FUNDING AGREEMENT
City Manager’s Office
701 Laurel St., Menlo Park, CA 94025
tel 650-330-6620

This Funding Agreement ("Agreement") is made this 14th day of August, 2017
("Execution Date") by and between the City of Menlo Park ("City") and Menlo Gateway, LP, a California
limited partnership ("Bohannon"), each of which is referred to herein individually as "Party" and jointly as
"Parties."

RECITALS:

WHEREAS, the City received an application from Bohannon to redevelop the properties located at 101-155
Constitution Drive ("Property") by demolishing the existing buildings and developing the Property with two
eight-story office buildings and two parking structures (the "Development"); and

WHEREAS, the Property is adjacent to the existing City-owned Chrysler Stormwater Pump Station, located
at 1221 Chrysler Drive;

WHEREAS, the City has budgeted $6.2 million for the upgrade of the pump station. City staff and the City’s
consultant, Schaaf & Wheeler, have commenced design of the new Chrysler Stormwater Pump Station.

WHEREAS, in May 2016, Bohannon indicated a desire to influence the location and aesthetics of the new
pump station building, given its proximity to the Development;

WHEREAS, the City has determined that it would be mutually beneficial to collaborate with Bohannon
regarding the location and design of the pump station;

WHEREAS, Bohannon agrees to a one-to-one exchange of property as shown on Figure 1 for the
construction of the new pump station. The exchange of property allows the existing pump station to remain
in operation during the construction of the new pump station, avoiding the need to construct a temporary
pump station. The new location also pushes the pump station further back from Chrysler Drive, allowing for
more landscaping along the street and improving the aesthetics of the site.

WHEREAS, Bohannon has agreed to provide permanent and temporary easements required for the new
driveway, storm drain lines, and construction activities.

WHEREAS, Bohannon will be responsible for obtaining the Architectural Control permit for the pump station.
The City will obtain the Use Permit for the pump station generator and the Building Permit for the pump
station, with input from the Bohannon team as required.

WHEREAS, the Planning submittal is anticipated to occur in June 2017, with Planning approval anticipated
in July 2017. The building permit submittal is anticipated to be made in November 2017, with Building permit
approval anticipated by January 2018 for bidding of the project in February 2018. Construction is expected
to begin in May 2018.

WHEREAS, on May 2, 2017, the City Council approved a budget for the new pump station and authorized
the City Manager to execute an agreement for cost sharing with Bohannon for the new pump station.
WHEREAS, Bohannon has agreed to pay for and provide the architectural and structural design for the building exterior walls. The City will provide the mechanical, electrical, grading and structural design for the pump station. The conceptual plan of the building exterior is shown on Figure 2.

WHEREAS, to ensure a seamless and coordinated design, Bohannon’s architectural consultant, Heller Manus, will serve as a subconsultant to Schaaf & Wheeler.

WHEREAS, Bohannon has agreed to design the landscaping on the pump station site and will enter into maintenance agreements with the City to maintain both the landscaping and the pump station exterior walls.

WHEREAS, Bohannon shall have the right to opt out of the financial obligation to pay for the cost of constructing the exterior walls as set forth below.

NOW, THEREFORE, the Parties agree as follows:

SECTION 1: SCOPE OF WORK AND REPORTING

1.1 Bohannon shall be responsible for the following Scope of Work:

1.1.1 Obtain Architectural Control permit for the pump station, which includes the application fee, submittals to the Planning Division, and presentations to the Planning Commission and City Council, if necessary.

1.1.2 Preparation of architectural and structural design plans for the pump station building exterior walls. Bohannon will establish a contract with Schaaf & Wheeler to pay Heller Manus’s fees, as well as reasonable costs incurred by Schaaf & Wheeler for any additional work associated with the design of the pump station exterior walls.

1.1.3 Preparation of specifications for the pump station exterior walls that are coordinated with the overall pump station specifications.

1.1.4 Provide a cost estimate for the pump station exterior walls at the 60% design level to the City, at which time a decision shall be made to proceed or not with the proposed design of the exterior walls.

1.1.5 Respond to building permit questions that relate to the pump station exterior walls during the building permit process.

1.1.6 Provide responses to City consultants or contractors during the bidding process that pertain to the pump station exterior walls.

1.1.7 Pay for the cost of construction and any change orders issued that are related to the exterior walls of the pump station.

1.1.8 Provide construction administration services or any professional service and/or other contracts as necessary, such as review of submittals, inspection, special testing, and preparation of punch list items that expressly pertain to the pump station exterior walls.

1.1.9 Provide landscaping plans for the pump station, which shall be prepared by a licensed landscape architect. The landscaping design shall include the fine grading up to the building walls. In addition, the extent of landscaping shall be minimal and accommodate access routes to the pump station and the numerous underground storm drain lines. The plans shall be submitted to the City for review and approval prior to installation of the landscaping by the City.
1.1.10 Enter into a separate agreement with the City for the maintenance of the landscaping area. The landscape maintenance agreement shall be executed prior to the completion of the pump station.

1.1.11 Enter into a maintenance agreement with the City for the pump station building exterior walls, which shall address, at a minimum, graffiti abatement, exterior finish, and paint. The pump station maintenance agreement shall be executed prior to the completion of the pump station.

1.1.12 Pay the cost of and relocate/adjust the existing temporary underground PG&E utility box (vault #7, as shown on Figure 1) as necessary to meet PG&E and the City’s requirements, while accommodating the proposed access road to the pump station. The placement of the utility box may require the design and construction of a retaining wall along the pump station access road, which shall be paid by Bohannon.

1.2 The City shall be responsible for the following Scope of Work:

1.2.1 Design and construction of the pump station, including electrical, mechanical and other equipment, foundation, retaining walls, substructure, and pipes and related infrastructure (including relocating the storm drain lines). In addition, the City will be responsible for fine grading according to the landscaping plans prepared by Bohannon.

1.2.2 Obtain the Use Permit for the pump station generator and PG&E permit for the transformer.

1.2.3 Prepare bid plans and specifications and incorporate specifications for the exterior wall (provided by Bohannon) into the pump station specifications.

1.2.4 Prepare an itemized bid form which will be utilized for the 60% cost estimate.

1.2.5 Prepare a 60% cost estimate, not including the estimate for the exterior walls, which will be provided by Bohannon.

1.2.6 Obtain building permit for the pump station and pay all building permit fees.

1.2.7 Bid and award the contract in accordance with City standard procedures for public works projects, subject to bids being within approved budget.

1.2.8 Provide construction inspection and project management until completion of the pump station.

SECTION 2: PROPERTY EXCHANGE AND EASEMENTS

2.1 The Parties will effectuate a lot line adjustment to exchange equivalently sized parcels as outlined on Figure 1. Bohannon agrees to prepare a deed that will transfer title of property from Bohannon to the City, and prepare a deed to transfer title of property from City to Bohannon. The deeds and lot line adjustment shall be recorded by March 1, 2018.

2.2 Bohannon agrees to provide the City with necessary easements, including temporary construction easements, permanent drainage easements for each of the storm drain lines crossing the Constitution site, and permanent ingress/egress easements which will allow the City to construct the pump station. These easements shall be recorded prior to commencement of construction, after
the deeds and lot line adjustment have been recorded.

2.3 Bohannon agrees to make good faith efforts to procure a demolition permit and commence demolition of 155 Constitution Drive by February 28, 2018. The time for performance of this obligation shall be extended, where delays or failures to perform are due to circumstances or factors beyond the reasonable control, or without the fault, of Bohannon. If a delay occurs, Bohannon shall use reasonable efforts to promptly notify the City of the delay. The time period for performance under this Agreement may also be extended in writing by the joint agreement of the City and Bohannon.

SECTION 3: ACCESS TO RECORDS AND RECORD RETENTION

At all reasonable times, Bohannon will permit, upon request, the City to access and use all reports, designs, drawings, plans, specifications, schedules and other materials prepared, or in the process of being prepared, for the work by Bohannon or any contractor or consultant of Bohannon. Bohannon will provide copies of any documents and Autocad drawings described in this Section to the City upon request and the City may use them for construction of the work without further approval from Bohannon or its consultants. Bohannon and the City will retain all records pertaining to the work for at least three years after completion of the Work.

SECTION 4: FUNDING AND PAYMENT

4.1 Bohannon agrees to pay the City for the actual cost of the design and construction of the exterior wall to the pump station, excluding overhead, profit, and general conditions. Upon commencement of construction of the project, the City shall provide Bohannon with monthly invoices for the costs incurred by the City during the previous calendar month for its performance of the pump station exterior walls. Each invoice shall itemize and allocate costs consistent with the pre-approved line item breakdown, and identify which costs are the responsibility of Bohannon. Within fifteen (15) days of Bohannon’s receipt of the Invoice, Bohannon shall pay to the City Bohannon’s Reimbursement. If Bohannon disputes the City’s allocation of costs to Bohannon, Bohannon may provide the City a notice disputing the correctness of the allocation within 10 days of receiving the monthly invoice. The Parties further agree to work together in good faith to informally resolve any such dispute. If the dispute has not been settled by agreement within 30 days after Bohannon delivers a dispute notice, then Bohannon may submit the dispute to arbitration in accordance with the commercial rules of the American Arbitration Association for final resolution.

4.2 In the event there are unforeseen conditions that occur during the construction of the project, the City will reasonably determine whose cost they are attributed to depending on which line items are affected, as follows: (i) if the unforeseen conditions occur in or are attributable to the pump station exterior walls, Bohannon will be fully responsible for any cost increases associated with such unforeseen conditions; and (ii) if the unforeseen conditions occur in or are attributable to the City’s scope of work, then the City will be fully responsible for the cost increases associated with such unforeseen conditions.

SECTION 5: TERM
5.1 The term of this Agreement will commence on the Execution Date and conclude upon Bohannon's final payment to the City upon the successful completion of the project (the "Term"), and completion of all work required by Bohannon as defined in the Scope of Work.

5.2 At the 60% design development drawings, the City shall prepare an itemized cost estimate for the pump station and include Bohannon's estimate for the exterior walls. All line items associated with the building exterior walls will be paid by Bohannon. All other items, including overhead, profit, and general conditions, will be paid by the City.

5.3 Bohannon will have a maximum of 15 days from the date of the 60% estimate to opt out of the financial cost of funding the exterior walls if the estimated cost exceeds $500,000 (not including contingency). If the estimated cost is below $500,000 (not including contingency) Bohannon shall be obligated to fulfill the terms of this agreement. Bohannon may opt out by notifying the City in writing.

5.4 If the estimated cost of exterior walls exceeds $500,000 (not including contingency) and Bohannon notifies the City in writing that they are opting out of the financial funding of the exterior walls, Bohannon agrees to pay the City all extra costs to modify the plans and obtain Planning Commission approval for an exterior design similar in quality to the Sharon Heights Water Pump Station.

5.5 The opting out of the financial funding of the exterior walls does not alter the requirements of Sections 1.1.9, 1.1.10, 1.1.12, 2.1 or 2.2 of this Agreement pertaining to the exchange of property, providing of easements, and design and maintenance of the landscaping.

5.6 If the cost of the City portion of the Pump Station exceeds $6.2 Million the City may elect not to award the contract and may modify the design to meet the approved budget, in which case this Agreement shall terminate.

SECTION 6: INDEMNIFICATION AND INSURANCE

6.1 Bohannon agrees, while engaged in the work provided for in this Agreement, to place and maintain suitable safeguards sufficient to prevent injury to any persons and to indemnify, defend and save harmless the City, its officers, representatives, and employees from and against any and all claims for loss, injury or damage resulting from the prosecution of said work except to the extent any claim arises out of the negligence or willful misconduct of the City.

6.2 City agrees, while engaged in the work provided for in this Agreement, to place and maintain suitable safeguards sufficient to prevent injury to any persons and to indemnify, defend and save harmless Bohannon, its officers, representatives, and employees from and against any and all claims for loss, injury or damage resulting from the prosecution of said work except to the extent any claim arises out of the negligence or willful misconduct of Bohannon.

SECTION 7: MISCELLANEOUS

7.1 Notices. All notices required or permitted to be given under this Agreement must be in writing and mailed postage prepaid by certified or registered mail, return receipt requested, or by personal delivery or overnight courier to the appropriate address indicated below or at such other place(s) that either Party may designate in written notice to the other. Notices are deemed received upon delivery if personally served, one day after mailing if delivered via overnight courier, or two days after mailing if mailed as provided above.
7.2 No Waiver. No waiver of any default or breach of any covenant of this Agreement by either Party will be implied from any omission by either Party to take action on account of such default if such default persists or is repeated. Express waivers are limited in scope and duration to their express provisions. Consent to one action does not imply consent to any future action.

7.3 Assignment. The Parties are prohibited from assigning, transferring or otherwise substituting their interests or obligations under this Agreement without the written consent of all other Parties, provided however, Bohannon shall have the right to assign this Agreement to an affiliated entity of Bohannon that is the owner of the Property without the prior approval or consent of the City.

7.4 Governing Law. This Agreement is governed by the laws of the State of California as applied to contracts that are made and performed entirely in California.

7.5 Compliance with Laws. In performance of this Agreement, the Parties must comply with all applicable Federal, State and local laws, regulations and ordinances.

7.6 Modifications. This Agreement may only be modified in a writing executed by both Parties.

7.7 Attorneys' Fees. In the event legal proceedings are instituted to enforce any provision of this Agreement, the prevailing Party in said proceedings shall be entitled to its costs, including reasonable attorneys' fees.

7.8 Relationship of the Parties. It is understood that this Agreement does not create the relationship of agent, servant, employee, partnership, joint venture or association between the parties.

7.9 Ownership of Work. All reports, designs, drawings (including Autocad files), plans, specifications, schedules, studies, memoranda, and other documents assembled for or prepared by or for, in the process of being assembled or prepared by or for, or furnished to Bohannon under this Agreement are the property of the City. The City may use all reports, designs, drawings (including Autocad files), plans, specifications, schedules, studies, memoranda, and other documents assembled for or prepared by or for under this agreement with Bohannon to construct the work. The Parties are entitled to copies and access to these materials during the progress of the work and upon completion or termination of the work or this Agreement. Bohannon may retain a copy of all material produced under this Agreement for its use in its general activities.

7.10 Warranty of Authority to Execute Agreement. Each Party to this Agreement represents and warrants that each person whose signature appears hereon is authorized and has the full authority to execute
this Agreement on behalf of the entity that is a Party to this Agreement.

7.11 Severability. If any portion of this Agreement, or the application thereof is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining portions of this Agreement, or the application thereof, will remain in full force and effect.

7.12 Counterparts. This Agreement may be executed in counterparts.

7.13 Entire Agreement. This Agreement constitutes the entire agreement between the parties pertaining to its subject matter and supersedes any prior or contemporaneous written or oral agreement between the parties on the same subject.

(Signatures on following page)
IN WITNESS WHEREOF, the Parties have hereunder subscribed their names the day and year indicated below.

MENLO GATEWAY, LP
a California limited partnership

By: Bohannon Development Company, a California corporation, its General Partner

By: __________________________________________
Name: Robert L. Webster
Title: President and CEO

CITY OF MENLO PARK, a municipal corporation

APPROVED AS TO FORM:

__________________________________________
William L. McClure, City Attorney

CITY OF MENLO PARK:

Signature

__________________________________________
Alex D. McIntyre
Name

ATTEST:

__________________________________________
City Clerk, City of Menlo Park

Date

8/8/17

Date

8/10/17

City Manager
Title

8/14/17

Attachments:  Figure 1 Site Plan

Figure 2 Building Schematic