

**Elliott Bay Trustee Council
Lower Duwamish River
Resolution 2013-01**

This resolution by the Elliott Bay Trustee Council (Trustee Council): 1) agree that the Bluefield Duwamish River Habitat Restoration Project, West Side West Waterway - Site 01 (Site 1 Project) is approximately 85% complete; 2) agree that the remaining costs to complete the project's construction is approximately \$209,151, including a contingency component; 3) agree to release the Performance Bond in the amount of \$750,000 which bond was established to ensure construction completion of the Site 1 Project; 4) agree an Escrow Agreement in the amount of \$209,151 is an appropriate financial assurance to ensure the construction completion of the Bluefield Site 1 Project and will be in lieu of the Performance Bond; 5) authorizes the National Oceanic and Atmospheric Administration (NOAA) to release the Performance Bond; and, 6) authorizes NOAA to execute the Escrow Agreement with Bluefield Holdings, Inc. and Bay Area Escrow, an Escrow Agent, to establish an Escrow Account in the amount of \$209,151 to ensure construction completion of the Site 1 Project.

Adopted: July 5, 2013

Attachments: Performance Bond and Escrow Agreement for Construction Completion

The Trustee Council consists of the National Oceanic and Atmospheric Administration (NOAA) of the U.S. Department of Commerce (acting as Lead Administrative Trustee); the U.S. Department of the Interior, represented by the U.S. Fish and Wildlife Service; the Muckleshoot Indian Tribe; the Suquamish Tribe; and the Washington Department of Ecology (as lead state Trustee), Department of Natural Resources and Department of Fish and Wildlife (as state co-Trustees). The Trustee Council is operating under the *Memorandum of Agreement for Elliott Bay, the Duwamish River and Eagle Harbor (effective date 1/19/06)*. That MOA provides the framework for implementing joint damage assessment and restoration actions by the Trustee Council in Elliott Bay and the Lower Duwamish River.

The Trustee Council has been engaged in discussions with Bluefield Holdings, Inc. concerning the use of some City of Seattle (City) properties for habitat restoration projects, which have been made available by the City for development of habitat restoration projects by Bluefield Holdings, Inc. ("Bluefield") through a lease executed on February 23, 2009. Bluefield intends to build restoration projects on these properties. Such projects are designed to provide ecological credits that could be used by Potentially Responsible Parties (PRPs) as one alternative approach to address their liability for natural resource damages (NRD) in settlements with the Trustee Council.

Bluefield established a performance bond to ensure that construction of the Site 1 Project will be completed (see Elliott Bay Trustee Council resolution 2011-01 and attached Performance Bond). The Trustees agree that as of June 5, 2013, Bluefield has completed approximately 85% of the construction of the Site 1 Project and will complete the remainder of the project during the next fish window in Fall, 2013, in accordance with permit requirements. Estimated costs to complete construction are \$209,151 and such amount includes a contingency component. At the time of the release of the Performance Bond, Bluefield will establish an Escrow Account to cover costs of construction completion. The Trustees agree that this Escrow Agreement is an appropriate financial assurance to ensure completion of the construction of the Site 1 Project and agrees that NOAA may execute this Escrow Agreement on behalf of the Trustee Council.

Now, therefore, it is resolved that:

1. The Trustee Council agrees that the Bluefield Site 1 project is approximately 85% constructed.
2. The Trustee Council agrees that the Escrow Agreement in the amount of \$209,151 is an appropriate financial assurance to ensure the construction completion of the Bluefield Site 1 Project.
3. The Trustee Council authorizes NOAA to release the Performance Bond with Bluefield.
4. The Trustee Council authorizes NOAA to sign the Escrow Agreement with Bluefield to hold funds to ensure completion of the Site 1 Project.

By their signatures below, representatives of the Elliott Bay Trustee Council hereby certify that this Resolution, 2013-01, was adopted in compliance with decision-making procedures of the Trustee Council.

NOAA:

By: Rebecca Hoff 7/2/13
Rebecca Hoff Date

U.S. Department of the Interior/U.S. Fish and Wildlife Service:

By: _____ Date _____
Jeff Krausmann

Washington State Department of Ecology (Lead State Trustee):

By: _____ Date _____
Donna Podger

The Muckleshoot Indian Tribe:

By: Glen St. Amant 7-2-13
Glen St. Amant Date

The Suquamish Tribe:

By: _____ Date _____
Richard Brooks

Now, therefore, it is resolved that:

1. The Trustee Council agrees that the Bluefield Site 1 project is approximately 85% constructed.
2. The Trustee Council agrees that the Escrow Agreement in the amount of \$209,151 is an appropriate financial assurance to ensure the construction completion of the Bluefield Site 1 Project.
3. The Trustee Council authorizes NOAA to release the Performance Bond with Bluefield.
4. The Trustee Council authorizes NOAA to sign the Escrow Agreement with Bluefield to hold funds to ensure completion of the Site 1 Project.

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NOAA:

By: _____ Date _____
Rebecca Hoff

U.S. Department of the Interior/U.S. Fish and Wildlife Service:

By:  _____ Date 2 Jul 2013
Jeff Krausmann

Washington State Department of Ecology (Lead State Trustee):

By: _____ Date _____
Donna Podger

The Muckleshoot Indian Tribe:

By: _____ Date _____
Glen St. Amant

The Suquamish Tribe:

By: _____ Date _____
Richard Brooks

Now, therefore, it is resolved that:

1. The Trustee Council agrees that the Bluefield Site 1 project is approximately 85% constructed.
2. The Trustee Council agrees that the Escrow Agreement in the amount of \$209,151 is an appropriate financial assurance to ensure the construction completion of the Bluefield Site 1 Project.
3. The Trustee Council authorizes NOAA to release the Performance Bond with Bluefield.
4. The Trustee Council authorizes NOAA to sign the Escrow Agreement with Bluefield to hold funds to ensure completion of the Site 1 Project.

By their signatures below, representatives of the Ellioff Bay Trustee Council hereby certify that this Resolution, 2013-01, was adopted in compliance with decision-making procedures of the Trustee Council.

NOAA:

By: _____ Date _____
Rebecca Hoff

U.S. Department of the Interior/U.S. Fish and Wildlife Service:

By: _____ Date _____
Jeff Krausmann

Washington State Department of Ecology (Lead State Trustee):

By: Donna Podger _____ Date 6/28/2013
Donna Podger

The Muckleshoot Indian Tribe:

By: _____ Date _____
Glen St. Amant

The Suquamish Tribe:

By: _____ Date _____
Richard Brooks

Now, therefore, it is resolved that:

1. The Trustee Council agrees that the Bluefield Site 1 project is approximately 85% constructed.
2. The Trustee Council agrees that the Escrow Agreement in the amount of \$209,151 is an appropriate financial assurance to ensure the construction completion of the Bluefield Site 1 Project.
3. The Trustee Council authorizes NOAA to release the Performance Bond with Bluefield.
4. The Trustee Council authorizes NOAA to sign the Escrow Agreement with Bluefield to hold funds to ensure completion of the Site 1 Project.

By their signatures below, representatives of the Elliott Bay Trustee Council hereby certify that this Resolution, 2013-01, was adopted in compliance with decision-making procedures of the Trustee Council.

NOAA:

By: _____
Rebecca Hoff Date

U.S. Department of the Interior/U.S. Fish and Wildlife Service:

By: _____
Jeff Krausmann Date

Washington State Department of Ecology (Lead State Trustee):

By: _____
Donna Podger Date

The Muckleshoot Indian Tribe:

By: _____
Glen St. Amant Date

The Suquamish Tribe:

By: Richard Brooks Date 6/28/13
Richard Brooks

PERFORMANCE BOND

Bond No. 09024228

KNOW ALL BY THESE PRESENTS:

That we **Bluefield Holdings, Inc., 2505 Second Ave., Suite 602, Seattle, WA 98121**, as Principal, hereinafter called Principal, and **Fidelity and Deposit Company of Maryland**, a Maryland corporation, as Surety, hereinafter called Surety, are held and firmly bound unto the **National Oceanic and Atmospheric Administration (NOAA), the United States Department of the Interior (DOI), the State of Washington, Department of Ecology (Ecology), the Muckleshoot Indian Tribe, and the Suquamish Tribe**, collectively known as the Obligee, in the amount of **Seven Hundred Fifty Thousand and No/100**** Dollars (**\$750,000.00*****) for the payment of which sum, well and truly to be made, the said Principal and Surety bind themselves, and their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal and the Obligee have developed a document entitled "Final Natural Resource Restoration and Enhancement Credit Protocol", dated May 24, 2009, hereinafter called the "Protocol". Under the guidelines set forth in the Protocol, the Principal must provide financial assurance to guarantee the construction of a natural resource restoration project in accordance with a Statement of Work (SOW) developed pursuant to the Protocol.

The habitat restoration project to be guaranteed through the issuance of this performance bond is detailed in the SOW entitled "Statement of Work for Duwamish River Habitat Restoration Program, West Side West Waterway - Site 01 in Seattle, Washington," dated March 24, 2011, hereinafter called the "Guaranteed Work".

NOW, THEREFORE, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That if Principal shall promptly, faithfully, fully and finally complete the Guaranteed Work in accordance with the Scope of Work, the Surety's obligation shall be null and void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER, That:

1. The Surety shall become liable on the obligation evidenced hereby only upon receipt of a written notice from the Obligee that the Obligee has determined that the Principal has failed to perform the Guaranteed Work. Such notice shall include a description of the Principal's failure to perform and shall be forwarded

to the Principal, with a copy to the Surety, within thirty (30) days after the Obligee has determined the Principal is in default. The notice to the Surety shall be delivered by registered mail to Surety at its Home Office in 1400 American Lane, Tower I, 19th Floor, Schaumburg, IL 60196. In the event of default, the Surety will have the right and opportunity, at its discretion, to: a) cure the Principal's default; b) assume the remainder of the Principal's obligations under the bond and to perform or sublet same; or c) to tender to the Obligee funds sufficient (as determined by the Obligee) to pay the cost, or remaining costs, of the Guaranteed Work, up to an amount not to exceed the penal sum of the bond. In no event shall the Surety be liable for fines, penalties, or forfeitures assessed against the Principal.

2. Any action, lawsuit or proceeding that may arise pursuant to this Performance Bond must be instituted in the US District Court for the Western District of Washington in which any Consent Decree or other type of settlement was reached in which a potentially responsible party (PRP) funded implementation of a portion of the project described in the Guaranteed Work, whether in whole or in part, to resolve alleged natural resource damage liability in or proximate to the Lower Duwamish River . That no action, lawsuit or proceeding under the Performance Bond shall be had or maintained against the Surety unless the same be filed and properly served upon the Surety within one year from the effective date of the cancellation of the Bond.
3. That no right of action shall accrue under this Bond to or for the use of a person or entity other than the Obligee, and its successors and assigns.
4. The aggregate liability of the surety is limited to the penal sum stated herein regardless of the number or amount of claims brought against this bond and regardless of the number of years this bond remains in force. The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the Total Dollar Amount of this Performance Bond. The surety's aggregate liability hereunder shall in no event exceed the amount set forth above.
5. Any modification, revision, or amendment which may be made in the terms of the Guaranteed Work or in the work to be done there under, or any extension of the Guaranteed Work, or other forbearance on the part of either the Principal or Obligee to the other, shall not in any way release the Principal and the Surety, or either of them, or their heirs, executors, administrators, successors or assigns from liability hereunder. The Surety hereby expressly waives notice of any

change, revision, or amendment to the Guaranteed Work or to any related obligations between the Principal and Obligee.

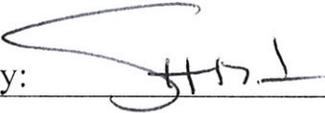
6. The Surety hereby agrees that the obligations of the Surety under this Performance Bond shall be in no way impaired or affected by any winding up, insolvency, bankruptcy or reorganization of the Principal or by any other arrangement or rearrangement of the Principal for the benefit of creditors.
7. The surety will, notify the Obligee in writing of any of the following events: (a) the filing by the Surety of a petition seeking to take advantage of any laws relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts; (b) the Surety's consent to (or failure to contest in a timely manner) any petition filed against it in an involuntary case under such bankruptcy or other laws; (c) the Surety's application for (or consent to or failure to contest in a timely manner) the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator, or the like of itself or of all or a substantial part of its assets; (d) the Surety's making a general assignment for the benefit of creditors; or (e) the Surety's taking any corporate action for the purpose of effecting any of the foregoing. Such notice shall be provided within thirty (30) days to the Obligee so as to provide the Obligee time to respond to any of the noted events.
8. All notices, consents, approvals and requests required or permitted hereunder shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested or (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, to the address shown in this Performance Bond. Notice to Obligee shall not be effective unless notice is sent to the National Oceanic and Atmospheric Administration, Attn: Rebecca Hoff: 7600 Sand Point Way NE, Seattle, WA 98115. All notices, elections, requests and demands under this Performance Bond shall be effective and deemed received upon the earliest of (a) the actual receipt of the same by personal delivery or otherwise, (b) one business day after being deposited with a nationally recognized overnight courier service as required above, or (c) three business days after being deposited in the United States mail as required above. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, election, request, or demand sent.
9. Any provision in this Performance Bond that conflicts with any applicable statutory or legal requirement shall be deemed deleted here from and provisions

conforming to such statutory or legal requirement shall be deemed incorporated herein

10. The Principal may terminate this Performance Bond only by sending written notice of termination to the Surety and to the Obligee; provided, however, that no such termination shall become effective unless and until the Surety receives written authorization for termination of this Performance Bond by the Obligee.

IN WITNESS WHEREOF, The said Principal and Surety have signed and sealed this instrument on this 30th day of March, 2011.

Bluefield Holdings, Inc.

By:  Scott Lockert
Vice President.
Name/Title

Fidelity and Deposit Company of Maryland

By: 
Heidi Bockus Attorney-in-Fact

BOND RELEASE- Bond #09024228

Effective the date shown below, the Obligee confirms that the required work has been completed and accepted. We hereby fully release and exonerate this bond.

Date

Signature

Name /Title

Power of Attorney
FIDELITY AND DEPOSIT COMPANY OF MARYLAND

KNOW ALL MEN BY THESE PRESENTS: That the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, by WILLIAM J. MILLS, Vice President, and GREGORY E. MURRAY, Assistant Secretary, in pursuance of authority granted by Article VI, Section 2, of the By-Laws of said Company, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, does hereby nominate, constitute and appoint **Heidi BOCKUS, Krista M. LEE, Jay A. MILEY and Kimberly A. PHELPS, all of Seattle, Washington, EACH** its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings, and the execution of such bonds or undertakings** in pursuance of these presents, shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its office in Baltimore, Md., in their own proper persons. This power of attorney revokes that issued on behalf of Heidi BOCKUS, Krista M. LEE, Kathie L. WIEGERS, Jay A. MILEY, Kimberly A. PHELPS, dated January 29, 2009.

The said Assistant Secretary does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article VI, Section 2, of the By-Laws of said Company, and is now in force.

IN WITNESS WHEREOF, the said Vice-President and Assistant Secretary have hereunto subscribed their names and affixed the Corporate Seal of the said FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 25th day of November, A.D. 2009.

ATTEST:

FIDELITY AND DEPOSIT COMPANY OF MARYLAND



Handwritten signature of Gregory E. Murray in cursive.

Handwritten signature of William J. Mills in cursive.

Gregory E. Murray Assistant Secretary

By:

William J. Mills

Vice President

State of Maryland }
City of Baltimore } ss:

On this 25th day of November, A.D. 2009, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, came WILLIAM J. MILLS, Vice President, and GREGORY E. MURRAY, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself depose and saith, that they are the said officers of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and that the said Corporate Seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.



Handwritten signature of Constance A. Dunn in cursive.

Constance A. Dunn

Notary Public

My Commission Expires: July 14, 2011

EXTRACT FROM BY-LAWS OF FIDELITY AND DEPOSIT COMPANY OF MARYLAND

“Article VI, Section 2. The Chairman of the Board, or the President, or any Executive Vice-President, or any of the Senior Vice-Presidents or Vice-Presidents specially authorized so to do by the Board of Directors or by the Executive Committee, shall have power, by and with the concurrence of the Secretary or any one of the Assistant Secretaries, to appoint Resident Vice-Presidents, Assistant Vice-Presidents and Attorneys-in-Fact as the business of the Company may require, or to authorize any person or persons to execute on behalf of the Company any bonds, undertakings, recognizances, stipulations, policies, contracts, agreements, deeds, and releases and assignments of judgements, decrees, mortgages and instruments in the nature of mortgages,...and to affix the seal of the Company thereto.”

CERTIFICATE

I, the undersigned, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that the Vice-President who executed the said Power of Attorney was one of the additional Vice-Presidents specially authorized by the Board of Directors to appoint any Attorney-in-Fact as provided in Article VI, Section 2, of the By-Laws of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed."

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the said Company,

this 30th day of March, 2011.

Ronald F. Halcy

Assistant Secretary