Offering Agreement, dated as of the date hereof (the “Amendment”), by and between the Company and the Manager (the Original Sales Agreement, as amended by the Amendment, the “Amended Sales Agreement”), relating to the issuance and sale by the Company of that number of shares (the “Shares”) of the Company’s common stock, par value \$0.001 per share (the “Common Stock”), having an aggregate offering price of up to \$800,000,000, all as more fully described in the base prospectus, dated January 5, 2024 (the “Base Prospectus”), contained in the Registration Statement on Form S-3 (File No. 333-276409) (as amended through and including the date hereof, the “Registration Statement”), as supplemented by the prospectus supplement, dated March 28, 2024 (together with the Base Prospectus, the “Prospectus”), each as filed with the Securities and Exchange Commission (the “Commission”) under the Securities Act of 1933, as amended. This opinion letter is being delivered at your request pursuant to the requirements of Item 601(b)(5) of Regulation S-K under the Act.

In our capacity as such counsel, we are familiar with the proceedings taken and proposed to be taken by the Company in connection with the authorization, issuance and sale of the Shares as contemplated by the Amended Sales Agreement and as described in the Registration Statement and the Prospectus. For purposes of this opinion letter, and except to the extent set forth in the opinion expressed below, we have assumed that all such proceedings have been or will be timely completed in the manner presently proposed in the Amended Sales Agreement and the Registration Statement and the Prospectus.

For purposes of issuing this opinion letter, we have made such legal and factual examinations and inquiries, including an examination of originals or copies certified or otherwise identified to our satisfaction as being true copies of (i) the Registration Statement, including the Prospectus, (ii) the Amended Sales Agreement, including the form of Terms Agreement set forth therein (each, a “Terms Agreement”), (iii) the Company’s articles of incorporation and bylaws, each as amended to date (collectively, the “Governing Documents”), and (iv) such agreements, instruments, corporate records (including resolutions of the board of directors and any committee thereof) and other documents, or forms thereof, as we have deemed necessary or appropriate. For purposes of issuing this opinion letter, we have also obtained from officers and other representatives and agents of the Company and from public officials, and have relied upon, such certificates, representations and assurances, and public filings, as we have deemed necessary or appropriate.

Without limiting the generality of the foregoing, we have, with your permission, assumed without independent verification that (i) the statements of fact and all representations and warranties set forth in the documents we have reviewed are true and correct as to factual matters, in each case as of the date or dates of such documents and as of the date hereof, (ii) the obligations of each party to any such document we examined are or will be its valid and binding obligations, enforceable in accordance with its terms; (iii) each natural person executing a document has, or when each Terms Agreement is signed will have, sufficient legal capacity to do so; (iv) all documents submitted to us as originals are authentic, the signatures on all documents we reviewed are genuine, and any document submitted to us as certified, conformed, photostatic, electronic or facsimile copies conform to the original document; (v) all corporate records made available to us by the Company, and all public records we have reviewed, are accurate and complete; (vi) prior to any issuance of Shares, each Terms Agreement with respect to such Shares will have been duly executed and delivered by the Company and the other parties thereto in accordance with the Amended Sales Agreement; and (vii) after the issuance of any Shares, the total number of issued and outstanding shares of Common Stock, together with the total number of shares of Common Stock then reserved for issuance or obligated to be issued by the Company pursuant to any agreement, plan, arrangement or otherwise, will not exceed the total number of shares of Common Stock then authorized under the Company’s articles of incorporation.

We are qualified to practice law in the State of Nevada. The opinion set forth herein is expressly limited to and based exclusively on the general corporate laws of the State of Nevada, and we do not purport to be experts on, or to express any opinion with respect to the applicability thereto or the effect thereon of, the laws of any other jurisdiction. We express no opinion concerning, and we assume no responsibility as to laws or judicial decisions related to, or any orders, consents or other authorizations or approvals as may be required by, any federal laws, rules or regulations, including, without limitation, any federal securities laws, rules or regulations, or any state securities or “blue sky” laws, rules or regulations.

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Based upon the foregoing and in reliance thereon, and having regard to legal considerations and other information that we deem relevant, we are of the opinion that the Shares have been duly authorized by the Company and if, when and to the extent any Shares are issued and sold in accordance with all applicable terms and conditions set forth in, and in the manner contemplated by, the Amended ATM Agreement and any relevant Terms Agreement (including payment in full of all consideration required therefor as prescribed thereunder), and as described in the Registration Statement and the Prospectus, such Shares will be validly issued, fully paid and nonassessable.

The opinion expressed herein is based upon the applicable laws of the State of Nevada and the facts in existence on the date of this opinion letter. In delivering this opinion letter to you, we disclaim any obligation to update or supplement the opinion set forth herein or to apprise you of any changes in any laws or facts after the date hereof. No opinion is offered or implied as to any matter, and no inference may be drawn, beyond the strict scope of the specific issues expressly addressed by the opinion set forth herein.

We hereby consent to the filing of this opinion letter as an exhibit to the Current Report on Form 8-K being filed on the date hereof and incorporated by reference into the Registration Statement and to the reference to our firm in the Prospectus under the heading “Legal Matters”. In giving this consent, we do not admit that we are within the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Commission promulgated thereunder.

Very truly yours,
/s/ Brownstein Hyatt Farber Schreck, LLP