

**MODIFICATION TO**

**AGREEMENT**

**by and among**

**THE CITY OF COLUMBUS, OHIO,**

**PFK COMPANY I, LLC,**

**PFK COMPANY II, LLC,**

**TAMARACK ENTERPRISES I, L.P.,**

**and**

**TAMARACK ENTERPRISES II, L.P.**

## AGREEMENT

This **Modification of Agreement** (this “Modification”) is made and entered by and among the **City of Columbus** (the “City”), **PFK Company I, LLC**, and **PFK Company II, LLC** (collectively, “PFK”), and **Tamarack Enterprises I, L.P.**, and **Tamarack Enterprises II, L.P.** (collectively, “Tamarack”), each individually a “Party” and collectively the “Parties.”

### *Recitals:*

- A. The Parties entered into the Agreement by and among the City of Columbus, Ohio, PFK Company I, LLC, PFK Company II, LLC, Tamarack Enterprises I, L.P., and Tamarack Enterprises II, L.P. dated as of March 26, 2008 (the “Agreement”) for the purpose of resolving all outstanding issues between and among them with respect to the Hartman Property as defined in the Agreement.
- B. The Parties desire to enter into this Modification to update the Limestone Mining Plan to allow for the expansion of Area 3 and Area 4 as defined herein; to allow for the removal of the sand, gravel, and limestone barrier between Areas 1 and 2, combining those two areas into one mining cell.
- C. This Modification is authorized by Ordinance No. xxxx-xxxx, passed by Columbus City Council on [DATE].

**NOW, THEREFORE**, in consideration of the promises and the mutual representations and agreements in this Agreement, the City, PFK, and Tamarack agree as follows:

**I.** Nothing in this Modification shall be deemed to supersede, modify, alter, amend, change, or replace any terms or conditions contained in the Agreement except as specifically set forth in this Modification. All terms and conditions of the Agreement not modified herein shall remain in full force and effect, and the Agreement and this Modification together shall constitute the entire agreement between the Parties.

**II.** The Limestone Mining Plan, attached to the Agreement as Exhibit D, is hereby deleted and replaced with Revised Exhibit D, attached to this Modification.

**III.** Article 1 of the Agreement is hereby modified as follows:

- a. **Section 1.01. Definitions.** The definitions below will be modified to read as follows. All other terms shall have the meanings as defined in the Agreement.

“Area 1” means the portion of the Mineral Premises so designated on *Revised Exhibit D*.

“Area 2” means the portion of the Mineral Premises so designated on *Revised Exhibit D*.

“Area 3” means the portion of the Mineral Premises so designated on *Revised Exhibit D*, including Area 3 East Expansion Area.

“Area 4” means the portion of the Mineral Premises so designated on *Revised Exhibit D*, including Area 4 East Expansion Area.

“Limestone Mining Plan” means the limestone mining plan attached to this Modification as *Revised Exhibit D* (which includes a graphic designation of Areas 1, 2, 3, and 4).

“Stormwater Drainage Manual” means the *Stormwater Drainage Manual*, approved May 2021, prepared and implemented by the Department’s Division of Sewerage and Drainage.

**IV. Section 2.02. Limestone Mining Plan**, subsection (b), is hereby deleted in its entirety and replaced with the following language:

(b) Approximately three (3) years prior to the Completion Date for Area 1, the Mineral Lessee initiated dewatering in Area 2, in accordance and compliance with the Limestone Mining Plan. The City has determined that the quantity and quality of water available from the City wells located on and around the Mineral Premises sufficiently meets the City’s daily water quantity requirements and accordingly the Mineral Lessee shall be permitted to permanently remove the sand, gravel, and limestone barrier between Areas 1 and 2, combining those two areas into one mining cell.

Notwithstanding anything to the contrary contained herein, in conjunction with the Limestone Mining Plan contained in the Revised Exhibit D, Mineral Lessee shall have the right to continue to mine, process, and sell the remaining sand and gravel above the limestone deposit in Area 4, followed by Area 3, prior to dewatering operations in these areas.

**V. Section 2.04. Discharge from Dewatering Operations** is hereby deleted in its entirety and replaced with the following:

The Parties covenant and agree that the discharge from dewatering operations in Areas 1, 2, 3, and 4 shall be directed as follows:

- (a) The dewatering discharge from Area 1 shall be directed to Area 3 to the extent it is able to receive it.
- (b) The dewatering discharge from Area 2 shall be directed to Area 3 and/or Area 1, as mutually agreed upon by the City and the Mineral Lessee, to the extent that they are able to receive it.

- (c) The dewatering discharge from Area 3 shall be directed to Area 4, and/or Area 2, and/or Area 1, as mutually agreed upon by the City and the Mineral Lessee, to the extent that they are able to receive it.
- (d) The dewatering discharge from Area 4 shall be directed to Area 3, and/or Area 2, and/or Area 1, as mutually agreed upon by the City and the Mineral Lessee, to the extent that they are able to receive it.

Excess dewatering discharge shall, to the extent permitted by applicable Law, be directed to the Scioto River. Any dewatering discharge into any of Areas 1, 2, 3, or 4 following the conversion of any such Area into a water supply reservoir shall comply with the water quality requirements in the Mineral Lessee's NPDES Permit. PFK and Tamarack covenant and agree to use reasonable efforts to cause the Mineral Lessee to assume full responsibility for the disposal of dewatering discharge, including the obtaining of all necessary discharge Permits, the application(s) for which will be supported by the City.

**VI. *Article 5. Representations and Further Agreements*** is hereby modified by the addition of the following:

***Section 5.13 Further Discussions.*** The Parties acknowledge that it is in the interest of each Party to continue working on an additional modification of the Agreement in order acknowledge the occurrence of certain actions anticipated in the Agreement and to reflect and accommodate current and expected future operational needs of the Mineral Lessee, the City and PFK/Tamarack. To that end, the Parties agree to engage in diligent and good faith discussions on an ongoing and regular basis in an effort to reach an agreement on future modifications of the Agreement and to execute such modifications upon agreement of the necessary terms and subject to any necessary authorizations of Columbus City Council. The Parties agree that time is of the essence and will use their best efforts and commit to attempt to come to an agreement on the additional detailed modification of the Agreement to be completed within two years. Subsequent Agreement and Modification reviews shall be conducted annually.

**VII. *Section 7.02. Notices*** is hereby deleted in its entirety and replaced with the following:

- (a) Except as otherwise provided herein, any notice provided for in this Agreement shall be in writing and shall be deemed to have been duly given as follows:
  - (1) upon receipt, when delivered personally to a Party at its address as hereinafter set forth; or

- (2) one Business Day after being delivered to a reputable overnight courier service, prepaid, marked for next-Day delivery to a Party at its address as hereinafter set forth; or
- (3) if sent by email, upon delivery of such email to a Party at its email address as hereinafter set forth during normal business hours or next business day and confirmation of receipt of such email by all Parties by “REPLY ALL” return email.

(b) All notices to be given to the City pursuant to this Agreement shall be sent to the City at the following address:

**The City of Columbus, Department of Public Utilities**

Attention: Director

910 Dublin Road,

Columbus, OH 43215

E-mail: @columbus.gov *(to be updated at execution)*

(c) All notices to be given to PFK and Tamarack pursuant to this Agreement shall be sent to PFK and Tamarack at the following addresses:

**PFK Company I, LLC**

**PFK Company II, LLC**

Attn: Carter H. Finnell, Authorized Member

17724 Edison Avenue

Chesterfield, MO 63005

Email: [chfmpo007@gmail.com](mailto:chfmpo007@gmail.com)

and

**Tamarack Enterprises I, L.P.**

**Tamarack Enterprises II, L.P.**

c/o Finnell, LLC, Managing General Partner

Attn: Carter H. Finnell, Authorized Member

17724 Edison Avenue

Chesterfield, MO 63005

Email: [chfmpo007@gmail.com](mailto:chfmpo007@gmail.com)

with copies to:

Jack R. Scholl

Environmental Planning & Design, LLC

100 Ross Street – 5<sup>th</sup> Floor

Pittsburgh, Pennsylvania 15219

Email: [jackscholl40@gmail.com](mailto:jackscholl40@gmail.com)

and

Allen L. Handlan, Esq.  
Kegler, Brown, Hill & Ritter  
65 East State Street, Suite 1800  
Columbus, OH 43215-4294  
E-mail: [ahandlan@keglerbrown.com](mailto:ahandlan@keglerbrown.com)

(d) All notices to be given to the Mineral Lessee pursuant to this Agreement shall be sent to the Mineral Lessee at the following addresses:

**The Olen Corporation**  
Attention: Kenneth W. Holland, President  
4755 South High Street  
Columbus, OH 43207  
E-mail: [kwh@theolencorp.biz](mailto:kwh@theolencorp.biz)

with a copy to:

**Kokosing, Inc.**  
6235 Westerville Road  
Westerville, Ohio 43081  
Attn: Legal Department  
Email: [gjr@kokosing.biz](mailto:gjr@kokosing.biz)

(e) Any Party may at any time change its address for such notices, requests, demands, or statements by giving the other Parties written notice thereof in accordance with Section 7.02(a).

**VIII. Section 7.02. Counterparts, Facsimile, Electronic Signatures** is hereby deleted in its entirety and replaced with the following:

This undersigned further agree that, except as may be required by applicable Ohio Law relative to filing and recording of documents, consistent with the Uniform Electronic Transactions Act, as adopted in the State of Ohio and codified in ORC Chapter 1306, this Agreement may be executed in counterparts and transmitted/delivered electronically in either Portable Document Format ("PDF") or other usual, customary and generally accepted electronic formats, all of which counterparts shall be deemed originals, all of which counterparts taken together shall constitute a single instrument, and the signature pages of each such counterpart may be detached from the several counterparts and attached to a single copy of this document to physically form a single instrument, and such instrument may be relied upon to the same extent, and under the same circumstances, as a manually executed original counterpart of this Agreement.

**IX.** This Modification shall be effective as of [DATE].

**[Signature pages follow in counterparts]**

***IN WITNESS WHEREOF***, this Modification has been duly executed and delivered for, in the name of, and on behalf of the City, PFK, and Tamarack by their duly authorized officers on the dates set forth beneath their respective signatures, but effective as of the Effective Date.

**PFK I:**

**PFK COMPANY I, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Carter H. Finnell, Authorized Member

Date: \_\_\_\_\_, 2022

**PFK II:**

**PFK COMPANY II, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Carter H. Finnell, Authorized Member

Date: \_\_\_\_\_, 2022

**TAMARACK ENTERPRISES I, L.P.,**  
a Delaware limited partnership

By: Finnell, LLC,  
a Delaware limited liability company,  
its managing general partner

By: \_\_\_\_\_  
Carter H. Finnell, Managing Member

Date: \_\_\_\_\_, 2022

**TAMARACK ENTERPRISES II, L.P.,**  
a Delaware limited partnership

By: Finnell, LLC,  
a Delaware limited liability company,  
its managing general partner

By: \_\_\_\_\_  
Carter H. Finnell, Managing Member

Date: \_\_\_\_\_, 2022



***IN WITNESS WHEREOF***, this Modification has been duly executed and delivered for, in the name of, and on behalf of the City, PFK, and Tamarack by their duly authorized officers on the dates set forth beneath their respective signatures, but effective as of the Effective Date.

**City:**

**THE CITY OF COLUMBUS, OHIO,**  
a municipal corporation

By: \_\_\_\_\_  
XXXXXX, Director  
Department of Public Utilities

Date: \_\_\_\_\_, 2022

Pursuant to Columbus City Council  
Ordinance No. xxxx-xxxx  
Passed [DATE]

***IN WITNESS WHEREOF***, this Modification has been duly executed and delivered for, in the name of, and on behalf of the City, PFK, and Tamarack by their duly authorized officers on the dates set forth beneath their respective signatures, but effective as of the Effective Date.

**Mineral Lessee**

***(which has executed this Agreement for the sole purpose of being bound by the terms of Sections 3.05 and 6.04):***

**THE OLEN CORPORATION,**  
an Ohio corporation

By: \_\_\_\_\_  
Kenneth W. Holland, President

Date: \_\_\_\_\_, 2022

**REVISED EXHIBIT D**

**Mining/Development Plan – REVISED 11-21-21**

See attached.