REQUEST

Consideration of the mediated Settlement Agreement conditionally reached on August 23, 2016, with the Lieb family for City acquisition of nearly 10 acres of property for use as future park, agricultural, historical and open space purposes.

a. Approve Resolution to make findings that entering into said agreement is exempt under CEQA pursuant to CEQA Guidelines Section 15316;
b. Authorize to determine and fund a Phase II Environmental Analysis of the Lieb property for an amount not to exceed $45,000;
c. Approve resolution authorizing a budget amendment for $1,650,000 million for the Settlement Agreement and up to $45,000 to fund Phase II Environmental Analysis of the Lieb property; and
d. Approve the settlement agreement with the Lieb family conditional on Phase II environmental results.

RECOMMENDATION

Approve the resolution to make findings that entering into said agreement is exempt under CEQA pursuant to CEQA Guidelines Section 15316; Authorize to determine and fund a Phase II Environmental Analysis of the Lieb property for an amount not to exceed $45,000; Approve the resolution authorizing a budget amendment for $1,650,000 million for the Settlement Agreement and up to $45,000 to fund Phase II Environmental Analysis of the Lieb property; and Approve the settlement agreement with the Lieb family conditional on Phase II environmental results.

BACKGROUND

The action before the City Council is to consider a Settlement Agreement between the City and the Lieb family regarding a property ownership dispute as the result of Wilfred Lieb’s Will. Wilfred Lieb died September 6, 2011. At the time of his death, Wilfred Lieb believed that he
owned a 100% interest in a 5.35-acre parcel at 1521 Hill Road, and a one-third interest in a 3.4-acre adjacent parcel ("the property"). Both parcels were and still are zoned as agricultural. The site was initially developed with a residential structure, barn and outhouse around 1913. Another main house was constructed around 1938, and a guest house was constructed in 1949. After its reported use as a hunting camp, the site was developed as a chicken farm and a walnut farm.

Wilfred Lieb left a handwritten Will. The Will was admitted to probate in December 2011, by Phillip Lieb, Wilfred Lieb’s nephew who, at the time, was the executor who had, in October 2011, filed probate proceedings with the Marin County Superior Court. The Will provided that Wilfred Lieb’s interest in the property would go to the Marin Agricultural Land Trust ("MALT"), but should MALT not want the property, then the City of Novato would inherit Wilfred Lieb’s interest in the property, subject to certain restrictions.

In December 2014, MALT disclaimed its interest in the property making the City the beneficiary. In early 2015, the City began its due diligence to determine whether it should accept Wilfred Lieb’s bequest. It came to light that on the property there were and are located underground storage tanks which at one time contained hazardous materials (oil and kerosene). It was also determined that the property was the subject of a Land Conservation Contract under the Williamson Act.

Based on its review of the property and its conditions, in April 2015, the City communicated to the Lieb family’s probate attorney the City’s acceptance of the inheritance subject to (1) only the restrictions stated in the Will, that is, that the City use the property “for passive park and historical purposes with no lighted outdoor activities at night time;” (2) a satisfactory Phase I inspection and report on the underground storage tanks; and (3) a satisfactory site inspection by the City council members.

Because the Lieb family also owned a portion of the property that Wilfred Lieb gave to the City in his Will, the Lieb family requested that the City purchase all of the family’s interest in the property. The City expressed its willingness to do so in writing, but needed to know the price that the family was willing to sell their interest in the property. Between February and September 2015 the City requested the family’s price at least 8 times in writing. However, the family never gave the City a price for the purchase of the family’s portion of the City’s inherited property.

Site inspections were performed by Council Members and City staff. The City received a Phase I report on July 7, 2015, addressing the underground tanks. The report found that the presence of underground fuel storage tanks represented a recognized environmental condition. The report recommended the removal of the tanks, sampling of the soils, and testing of the water from the well.

On September 1, 2015, the City filed a formal acceptance of the bequest in the probate court. This filing of the acceptance document is a normal procedure for the acceptance of a bequest for the type in Wilfred Leib’s Will. On October 29, 2015, each Council Member was sent a letter from the Lieb family’s new attorney challenging the City’s legal right to inherit any of the property.
On December 16, 2015, the Council retained the litigation firm of Abbey, Weitzenberg, Warren & Emery to file a Petition with the Probate Court to confirm the City’s right to inherit the property. The Lieb family filed an opposition to the City’s Petition on February 22, 2016.

In the Lieb family’s opposition, the family contested that Wilfred Lieb owned 100% of the 5.3-acre parcel and disputed the City’s right to any of the property because of ambiguity in the Will. In the alternative, the family asserted its right to impose 29 conditions regarding the City’s use and ownership of property. Among other contentions, the family claimed that two of Wilfred Lieb’s nephews enjoyed life estates in the property.

In addition to the Lieb family’s opposition to the bequest to the City, the Lieb family filed a separate civil action against the City, alleging that the City violated the Williamson Act and inversely condemned the property.

In March of 2016, the parties agreed to mediate the dispute, with the hope of coming to a resolution without continuing litigation. A conditional settlement signed by all parties was reached in the mediation on August 23, 2016, subject to City Council approval, and acceptance by the Council of a Phase II environmental investigation.

The key points of that Settlement Agreement are that:

1. the City pay the Lieb family 1.65 million dollars ($1,650,000) to acquire both parcels as well as an adjoining small 4000 square-foot parcel;
2. the City may use the property for park, open space, historical and agricultural purposes;
3. that a Phase II investigation be conducted and the results be satisfactory to the City;
4. the two nephews may remain on the 3.4-acre parcel until August 22, 2017, with a $100,000 security deposit and indemnification running in favor of the City;
5. if the City sells the property within 10 years and the sale results in a material change to the deed restrictions on the use of the property, the City must pay the Lieb family fifty percent (50%) of the proceeds;
6. if within 10 years the City materially changes the deed restrictions, the City must pay the Lieb family 50% of the then fair market value of the property; and
7. the Lieb family’s civil action against the City must be dismissed with prejudice upon receipt of the acquisition payment by the City.

The City Council has until October 7, 2016, to approve the conditional settlement, according to the timeline established in the Settlement Agreement (attached to this report). The Phase II investigation must be in progress by November 21, 2016, and completed, accepted or rejected by the Council by December 21, 2016.

Should the Council decline to approve this Settlement Agreement, then the Council has the option to walk away and not acquire the property or the option to litigate the dispute. It is estimated litigating this matter through trial will range from $50,000 to $175,000 in attorneys’ fees and costs or more depending upon the nature and extent of the litigation to which the City must respond.
BENEFITS OF ACQUIRING THE PROPERTY

The benefits of acquiring this beautiful piece of property are many. Its downtown location and proximity to single family and multi-family housing nearby, make it a great site to bike to or access on foot. The natural beauty of this nearly 10-acre site, with a creek, beautiful trees, and open areas, would make walking and picnic uses of the site very enjoyable. Both active and passive recreation opportunities are possible at this site in order to serve the diverse recreation needs of seniors, children, families, and the disabled community. Preserving and sharing the history of this site, would help create a legacy that acknowledges the past, while sharing it with current and future users of the site.

Additionally, the City-owned 12-acre site of Hill Recreation Area, Margaret Todd Senior Center, and Hill Gymnasium, is directly across the street from this property. Purchasing the Lieb property, would increase the City’s flexibility in planning for the future of the Hill Recreation area, and would allow a variety of uses to be spread across two sites. Across the creek, there are the City’s Arroyo Avichi Park and Novato Unified School District’s Rancho Elementary School that could be connected to the Lieb property to create a more formal linkage between these neighborhoods. The City is interested in minimizing cost and staff impact of increasing land and building maintenance responsibilities, so revenue and other partnership opportunities could be explored to assist in achieving this successfully.

The acquisition of this property does come with costs to transition the property from private residential use to public ownership and use. There are buildings and structures on the site that will require maintenance. Any new amenities will also require funding. While the City has very limited capital funding sources to build and renovate parks and City property, City staff see this as a once in a lifetime opportunity to retain and preserve this special property for community benefit. More detailed review and planning with the community for the reuse of the site for park, open space, historical and agricultural uses would occur in the future.

The acquisition of this site, near the heart of our town, is an unanticipated and exciting opportunity. The purchase of this property supports the Council’s Environmental Legacy Strategic Plan Goal of preserving and protecting Novato’s unique environment for future generations and evaluating and pursuing acquisition of open space and park development.

Adding this nearly 10-acre site to the City’s property inventory, supports the City’s commitment to building a culture of health, through land use and providing abundant park and recreation opportunities, that foster community connection and pride. This site will help us to continue to provide and expand opportunities for our residents to become and stay active and healthy. The purchase of the Lieb property is an investment in Novato’s future and the health of our children and all residents.

ENVIRONMENTAL DETERMINATION

The acquisition of the Lieb property for use as a park, open space, historical and agricultural purposes is Class 16 of the Categorical Exemption of the California Public Resources Code. This Class of categorical exemptions has been determined not to have a significant effect on the environment and thus are exempt from CEQA.
“Class 16 consists of the acquisition, sale, or other transfer of land in order to establish a park where the land is in a natural condition or contains historical or archaeological resources and either:

(a) The management plan for the park has not been prepared, or
(b) The management plan proposes to keep the area in a natural condition or preserve the historical or archaeological resources. CEQA will apply when a management plan is proposed that will change the area from its natural condition or cause substantial adverse change in the significance of the historic or archaeological resource.”

The management plan for the Lieb property for the park has not been prepared. Thus, this acquisition qualifies for the categorical exemption under Guideline 15316(a).

**FISCAL IMPACT**

$1.65 million in acquisition cost, plus the cost of the Phase II investigation estimated at $31,883.90, plus the cost of remediation (if any, and if authorized by the City Council). If the property is acquired, the Lieb family will credit one-half of the cost of the Phase II investigation report against the purchase price.

The staff recommends funding the acquisition of the Lieb property using funds that are restricted to use for parks, recreation and open space purposes. Therefore, funding is recommended from three sources: (1) Development Impact Fees for Open Space, (2) Quimby Fees, and (3) County Parks Measure A funding.

<table>
<thead>
<tr>
<th>Proposed Funding for Lieb Property Purchase</th>
<th>Recommendation</th>
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<tr>
<td>DIF - Open Space</td>
<td>680,000</td>
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<tr>
<td>Measure A Parks¹</td>
<td>775,000</td>
</tr>
<tr>
<td>Quimby Fees</td>
<td>195,000</td>
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<tr>
<td>TOTAL ACQUISITION COST</td>
<td>$1,650,000</td>
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¹ The initial purchase would be funded by a loan to the Measure A fund, repaid over approx. 5 years at $150,000 per year plus interest at the City's portfolio rate.

The City collects funds from residential development to support the acquisition of open space through Development Impact Fees for Open Space. Quimby fees are also collected from residential development and can be used to purchase or renovate parks and recreation facilities. Funding from the 9–year County tax, County Parks Measure A, can also be used to support acquisition and renovation of parks, open space and recreation facilities. Funds from this County source have helped fund the renovation of the dog park and of two parks in Bahia.
Therefore, use of funds from these three restricted sources is recommended to fund the $1.65M purchase of the Lieb property. Additionally, funding the Phase II Environmental Investigation, with Quimby funds (estimated at $31,883.90) for a not to exceed $45,000, is recommended.

PUBLIC OUTREACH

The acquisition of the Lieb property is a unique and special circumstance arising from a disputed Will. The Council felt it was important to have a public session to allow for input regarding the decision on whether to accept the Settlement Agreement and acquire the property. The legal process constrained the City’s opportunity to have more advance discussion with the community.

On Thursday and Friday before the October 4th Council meeting, City staff performed a variety of public outreach initiatives. Staff mailed a public notice to all property owners within 600 feet of the Lieb property announcing the meeting and inviting public input. Individuals who are on the Hill Recreation Masterplan project’s e-notification list were also mailed the public notice. Public information staff also are posting information on social media and an e-notification was sent with a link back to this staff report. The Council welcomes input on this agenda item at the October 4th Council meeting.

CONCLUSION & RECOMMENDATION

This unique and rare opportunity to acquire a beautiful piece of property in the heart of downtown, that can provide many community benefits, should warrant careful consideration. Acquisition of this property would demonstrate Council’s continued commitment to preserving Novato’s parks, open space, and environmental and community features for the public to enjoy.

Staff recommends that Council:

a. Approve Resolution to make findings that entering into said agreement is exempt under CEQA pursuant to CEQA Guidelines Section 15316;

b. Authorize to determine and fund a Phase II Environmental Analysis of the Lieb property for an amount not to exceed $45,000.

c. Approve resolution authorizing a budget amendment for $1,650,000.00 for the Settlement Agreement and up to $45,000.00 to fund Phase II Environmental Analysis of the Lieb property

d. Approve the Settlement Agreement with the Lieb family conditional on Phase II environmental results

ATTACHMENTS

1. Conditional Settlement Agreement
2. Proposal for Phase II Investigation by Environmental Geology Services (dated September 28, 2016)
3. Resolution Making Findings that Settlement is Exempt under CEQA, and then Approving Settlement Agreement
4. Resolution authorizing funding
5. Copy of Public Notice mailed to all Property Owners within 600’ of site
SETTLEMENT AGREEMENT AND RELEASE
IN FULL OF ALL CLAIMS AND RIGHTS

I. PARTIES

This Settlement Agreement and Release in Full of All Claims and Rights (hereinafter, referred to as the “Agreement”) is made and entered into as of August 23, 2016 (the “Effective Date”), by and between Phillip Lieb (“Phillip”), individually and in his capacity as executor of the Estate of Wilfred Henry Lieb (the “Estate”), John Lieb (“John”), an individual, Blanche Lieb (“Blanche”), in her capacity as trustee of the Richard S. and Blanche A. Lieb Trust dated November 30, 1993 (the “Richard and Blanche Trust”), Donald R. Lieb (“Donald”), individually and in his capacity as trustee of the Lloyd L. Lieb Testamentary Trust (the “Lloyd Trust”), Randolph Lieb (“Randolph”) and Barbara Berg (“Barbara”), individually (collectively, the “Lieb Family”), on the one hand, and the City of Novato (the “City”), on the other hand, with reference to the following:

II. RECITALS

A. WHEREAS, decedent Wilfred Henry Lieb (“Wilfred”) owned interests in adjoining parcels of real property on Hill Road in Novato, California: (1) a 5.3 acre parcel, APN No. 140-352-32 (the “Westerly Parcel”); (2) a 3.4 acre parcel, APN No. 140-352-33 (the “Easterly Parcel”); and (3) an approximately 4000 square foot parcel, APN No. 140-291-22 (the “Small Parcel” and, together with the Westerly Parcel and the Easterly Parcel, the “Property”).

B. WHEREAS, Wilfred died on September 6, 2011, leaving a holographic will (the “Will”) which names the City as a potential devisee of Wilfred’s interests in the Westerly Parcel and the Easterly Parcel;

C. WHEREAS, Phillip, John, Randolph, Barbara, and Donald hold certain beneficial interests under the Will;

D. WHEREAS, the City filed a Petition for Determination of Entitlement to Real Property (the “Petition”), In re Estate of Wilfred Henry Lieb, Marin County Superior Court case No. PR 1104967, in which the City seeks a declaration that Wilfred owned a 100% interest in the Westerly Parcel at his death and that Wilfred validly devised his interests in the Easterly Parcel and Westerly Parcel to the City, and Lieb Family disputes those contentions;

E. WHEREAS, Donald and Blanche filed a civil lawsuit, Donald R. Lieb et al. v. City of Novato et al. Marin County Superior Court case No. CIV 1601783 (the “Civil Action”), in which they seek: (1) a declaration that Wilfred owned a 1/2 interest in the Westerly Parcel at his death as a tenant in common with the Richard and Blanche Trust; (2) a declaration that the City violated the Williamson Act; and (3) that the City inversely condemned the Property, and the City disputes those contentions;

F. WHEREAS, the Petition has been consolidated with the Civil Action (the consolidated action shall hereinafter be referred to as the “Action”); and
G. WHEREAS, the parties wish to fully and finally settle their respective rights and interests with respect to the Will, the Estate, the Petition, and the Civil Action, and to fully and finally release any and all claims and rights that each has or may have against the other, and in order to effectuate such a settlement, the parties have agreed to equitably resolve any existing and/or potential disputes in connection therewith as follows:

III. TERMS OF AGREEMENT

NOW THEREFORE, in consideration of the foregoing recitals, and the terms and provisions contained herein, the parties hereto agree as follows:

1. Consideration.

   a) Purchase of Property. The City agrees to purchase the Property pursuant to a formal written purchase and sale agreement which shall include, among others, the following terms:

      i. Purchase price to be $1,650,000 (the “Purchase Price”), which shall be disbursed to the Brekhus Law Partners Trust Account (the “Trust Account”) at close of escrow, defined below;

      ii. The deed transferring the Property from Seller to the City shall contain the following restrictions: The Property shall be used for park, open space, historical, and agricultural purposes, and use of the Property for motorized recreational vehicles and/or a sports complex shall be prohibited;

      iii. John and Phillip Lieb shall continue to have the quiet use and enjoyment of the Property in its current condition, as is, where is, and with all faults, for one year from the date of the execution of this Agreement (the “Move Out Date”), and the City shall have no obligation to maintain, repair and/or improve the Property during that time;

         A. John and Phillip Lieb shall indemnify and hold the City harmless from any costs, expense, claims, demands, or liability arising from any act or omission of John or Phillip, or any guests, agents or representatives of either of them, in connection with their use, enjoyment, and/or occupancy of the Property.

         B. John and Phillip shall vacate the Property, and remove any and all personal property therefrom, on or before the Move Out Date. In connection therewith, John and Phillip shall execute a Stipulated Judgment for Possession (the “Stipulation”) which shall require that they vacate the Property and remove any and all personal property therefrom on or before the Move Out Date.
Provided that the foregoing condition is timely met, the original Stipulation shall be returned to Phillip and John, and shall not be filed with any court. This does not require the Lieb Family to remove buildings or building and yard debris.

C. $100,000 shall be withheld from the Purchase Price as a security deposit (the “Security Deposit”) and, provided Phillip and John vacate the Property and remove any and all personal property therefrom in accordance with this agreement, shall be disbursed to the Trust Account promptly upon accomplishment of same. In the event Phillip and John do not timely vacate the Property and/or remove any and all personal property therefrom, the City may use any portion of the Security Deposit to enforce the foregoing requirements. After Phillip and John have vacated the Property, their personal property has been removed therefrom, and the City has been reimbursed from the Security Deposit for all costs and expenses of accomplishing same, the City shall disburse any remaining portion of the Security Deposit to the Trust Account.

iv. In the event the City sells the Property within ten (10) years of the Effective Date of this Agreement, and that sale results in a material change in the aforementioned deed restrictions, the City shall give the Lieb Family fifty (50%) of the proceeds from any such sale of the Property. In the event, within ten (10) years following Close of Escrow, the City materially changes the deed restrictions to which the Property is subject, the City shall pay the Lieb Family fifty percent (50%) of the then fair market value of the Property.

v. The City shall use the name, “Lieb,” in naming the Property.

b) Conditions Precedent. This Agreement is expressly conditioned on each and every one of the following conditions:

i. Approval by City Council. The Novato City Council in its sole discretion must approve this Agreement within forty-five (45) days. In the event such approval is not obtained, this Agreement shall be null and void and all obligations thereunder shall cease.

ii. Conveyance of Good and Marketable Title. Within 30 days of execution of this Agreement, the Lieb Family shall cause to be tendered to the escrow holder (to be selected by the City), a Grant Deed in accordance with this Agreement. Confirmation that the Lieb Family can convey good and marketable title shall be obtained to the satisfaction of the City, at its sole cost, from a title company.
iii. **Environmental Investigation.** Within 90 days, the City must approve, subject to its discretion, the results of a Phase 2 Investigation of the Property (the “Investigation”). Provided the City is proceeding diligently with this Investigation, it shall be entitled to one thirty-day extension with respect to the foregoing deadline. The City shall pay the cost of the Investigation, and shall be entitled to a credit against the Purchase Price in the amount of fifty percent (50%) of the cost of the Investigation. If the City is not satisfied with the Phase 2 Investigation, this Agreement shall be null and void, all obligations thereunder shall cease, and the City shall bear all costs of the Investigation; provided, however, in the event the Investigation does not reveal any contamination of soil or water that requires remediation (separate and apart from removal of underground storage tanks), the City shall be deemed not to have a basis for cancelling this agreement based on the failure of this condition precedent.

c) **Close of Escrow.**

i. Within 30 days following satisfaction of all of the foregoing conditions precedent, the City shall tender to the Trust Account the Purchase Price, less the Security Deposit.

ii. Following close of escrow, the City shall indemnify and hold the Lieb Family harmless from any claims, demands, or liabilities arising in connection with any contamination discovered on the Property; provided, however, that such indemnification shall not apply to any claims, demands or liabilities arising from any acts or omissions of Phillip or John following Close of Escrow.

d) **Request for Dismissal.** Upon the Lieb Family’s receipt of the payment described in subparagraph 1(a) hereinafore, the parties hereby agree to and shall promptly cause to be filed with the Marin County Superior Court a fully executed Request for Dismissal with prejudice of the Action.

e) **Waiver of Williamson Act Claims:** The City agrees to waive any and all claims it has or may have against the Lieb Family under the Williamson Act.

f) **Mutual Release.** As a material component of the consideration given and received in connection with this Agreement, each of the parties hereto agrees to the mutual release provisions contained in paragraph 2, below.

2. **Mutual General Release.** The City, on the one hand, and the Lieb Family, and each of them, on the other hand, in their individual and fiduciary capacities, for themselves, their agents, insurers, successors and assigns, do hereby release and discharge each other, and their respective officers, directors, representatives, heirs, executors, administrators, successors, assigns, agents,
attorneys and employees of and from any and all claims, demands, debts, obligations, liabilities, costs, expenses, rights of action, causes of action, awards and judgments of any kind or character whatsoever arising in whole or in part prior to the date first above written, or which may hereafter be claimed to arise in whole or in part out of any action, inaction, event or matter occurring prior to the date first above written, all of which are hereinafter called, "Released Claims."

The Released Claims include, but are not limited to, any and all claims arising out of the Action, the Estate, the Will, or any other claims that the parties hereto had, have, or may have against each other prior to the date first written above.

Each of the parties acknowledges and agrees that the Released Claims may include claims of any nature and kind whatsoever, whether known or unknown, suspected or unsuspected and further acknowledge that they may be presently unknown or unsuspected, and may be based upon hereafter discovered facts different from, or in addition to, those which they now know, or believe to be true. Nevertheless, the parties agree that the foregoing release shall be and remain effective in all respects, notwithstanding such different or additional facts, or the discovery thereof, and further hereby expressly waive any and all rights provided in California Civil Code Section 1542 which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

3. **Enforceability Under Section 664.6 of the Civil Code of Procedure.** The parties agree that any and all terms of this Agreement may be enforced pursuant to a motion brought under CCP § 664.6.

4. **Contractual Indemnity.** The City, on the one hand, and the Lieb Family, and each of them, on the other hand, shall indemnify and hold the other party harmless from and against any cost, liability, damage or loss, including all reasonable costs and attorney’s fees in connection therewith, arising out of or in any way related to any claim made against the other party, which claim has been released pursuant to paragraph 2, above. In the event any action or proceeding is instituted upon a claim which has been released pursuant to paragraph 2, above, this Agreement may be pleaded as a full and complete defense to any such action or proceeding as the basis for abatement of, or injunction against, any such action or proceeding, or as the basis of a cross-complaint for damages.

5. **Binding on Successors.** This Agreement shall inure to the benefit of and shall bind the parties hereto and their respective representatives, heirs, executors, administrators, successors, assigns, families, partners, employers, employees, officers, directors, shareholders and agents.

6. **Further Documentation.** Each of the parties hereto shall do all acts and execute all documents necessary or reasonably convenient to effectuate the terms and provisions of this Agreement.
7. **Final Agreement.** This Agreement supersedes all prior negotiations and understandings of any kind with respect to the subject matter hereof, and contains all of the terms and provisions of the Agreement between the parties hereto with respect to the subject matter hereof. There are no oral representations, understandings, statements or stipulations of any kind or character made by any of the parties bearing upon the effect of this Agreement to induce execution of this Agreement, or otherwise, which have not been incorporated herein.

8. **Governing Law.** This Agreement is made under and shall be governed by and construed in accordance with the laws of the State of California. If any civil action is filed to enforce or interpret any of the terms or provisions of this Agreement, or otherwise, the parties agree that the appropriate venue shall be a state court of competent jurisdiction located in the County of Marin, State of California.

9. **Severability Provision.** If any provision of this Agreement is unenforceable, for any reason, the remaining provisions shall nevertheless be of full force and effect.

10. **No Admission of Liability.** This Agreement pertains to disputed claims and does not constitute in any way an admission of liability or to the validity of any of the claims or matters alleged in the Action. Execution of this Agreement does not constitute evidence of, and shall not be construed to be, an admission of liability and/or wrongdoing by any party hereto.

11. **No Other Actions Filed.** Each of the parties hereto represents that, other than the Action, no litigation against any other party hereto, related in any manner to the Released Claims, has been filed, and will not be filed at any time hereafter.

12. **Warranty of Nonassignment.** The parties hereto represent and warrant that they have not heretofore assigned or transferred, or purported to assign or transfer, to any person, firm or corporation whatsoever any claim, debt, liability, demand, obligation, cost, expense, action or causes of action covered by this Agreement, and each party acknowledges and agrees that this warranty and representation is an essential and material term of this Agreement without which none of the consideration received in connection herewith would have been made or delivered. The foregoing warranty and representation shall survive the delivery of this Agreement, and each of the parties hereto shall indemnify, defend and hold the others harmless from any claims, demands or actions which have been assigned or transferred, or purported to have been assigned or transferred, in violation of the foregoing representation and warranty.

13. **Factual Differences.** Each of the parties understands and accepts the risk that the facts with respect to which this Agreement is entered into may be different from the facts now known or believed by each party to be true. This Agreement shall remain in all respects effective and shall not be subject to termination or rescission by virtue of any such differences in fact.

14. **Attorney’s Fees.** In the event of any controversy, claim or dispute following the date of the execution of this Agreement, in connection with or relating to this Agreement, or the subject matter
hereof, the prevailing party shall be entitled to recover all costs and expenses (including, but not limited to, reasonable attorney’s fees) incurred by the prevailing party in connection therewith.

15. **Modification.** This Agreement may be modified only by a subsequent document in writing, signed by the party to be charged thereunder.

16. **Plain Meaning.** This Agreement shall be interpreted in accordance with the plain meaning of its terms and not strictly for or against any of the parties hereto.

17. **Headings.** The paragraph headings of this Agreement are provided for the ease of reference only and shall have no effect on its interpretation.

18. **Agreement Mutually Negotiated.** This Agreement has been negotiated between the parties and has been thoroughly reviewed by each party. Each party has had an opportunity to make such changes as that party wished to make. Accordingly, the parties agree that for purposes of interpreting this Agreement, neither party shall be deemed to have drafted this Agreement and each party waives the rule of contract construction which provides that ambiguities in the contract shall be construed against the party who drafted the Agreement or otherwise caused the ambiguity to exist. Parties expressly waive their rights under Civil Code Section 1654.

19. **Representation by Counsel.** All parties affirmatively represents that they have been represented, throughout the negotiation of this Agreement, by attorneys of their own choosing.

20. **Knowing and Voluntary Agreement.** The parties hereto represent that they have carefully read this Agreement and that they fully understand the contents and legal effect thereof. The parties hereto further affirmatively represent they have discussed, or have had an opportunity to discuss, with attorneys or advisors of their choice, each of the terms and conditions of this Agreement, and that they understand and agree to each such term and condition.

21. **No Reliance On Any Other Party.** The parties hereto expressly represent that they have not relied upon any statements or representations made by any other party to this Agreement, or by the representative, agent, or attorneys of any party to this Agreement, other than with respect to such statements and representations which are expressly set forth in this Agreement.

22. **Counterparts.** This Agreement may be executed in separate counterparts, each of which shall be deemed an original, and all of which shall constitute one single instrument. Where convenient for the parties to do so, the signed signature pages may be facsimile transmissions. The parties agree that their signatures, or any facsimile transmission thereof shall be fully binding upon them in the same manner as if the parties had each signed the same original contract.

[Signature Page to Follow]
ACCEPTED AND AGREED

John Lieb

Phillip Lieb

THE ESTATE OF WILFRED HENRY LIEB

By: Phillip Lieb, Executor

Donald Lieb

THE LLOYD LIEB TRUST

By: Donald Lieb, Trustee

Barbara Berg

Randolph Lieb

THE RICHARD S. AND BLANCHE LIEB TRUST

By: Blanche Lieb, Trustee

THE CITY OF NOVATO

By: Cathy Capriola, Interim City Manager
Approved as to form:

Abbey, Weitzenberg, Warren & Emery, P.C.

By: [Signature]
Lewis Warren
Attorneys for the City of Novato

Brekhus Law Partners

By: [Signature]
Elizabeth A. Brekhus
Attorney for Barbara Berg, Blanche Lieb, Donald Lieb, Randolph Lieb

[Signature]
Joseph Tinney
Attorney for the Estate of Wilfred Henry Lieb
Mr. Michael Wanser  
Abbey, Weitzenberg, Warren & Emery, PC  
P.O. Box 1566  
Santa Rosa, CA 95402

RE: PROFESSIONAL SERVICES AGREEMENT AND COST ESTIMATE  
Phase 2 Investigation  
Lieb Property, APN’s 140-352-032, 033, and 140-291-022  
1521 Hill Road, Novato, California

Dear Mr. Wanser:

Thank you for the opportunity to provide consulting services. Based on our consultations with Mr. Michael Wanser, Abbey, Weitzenberg, Warren & Emery, PC (Client), Environmental Geology Services (EGS) understands that the City of Novato is pursuing the purchase of the referenced property in Novato, CA. Mr. Wanser indicated that the City of Novato, as part of their due diligence, would like to determine the potential for residual contamination on the property due to past site use through the implementation of a Phase 2 Investigation. This Professional Services Agreement (PSA) was prepared and is being transmitted to you in response to your request. The proposed PSA will provide a scope of work that will evaluate the potential for residual contaminants related to the former site use as agricultural, tractor/equipment repair, and existing petroleum underground storage tanks (UST’s). As requested by the City of Novato, this PSA also includes time for an archaeological assessment, field monitoring (if needed), and a septic system inspection.

SCOPE OF WORK

Based on our discussion with Mr. Wanser, as well as our review of a previously prepared Phase 1 Environmental Site Assessment (ESA) provided to EGS by Mr. Wanser, EGS has developed the following scope of work:

Task 1: Project Management (consultation, coordination, site inspections)  
Task 2: Work Plan Preparation (including permitting and utility clearance)  
Task 3: Phase 2 Investigation (drilling and sampling)  
Task 4: Laboratory Analysis  
Task 5: Waste Disposal  
Task 6: Report Preparation (including conclusions and recommendations)

The following sections present further detail of the proposed scope of work.
PROJECT MANAGEMENT, CONSULTATION, COORDINATION, INSPECTIONS

This task includes time for EGS to consult with the Client, make a preliminary site visit to verify current site conditions, as well as conditions listed in the Phase 1 ESA Report. EGS will determine potential sample locations, and confirm site access for drill rig. EGS will also review the surrounding area on State and local databases to determine the assumed groundwater gradient, which will be used in locating possible soil and groundwater sample locations.

We will consult with the local permitting agency (MCEHS) to confirm our scope of work prior to preparing the Work Plan, for drilling permit purposes. We will consult our C-57 licensed drilling subcontractor to determine rig capabilities and site access to investigate shallow soil and groundwater beneath the site. EGS will also discuss the scope of work with our subcontract laboratory to verify required analysis and obtain appropriate sample containers.

This task also includes time for EGS to manage, coordinate and schedule site inspections by an archaeologist to assess the potential for tribal lands on or nearby the site, and for a septic system company to provide an inspection of the existing septic system at the site.

In this task we will also coordinate the schedule with our subcontractors and laboratory, as well as with the Client. This task will also include general project management and administration during the project.

WORK PLAN PREPARATION, PERMITTING, UTILITY CLEARANCE

As part of the permitting process, regulatory agencies typically require a formal description of work (Work Plan with a site specific Health and Safety Plan or HASP) to be submitted with the drilling permit application. In this task we will prepare the Work Plan and HASP, to the level of detail required by the regulatory agency, in this case the MCEHS, for their review and comments. We will inquire with the MCEHS to determine the level of effort needed and will complete only what is necessary to obtain a drilling permit.

Upon receipt of the drilling permit, we will schedule our C-57 licensed drilling contractor to implement the drilling portion of the Work Plan. Once the schedule is established we will notify the Client and the regulatory agencies of the drilling schedule.

Additionally, at least 4 days prior to drilling, we will travel to the site to mark the site boundaries and the proposed exploration locations with white paint and notify Underground Services Alert (USA) of exploration dates to gain utility clearance.
Phase 2 Investigation

EGS will direct our subcontract drilling company to advance at least eight (8) exploratory soil probes (or borings) near the following locations:

1) Adjacent to the two (2) existing fuel oil UST’s;
2) Adjacent to the existing gasoline UST;
3) Adjacent to the tractor shed containing an engine repair man way.

Two soil borings will be advanced at each of the above locations, with at least one of the borings located in the assumed down gradient direction. At least one of the soil borings will achieve a grab groundwater from each of the areas (4 total groundwater samples). Soil samples will be collected from all soil borings at varying depths, with 2 soil samples retained for analysis from each location.

Additionally, EGS proposes collecting shallow soil samples (0-6 inches and 24-30 inches bgs) at four (4) locations each adjacent to: the barn, equipment shed and tractor shed areas (structures where chemical storage had been located). The 0-6 inch samples and the 24-30 inch samples will be composited by the laboratory at a 4:1 ratio such that only one surface and one deeper sample will be analyzed from shallow soils adjacent to these structures to assess the potential for residual contamination in shallow soils (and to determine if deeper exploration is needed).

EGS will screen soils in the field using a PID. All locations will be located on the site; we will not encroach on adjacent sites or in public right-of-ways. The exploration and sampling will take two days of field work to perform.

Soil samples will be collected from subsurface soils at each exploratory location at varying depths from shallow soils including, but not limited to: just below the surface material, at changes in lithology, in the vadose zone and groundwater interface if encountered, or at approximately every five (5) feet bgs until groundwater has been reached. At least two (2) soil samples will be retained for analysis from each probe/boring (unless soils are visibly contaminated based on field observations, then additional soil samples will be collected).

Soil sample tubes will be covered with teflon sheets and sealed with plastic caps, labeled, and placed in a chilled, insulated cooler with frozen “blue ice” for delivery to our subcontracted California State Certified analytical laboratory for analysis. In areas where gasoline and other volatile organic compounds (VOC’s) are suspected (gasoline UST, man way, near former chemical storage structures), the soil samples will be preserved in the field in accordance with EPA preservation method 5035.
EGS also suggests collecting groundwater samples from each of the existing groundwater supply wells on the property, if possible, for analysis of chemicals of concern.

Sample containers will be logged on a Chain-of-Custody form and placed in an ice chest containing frozen “blue ice” for transport to our subcontracted California State Certified analytical laboratory.

Sampling equipment will be decontaminated by steam cleaning and/or washing with phosphate-free detergent and rinsing with potable water between each use. Lithologic logs will be prepared during the field work by our California State Professional Geologist, who will also supervise the drilling and sample collection activities.

Upon completion of the sampling, and in accordance with MCEHS requirements, the soil probe/boring holes will be back filled with neat cement to within approximately 6-inches bgs. The upper 6-inches of the probe holes will be patched with asphalt, cement or soils to match the existing surface.

The drill cuttings will be placed either in drums or in a soil stockpile for disposal. Waste management is discussed in a following section of this PSA.

The scope of work described herein may be modified based on our initial site observations. If so, EGS will revise the scope of work and updated the estimated costs. Additionally, as requested, EGS has included time for an archaeologist to be present on site to monitor for artifacts if needed based on their initial site assessment.

LABORATORY ANALYSIS AND REVIEW

Soil and groundwater samples collected as described above will be transported to our subcontract State Certified analytical laboratory for analysis of the following:

- **Fuel Oil UST Areas (8 soil samples, 2 water samples):** Total Petroleum Hydrocarbons as Diesel (TPH-D) and Kerosene (TPH-K) by EPA Test Method 8015M; and 5 LUFT Metals by EPA Test Method 6010 (groundwater only).

- **Gasoline UST Area (4 soil samples, 1 water sample):** Gasoline Range Organics (GRO) and Volatile Organic Compounds (VOC’s), including BTEX and lighter phase volatile gases, using EPA Testing Method 8260; and 5 LUFT Metals by EPA Test Method 6010 (groundwater only).

- **Repair Man Way Area (three [3] 3:1 composite soil samples, 1 water sample):** Total Petroleum Hydrocarbons as Diesel (TPH-D) and Motor Oil (TPH-MO) by EPA Test Method 8015M; GRO and VOC’s, including BTEX and lighter phase volatile gases, using EPA Testing Method 8260; CAM 17 Metals by EPA Test
Method 6010 (groundwater only); PCB’s by EPA Test Method 8082 (groundwater only).

- **Former Chemical Storage Structures** (six (6) 4:1 composite soil samples): TPH-D and TPH-MO by EPA Test Method 8015M; GRO and VOC’s, including BTEX and lighter phase volatile gases, using EPA Testing Method 8260; CAM 17 Metals by EPA Test Method 6010; Organochlorine Pesticides (OCP’s) by EPA Test Method 8082.

- **Groundwater Supply Wells** (2 water samples): TPH-D and TPH-MO by EPA Test Method 8015M; GRO and VOC’s, including BTEX and lighter phase volatile gases, using EPA Testing Method 8260; CAM 17 Metals by EPA Test Method 6010.

Soil sample holding times and analysis will be pursuant to the EPA Method guidelines. The results of the soil samples collected during this Phase 2 Investigation will be reviewed by our California State Professional Geologist, and will be attached to the final report. Laboratory turnaround time (TAT) will be 2 weeks.

**WASTE DISPOSAL**

The soil waste produced during the drilling activities will need to be properly disposed of. The waste will be labeled and stored at the site pending results of chemical analysis. In accordance with regulatory requirements, hazardous wastes can be stored on the site a maximum of 90 days, at which time they must be treated or disposed of properly by the owner. If these are “non-hazardous wastes” they may be stored for a longer period.

EGS has included time to assist with the waste disposal management including profiling and landfill acceptance. We did not include a cost for transport and landfill fees since the type of contaminant, if any, is unknown at this time. Once we receive the analytical results, and have a final volume of material, EGS will be glad to revise cost estimates for waste disposal, if needed. Upon disposal, all waste materials generated by the investigation will be properly disposed of and accounted for with shipping and disposal documents and waste manifests, and will be included in the report.

**REPORT PREPARATION**

Upon receipt of the analytical results, we will prepare a report documenting the Phase 2 Investigation which will include sampling procedures, sample locations, waste disposal documentation, the analytical results, as well as our conclusions and recommendations for the site. The report will be provided in PDF format and will be e-mailed only. No hard copy will be provided.
FEES - Services will be provided on a time and materials basis using the hourly charges and unit costs presented in the attached Schedule of Charges. We estimate the costs for Tasks 1 through 6 to be $31,883.90.

SCHEDULE – We will begin on the Work Plan and Permitting as soon as we receive formal authorization to proceed. The time to implement this PSA will be dependent on the regulatory agency Work Plan review and issuance of their permits, as well as the driller’s schedule.

INSURANCE - EGS maintains general and professional liability insurance (E&O). A certificate of insurance will be issued upon your request prior to the start of work.

CONTRACT - Please sign the Agreement and e-mail (dbush@EGSconsultants.com) the executed Agreement to EGS as formal authorization to proceed.

TERMS - We request that a retainer payment in the amount of $5,000.00 be sent prior to beginning the work, with the balance due upon completion of tasks or after the final report is completed.

LIMITATIONS - This work will be performed in accordance with generally accepted environmental investigation practices for similar investigations and soil sampling conducted at this time and in this geographic area. No other guarantees or warranties, express or implied are provided.

Our scope of work does not include a determination of the environmental and public health impact, of known or suspected contamination. The scope does not include providing a risk assessment. Assumptions made about apparent public health risk are based on limited data and will not constitute a formal assessment of risk. If the Client desires a formal risk assessment, such assessment should be requested as a separate scope of work.

The soil sampling and testing program is intended to provide an assessment of potential soil contamination for specific compounds, at specific locations, depths, and at specific times. The proposed investigation is not exhaustive, and may not reveal contamination that may be present at locations (horizontal or vertical) other than those explored, sampled and analyzed. This investigation is not intended to predict future on-site or off-site conditions.

It is understood by the parties hereto that the Client who requested this investigation will use the results for the stated purpose and no other purpose. No other use or disclosure is intended by Consultant. Client agrees to hold Consultant harmless for any inverse condemnation or devaluation of said property that may result if the Consultant's report or information generated is used for other purposes. Finally, the Report will be issued with the understanding that it will be used in its entirety.
GENERAL CONDITIONS AND SCHEDULE OF CHARGES - EGS's General Conditions and Schedule of Charges are attached to this Agreement and are incorporated into and made a part of this Agreement by reference. After reviewing the Agreement, call use if you have any questions.

If you have questions about this scope of work, costs, or the Agreement please call me at 707-528-0810.

Sincerely,
ENVIRONMENTAL GEOLOGY SERVICES

David L. Bush, P.G.
Owner & Principal Geologist

Attachments which are a part of this Professional Services Agreement by reference:

Agreement
EGS's General Conditions
Schedule of Charges
AGREEMENT

The undersigned agrees to the terms and conditions of this Professional Services Agreement:

CONSULTANT

__________________________
Signature

David L. Bush

__________________________
Printed Name

September 28, 2016

__________________________
Date

CLIENT

__________________________
Signature

__________________________
Printed Name

__________________________
Date

Transmitted to:

Mr. Michael Wanser, Abbey, Weitzenberg, Warren & Emery, PC,
mwanser@abbeylaw.com (PDF Copy)

Please sign and date the above Agreement and transmit to us via e-mail to
dbush@egsconsultants.com

Please send the retainer payment in the amount of $5,000.00 to the following:

Environmental Geology Services
6169 Amie Drive
Windsor, CA 95492
ENVIRONMENTAL GEOLOGY SERVICES
SCHEDULE OF CHARGES

Effective January 1, 2016

Unless agreed otherwise, work is charged for on a time and expense basis in accordance with the following schedule of charges. Hourly rates are fully burdened (include federal state and local taxes, insurance, and other internal overhead costs).

Personnel

Principal Geologist / Engineer/ Hydrogeologist $160/hour
Senior Geologist / Engineer/ Hydrogeologist $140/hour
Project Geologist / Engineer/ Hydrogeologist $130/hour
Staff Geologist / Engineer/ Hydrogeologist $110/hour
Field Technician / Technical Assistant $100/hour
Drafting (Adobe Illustrator or AutoCAD) $95/hour
Word Processing / Reproduction / Clerical $65/hour

Equipment & Materials

Field Truck with safety equipment / tools $150/day
Vehicle Mileage $0.65/mile
Field Photo Ionization Detector (PID) $125/day
Water Quality Multi-Meter (Ohms/pH/Temp/DO/, etc) $135/day
Electronic Water Level Probe $85/day
Disposable PVC Bailer $18/each
Stainless Steel or Teflon Bailer $25/day
Peristaltic Pump $125/day
Electric Sampling/Purge Pump $85/day
AMS Soil Sampler $15/day + $5/sample liner
Vapor Pin Supplies $150/sample
Other equipment/ Material prices quoted on request

Other

Travel time is charged at regular rates. A maximum of 4 hours per day will be charged for travel. For court appearance, trial and deposition preparation, expert witness testimony, or deposition the charge is $325 per hour, payable in advance. Four and eight hour minimums apply.

Outside services including laboratory analysis, consultants, subcontractors, equipment not listed above, outside reproduction, shipping, meals, lodging, and special equipment or services not listed above are charged at cost plus 15%. Charges for work on continuing projects will be based on a new schedule of charges effective January 1 of each year.
Conditions: The following General Conditions are incorporated into and made part of this Professional Services Agreement:

**GENERAL CONDITIONS**

1. **STANDARD OF CARE** - Services performed by Consultant under this agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the profession practicing in the same locality under similar conditions at the time the services are provided. No other representation, express or implied, and no warranty or guarantee is included or intended in this agreement, or in any report, opinion, document or otherwise. Consultant's analysis and recommendations will be based upon the results of test borings, or other investigative work. Consultant recognizes that subsurface conditions may change with time or vary from those encountered at the location where borings or explorations are made by Consultant and that the data interpretations and recommendations of Consultant are based solely on the information available. Consultant will not be responsible for interpretation or use by others of the information developed by Consultant.

2. **EXCLUSIONS** - Unless agreed to, in writing, Consultant's scope of work does not include evaluation of soil contamination; soil chemistry; corrosivity; groundwater contaminations; potential hazardous materials; presence or absence of wetlands; approval of or observation of the installation of construction materials; or establishing or verifying construction lines and grades.

3. **RIGHT OF ENTRY** - Client shall provide for Consultant's right to enter from time to time property owned by Client and/or others in order for Consultant to fulfill the scope of services included herein. Client understands that use of exploration equipment may cause some damage, the correction of which is not part of this agreement. Client also understands that the discovery of certain conditions and/or taking preventative measures relative to these conditions may result in a reduction of the property's value. Accordingly, Client waives any claim against Consultant, and agrees to defend, indemnify and hold Consultant harmless from any claim or liability for injury or loss allegedly arising from procedures associated with subsurface exploration activities or discovery of hazardous materials or suspected hazardous materials.

4. **SUBTERRANEAN STRUCTURES** - Client is responsible for accurately delineating the locations of all subterranean structures (e.g. utilities, underground tanks, etc.). Consultant will take reasonable precautions to avoid known subterranean structures, and Client waives any claim against Consultant, and agrees, to defend, indemnify, and hold Consultant harmless from any claim or liability for injury or loss, including costs of defense, arising from damage done to or caused by subterranean structures not identified or accurately located.

5. **JOB SITE SAFETY** - Client agrees that in accordance with generally accepted construction practices, the construction contractor will be required by the Client to assume complete responsibility for job site conditions during the course of construction, including safety of persons and property. Neither the professional activities of Consultant, nor the presence of Consultant employees or subcontractors, shall be construed to imply that Consultant has any responsibility for methods of work performance, superintendence, sequencing of construction, or safety in, on or about the job site.

6. **SAMPLES AND WASTES** - Consultant will submit selected soil, water and rock samples removed from the site to a State certified analytical laboratory. After analysis the laboratory will dispose of samples in accordance with their procedures. Other arrangements for storage or transfer of samples can be made at Client's expense upon Client's written request. Samples not selected for submission to the laboratory will remain on site and combined with drill cutting waste and or well development waste water as appropriate. Should any of these samples and or wastes be contaminated by hazardous substances or suspected hazardous substances, it is the Client's responsibility to select and arrange for lawful disposal procedures; that is, procedures which encompass removing the contaminated samples, from Consultant's custody and transporting them to a disposal site. Client is advised that, in all cases, prudence and good judgment should be applied in selecting and arranging for lawful disposal procedures. Accordingly, unless Client indicated otherwise within ten (10) working days from time of sample collection, Client hereby instructs Consultant to make arrangements, as Client's agent, for proper transportation and disposal of the selected laboratory samples with appropriate licensed parties. Client will be responsible for appropriate storage and disposal of all other samples and wastes developed during drilling, probing, subsurface exploration, well development and purging and related site activities. Due to the risks to which Consultant is exposed, Client agrees to waive any claim against Consultant, and to defend, indemnify and hold Consultant harmless from any claim or liability for injury or loss arising from Consultant's service as Client's agent in arranging for proper transportation and disposal of contaminated samples, as well as any claim or liability for injury or loss arising from Consultant's containing, labeling, transporting, testing, storing or other handling of contaminated samples.
7. **NOTIFICATION OF HAZARDOUS MATERIALS** - When hazardous materials are known, assumed or suspected to exist at a site, Consultant is required to take appropriate precautions to protect the health and safety of all personnel, to comply with applicable laws and regulations and to follow procedures that Consultant deems prudent to minimize risk to employees and the public. Client hereby warrants that if he knows or has any reason to assume or suspect that hazardous materials may exist at the project site, he has so informed Consultant. Client also warrants that he has done his best to inform Consultant of such known or suspected hazardous materials' type, quantity and location.

8. **MONITORING** - If Consultant is retained to provide a site representative to monitor specific portions of construction work or other field services as set forth in the proposal, then the following applies: For the specified assignment, Consultant representatives will report observations and professional opinions to Client or his designated representative. No action of Consultant can be construed as altering any agreement between Client and others. Consultant will report to Client any observed Consultant related work which, in Consultant's professional opinion, does not conform with plans and specifications. Consultant has no right to reject or stop work of any agent of the Client. Such rights are reserved solely for observed Consultant related work which, in Consultant's professional opinion, does not conform with plans and specifications. Consultant has no right to reject or stop work of any agent of the Client. Such rights are reserved solely for Consultant. Furthermore, Consultant's presence on site does not in any way guarantee the completion or quality of the performance of the work of any party retained by Client to provide field or construction related services.

9. **TERMINATION** - Upon the event of substantial failure of performance in accordance with the terms herein by the other party, either party may terminate this agreement upon seven (7) days written notice. In the event of termination by either party, Consultant shall be paid for services performed to the termination notice date plus reasonable termination expenses including the cost of completing analyses, records and reports necessary to document project status at time of termination, costs advanced to other companies or laboratories and for equipment purchased specifically for this project.

10. **DISPUTE RESOLUTION** - All claims, disputes and other matters in controversy between Consultant and Client arising out of or in any way related to this agreement will be submitted to "alternate dispute resolution" (ADR) before and as a condition precedent to other remedies provided by law. Since no specific ADR procedures are set forth in this agreement, it is understood that the parties shall submit disputes to mediation as a condition precedent to litigation. If a dispute at law arises from matters related to the services provided under this agreement and that dispute requires litigation instead of ADR then the prevailing party will be entitled to recovery of all reasonable costs incurred, including staff time, court costs, attorney fees, and other claim related expenses.

11. **LIMITATION OF LIABILITY** - Client agrees to limit Consultant's liability to the Client and all third parties arising from Consultant's professional acts, errors or omissions, such that the total aggregate liability of Consultant shall not exceed Consultant's total fee for the services rendered on this project or that covered by Consultant's insurance (less the deductible amount), whichever is greater. If Client wishes to have higher limits of liability and the charges involved, he should present request in writing to Consultant. Consultant further agrees to require of the contractor and subcontractors an identical limitation of Consultant's liability for damages suffered by consultant or subcontractors arising from Consultant's professional acts, errors or omissions. Client recognizes that Consultant has general and professional liability insurance. If Client requests additional insurance or a certificate of insurance he should request this in writing from Consultant. Neither Consultant nor his subcontractors assumes any liability for damages to others which may arise because of Consultant's professional acts, errors or omissions, except as stipulated herein.

12. **OWNERSHIP OF DOCUMENTS** - Unless indicated otherwise in specific project contracts, all reports, boring logs, field data, notes, laboratory test data, calculations, estimates, and other documents prepared by Consultant as instruments of service shall remain the property of Consultant. Client agrees that all reports and other work furnished to the Client or his agents, which are not paid for, will be returned upon demand and will not be used by the Client for any purpose whatsoever.

13. **BILLING AND PAYMENT** - Consultant will submit invoices to the Client at least monthly and a final bill upon completion of services. Payment is due upon presentation and is delinquent if payment has not been received within thirty (30) days from date of invoice. Client agrees to pay an additional charge of one-and one-half (1.5) percent per month or the maximum rate allowed by law on a delinquent account, excepting any portion of the invoiced amount in dispute and resolved in favor of Client. If Client objects to all or any portion of the invoice, Consultant in writing within fourteen (14) days of the invoice date, identify the cause of disagreement, and pay when due that portion of the invoice not in dispute. The parties will immediately make every effort to settle the disputed portion of the invoice. All time and expenses incurred (including attorney's fees) in connection with collection of any delinquent amount will be paid by Client to Consultant per Consultant's current fee schedules. In the event Client fails to pay Consultant within sixty (60) days after invoices are rendered, Client agrees that Consultant has the right to consider the failure to pay Consultant's invoice as a breach of this agreement. At this point a lien will be filed on the property.
COST ESTIMATE - September 28, 2016
PHASE 2 INVESTIGATION
1521 Hill Road, Novato, CA

Task 1 - Project Management, Consultation, Inspection, Scheduling, Admin

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Task 1 Subtotal Estimate $7,061.00

Task 2 - Work Plan Preparation, Permiting, USA Marking

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Utility Clearance, Site Marking

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Task 2 Subtotal Estimate $2,981.30

Task 3 - Phase 2 Investigation (2 Days in Field)

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Task 3 Subtotal Estimate $9,259.00
## Task 4 - Laboratory Analysis

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**Task 4 Subtotal Estimate** $9,658.85

## Task 5 - Waste Disposal

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<td>Staff Geologist</td>
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<td>Lab Analysis +15%</td>
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**Task 5 Subtotal Estimate** $978.75

## Task 6 - Report Preparation

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<td>Project Geologist</td>
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</table>

**Task 6 Subtotal Estimate** $1,945.00

**TOTAL PROJECT COST ESTIMATE** $31,883.90
CITY COUNCIL OF THE CITY OF NOVATO

RESOLUTION NO. ______

A RESOLUTION APPROVING THE SETTLEMENT AND RELEASE IN FULL OF ALL CLAIMS AND RIGHTS IN THE MATTER OF IN RE ESTATE OF WILFRED HENRY LIEB AND DONALD R. LIEB ET AL. V. CITY OF NOVATO; APPROVING THE PHASE II PROFESSIONAL SERVICES AGREEMENT AND COST ESTIMATE FROM ENVIRONMENTAL GEOLOGY SERVICES; AND ADOPTION OF A CATEGORICAL EXEMPTION PURSUANT TO SECTION 15316(a) OF THE CEQA GUIDELINES

WHEREAS, the representatives of the Lieb family, the Interim City Manager, the City Community Services Director, the Assistant City Attorney and Special Counsel for the City met with a private mediator on August 23, 2016, to resolve the Petition for Determination of Entitlement to Real Property filed by the City in the probate matter entitled Estate of Wilfred Henry Lieb, bearing Marin County Superior Court Case No. 1104967 (“City’s Case”), and the Action for Inverse Condemnation filed by the Lieb family in the case entitled Donald R. Lieb et al. v. City of Novato, bearing Marin County Superior Court Case No. 1601783 (“Lieb Family Case”) consistent with the direction and parameters set by the City Council. A settlement subject to the City Council’s approval was reached; and

WHEREAS, the City Council and the Lieb family representatives (collectively “the parties”) wish to fully and finally settle their respective claims and defenses made and asserted in the City Case and in the Lieb Family Case, and to fully and finally release any and all claims and rights that each has or may have against the other, and in order to effectuate such a settlement, the parties have agreed to equitably resolve any existing and/or potential disputes in connection therewith as set forth in the attached Settlement Agreement and Release in Full of All Claims and Rights (“Settlement”); and

WHEREAS, in order for said Settlement to be effective, the City Council must approve the Settlement. A central component to the Settlement is the requirement that the City pay the Lieb family $1.65 million in exchange for which the Lieb family shall convey to the City the almost nine (9) acres of real property which is the subject of the City’s Case and Lieb Family Case. Said real property is located at 1521 Hill Road, Novato (“subject real property”); and

WHEREAS, there are significant benefits to accrue to the City and its citizens should the City acquire the subject real property; and

WHEREAS, the benefits of acquiring this beautiful piece of property are many. The parcel is located near downtown and sits in a residential neighborhood (both single family and multi-family housing) which creates an ease of access for walking or biking. This nearly 10-acre site encompasses great natural beauty with a creek, established and beautiful trees, and open areas. The property has an agricultural history that could also be preserved and celebrated. The property must be used for park, open space, agricultural and historical purposes. The acquisition of the property allows for active and passive recreation opportunities to serve the diverse recreation needs of seniors, children, families, and the disabled community. Preserving and sharing the history of
this site, would help create a legacy that acknowledges the past, while sharing it with current and future users of the site; and

WHEREAS, additionally, the City-owned 12-acre site of Hill Recreation Area, Margaret Todd Senior Center, and Hill Gymnasium, is directly across the street from this property. Purchasing the Lieb property, would increase the City’s flexibility in planning for the future of the Hill Recreation area, and would allow connections across two sites; and

WHEREAS, acquiring this property does come with operating and capital costs to transition the property from private residential use to public ownership and use. There are buildings and structures on the site that will require maintenance. More detailed review and planning with the community for the reuse of the site for park, open space, historical and agricultural uses will occur in the future; and

WHEREAS, the acquisition of this site, near the heart of our town, is an unanticipated and exciting opportunity. The purchase of this property supports the Council’s Environmental Legacy Strategic Plan Goal of preserving and protecting Novato’s unique environment for future generations and evaluating and pursuing acquisition of open space and park development; and

WHEREAS, adding this site to the City’s property inventory, supports the City’s commitment to building a culture of health, through land use, providing abundant park and recreation opportunities and community connections, and this site will help us to continue to provide and expand opportunities for our residents to become and stay active and healthy. The purchase of the Lieb property is an investment in Novato’s future and the health of our children and all residents; and

WHEREAS, one of the conditions of the attached Settlement is that the City Council must approve in the exercise of its discretion, the results of a Phase II Investigation of the subject real property; and

WHEREAS, the Environmental Geology Services Consulting and Project Management group has provided a Professional Services Agreement and Cost Estimate (attached hereto) that provides such Phase II Investigation; and

WHEREAS, the attached Settlement provides that the City may use the subject real property for park, open space, historical and/or agricultural purposes. The acquisition of the subject real property for said purposes falls within Class 16 of the Categorical Exemptions from the California Environmental Quality Act (“CEQA”) as set forth in the CEQA Guidelines at 14 Cal. Code Regs., Section 15316, in that these uses have been determined not to have a significant effect on the environment and thus are exempt from CEQA; and

WHEREAS, Class 16 consists of the acquisition, sale, or other transfer of land in order to establish a park where the land is in a natural condition or contains historical or archaeological resources and the management plan for the park has not been prepared. The subject real property is in a natural condition and contains historical resources. Additionally, the management plan for the subject real property for the park has not been prepared. Thus, this acquisition qualifies for the categorical exemption under CEQA Guidelines, Section 15316(a).
NOW THEREFORE, BE IT RESOLVED:

1. that the Settlement is approved.

2. the Phase II Professional Services Agreement and Cost Estimate of Environmental Geology Services Consulting and Project Management Group (“Consultant”) is approved and the Interim City Manager is authorized to execute same on behalf of the City.

3. that the Interim City Manager is authorized and directed - as soon as is practicable following adoption of this Resolution – to inspect, document and photograph the improvements and personal property located on the subject real property in order to ascertain and identify personal property and/or historical resources that the City may wish to retain or own as part of its acquisition of the subject real property.

4. that the approval of said Settlement and the acquisition of the subject real property is categorically exempt from CEQA pursuant to Section 15316(a) of the CEQA Guidelines.

* * * * * * * * * *

I HEREBY CERTIFY that the foregoing resolution was duly and regularly adopted by the City Council of the City of Novato, Marin County, California, at a meeting thereof, held on the 4th day of October, 2016, by the following vote, to wit:

AYES: Councilmembers
NOES: Councilmembers
ABSTAIN: Councilmembers
ABSENT: Councilmembers

Deputy City Clerk of the City of Novato

Approved as to form:

City Attorney of the City of Novato
CITY COUNCIL OF THE CITY OF NOVATO

RESOLUTION NO. ________

RESOLUTION AMENDING BUDGET RESOLUTION 30-16 FOR THE PARKS MEASURE A FUND; THE DEVELOPMENT IMPACT FEE FUND; AND THE SUBDIVISION PARK TRUST (QUIMBY) FUND; IN AN AMOUNT TOTALING $1,695,000 TO ACQUIRE LIEB FAMILY PROPERTY

WHEREAS, the City Council wishes to acquire several real estate parcels ("the Lieb property") in Novato totaling nearly nine acres to provide additional parkland, open space, historical and agricultural uses for Novato residents; and

WHEREAS, the City Council has negotiated an agreement with several members of the Lieb family, the current owners of the property, for a total purchase price of $1,650,000; and

WHEREAS, the agreement requires that a "Phase II Environmental Investigation" be conducted at the property by a qualified professional, at a cost estimated to be no greater than $45,000; and

WHEREAS, the City Council, at its meeting of October 4, 2016 adopted resolution no. ________ approving the settlement agreement to acquire the Lieb property from the Lieb family; and

WHEREAS, there are funds available in the Measure A Parks fund, the Development Impact Fee fund, and the Subdivision Park Trust (Quimby) fund for the purchase.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Novato, in order to purchase the Lieb property and complete the Phase II Environmental Investigation, hereby amends budget resolution 30-16 in an amount totaling $1,695,000 as follows: $680,000 from Development Impact Fees (Fund 327 – Open Space component), $775,000 from Parks Measure A (Fund 310), and $240,000 from Quimby (Subdivision Park Trust) (Fund 231). The expenditures from Parks Measure A will be funded initially by an inter-fund loan from the Emergency and Disaster Response Fund, which will be repaid over 5 years by Parks Measure A from future Measure A revenues.

* * * * * * * *

I HEREBY CERTIFY that the foregoing resolution was duly and regularly adopted by the City Council of the City of Novato, Marin County, California, at a meeting thereof, held on the 4th day of October, 2016, by the following vote, to wit:
AYES: Councilmembers
NOES: Councilmembers
ABSTAIN: Councilmembers
ABSENT: Councilmembers

Deputy City Clerk of the City of Novato

Approved as to form:

City Attorney of the City of Novato
The City of Novato will consider the purchase of privately-owned land located on Hill Road at the Novato City Council meeting on **Tuesday, October 4, 2016 at 6:30pm** at Novato City Hall, 901 Sherman Ave.

The potential purchase is the result of a mutual mediation agreement. The nearly ten acre site, across from Hill Recreation Area, was historically used for agricultural purposes and is located near the heart of Downtown.

The purpose of this public meeting is to discuss the proposed purchase and price. The reuse of this site is limited to park, historical, agricultural and open space uses. The Novato City Council will decide whether to approve the agreement and allocate City funds to purchase the property, and if approved, will begin an environmental analysis. More detailed discussion of the reuse of the property will occur at future noticed community meetings.

The City is notifying residents about this meeting to provide an opportunity to learn more about the agreement, proposed purchase and the associated costs.

*For more information regarding the Lieb Private Property Acquisition, please visit novato.org/hillroadproperty.*

Date: 9/28/16
THIS IS AN OFFICIAL NOTICE FROM THE CITY OF NOVATO

Sign-up to stay up-to-date on this & other citywide topics at novato.org/connectwithus