MEMORANDUM OF AGREEMENT BETWEEN THE TOWN OF WINDSOR, WINDSOR WATER DISTRICT AND THE LYTTON RANCHERIA OF CALIFORNIA REGARDING THE CONNECTION TO THE TOWN OF WINDSOR'S WASTEWATER SYSTEM

This Memorandum of Agreement ("Agreement") is entered into and effective as of July 1, 2020 (the "Effective Date"), by and among the Town of Windsor, a California municipal corporation ("TOWN"), the Windsor Water District, a subsidiary district of the Town of Windsor ("DISTRICT") (TOWN and DISTRICT referred to herein collectively as "TOWN") and the Lytton Rancheria of California, a federally recognized Indian tribe ("TRIBE") (referred to herein collectively as "PARTIES").

RECITALS

WHEREAS, the TOWN owns and operates a wastewater collection and treatment system, including a wastewater reclamation facility; and

WHEREAS, on December 19, 2020, President Donald Trump signed into law U.S. Senate Bill S.1790 taking approximately 511 acres of land in unincorporated Sonoma County owned by the TRIBE into Federal trust ("TRUST LANDS"); and

WHEREAS, the TRIBE seeks to develop an approximately 177.87 acre portion of the TRUST LANDS located to the west of TOWN limits, as further described herein and consisting of: (a) 361 residential units; (b) 18,809 square foot community center; (c) 2,500 square foot roundhouse; (d) 2,707 square foot retreat; and (e) 60,000 square feet of community and/or Tribal government buildings ("RESIDENTIAL PROJECT"); and

WHEREAS, the RESIDENTIAL PROJECT is located on TRUST LANDS within and outside the boundaries of the TOWN's Urban Growth Boundary; and

WHEREAS, the TOWN recognizes the sovereign right of the TRIBE to use and develop TRUST LANDS at its sole discretion and that the TOWN has no legal or regulatory authority to exercise jurisdiction over, deliberate on, approve, disapprove or otherwise exercise judgment regarding the TRUST LANDS or the RESIDENTIAL PROJECT; and

WHEREAS, the TRIBE has requested that the TOWN allow the TRIBE to connect to the TOWN's wastewater system to serve the RESIDENTIAL PROJECT; and

WHEREAS, Policy LU-7.10 in the Land Use and Community Design Element of the Town of Windsor 2040 General Plan allows for extension of TOWN wastewater services outside the Urban Growth Boundary, subject to the Town Council making the necessary findings; and

WHEREAS, on May 20, 2020, the Town Council adopted Resolution No. 3594-20, incorporated herein by reference, making the necessary findings and approving the execution of this Agreement; and

WHEREAS, a Final Environmental Assessment ("EA") addressing the first phase of the RESIDENTIAL PROJECT, was prepared in May 2011 in accordance with requirements of the National Environmental Policy Act ("NEPA") and was approved by the Bureau of Indian Affairs ("BIA") of the United States Department of Interior on June 5, 2012; and

WHEREAS, pursuant to a Memorandum of Agreement between the TRIBE and the County of Sonoma executed March 10, 2015 ("County MOA"), the TRIBE agreed to implement the mitigation measures identified in the EA; and

WHEREAS, the County MOA contains provisions requiring that the TRIBE conduct future environmental review prior to construction of any development not specifically addressed in the EA; and

WHEREAS, the County MOA also requires the TRIBE to implement and follow the mitigation measures identified in EA during construction and operation of the RESIDENTIAL PROJECT and to implement and follow any mitigation measures identified and approved as part of any future NEPA document prepared for the development of TRUST LANDS; and

WHEREAS, the portion of the RESIDENTIAL PROJECT subject to the TOWN's environmental review authority under the California Environmental Quality Act ("CEQA") is limited to work required to construct new sewer lines and/or improve existing sewer lines within existing public rights-of-way and work required to improve the existing aeration basin system at the Town's existing wastewater treatment plant, which have been determined to be exempt from CEQA pursuant to: California Public Resources Code Section 21080.21, which exempts replacement, repair and new construction of pipelines less than one mile in length in a public right-of-way; and, CEQA Guidelines Section 15301(b), which exempts minor alterations to existing publicly owned utilities where there is negligible expansion of the existing use; and

WHEREAS, engineering analyses prepared by the TOWN and the professional consulting firm of GHD determined that with certain improvements to the existing wastewater treatment plant, there is sufficient capacity to serve the RESIDENTIAL PROJECT; and

WHEREAS, the TRIBE and TOWN agree that connection to the TOWN's wastewater system is a preferable option for providing wastewater service to the RESIDENTIAL PROJECT and that the TRIBE should be allowed to connect to the TOWN's wastewater system, including for the beneficial reasons enumerated in the May 20, 2020 Town Council meeting Agenda Report, incorporated herein by reference; and

WHEREAS, pursuant to Section 2869(16) of Senate Bill 1790 (National Defense Authorization Act for Fiscal Year 2020) of the 116th Congress (2019-2020), the TRIBE cannot engage in any gaming activities, or gaming uses on the RESIDENTIAL PROJECT site and/or TRUST LANDS in perpetuity.

NOW, THEREFORE, in consideration of their mutual agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the PARTIES agree as follows:

AGREEMENT

1. Recitals. The Recitals set forth at the beginning of this Agreement are deemed incorporated herein, and the PARTIES hereto represent they are true, accurate, and correct.

2. Purpose. The purpose of this Agreement is to memorialize the agreed upon terms for connecting the RESIDENTIAL PROJECT, as described in Section 4.A below, to the TOWN's wastewater system.

3. Term. The Effective Date of this Agreement is the first date written above. This Agreement shall remain in full force and effect until terminated by either PARTY pursuant to Section 8 below.

4. Covenants.

A. The TOWN agrees to approve the extension of, and connection to, the TOWN's wastewater system to serve development of the RESIDENTIAL PROJECT on a portion of the TRUST LANDS, as shown on Exhibit "A" attached hereto and incorporated herein by reference, and specifically consisting of the following: (a) 361 residential units; (b) 18,809 square foot community center; (c) 2,500 square foot roundhouse; (d) 2,707 square foot retreat; and (e) 60,000 square feet of community and/or Tribal government buildings.

B. The PARTIES agree that extension of, and connection to, the TOWN's wastewater system shall be contingent on execution of a Joint Exercise of Powers Agreement ("JEPA"), in accordance with Section 5 and agreed to by both the TOWN and the TRIBE.

C. The TRIBE agrees to pay the TOWN a lump sum payment of Twenty Million Dollars ($20,000,000.00) within fifteen (15) days of executing the JEPA, in accordance with Section 5, for the purpose of onetime connection fees and future community benefit project or projects.

D. The TOWN agrees that the lump sum payment of Twenty Million Dollars ($20,000,000.00) includes a one-time connection fee for the RESIDENTIAL PROJECT, and that any future increase to the Town's wastewater system connection fees will not be applicable to the RESIDENTIAL PROJECT regardless of the timing of its construction. The TRIBE agrees that expenditure of the remainder of the lump sum payment of Twenty Million Dollars ($20,000,000.00) to the TOWN is at the sole discretion of the TOWN and may be used for any purpose. The community benefit portion of the payment is expected to be used for projects such as a recreational facility or a pool.

E. The TRIBE agrees to design and construct, at its sole cost and expense, all on-site sewer infrastructure and off-site sewer line improvements necessary for connecting the RESIDENTIAL PROJECT site to the TOWN's existing wastewater system, and that these costs are in addition to the Twenty Million Dollar ($20,000,000.00) lump sum payment described herein.

F. The TRIBE agrees to pay all costs associated with any needed improvements to correct deficiencies in existing "downstream" sewer lines that directly result from development of the RESIDENTIAL PROJECT, and that these costs are in addition to the Twenty Million Dollar ($20,000,000.00) lump sum payment described herein.

G. The PARTIES agree any such needed improvements described in Sections 4(E)-4(F) above, including cost estimates substantiated by technical analysis, including but not limited to, flow estimates and construction design, shall be identified by the TOWN and presented to the TRIBE for review and acceptance prior to entering into the JEPA as described in Section 5.

5. Joint Exercise of Powers Agreement. Prior to a physical connection to the TOWN's wastewater system, the TOWN and TRIBE agree to enter into a JEPA for the provision of wastewater services and that the JEPA provisions shall include, but are not limited to, the following:

a. Capacity of wastewater service to be provided

b. Standards for construction of wastewater infrastructure

c. Inspection, operation, and maintenance of wastewater infrastructure

d. Ownership of and access to wastewater infrastructure

e. Wastewater service charges

f. Administrative provisions

g. Access and use of reclaimed water.

6. Indemnification. The TRIBE agrees to indemnify, defend and hold harmless the TOWN (with counsel reasonably acceptable to the TOWN) from and against any and all claims, losses, proceedings, damages, causes of action, liability, costs, and expenses (including its reasonable attorneys' fees) arising from any action or proceeding filed against the TOWN which challenges the TOWN's approval, execution or delivery of this Agreement. The PARTIES agree that this Section 6 shall constitute a separate agreement entered into concurrently and that if any other provision of this Agreement, or the Agreement as a whole, is terminated, invalidated, rendered null or set aside by a court of competent jurisdiction, the PARTIES agree to be bound by the terms of this Section 6 which shall survive such termination, invalidation, nullification, or setting aside.

7. Amendments. This Agreement, including any exhibits hereto, may only be amended by mutual written agreement executed by duly authorized representatives of both PARTIES.

8. Termination. Either Party may terminate this Agreement for any reason by giving the other Party at least fourteen (14) days' prior written notice.

9. No Third Party Beneficiaries. This Agreement is not intended to, and will not be construed to, confer any benefit or create any right on a third party, or the power or right to bring an action to enforce any of its terms.

10. No Agency, Joint Venture, or Partnership. Although this Agreement anticipates the execution of a JEPA in the future, the PARTIES hereby renounce the existence of any form of agency relationship, joint venture, or partnership between the TOWN and TRIBE stemming from this Agreement, and the PARTIES agree that nothing contained herein shall be construed as creating any such relationship between the PARTIES.

11. Waiver. The waiver by either PARTY or any of its officers, agents or employees, or the failure of either PARTY or its officers, agents or employees to take action with respect to any right conferred by, or any breach of any obligation or responsibility of this Agreement, will not be deemed to be a waiver of such obligation or responsibility, or subsequent breach of same, or any terms, covenants or conditions of this Agreement, unless such waiver is expressly set forth in writing in a document signed and executed by the appropriate authority of both PARTIES.

12. Severability. The provisions of this Agreement are severable, and the invalidity of any provision or portion of this Agreement shall not in and of itself affect the validity of any other provision or portion of this Agreement, and the remaining provisions of the Agreement shall remain in full force and effect. If any provisions of this Agreement were determined to be invalid or unenforceable, then the PARTIES agree to promptly use good faith efforts to amend this Agreement to reflect the original intent of the PARTIES in accordance with applicable law.

13. Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the United States, and the State of California.

14. Limited Waiver of Sovereign Immunity/Dispute Resolution.

A. The PARTIES acknowledge that the TRIBE is a federally-recognized Indian tribe and, as such, it possesses sovereign immunity from suit. Nothing in this Agreement is or shall be deemed to be a waiver of the TRIBE's sovereign immunity from suit, which immunity is expressly asserted, except that the TRIBE agrees to waive its sovereign immunity from suit specifically and exclusively to the TOWN for the limited and sole purposes of compelling arbitration and of enforcing an arbitration decision rendered pursuant to the terms and conditions of this Agreement.

B. Prior to pursuing any arbitration, each PARTY shall, whenever possible, attempt to resolve any grievance, complaints, or disputes that are brought to its attention by the other PARTY. Each PARTY shall notify the other PARTY in writing of any material dissatisfaction with the other PARTY's performance at that PARTY's address of record. Within ten (10) days of such notice, unless the problem has been resolved, the PARTIES shall meet and confer in good faith to determine what remedial action, if any, is necessary.

C. In the event of any dispute between the parties hereto arising under this Agreement, such dispute shall be submitted to mandatory binding arbitration pursuant to the

Commercial Rules of American Arbitration Association. Each party shall initially pay its own arbitration costs and expenses, but the arbitrator may, in its discretion, include such costs and expenses, together with reasonable attorneys' fees, as part of the award to the prevailing party. Any award of the arbitrators may be submitted for enforcement to a court of competent jurisdiction located in Sonoma County, California.

D. Either PARTY may seek judicial enforcement of such arbitration decision. Such enforcement actions shall be brought in the United States District Court for the Northern District of California, the United States Court of Appeals for the Ninth Circuit, and the United States Supreme Court. If the United States District Court for the Northern District of California determines that it lacks jurisdiction, the PARTIES shall be entitled to file in Sonoma County Superior Court or the closest court with jurisdiction geographically thereto. The awards of any arbitration, if brought in Federal Court, shall be governed by the Federal Arbitration Act codified in Title 9 of the United States Code except as the same may be changed or limited by the provisions of this Agreement.

E. The appropriate Court shall have the authority not only to confirm any order or decision of the arbitrator, but to issue all orders necessary, including, but not limited to, the issuance of temporary or permanent injunctions to prohibit the PARTIES from engaging in conduct that violates the provisions of the Agreement; compelling the PARTIES to comply with the provisions of this Agreement; requiring the PARTIES to pay over any income or profits subject to attachment; or enforcing any decision or order of any arbitrator selected under this Agreement. Judicial remedies for any such arbitration agreed upon by the PARTIES are specifically limited to the following:

a. The enforcement of an award of money damages by arbitration pursuant to this Agreement.

b. The enforcement of a determination by an arbitrator pursuant to this Agreement that mandates either PARTY to specifically perform any obligation under this Agreement (other than an obligation to pay money which is provided for in Section 14(E)(a) above).

F. The TRIBE's limited waiver of its sovereign immunity as provided herein in favor of the TOWN extends only to an arbitration, action to compel arbitration and action to confirm or enforce arbitration awards by the TOWN for money damages, specific performance, injunctive relief, and/or declaratory relief for the TRIBE's breach of this Agreement.

15. Binding Agreement. This Agreement is intended to be, and shall be construed to be, binding upon the PARTIES and all successors and successors-in-interest of each PARTY, including all officers, agents and employees, and, in the case of the TOWN, future Town Councils and, in the case of the TRIBE, future Tribal Councils or General Councils.

16. Construction of Agreement. This Agreement, including all recitals, together with all Exhibits, constitutes the entire agreement between the PARTIES and supersedes all prior negotiations, representations, drafts regarding this Agreement, whether written or oral, regarding

the matters herein. Each PARTY is represented by legal counsel and has consulted with legal counsel regarding the terms of this Agreement. In the event of a dispute between the PARTIES as to the language of this Agreement or any amendment to this Agreement or the construction or meaning of any term contained in this Agreement or any amendment to this Agreement, this Agreement or any amendment to this Agreement shall be deemed to have been drafted by the PARTIES in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against, or in favor of, either PARTY based on the preparation or negotiation of this Agreement or any amendment to this Agreement. The headings contained in this Agreement are for convenience of reference only and shall not affect this Agreement's construction or interpretation.

17. Confidentiality. Other than reports prepared to comply with NEPA Guidelines, any information or documents obtained, directly or indirectly under this Agreement or preceding negotiations, shall be deemed confidential to the extent allowed under the law and shall not be shared with any third party. The TOWN shall promptly provide the TRIBE notice of any Public Records Act or Freedom of Information requests related to this Agreement and shall afford the TRIBE, within the time limits allowed under applicable law, an opportunity to seek an injunction by the Court against any such disclosure.

18. No Submission to Jurisdiction. The PARTIES acknowledge and agree that this Agreement, except as otherwise specified, is not intended to constitute, and shall not be construed as constituting, a submission by the TRIBE to the jurisdiction of (i) the TOWN or any or any of its subdivisions, departments or courts, (ii) any of its or their respective officials, employees, inspectors or contractors, or (iii) any of its or their respective laws, rules, regulations, ordinances, general plans or specific plans.

19. Duplicate Originals. At least two (2) sets of this Agreement shall be signed and exchanged by the PARTIES, each of which shall be considered an original document.

20. Obligation on Related Entities. This Agreement binds the PARTIES and their departments, affiliates, agents, representatives, successors, contractors, officials, and related entities which such Agreement shall also be reflected in a resolution of each PARTY's respective governing body approving the Agreement.

21. Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Agreement shall be made in writing and sent to the PARTIES at their respective addresses specified below or to such other address as a PARTY may designate by written notice delivered to the other PARTIES in accordance with this Section. All such notices shall be sent by:

a. personal delivery, in which case notice is effective upon delivery;

b. certified or registered mail, return receipt requested, in which case notice shall be deemed delivered upon receipt if delivery is confirmed by a return receipt;

c. nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is

confirmed by the delivery service; or

d. facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a nonbusiness day.

For the TRIBE:

Tribal Chairperson
Lytton Rancheria of California
437 Aviation Blvd.
Santa Rosa, CA 95403
Tel: (707) 575-5917

For the TOWN:

Ken MacNab
Town Manager
Town of Windsor
9291 Old Redwood Highway
Windsor, California 95492

22. Representations and Warranties. Each PARTY hereby represents, warrants, and covenants to the other PARTY as follows:

A. Authority. Such PARTY has the legal power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement.

B. Due Authorization. The approval, execution, and delivery of this Agreement, and the performance by such PARTY of its obligations under this Agreement, have been authorized by all requisite actions of such PARTY.

C. Due Execution and Delivery. The persons executing this Agreement on behalf of such PARTY are duly authorized to execute and deliver this Agreement in the name of and on behalf of such PARTY.

D. Enforceability. This Agreement constitutes the legal, valid, and binding obligation of each PARTY, enforceable against each PARTY in accordance with its terms, and, once executed and delivered, cannot be invalidated pursuant to any subsequent action of the respective governing bodies, as applicable.

E. No Conflict. The approval, execution, delivery, and performance of this Agreement does not conflict with any other agreement to which each PARTY is a

PARTY and does not violate or require any action which has not been taken under any law, statues, rule, regulation, ordinance, general plan, specific plan, or court order or decree applicable to such PARTY.

IN WITNESS WHEREOF, the PARTIES execute and enter into this Agreement with the intent to be bound thereby through their authorized representatives whose signatures are affixed below.

TOWN OF WINDSOR:

By: _____
Ken MacNab, Town Manager

WINDSOR WATER DISTRICT:

By: _____
Ken MacNab, General Manager

ATTEST:

By: _____
Maria De La O, Town Clerk

APPROVED AS TO FORM:

By: _____
Jose M. Sanchez, District Counsel

APPROVED AS TO FORM:

By: _____
Jose M. Sanchez, Town Attorney

TRIBE:

LYTTON RANCHERIA OF CALIFORNIA

By: _____
Margie Mejia, Tribal Chairperson

Date: 6/20/20

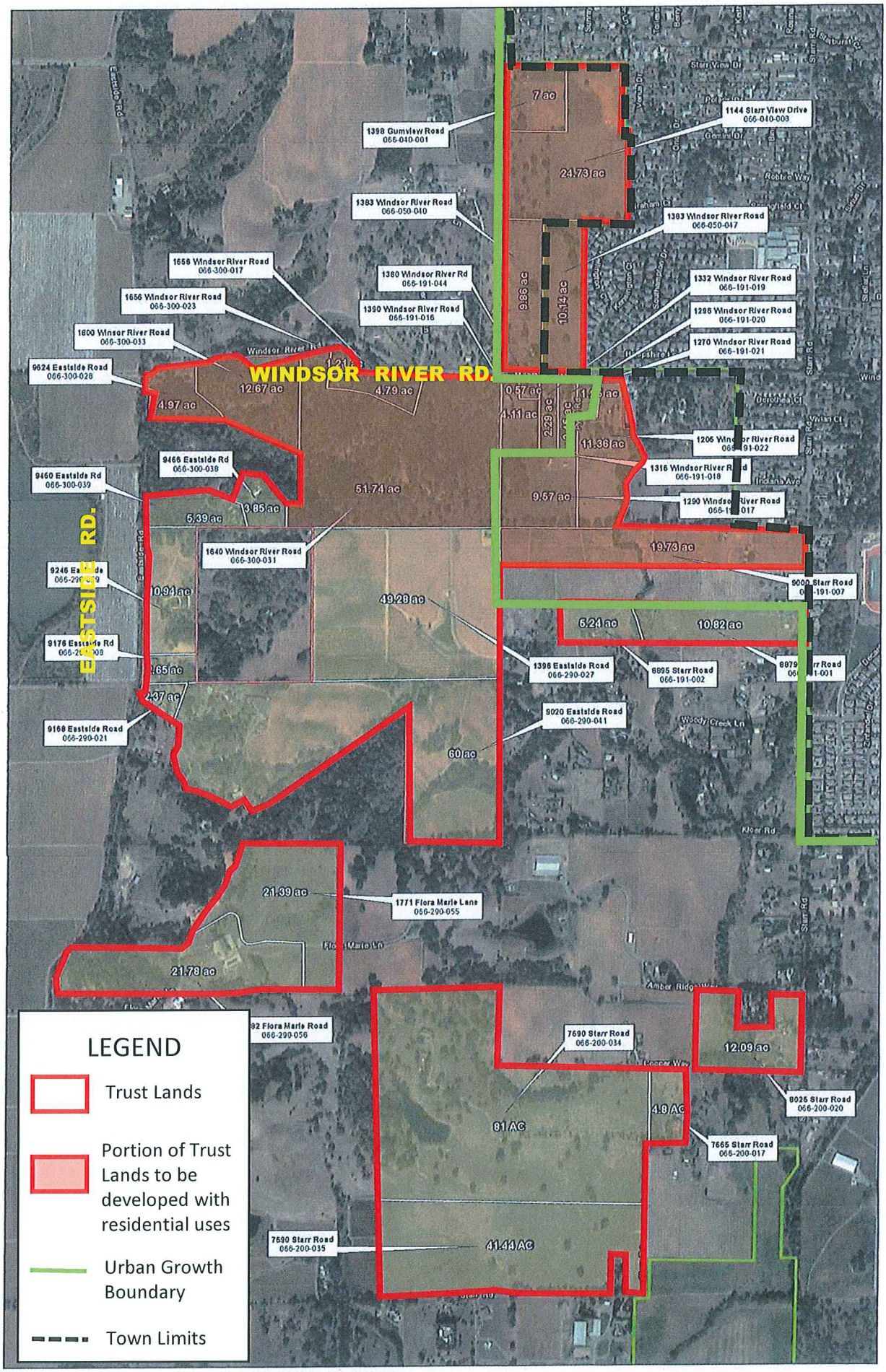
APPROVED AS TO FORM BY
LEGAL COUNSEL FOR THE TRIBE:

By: _____
Laurence R. Stidham

Date: 6/23/2020

EXHIBIT A

EXHIBIT "A"- LYTTON RANCHERIA TRUST LANDS



SOURCE: Sonoma County General Plan 2020, updated 2012; USDA aerial photograph, 6/13/2010; AES, 1/18/2017