THIS AGREEMENT (the “Agreement”), is made and entered into as of August 3, 2017 (“Effective Date”), by and between the CITY OF MENLO PARK, a California municipal corporation (the “City”), and BOHANNON MG, LLC, a California limited liability company (“Bohannon”). The City and Bohannon are sometimes referred to herein individually as a “Party,” and jointly as the “Parties.”

RECITALS:

WHEREAS, Bohannon is the project sponsor and lead developer of the Menlo Gateway Project, located at 100 to 190 Independence Drive and 101 to 155 Constitution Drive within City of Menlo Park, County of San Mateo, State of California (the “Property”).

WHEREAS, on December 7, 2010, the City conditionally approved the Menlo Gateway Project (the “Project”). On May 4, 2015, the City’s Planning Commission approved certain changes to the Project which were found to be substantially consistent with the original Project. As approved, the Project consists of two phases including an office building, parking structure, hotel, and fitness facility to be located at 100 to 190 Independence Drive (the “Independence Phase”), and two office buildings and two parking structures to be located at 101 to 155 Constitution Drive (the “Constitution Phase”).

WHEREAS, the Conditional Development Permit for the Project requires Bohannon to construct certain streetscape improvements. Specifically, Condition 8.31 requires Bohannon to install new sidewalks between the Independence office building and the intersection of Independence Drive and Constitution Drive (the “Bohannon Streetscape Improvements”), including new curb and gutters along the freeway frontage, landscaping, and light poles.

WHEREAS, as part of its street maintenance obligations, the City is responsible for the reconstruction and resurfacing of the same portion of Independence Drive that will be affected by the Bohannon Streetscape Improvements, which is anticipated to include grind and overlay work that is outside the scope of Bohannon’s obligations under the Project approvals (the “City Work”).

WHEREAS, the Parties recognize that it would be more efficient, less disruptive, and more cost-effective for Bohannon to construct the City Work at the same time as the Bohannon Streetscape Improvements. The City has agreed to allow Bohannon to perform the City Work in exchange for a credit against future building construction road impact fees that will be assessed against the Constitution Phase of the Project.

NOW, THEREFORE, in consideration of the mutual covenants and promises of the Parties herein contained, the Parties agree as follows:
1. **Bohannon’s Obligations.** Bohannon agrees to furnish at its own expense all the labor, material, equipment and inspection services necessary to complete, within one year from the date of this Agreement, the City Work, comprising the approximately 5,650 square foot “CITY GRIND AND OVERLAY” area described in Exhibit A, according to the plans and specifications prepared for said improvements and in compliance with City standards and to the satisfaction of the City Engineer. Bohannon will also complete the Bohannon Streetscape Improvements along Independence Drive, and shown as the approximately 2,505 square foot “ORIGINAL SAWCUT AREA” and the approximately 3,205 square foot “NEW SAWCUT AREA” described in Exhibit A. Bohannon or Bohannon’s consultants shall prepare the design plans and specifications for construction of the City Work, which shall be approved by the City. Bohannon shall also take any and all actions necessary to timely complete construction of the City Work, and further agrees that, in performing the City Work, shall, at its sole cost and expense: (i) employ a contractor and subcontractor(s) that are licensed by the State of California and have obtained all necessary building and other governmental permits and licenses required in connection with the City Work; and (ii) perform all City Work in accordance with the Plans and Specifications and with all applicable building codes, ordinances, laws and regulations of the City and of the State of California in effect at the time the permits for the City Work are issued, in a manner consistent with the terms and conditions of this Agreement, and in accordance with sound engineering and construction practices.

2. **Building Construction Road Impact Fee Credit.** Bohannon and City agree that upon completion of the City Work, Bohannon shall be entitled to a credit against future building construction road impact fees assessed against the Constitution Phase of the Project in the amount of $73,825.00, which represents the costs that would be incurred by the City if it were to perform the City Work instead of Bohannon.

3. **Term.** This Agreement, and the obligations herein, shall become effective commencing on the Effective Date and shall terminate upon the completion of the City Work and the City’s confirmation that it has applied Bohannon’s Reimbursement as a credit against Bohannon’s Building Construction Street Impact fees. This Agreement may also be terminated at any time upon written mutual agreement of the Parties.

4. **Indemnification.** Bohannon shall indemnify and hold harmless City, and City’s respective representatives, contractors, agents, tenants, customers, invitees, vendors and subtenants from and against any claims, damages, actions, penalties, liabilities or judgments, including attorneys’ fees and costs of litigation, arising out of or related to the actions or inactions of Bohannon relating to performance of the City Work and the other obligations of Bohannon hereunder, which covenant shall survive expiration or earlier termination of this Agreement.

5. **Insurance.** Bohannon agrees to maintain comprehensive public liability and property damage insurance naming the City, its officers, agents, and employees as additional insured in a combined single limit of $1,000,000 for the death and injury of any persons in any one occurrence; and for property damage in any one occurrence. A certificate of said insurance policy shall be filed with the City.

6. **Notices.** Any notice to either Party shall be in writing and given by delivering the notice in person or by sending the notice by registered or certified mail or express mail, return receipt requested with postage prepaid, to the Party’s mailing address. The respective mailing addresses of the Parties are, until changed, the following:

   **To Bohannon:**
   Bohannon MG, LLC
   Sixty 31st Avenue
San Mateo, California 94403-3404
Attn: Robert Webster

To the City:
City of Menlo Park
701 Laurel Street
Menlo Park, CA 94025-3409
Attn: Public Works Director

With a Copy to:
City of Menlo Park
1100 Alma Street, Suite 210
Menlo Park, CA 94025
Attn: City Attorney

Either Party may change its mailing address at any time by giving ten (10) days' notice of such change in the manner proved in this paragraph. All notices shall be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.

7. Severability. In the event any one or more of the provisions of the Agreement shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable, the remaining provisions of the Agreement shall remain in effect and the Agreement shall be read as though the offending provision had not been written or as the provision shall be determined by such court to be read.

8. Governing Law. This Agreement is made under, shall be governed by and construed in accordance with the laws of the State of California.

9. Further Assurances. Each Party covenants, on behalf of itself and its successors and assigns, to take all actions and do all things, and to execute, with acknowledgment or affidavit if required, any and all documents, instruments and writings as may be necessary or proper to achieve the purposes and objectives of the Agreement.

10. Attorney's Fees. In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs of such litigation.

PARTY
Bohannon MG, LLC,
a Delaware limited liability company

By: Menlo Gateway, LP,
a California limited partnership,
its sole member

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

[Signature]

Date: 7/26/7

Robert L. Webster
Name

President
Title
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

8/1/17

Date

8/1/17

City Manager
Title

Date

8/3/17
EXHIBIT A
(Independence Arc Pavement Exhibit)