

EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT
(APN 167-39-032)

This Exclusive Negotiating Rights Agreement (the "Agreement") is entered into as of this February 10, 2017 by and among the **City of Los Altos** (the "City"), **New Venture Fund, Inc.** on behalf of its project the **First Street Green Park Foundation** (the "Foundation"), and **Los Altos Holdings, LLC** (the "Developer") on the basis of the following facts:

RECITALS

A. The City is the owner of an approximately one (1) acre parcel of real property in the City of Los Altos commonly referred to as "Parking Plaza 7" (APN 167-39-032), as shown on the map attached to this Agreement as Exhibit A and incorporated herein by this reference (the "City Property"). The City Property is currently improved with approximately 126 surface-level parking spaces and various other City improvements such as trees, landscaping and lighting.

B. The Developer is the owner of eight parcels along First Street in downtown Los Altos, approximately one acre in size (the "Developer Property"), which are adjacent to the City Property. The Developer has proposed to redevelop the Developer Property with a new commercial or mixed-use building with sufficient on-site parking to serve the proposed development (the "Commercial Project"). The Developer understands that the City must approve certain discretionary entitlements to allow development of the proposed Commercial Project, and that the City has not yet committed to approving any such entitlements. The Developer further understands that the City is not committing by virtue of this Agreement to any disposition of the City Property.

C. The fiscal sponsor for the Foundation will be the New Venture Fund, which is an existing IRS Code section 501(c)(3) non-profit corporation. The Foundation desires to improve, for the benefit of the public, a portion of the adjacent City Property with (i) a public park located at grade, and (ii) replacement parking that may be integrated with the Commercial Project (the "Park Project"). The Foundation would replace the existing parking spaces currently on the surface of the City Property with an appropriate number of parking spaces, at a minimum of a one to one ratio, in a new location subject to the City and the Foundation's approval. The City and the Developer may jointly decide to investigate the City's use of the Developer Property as a means to facilitate the Park Project, including, but not limited, to the following potential items: easements and utilities, parking integration, structural integration, or construction synergies.

D. If the City, following environmental review pursuant to the California Environmental Quality Act ("CEQA"), approves the required entitlements, the Foundation will fund the development of the proposed Park Project without the use of any City funds. Notwithstanding the foregoing, if the City desires to increase the size or scope of the Park Project as proposed by the Developer on the City Property, the City understands that neither the Foundation nor the Developer would fund the entire larger development.

E. The City is interested in exploring the feasibility of making the City Property available for the Park Project, possibly through a master project agreement, ground lease, license agreement, statutory development agreement, and/or other agreements and arrangements (generally referred to herein as a “master agreement”), in consideration for the Foundation’s design and construction of a public park on that property and replacement parking in an approved location.

F. The purpose of this Agreement is to establish procedures and standards for the negotiation by the City, the Developer, and the Foundation regarding the master agreement and form of property conveyance documents (e.g., a “lease/lease back”), license agreement, or other arrangement that would facilitate the development of the Park Project on the City Property. As more fully set forth in Section 7, the Developer acknowledges and agrees that this Agreement in itself does not grant the Developer the right to develop any part of the Commercial Project, and the Foundation acknowledges and agrees that this Agreement in itself does not grant the Foundation the right to develop the Park Project, nor does it obligate the Foundation or the Developer to undertake any activities or incur costs to develop any part of the Park Project, except for the preliminary analysis and negotiations contemplated by this Agreement. The City further acknowledges and agrees that nothing in this Agreement commits the Foundation to develop the Park Project or otherwise take any action with respect to the City Property. The Parties agree that this Agreement does not obligate Developer or the Foundation to pay any funds to the City, other than the Deposit and Additional Deposit (if any) discussed in Section 4 herein.

G. The Parties acknowledge that nothing in this Agreement limits the City’s discretion with respect to any of the entitlements that are required to develop the proposed Commercial Project and Park Project, and that the City is not making any commitment to approve any portion of either Project. Each of the Projects shall undergo environmental review, in full compliance with CEQA, and nothing in this Agreement limits the City’s discretion to determine the type of CEQA review required for any portion of either Project, nor limit the City’s discretion to refuse to approve and/or certify any CEQA document(s) prepared to analyze the impacts of the same.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties mutually agree as follows:

EXCLUSIVE NEGOTIATIONS RIGHT

1. Good Faith Negotiations. The City and the Foundation shall negotiate diligently and in good faith, during the Negotiating Period described in Section 2, the terms of the master agreement to allow the use of the City Property for the development of the Park Project. As described in Recital C, to the extent the Developer Property is used to facilitate the Park Project, the City and the Developer shall negotiate diligently and in good faith, during such Negotiating Period, the terms relating to the Commercial Project. During the Negotiating Period, the parties shall use good faith efforts to accomplish the respective tasks outlined herein in Exhibit B to facilitate the negotiation of mutually satisfactory agreements.

2. Negotiating Period. The negotiating period (the “Negotiating Period”) under this Agreement shall be ten (10) months as more fully set forth in Exhibit B, commencing on the date of this Agreement. The Negotiating Period shall be extended for a period of an additional two periods of five (5) months each, if either the Foundation or the Developer presents a written request to the City, and the City agrees to and accepts. Following the expiration of the second five (5) month extension, the City Manager has the authorization to agree, upon written request from either the Foundation or the Developer, to any number of additional five (5) month extensions to the Negotiating Period. The City Manager shall respond to any such written request, in writing, within fourteen (14) days of receiving the request. The City Manager shall not unreasonably withhold approval of any such request for additional extension(s) of the Negotiating Period. However, at the City Manager’s discretion, such request may be referred to the City Council, and the City Manager shall have an appropriate period of time to agendaize the request before the City Council.

If a master agreement regarding the use of the City Property has not been executed by the City, the Developer, and the Foundation prior to the expiration of the Negotiating Period, then this Agreement shall terminate and no party shall have any further rights or obligations under this Agreement, except as set forth in Section 4. If a master agreement is executed by the City, the Developer, and the Foundation, upon such execution, this Agreement shall terminate, and all rights and obligations of the parties shall be as set forth in the executed master agreement.

During the Negotiating Period, as part of the negotiation of a master agreement allowing the use of the City Property, if applicable, and in order to vest development rights, the City and the Foundation may also negotiate the terms of a statutory development agreement pursuant to California Government Code sections 65865 *et seq.* (“Development Agreement”) for the development of the Park Project. To the extent the Developer Property is used to facilitate the Park Project, as outlined in Recital C, the Developer and the City may negotiate such an agreement for the Commercial Project. This Agreement does not obligate the City to approve any portion of either Project. The Development Agreement would only be approved if the City Council approves all necessary entitlements, following the City’s CEQA review of the same, and determines that approval of such Project is in the City’s best interest. The City expressly retains all its discretion and reserves all rights with respect to the approval or denial of proposed entitlements, CEQA review, and potential Development Agreement.

3. Exclusive Negotiations. During the Negotiating Period, the City shall not negotiate with any entity, other than the Foundation and the Developer, regarding development of the City Property, solicit or entertain bids or proposals to do so, or make any modifications to the current use of the City Property.

4. City Costs and Foundation Deposits. The Foundation and the Developer acknowledge that the City will expend resources in the negotiation of the master agreement and performance of the tasks provided in Exhibit B. The Foundation and the City agree the amount that the Foundation shall submit to the City as a good faith and initial deposit for costs associated with the planning, design, and engineering consultant(s) and attorneys’ fees is the initial sum of \$25,000 (the “Deposit”). If the City requires any other deposits as set forth in this section, the combined total shall not exceed \$75,000 without City Council approval. The Deposit will be paid within fifteen (15) days following full execution of this Agreement by the City and the Foundation.

The Deposit shall be provided in the form of a cashier's check made to the order of the City and be placed in a separate City deposit account. Any interest earned on the Deposit and any subsequent deposits shall be added to the total Deposit amount and may be used in accordance with this Agreement. The City shall have no obligation to begin the negotiation of the master agreement or to retain outside legal counsel or consultant(s) until the Foundation delivers the Deposit to the City.

Within thirty (30) days following full execution of this Agreement, the City, the Foundation, and the Developer shall complete a budget estimate for all costs and expenses associated with the tasks set forth in Exhibit B, which shall include costs and expenses associated with "Transaction Documents" and "Consultant Costs" (defined below) and shall determine the amount of any additional deposit (referred to herein as the "Additional Deposit") needed to pay or reimburse the City for completion of the tasks set forth in Exhibit B. The Additional Deposit, if any, shall be a "not to exceed" amount under which the Foundation's obligation to pay or reimburse the City for the tasks set forth in Exhibit B shall not exceed the Additional Deposit amount. The Additional Deposit amount (if any) shall be memorialized in writing by the Foundation, and City Manager, and if no Additional Deposit amount is required, the same shall be memorialized in writing by the Foundation and City Manager. The Additional Deposit (if any) shall be placed in the same separate City deposit account as the Deposit.

For the period of five (5) months following the date of full execution of the Agreement ("Due Diligence Period"), the Deposit and Additional Deposit (if any) shall be fully refundable to the Foundation, except for any costs or expenses incurred by the City as described below. The Due Diligence Period may be shortened at the Developer and the Foundation's sole discretion.

The Deposit and Additional Deposit (if any) may be used by the City to pay and reimburse the City's reasonable costs and expenses in negotiating and preparing the master agreement, ancillary documents, and planning, design, engineering and environmental review (collectively, the "Transaction Documents") consistent with the City's tasks provided in Exhibit B. Such costs and expenses may include reasonable fees and services of third party planning consultant(s) and attorneys, selected by the City, relating to the preparation of the Transaction Documents ("Consultant Costs"). This Agreement only obligates the Foundation to pay or reimburse the City for the costs and expenses, including Consultant Costs, that the City actually incurs, at the hourly rates that the Consultant(s) would charge the City absent the Foundation's involvement.

The Foundation, in its reasonable discretion, shall approve or disapprove Consultant Costs within seven (7) days following the City's submittal of the Consultant Costs. It shall be reasonable for the Foundation to disapprove any Consultant Costs that are not consistent with the budget estimate covered by the Additional Deposit (if any) or not consistent with the tasks identified in Exhibit B. Following the performance of a consultants' work, the Foundation has the right to review the consultants' invoices to verify the actual costs, and potentially address any disputes with the City and/or directly with the consultant(s).

To the extent this Agreement is terminated prior to or as of the end of the Negotiating Period, and the City has incurred Consultant Costs that are less than the Deposit and Additional Deposit (if any), the City shall return the unexpended balance of the Deposit and Additional

Deposit (if any) to the Foundation along with an accounting of the Consultant Costs incurred by the City within ninety (90) days after the termination date.

To the extent that the Developer and the City determine that Additional Deposits are required to reimburse the City for the City's Costs relating to the Commercial Project, versus the Park Project, the Developer shall, per the provisions of this section, provide those deposits.

5. Identification of Developer and Foundation Representative. The representative of the Foundation and the Developer to negotiate the master agreement with the City is Kelly Snider, Manager, Los Altos Holdings, LLC.

NEGOTIATION TASKS

6. Overview. To facilitate negotiation of the master agreement, the parties shall use reasonable good faith efforts to accomplish the tasks set forth in this Exhibit B in a timeframe that will support negotiation and execution of a mutually acceptable master agreement prior to the expiration of the Negotiating Period.

7. Environmental Review. Nothing in this Agreement shall be construed to compel the City to approve or make any particular findings with respect to any environmental documentation that is prepared, pursuant to CEQA, for any portion of either Project. The City retains its full discretion to refuse to approve any CEQA document prepared to analyze the environmental impacts of the Park Project, Commercial Project, or both.

8. Site Access. No later than five (5) days following approval of this Agreement, the Developer and the City will enter into a separate agreement to provide the Developer, the Foundation and their respective consultants with rights to enter, examine and conduct tests on the City Property with a City approved encroachment permit. Any interference with circulation, access or parking on the City Property shall be approved by the City at least 72 hours in advance.

9. Reports. The Developer and the Foundation shall provide the City with copies of relevant reports, studies, analyses and similar documents, excluding confidential or proprietary information, prepared or commissioned by the Developer or the Foundation with respect to this Agreement, promptly upon their completion. The City shall promptly provide the Developer and the Foundation with copies of relevant reports, studies, analyses and similar documents (collectively, "City Documents") prepared or commissioned by the City with respect to this Agreement and the development of the City Property, following execution of this Agreement with respect to documents then in its possession or under its reasonable control, and upon their completion with respect to any subsequently prepared documents.

While desiring to preserve its rights with respect to treatment of certain information on a confidential or proprietary basis, the Developer and the Foundation acknowledge that the City will need sufficient, detailed information about the proposed Park Project to make informed decisions about the content and approval of the master agreement making the City Property available for the Park Project. The City will work with the Developer to maintain the confidentiality of proprietary information subject to the requirements imposed on the City by the Public Records Act (Government Code sections 6253 *et seq.*). The Developer and the Foundation acknowledge that the City may share information provided by the Developer and the Foundation of potential

proprietary nature with third party consultants and City Council members as part of the negotiation and decision making process. If this Agreement is terminated without the execution of a master agreement relating to the City Property, the City shall return to the Developer and the Foundation any information submitted by them under this Agreement.

The Parties agree that the master agreement shall provide that the Developer or the Foundation as appropriate, at all times, remains the sole owner of the architectural drawings (*e.g.*, floor plans, elevations, landscape architecture), engineering, and any other documents generated by Developer or its consultants or contractors for any portion of either Project. The City expressly agrees that if a master agreement is not executed, or the City does not approve any portion of either Project, all of such plans, architectural drawings (*e.g.*, floor plans, elevations, landscape architecture), engineering, and any other documents relating to any portion of either Project, including the Foundation's proposed Park Project, that were generated by the Developer, the Foundation or their respective consultants or contractors shall remain the sole property of the Developer or the Foundation, as appropriate, and all copies of the same shall be returned to the Developer and the Foundation or destroyed, if they have not been released to the public by the Developer or the Foundation or otherwise in accordance with this Agreement prior to this time.

10. Progress Reports. All parties shall make monthly oral or written progress reports advising the other parties on studies being made and matters being evaluated by the reporting party with respect to this Agreement and either Project.

GENERAL PROVISIONS

11. Limitation on Effect of Agreement. This Agreement shall not obligate the City, the Foundation or the Developer to enter into a master agreement, lease agreement, license agreement or similar agreement regarding the use of the City Property for the Park Project, or to enter into any particular agreement. By execution of this Agreement, the City is not committing itself to or agreeing to undertake acquisition, disposition, or exercise of control over any property. Execution of this Agreement by the City is merely an agreement to conduct a period of exclusive negotiations in accordance with the terms hereof, reserving for subsequent City and City Council action the final discretion and approval regarding the execution of a master agreement, lease agreement, license agreement or similar agreement and all proceedings and decisions in connection therewith. Any master agreement or other agreement resulting from negotiations pursuant to this Agreement shall become effective only if and after such agreement has been considered and approved by the City Council and executed by the Foundation and Developer, as appropriate.

12. Notices. Formal notices, demands and communications between the City and the Developer shall be sufficiently given if, and shall not be deemed given unless, dispatched by certified mail, postage prepaid, return receipt requested, or sent by express delivery or overnight courier service, to the office of the parties shown as follows, or such other address as the parties may designate in writing from time to time:

City:	City of Los Altos 1 N. San Antonio Rd. Los Altos, CA 94022 Attention: City Manager
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Developer: Los Altos Holdings, LLC
171 Main Street, #259
Los Altos, CA 94022
Attention: Janos Libor, Manager

Foundation: First Street Green Park Foundation
c/o its Fiscal Sponsor
New Venture Fund, Inc.
1201 Connecticut Avenue NW, Suite 300
Washington, DC 20036
Attention: Wilbur Priester, Chief Financial Officer

Such written notices, demands and communications shall be effective on the date shown on the delivery receipt as the date delivered or the date on which delivery was refused.

13. Costs and Expenses. Except for the Foundation's obligation to fund certain City Consultant Costs under Section 4 above, each party shall be responsible for its own costs and expenses in connection with any activities and negotiations undertaken in connection with this Agreement, and the performance of each party's obligations under this Agreement.

14. No Commissions. The City shall not be liable for any real estate commissions or brokerage fees that may arise from this Agreement or any master agreement, lease agreement, or similar agreement that may result from this Agreement. The City represents that it has engaged no broker, agent or finder in connection with this transaction, and the Developer shall defend and hold the City harmless from any claims by any broker, agent or finder retained by the Developer or the Foundation.

15. Defaults and Remedies.

(a) Default. Failure by any party to negotiate in good faith as provided in this Agreement shall constitute an event of default hereunder. The non-defaulting party shall give written notice of a default to the defaulting party, specifying the nature of the default and the required action to cure the default. If a default remains uncured thirty (30) days after receipt by the defaulting party of such notice, the non-defaulting party may exercise the remedies set forth in subsection (b).

(b) Remedies. In the event of an uncured default by any party, the non-defaulting party's sole remedy shall be to terminate this Agreement, upon which termination the Foundation shall be entitled to the return of the uncommitted portion of the Deposit and Additional Deposit (if any) and any interest earned thereon. Following such termination and the return of the appropriate amount of the Deposit or Additional Deposit (if any) and any interest earned thereon, neither party shall have any further right, remedy or obligation under this Agreement.

Except as expressly provided above, no party shall have any liability to the other for damages or otherwise for any default, nor shall either party have any other claims with respect to performance under this Agreement. Each party specifically waives and releases any such rights or claims they may otherwise have at law or in equity.

16. Nonliability of Officials, Officers, Members, and Employees. No member, official, officer, or employee of any party shall be liable to the other party, or any successor in interest, in the event of any default or breach by either party, or for any amount which may become due to any party or to its successor, or on any obligations under the terms of this Agreement.

17. Assignment. The Developer and the Foundation may assign their respective interests in this agreement to any related entity without the City's consent. The Developer and the Foundation must inform the City of any assignment in writing.

18. No Attorney's Fees. The prevailing party in any action to enforce this Agreement shall not be entitled to recover reasonable attorneys' fees and costs from the other parties (including fees and costs in any subsequent action or proceeding to enforce or interpret any judgment entered pursuant to an action on this Agreement). Each party shall bear its own costs and fees.

19. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

20. Entire Agreement. This Agreement constitutes the entire agreement of the parties regarding the subject matters of this Agreement.

21. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, this Agreement has been executed by the parties on the date first above written.

[Signatures on next page]


APPROVED AS TO FORM:

CITY:

CITY OF LOS ALTOS,
a municipal corporation of the State of California


By: 
Name: Chris Jordan
Title: City Manager

Dated: 2/21/2017

By: 
Name: Jolie Houston
Title: City Attorney

Dated: 2-15-17

ATTEST:

By: 
Name: ~~Jan Logan~~ J. Logan
Title: ~~City Clerk~~ Deputy City Clerk

Dated: 2.21.2017

DEVELOPER:

LOS ALTOS HOLDINGS, LLC,
a limited liability company in the State of California

By: 
Name: Janos Libor
Title: Manager

Dated: Feb 10, 2017

FIRST STREET GREEN PARK FOUNDATION:

NEW VENTURE FUND, INC.

By: 
Wilbur Priester (Feb 10, 2017)
Name: Wilbur Priester
Title: Chief Financial Officer

Dated: Feb 10, 2017

EXHIBIT A
PROPERTY MAP
(APN:167-39-032)



EXHIBIT B

SCOPE OF WORK—DUE DILIGENCE & NEGOTIATING PERIODS

(Tasks may be modified by Developer in consultation with the City.)

I. INITIAL NEGOTIATION AND DUE DILIGENCE PERIOD—5 MONTH PERIOD (DEVELOPER MAY ELECT TO END DUE DILIGENCE PERIOD EARLIER THAN 5 MONTHS)

CITY

- Schedule regular meetings with Development staff of City Manager's Office;
- Begin environmental documentation required by CEQA;
- Facilitate meetings to review submittals for the Park Project (and Commercial Project to the extent the Developer Property is used to facilitate the Park Project) application(s) for required entitlements (*e.g.*, zoning change, subdivision, etc.) and circulation of Draft CEQA Analysis, if completed;
- Provide confirmation of all applicable City fees and costs, including parks fees;
- Arrange meetings for the negotiation of the master agreement regarding the use of the City Property; and
- Other tasks as appropriate to meet project goals.

FOUNDATION AND DEVELOPER

- Pay initial Deposit within 15 days of the execution of this Agreement in accordance with Section 4 of the same;
- Determine whether the City Property is suitable for Park Project. If, in the Foundation's judgment, the City Property is not suitable for development, the Foundation and the Developer may terminate the agreement, upon which time, the remaining balance of the Deposit and Additional Deposit (if any) shall be immediately refunded to the Foundation and this Agreement shall be terminated without further action of any party, and thereafter neither party shall have any further duties, obligations, rights, or liabilities under this Agreement. As part of its review of the suitability of the City Property, the Foundation may undertake the following tasks:
 - Review of site historical soils and subsurface data and information;
 - Preliminary analysis of geotechnical conditions of site surface and subsurface;
 - Preliminary analysis of site issues relative to endangered species and sensitive habitat;
 - Preliminary assessment of traffic and parking issues/constraints that may affect site development;

- Assessment of major public and private utility capacities and connections for providing service to the Park Project (and Commercial Project to the extent the Developer Property is used to facilitate the Park Project);
 - Assessment of site drainage and waterway issues that may affect site development;
 - Preliminary analysis of toxic and hazardous waste conditions throughout the City Property; and
 - Review of any site easements or other use restrictions that may affect site development.
- Review title and make any objections to title with respect to the City Property, if applicable;
 - Per the terms of Section 4 of this Agreement, discuss with the City any Additional Deposit that may be necessary to offset the costs for retention of further consultants within 30 days of the execution of this Agreement;
 - If subdivision of the City Property is necessary, prepare and submit to the City a proposed site plan identifying the size and shape of the parcels which comprise the City Property and the approximate location of the Park Project improvements to be constructed;
 - Prepare and submit a Scope of Development describing the approximate location of improvements throughout the Park Project (and Commercial Project to the extent the Developer Property is used to facilitate the Park Project);
 - Discuss with the City the phasing of the Park Project (and the Commercial Project to the extent the Developer Property is used to facilitate the Park Project);
 - Provide such information as may be required to enable the City to prepare or cause preparation and consideration of any CEQA-required document;
 - Prepare detailed schedule of performance for the Park Project (and the Commercial Project to the extent the Developer Property is used to facilitate the Park Project), including development of the City Property;
 - Identify key stakeholders;
 - Conduct and document Community Meetings for public input on site design and operations; and
 - Other tasks as appropriate to meet project goals.

II. PORTION OF THE NEGOTIATING PERIOD FOLLOWING THE CLOSE OF THE DUE DILIGENCE PERIOD—5 ADDITIONAL MONTHS WITH TWO POTENTIAL 5 MONTH EXTENSIONS

CITY

- Continue arranging necessary meetings to negotiate master agreement regarding the use of the City Property;

- If applicable, continue preparation of any CEQA-required document;
- Schedule Bicycle and Pedestrian Advisory Commission Hearing;
- Schedule Planning Commission Hearing;
- Schedule City Council Hearing;
- Provide necessary City financing documentation for public finance applications, if applicable;
- Negotiate terms for the City's maintenance and operation of the park improvements;
- If applicable, negotiate Development Agreement for the Park Project (and the Commercial Project to the extent the Developer Property is used to facilitate the Park Project); and
- Other tasks as appropriate to meet project goals.

FOUNDATION AND DEVELOPER

- Provide the City with a detailed schedule of performance for the development of the Park Project (and Commercial Project to the extent the Developer Property is used to facilitate the Park Project), which shall include, but not be limited to: a plan setting forth the proposed timeline for the preparation of development concepts, detailed phasing, community outreach and planning and environmental review/approval;
- If applicable, continue providing any information required to enable the City to prepare, or cause preparation and consideration of any CEQA-required document;
- Continue processing planning applications and obtain Planning and Development permits and tentative map;
- Create design development drawings;
- Pursue necessary financing commitments, if applicable;
- Negotiate terms for the City's maintenance and operation of the park improvements;
- If applicable, negotiate Development Agreement for Park Project (and Commercial Project to the extent the Developer Property is used to facilitate the Park Project); and
- Other tasks as appropriate to meet project goals.