

## Intergovernmental Agreement for Marina Dredging Services

This Agreement is entered into between the Port of Astoria, an Oregon Port District formed and authorized pursuant to Oregon Revised Statutes (ORS) chapter 777, and the Port of Ilwaco, a Washington rural Port District formed and authorized pursuant to Revised Code of Washington (RCW) chapter 53.08. This agreement is effective upon signing by both parties hereto. For purposes of this Agreement, the parties may be referred to collectively as “the Ports” or “the Parties.”

WHEREAS the Port of Ilwaco is authorized by RCW 39.34.030 *et seq.*, and RCW 53.08.240, to enter into agreements with a unit of local government in another state for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform, and

WHEREAS the Port of Astoria is authorized by ORS 190.420, ORS 777.108, and ORS 777.112 to enter into agreements for joint and cooperative action with units of local government from another state, and

WHEREAS the Ports share a common interest in supporting commercial and recreational fishing, given their importance to our local and regional economy and heritage of our coastal community, and

WHEREAS the Port of Astoria is in need of marina dredging services and equipment to support this interest and the Port of Ilwaco has the personnel, expertise and resources to provide such services and equipment, and

WHEREAS the Parties have determined that provision of dredging services by the Port of Ilwaco to the Port of Astoria will provide a cost-effective and efficient use of public resources,

NOW THEREFORE, in consideration of the covenants and agreements hereinafter set forth, the Parties hereby enter into this Agreement as follows:

1. **SERVICES:** The Port of Astoria requires the dredging of its West Marina (the "Project"). The Parties will each provide the labor, equipment, and materials for the Project as outlined and described in the Statement of Work, which is attached to this Agreement as Exhibit A and incorporated herein by this reference.
2. **TIMELINE AND PERFORMANCE:** The Services will be commenced Nov 1, 2017 and completed by December 31, 2017 (“Performance Period”). The Completion date may be amended, and the Performance Period thereby modified, without further action of the Parties, in accordance with conditions outlined on Exhibit A. All work on the Project shall be performed in compliance with the permit(s) issued by the U.S. Army Corps of Engineers for the Project, which is part of this Agreement and incorporated herein by this reference. Pre- and post-Performance Period surveying and mobilization/demobilization may be conducted outside the stated time frame as required.
3. **COMPENSATION:** Cost assessments for the Project will be invoiced as outlined on Exhibit B, attached hereto and by this reference made a part hereof, subject to additional work and costs as jointly

agreed upon by the Parties pursuant to Section 6. The Port will calculate and hold back retainage in the amount of 5 percent of the total contract amount until full performance of Services is confirmed by the Port.

4. **INDEPENDENT PORT OF ILWACO:** In the performance of this Agreement, each party is an independent contractor and shall not be deemed an agent or employee of the other. Each party shall be solely responsible for its employees and for their compensation, benefits, contributions and taxes, if any. The Port of Ilwaco shall be responsible for complying with all labor and contracting laws applicable to the Services to be performed under this Agreement.

5. **INSURANCE:** The Port of Ilwaco shall procure and continuously maintain throughout the term of this Agreement insurance coverage as follows:

- A. Worker's Compensation Insurance as required by applicable law.
- B. Commercial General Liability and Automobile Liability Insurance with combined single limits, or their equivalent, of not less than \$1,500,000.00 for each occurrence and \$2,000,000.00 in the aggregate, for bodily injury and property damage.
- C. Contractual liability coverage for the indemnity provided under this Agreement, naming the Port of Astoria as an Additional Insured, in sufficient form to protect both Parties against claims of third persons for personal injury, death or property damage arising from the Services performed pursuant to this Agreement.
- D. All insurance necessary to protect the Port of Ilwaco's interest in the dredge equipment and pipe.

Proof of required insurance coverage shall be provided to the Port of Astoria prior to beginning the Services.

6. **MODIFICATIONS:** Any changes to this Agreement, including all exhibits, shall be negotiated between the Parties through their designated representatives and formalized by signed written amendment hereto prior to commencement of any work resulting from such change. The Port of Ilwaco shall provide the Port of Astoria with written notice of any event or occurrence that the Port of Ilwaco believes entitle it to a change in the Project scope, cost, or time for performance, within five (5) business days of the event or occurrence happening. Failure to provide such written notice shall constitute a waiver by the Port of Ilwaco of any claim for additional costs or time related to the change. Any request for an increase in the scope of services shall include an estimate of expected time and costs for the expected additional work. Upon approval by the Port of Astoria, the Port of Astoria will issue a Change Order authorizing the additional work. Any work performed without a signed Change Order shall be at the Port of Ilwaco's sole expense.

7. **PORT OF ASTORIA RESPONSIBILITIES:** In addition to those responsibilities outlined on Exhibit A, the Port of Astoria agrees to: (i) make available to Port of Ilwaco known materials, data, and information pertaining to the Project or the Services; (ii) convey and discuss such materials, data and information with Port of Ilwaco; (iii) reasonably cooperate in the delivery of the Services; and (iv) assist

in a liaison capacity with any tenants currently leasing or renting any facilities, buildings or other structures that may be impacted by the Services.

8. **RECIPROCAL INDEMNIFICATION:** The Port of Ilwaco shall indemnify, hold harmless, and defend the Port of Astoria for, from and against any and all costs, claims, actions, liabilities or expenses (including, without limitation, all costs, demands, charges, suits, judgments, fines, penalties, liabilities, debts, attorneys' fees and causes of action), of whatsoever nature or character, including without limitation, claims, losses and expenses for property damage, bodily injury or death, which may be imposed upon or claimed against or incurred by the Port of Astoria and which arise from any of the following: (a) any act, omission or negligence of the Port of Ilwaco or its partners, officers, directors, agents, employees, invitees or subcontractors; (b) any use, occupation, management or control of Port of Astoria property by the Port of Ilwaco or its employees, agents, subcontractors, or suppliers, whether or not due to the Port of Ilwaco's own act or omission and whether or not occurring on Port of Astoria property; (c) any condition created on Port of Astoria property by the Port of Ilwaco or its employees, agents, subcontractors, or suppliers, and any accident, injury or damage arising from the condition; (d) any breach, violation or nonperformance of any of the Port of Ilwaco's obligations under this Agreement; or (e) any damage caused by the Port of Ilwaco or its employees, agents, subcontractors, or suppliers on or to Port of Astoria property. The Port of Astoria reserves the right to approve or reject in advance any legal counsel selected by the Port of Ilwaco to defend any action affecting the legal rights and obligations of the Port of Astoria.

The Port of Astoria shall indemnify, hold harmless, and defend the Port of Ilwaco for, from and against any and all costs, claims, actions, liabilities or expenses (including, without limitation, all costs, demands, charges, suits, judgments, fines, penalties, liabilities, debts, attorneys' fees and causes of action), of whatsoever nature of character, including without limitation, claims, losses and expenses for property damage, bodily injury or death, which may be imposed upon or claimed against or incurred by the Port of Ilwaco and which arise from any of the following: (a) any act, omission or negligence of the Port of Astoria or its partners, officers, directors, agents, employees, invitees or subcontractors; (b) any use, occupation, management or control of Port of Astoria property by the Port of Astoria or its employees, agents, subcontractors, or suppliers, whether or not due to the Port of Astoria's own act or omission and whether or not occurring on Port of Astoria property; (c) any condition created on Port of Astoria property by the Port of Astoria or its employees, agents, subcontractors, or suppliers, and any accident, injury or damage arising from the condition; (d) any breach, violation or nonperformance of any of the Port of Astoria's obligations under this Agreement; or (e) any damage caused by the Port of Astoria or its employees, agents, subcontractors, or suppliers on or to Port of Astoria property. Any liability of the Port of Astoria shall be subject to the provisions and limitations of the Oregon Tort Claims Act, ORS 30.260 to 30.400.

9. **SITE ACCESS:** To the best of its ability, the Port of Astoria shall provide reasonable and timely access to any site reasonably necessary for the successful and timely completion of Services under this Agreement.

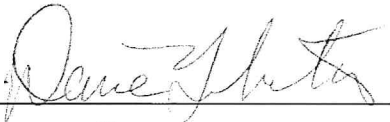
10. **SEVERABILITY:** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of Parties shall be construed as if this Agreement did not contain the particular term or provision held invalid.

11. ENTIRE AGREEMENT: This Agreement, with all exhibits, constitutes the entire Agreement between the Parties. All understandings and agreements between the Parties and representations by either party concerning this Agreement are contained within this Agreement. No waiver, consent, modification, amendment or change in the terms of this Agreement shall bind either party unless in writing and signed by both parties. Any written waiver, consent, modification, amendment or change only in the specific instance and for the specific purpose given.

All definitions established in this Agreement, including the exhibits, have the meaning established by the definition throughout the entire Agreement, including the exhibits.

IN WITNESS hereof, the Parties mutually acknowledge that they have read and understand this Agreement, and agree be bound by its terms and conditions by causing to be affixed below the signatures of their authorized representatives.

PORT OF ILWACO

By: 

Date Signed: 9-18-17

Name: DAVE NICHOLS

Title: Chairman

PORT OF ASTORIA

By: 

Date Signed: 9-18-17

Name: FRANK R SPENCE

Title: PRESIDENT

# Intergovernmental Agreement for Marina Dredging Services Exhibit A – Statement of Work

1. In addition to those obligations outlined in the Agreement, the Port of Ilwaco shall provide the following:

- 1.1 Dredge vessel and all associated equipment necessary to operate and maintain the dredge.
- 1.2 All supplies (defined as anything that is consumed in normal operations) necessary to operate and maintain the dredge.
- 1.3 All labor necessary to maintain the dredge in working order.
- 1.4 Dredge pipe and all associated equipment and supplies necessary to maintain the pipe in operational condition.
- 1.5 One Port of Ilwaco employee to operate the dredge for each shift; the dredge shall not be operated without at least one Port of Ilwaco employee present.
- 1.6 Completion and submission of the Daily Report, attached hereto and incorporated herein as Exhibit C.
- 1.7 Conformance with the Dredge Plan, attached hereto and incorporated herein as Exhibit D

2. During the Performance Period defined in Section 2, the Port of Ilwaco shall maintain continuous dredging removal of sediment for the maximum amount of time allowed under the permit(s) issued for the Project, weekends and legal holidays excepted (“Allowed Removal Time”). The portion of each work window throughout the duration of the Performance Period during which dredging operations are occurring shall be defined as the Actual Removal Time, to include time spent in actual sediment removal as well as those repair or maintenance tasks necessitated by unforeseen debris or other foreign materials in the marina (“Marina Conditions”). Mobilization, those repair or maintenance operations not necessitated by Marina Conditions, and any other dredge operations not included above in the definition of Actual Removal Time shall not be deemed Actual Removal Time.

3. In addition to those obligations outlined in the Agreement, the Port of Astoria shall provide the following:

- 3.1 All labor, expertise, supplies, and associated equipment necessary to move and sink the dredge pipe.
- 3.2 One Port of Astoria employee to assist in the operation of the dredge for each shift, a shift defined as one 8-hour period; the Parties agree that the Port of Astoria employee assisting in the operation of the dredge is subject to direction of the Port of Ilwaco dredge operator.
- 3.3 Port of Astoria shall provide TraveLift services for mobilization and demobilization
- 3.4 Port of Astoria shall provide work boat and crew to move dredge into position from the TraveLift on Pier 3 to the West Mooring Basin
- 3.5 Port of Astoria shall provide a dumpster for removal of trash and debris removed from Marina

3.6 Port of Astoria shall engage a third-party vendor to provide pre- and post-dredge bathymetric surveys

4. A minimum of two operations staff must be present at all times when dredging operations are underway (for safety). Additional operations staff will be needed during mobilization and demobilization, and may be needed during maintenance or repair activities, and if conditions in the marina require additional staff (excessive pump cleans or other adverse conditions).

# Intergovernmental Agreement for Marina Dredging Services Exhibit B – Project Costs

1. **Invoicing Schedule.** The Port of Astoria shall issue progress payments under the Agreement upon receipt of an invoice from the Port of Ilwaco. Port of Ilwaco agrees to issue Invoices according to the following schedule:

- 1 Upon completion of mobilization
- 2 On December 1, 2017
- 3 On January 1, 2018
- 4 Upon completion of Project (if performance is not complete by Dec 31, 2017)

A progress payment is not considered acceptance or approval of any work or waiver of any defects therein.

Port of Ilwaco agrees to invoice the Port of Astoria for the following amounts: Invoice 1 for mobilization shall be \$15,000. Invoices 2 and 3 shall be based on the number of days that Port of Ilwaco removes sediment for at least 5 hours and shall be invoiced at \$3,000 per day. Invoice 4 shall be calculated as defined in Section 3 of this exhibit below.

2. **Retainage.** Port of Astoria will reserve as retainage from all progress payments five percent (5%) of each invoice. As work progresses, Port of Astoria may (but is not required to) reduce the amount of the retainage and Port of Astoria may (but is not required to) eliminate retainage on any remaining monthly contract payments after 50 percent of the Work under the Agreement is completed if, in Port of Astoria's opinion, such work is progressing satisfactorily. Elimination or reduction of retainage shall be allowed only upon written application by Port of Ilwaco. The retainage held by Port of Astoria shall be included in and paid to Port of Ilwaco as part of the final payment.

### 3. Costs.

The Total Cost to the Port of Astoria under this Agreement shall be \$7.50 per cubic yard ("CY"). The total volume of sediment removed shall be determined by pre- and post-dredge bathymetry surveys provided for in section 3.6 of Exhibit A. In the performance of its obligations under this Agreement, the Port of Astoria will incur costs (including, ~~but not limited to,~~ labor and bathymetry). These costs are to be included in the \$7.50/CY rate and not in addition to the rate. Accounting for these costs shall be calculated at the completion of the Project. Therefore the final payment to the Port of Ilwaco shall be determined by the following formula:

- 1) Total cubic yards of material removed multiplied by \$7.50,
- 2) subtract the total of all previous progress payments,
- 3) subtract the total of all costs incurred by the Port of Astoria in the performance of this Agreement.

Agreement.

A detailed final statement of incurred costs shall be provided to Port of Ilwaco at the time of final payment.

*Handwritten initials:*  
B  
RBA

# Daily Dredge Report (Exhibit C)

Date \_\_\_\_\_ Est Cu Yds Moved \_\_\_\_\_  
 Captain/Leverman \_\_\_\_\_ Boat Operator \_\_\_\_\_ Deckhand \_\_\_\_\_  
 Date \_\_\_\_\_ On-Duty Time \_\_\_\_\_ Off-Duty Time \_\_\_\_\_ Dredge Area \_\_\_\_\_  
 High Slack \_\_\_\_\_ Pump Start Time \_\_\_\_\_ Pump Stop Time \_\_\_\_\_ Low Slack \_\_\_\_\_

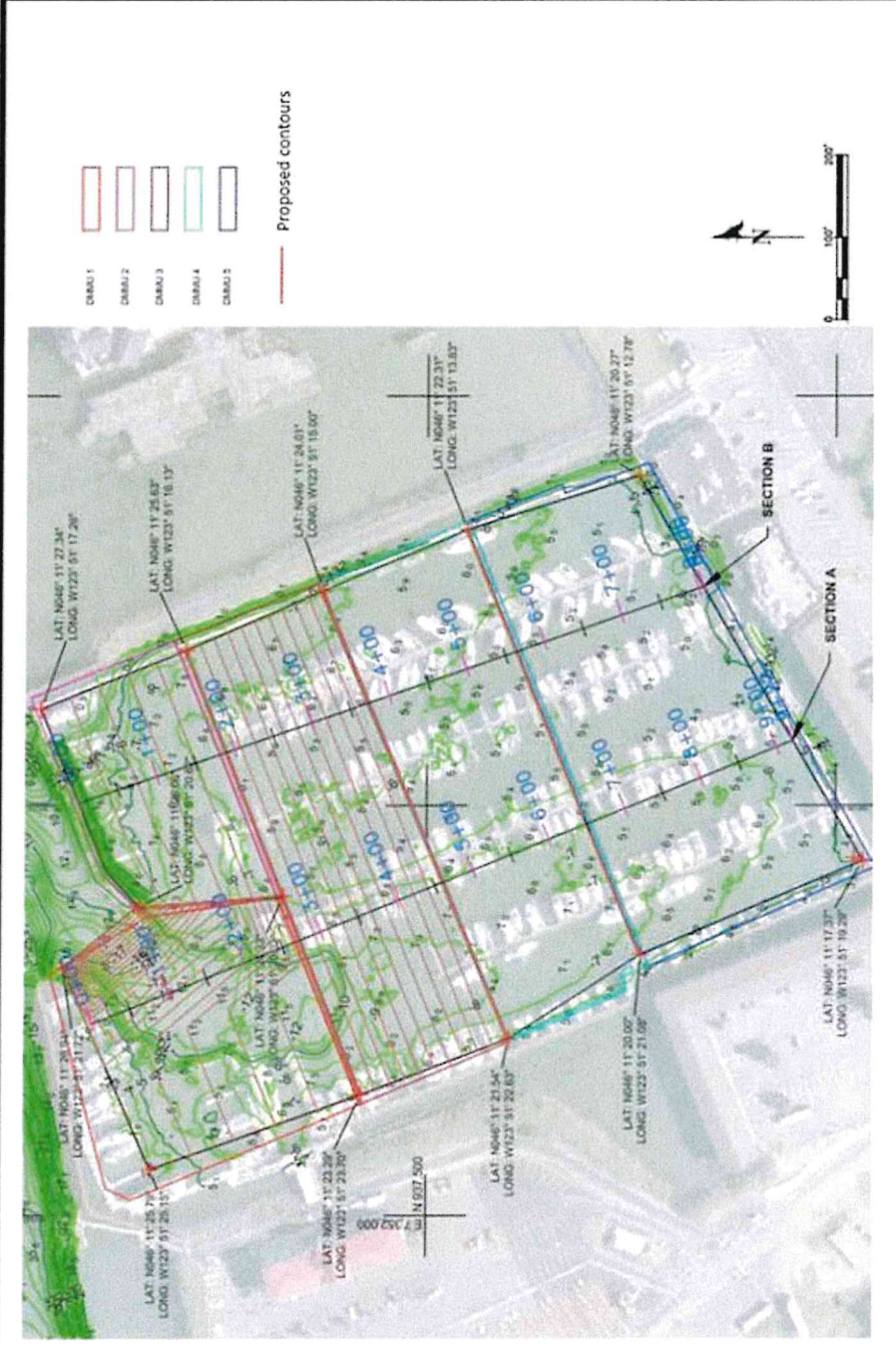
## Pump Information

Pump Stop Time	Description (pump clean, break, mechanical, etc.)	Pump Start Time	Total Minutes

Captain / Leverman Signature \_\_\_\_\_







**Figure 4A: Dredging Plan**  
**West Basin Marina Maintenance Dredging**  
 (Advanced Remediation Technologies, Inc. 2017)

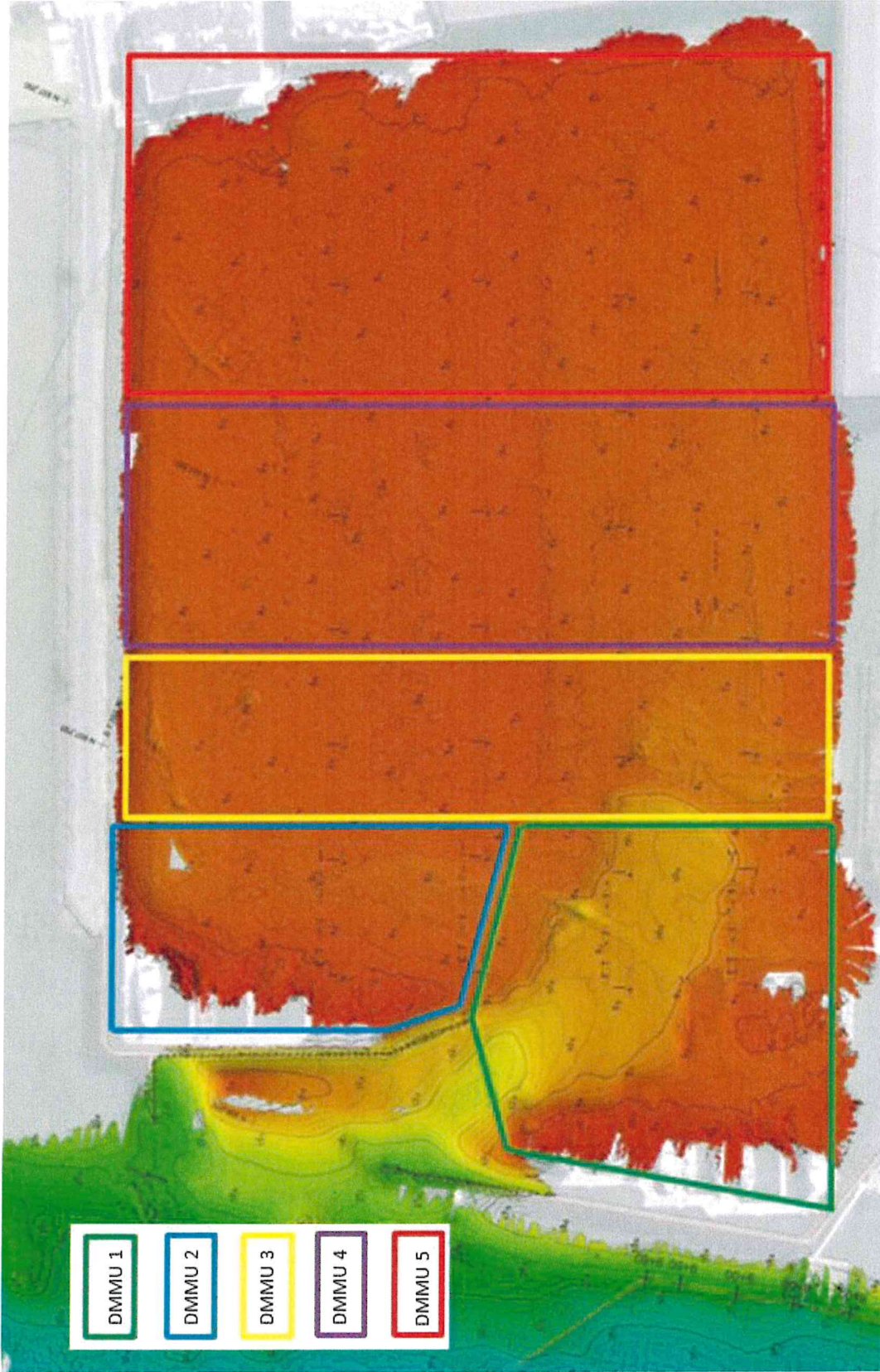


Exhibit D

## Dredge Plan

The dredge plan is to achieve -14 MLLW throughout the entirety of Dredge Maintenance Management Units (“DMMU”) 1 and 2 (“Project Area”), illustrated in general outlines immediately above and defined exactly in Figure 4A of this Exhibit D.