

**Elliott Bay Trustee Council  
Lower Duwamish River  
Resolution 2016-02**

In this resolution by the Elliott Bay Trustee Council (“Trustee Council”), the Trustee Council: 1) approves the attached invoices submitted by Bluefield Holdings Inc. (“Bluefield”) in support of its request for reimbursement for operation and maintenance activities as stated in the summary of activities undertaken in connection with the Bluefield Duwamish River Habitat Restoration Project, West Side West Waterway - Site 01 (Site 01) during the periods of January 1, 2014 to December 31, 2014 and January 1, 2015 to December 31, 2015, and 2) authorizes the National Oceanic and Atmospheric Administration (NOAA) to release \$42,628.46 from the escrow account for payment of these invoices as allowed under the attached Escrow Agreement.

Adopted:                    October 31, 2016

Attachments:            Bluefield Invoice # 000000000882 dated April 18, 2016  
For: Professional services rendered January 1, 2014 to December 31, 2014  
Amount: \$21,078.43

Bluefield Invoice # 000000000880 dated March 14, 2016  
For: Professional services rendered January 1, 2015 to December 31, 2015  
Amount: \$21,550.03

Escrow Agreement

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 United States, on behalf of the Trustee Council, lodged a Consent Decree [*United States v. City of Seattle*, Case 2:16-cv-01486] on September 22, 2016 in which the City of Seattle (City) resolved its liability for natural resource damages at the Lower Duwamish Waterway Superfund Site. Additionally, Bluefield is a signatory to the Consent Decree as the Consent Decree identifies properties owned by the City for possible habitat restoration projects to be constructed and implemented by Bluefield through a lease executed with the City on February 23, 2009. 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. The restoration projects constructed and implemented by Bluefield are subject to review and approval by the Trustee Council as stated in Section VI (6) of the Consent Decree. Site 01 is one such project and is described in Appendix A of the Consent Decree.

As part of the operation and maintenance of Site 01, the Trustee Council entered into an Escrow Agreement (see attached Escrow Agreement) to ensure that it provides the ecological benefits necessary to help address injury to natural resources into the future. The summary of the Site 01 activities performed by Bluefield as described in the invoices has been reviewed and approved by the Trustee Council as appropriate expenditures for the operation and maintenance of Site 01. Therefore, pursuant to Section 2(d) of the Escrow Agreement, it is appropriate for NOAA, on behalf of the Trustee Council, to seek release of funds from the Escrow Agreement to reimburse Bluefield for costs associated with the operation and maintenance of Site 01.

**Now, therefore, it is resolved that:**

1. The Trustee Council reviewed and approves the operation and maintenance activities undertaken in calendar years 2014 and 2015 in connection with operation and maintenance of Site 01 and as outlined in Bluefield invoices, 000000000880 and 000000000882 (attached hereto).
2. Pursuant to Section 2(d) of the Escrow Agreement, the Trustee Council approves NOAA to seek release of funds from the escrow account in the amount of \$42,628.46, to Bluefield for payment of operation and maintenance expenditures for Site 01 for calendar years 2014 and 2015.

By their signatures below, representatives of the Elliott Bay Trustee Council hereby certify that this Resolution, 2016-02, was adopted in compliance with decision-making procedures of the Trustee Council.

NOAA:

By: Rebecca Hoff 10/31/16  
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

As part of the operation and maintenance of Site 01, the Trustee Council entered into an Escrow Agreement (see attached Escrow Agreement) to ensure that it provides the ecological benefits necessary to help address injury to natural resources into the future. The summary of the Site 01 activities performed by Bluefield as described in the invoices has been reviewed and approved by the Trustee Council as appropriate expenditures for the operation and maintenance of Site 01. Therefore, pursuant to Section 2(d) of the Escrow Agreement, it is appropriate for NOAA, on behalf of the Trustee Council, to seek release of funds from the Escrow Agreement to reimburse Bluefield for costs associated with the operation and maintenance of Site 01.

**Now, therefore, it is resolved that:**

1. The Trustee Council reviewed and approves the operation and maintenance activities undertaken in calendar years 2014 and 2015 in connection with operation and maintenance of Site 01 and as outlined in Bluefield invoices, 000000000880 and 000000000882(attached hereto).
2. Pursuant to Section 2(d) of the Escrow Agreement, the Trustee Council approves NOAA to seek release of funds from the escrow account in the amount of \$42,628.46, to Bluefield for payment of operation and maintenance expenditures for Site 01 for calendar years 2014 and 2015.

By their signatures below, representatives of the Elliott Bay Trustee Council hereby certify that this Resolution, 2016-02, 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 25 OCT 16

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

As part of the operation and maintenance of Site 01, the Trustee Council entered into an Escrow Agreement (see attached Escrow Agreement) to ensure that it provides the ecological benefits necessary to help address injury to natural resources into the future. The summary of the Site 01 activities performed by Bluefield as described in the invoices has been reviewed and approved by the Trustee Council as appropriate expenditures for the operation and maintenance of Site 01. Therefore, pursuant to Section 2(d) of the Escrow Agreement, it is appropriate for NOAA, on behalf of the Trustee Council, to seek release of funds from the Escrow Agreement to reimburse Bluefield for costs associated with the operation and maintenance of Site 01.

Now, therefore, it is resolved that:

1. The Trustee Council reviewed and approves the operation and maintenance activities undertaken in calendar years 2014 and 2015 in connection with operation and maintenance of Site 01 and as outlined in Bluefield invoices, 000000000880 and 000000000882 (attached hereto).
2. Pursuant to Section 2(d) of the Escrow Agreement, the Trustee Council approves NOAA to seek release of funds from the escrow account in the amount of \$42,628.46, to Bluefield for payment of operation and maintenance expenditures for Site 01 for calendar years 2014 and 2015.

By their signatures below, representatives of the Elliott Bay Trustee Council hereby certify that this Resolution, 2016-02, 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 \_\_\_\_\_  
Donna Podger Date 10/26/16

The Muckleshoot Indian Tribe:

By: \_\_\_\_\_  
Glen St. Amant Date

The Suquamish Tribe:

By: \_\_\_\_\_  
Richard Brooks Date

As part of the operation and maintenance of Site 01, the Trustee Council entered into an Escrow Agreement (see attached Escrow Agreement) to ensure that it provides the ecological benefits necessary to help address injury to natural resources into the future. The summary of the Site 01 activities performed by Bluefield as described in the invoices has been reviewed and approved by the Trustee Council as appropriate expenditures for the operation and maintenance of Site 01. Therefore, pursuant to Section 2(d) of the Escrow Agreement, it is appropriate for NOAA, on behalf of the Trustee Council, to seek release of funds from the Escrow Agreement to reimburse Bluefield for costs associated with the operation and maintenance of Site 01.

**Now, therefore, it is resolved that:**

1. The Trustee Council reviewed and approves the operation and maintenance activities undertaken in calendar years 2014 and 2015 in connection with operation and maintenance of Site 01 and as outlined in Bluefield invoices, 000000000880 and 000000000882 (attached hereto).
2. Pursuant to Section 2(d) of the Escrow Agreement, the Trustee Council approves NOAA to seek release of funds from the escrow account in the amount of \$42,628.46, to Bluefield for payment of operation and maintenance expenditures for Site 01 for calendar years 2014 and 2015.

By their signatures below, representatives of the Elliott Bay Trustee Council hereby certify that this Resolution, 2016-02, 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 10-31-16

**The Suquamish Tribe:**

By: \_\_\_\_\_  
Richard Brooks Date

As part of the operation and maintenance of Site 01, the Trustee Council entered into an Escrow Agreement (see attached Escrow Agreement) to ensure that it provides the ecological benefits necessary to help address injury to natural resources into the future. The summary of the Site 01 activities performed by Bluefield as described in the invoices has been reviewed and approved by the Trustee Council as appropriate expenditures for the operation and maintenance of Site 01. Therefore, pursuant to Section 2(d) of the Escrow Agreement, it is appropriate for NOAA, on behalf of the Trustee Council, to seek release of funds from the Escrow Agreement to reimburse Bluefield for costs associated with the operation and maintenance of Site 01.

**Now, therefore, it is resolved that:**

1. The Trustee Council reviewed and approves the operation and maintenance activities undertaken in calendar years 2014 and 2015 in connection with operation and maintenance of Site 01 and as outlined in Bluefield invoices, 000000000880 and 000000000882 (attached hereto).
2. Pursuant to Section 2(d) of the Escrow Agreement, the Trustee Council approves NOAA to seek release of funds from the escrow account in the amount of \$42,628.46, to Bluefield for payment of operation and maintenance expenditures for Site 01 for calendar years 2014 and 2015.

By their signatures below, representatives of the Elliott Bay Trustee Council hereby certify that this Resolution, 2016-02, 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

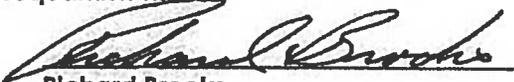
**Washington State Department of Ecology (Lead State Trustee):**

By: \_\_\_\_\_  
Donna Podger Date

**The Muckleshoot Indian Tribe:**

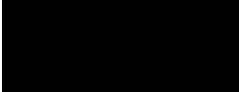
By: \_\_\_\_\_  
Glen St. Amant Date

**The Suquamish Tribe:**

By:   
Richard Brooks Date 10/31/16

**Invoice**

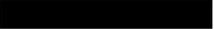
**Bluefield Holdings Inc.**



April 18, 2016

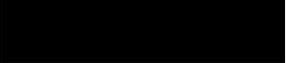
Elliott Bay Trustee Council

Project No: 07.20140002.00



Invoice No: 00000000881

NOAA Office of Response & Restoration



Project 07.20140002.00 BFH Site 1 Trustee Maintenance Fund

**Professional Services from December 01, 2014 to December 31, 2014**

Task 0000001 Site 1 Trustee Maintenance Fund

**Consultants**

Consultant Services-NRD Habitat

4/18/2016 NRD Habitat LLC

7 4/18/16

21,078.43

**Total Consultants**

1.0 times

**21,078.43**

**21,078.43**

**Total this Task**

**\$21,078.43**

**Total this Invoice**

**\$21,078.43**



**Invoice**

**Bluefield Holdings Inc.**



March 14, 2016  
Project No: 07.20140002.00  
Invoice No: 00000000880

Elliott Bay Trustee Council  
[Redacted]  
NOAA Office of Response & Restoration  
[Redacted]

Project 07.20140002.00 BFH Site 1 Trustee Maintenance Fund

**Professional Services from January 01, 2015 to December 31, 2015**

Task 0000001 Site 1 Trustee Maintenance Fund

**Consultants**

Consultant Services-NRD Habitat					
3/14/2016	NRD Habitat LLC	0000006	3/14/16	21,550.03	
	<b>Total Consultants</b>			<b>1.0 times</b>	<b>21,550.03</b>
					<b>21,550.03</b>
				<b>Total this Task</b>	<b>\$21,550.03</b>
				<b>Total this Invoice</b>	<b>\$21,550.03</b>

## **ESCROW AGREEMENT**

This Escrow Agreement ("Agreement") is made and entered into this 29<sup>th</sup> day of March, 2011, by Bluefield Holdings, Inc. ("Bluefield"); the National Oceanic and Atmospheric Administration (NOAA), on behalf of the Department of Commerce and Bay Area Escrow ("Escrow Agent").

**WHEREAS**, Bluefield and the Elliott Bay Trustee Council, comprised of the United States Department of the Interior (DOI), the State of Washington, Department of Ecology (Ecology), the Muckleshoot Indian Tribe, and the Suquamish Tribe and NOAA 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 operation and maintenance of the Natural Resource Restoration Project in accordance with a Statement of Work (SOW) developed pursuant to the Protocol. The operation and maintenance of the habitat restoration to be guaranteed through the establishment of this Escrow Account is detailed in the SOW entitled "Statement of Work for Duwamish River Habitat Restoration Program, West Side West Waterway - Site 01 in Seattle, Washington," hereinafter called the "Guaranteed Work".

**NOW, THEREFORE**, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned parties hereto agree as follows:

### **SECTION 1. Appointment of Escrow Agent.**

Bluefield and NOAA hereby appoint Bay Area Escrow to serve as Escrow Agent under the Escrow Agreement on the terms and conditions set forth herein.

### **SECTION 2. The Escrow Fund, Release of Funds and Termination.**

## ESCROW INSTRUCTIONS

Page 2 of 8

(a) On the Effective Date of this Agreement, and at the time of the execution of this Agreement by Bluefield, Bluefield shall tender \$250,000 to the Escrow Agent for deposit in a separate bank account maintained by Escrow Agent for purposes of the Agreement.

(b) All funds received by the Escrow Agent pursuant to the terms of these Escrow Instructions shall be held and disbursed in accordance with the terms and conditions of the Agreement. Escrow Agent shall invest the Escrow Deposit in an interest bearing account at a financial institution to be selected by Bluefield and to be identified in writing to NOAA.

(c) All interest earned on such funds shall be available for purposes of this Agreement. In the event the funds in the Agreement exceed the amounts needed to complete the operation and maintenance of the Guaranteed Work, any balance and interest accrued shall be released to Bluefield at the end of the term of this Escrow Agreement.

(d) The Escrow Agent shall disburse funds as NOAA shall direct and on the following conditions:

(i) Commencing one year from the Effective Date of this Agreement and on an annual basis, NOAA will direct in writing that the Escrow Agent shall disburse an amount from the Escrow Account to Bluefield in payment for Bluefield's annual expenditures for the operation and maintenance associated with the Guaranteed Work. The disbursement shall be made to [identify Bluefield's bank account].

(ii) Thirty (30) days prior to the scheduled annual disbursement noted in paragraph 2(d)(i), Bluefield shall notify NOAA in writing of the amount of its expenditures for the prior year spent on the operation and maintenance of the Guaranteed Work. Such notification shall specify the costs and the underlying documentation that supports the disbursement request.

iii) If NOAA objects to an annual disbursement for any reason, NOAA will

## ESCROW INSTRUCTIONS

Page 3 of 8

notify the Escrow Agent and Bluefield of their objections and the specifics of the deficiency in writing five working days before the date of the scheduled annual disbursement. NOAA will provide Bluefield fifteen working days to cure the deficiency.

(iv) If after fifteen working days, Bluefield is not able to cure the deficiency in a manner satisfactory to NOAA, or there is otherwise a dispute related to the annual disbursement, the Escrow Agent will disburse the scheduled annual amount of the operation and maintenance to NOAA into an account to be determined by NOAA.

(v) If Bluefield does cure the deficiency to the satisfaction of NOAA, NOAA will notify Bluefield and Escrow Agent that there are no further objections to the annual disbursement, and Escrow Agent shall release the scheduled amount to the Bluefield bank account identified in Section 2, paragraph (d)(i).

(c) Overall Failure to Complete Operation and Maintenance of Guaranteed Work.

Irrespective of the annual disbursements noted in Section 2(d), in the event NOAA determines that Bluefield has failed to meet its operation and maintenance obligations as described in the Guaranteed Work, within thirty days of determining there is such a failure, NOAA shall notify Bluefield and the Escrow Agent in writing and shall specify the nature of the deficiency. Bluefield shall have fifteen working days from the date of notice to cure and to perform the operations and maintenance as required by NOAA. In the event Bluefield fails or is unable to cure the deficiencies specified by NOAA, NOAA will notify the Escrow Agent of such failure and the Escrow Agent shall release the remainder of the funds in the Escrow Account to NOAA into an account to be determined by NOAA. In the event Bluefield is able to cure the deficiency within the time frame allowed and to the satisfaction of NOAA, NOAA will notify the Escrow Agent in writing, will withdraw its request for full disbursement of the Escrow account, and the Escrow Agent shall disburse the funds to Bluefield.

## ESCROW INSTRUCTIONS

Page 4 of 8

(f) Escrow Agent Performance. Escrow Agent shall only perform such duties as are expressly set forth in this in this Agreement. Escrow Agent may resign from its duties or obligations hereunder by giving written notice 30 days in advance of such resignation to Bluefield and NOAA. Advanced written notice shall specify a date when such resignation shall take effect, but no such resignation shall be effective until at least 30 days following the date on which Escrow Agent provided notice. In the event that Bluefield and NOAA have not appointed a new escrow agent under this Agreement and provision has not been made to transfer the Escrow Account to such new escrow agent prior to the effective date of the resignation of Escrow Agent, then the Escrow Agent may appoint a second escrow agent which shall be a commercial bank organized under the laws of the United States or the State of California and having a combined capital and surplus of at least \$50 million.

(g) Effective Date. The Effective Date of this Agreement is the date by which it is executed by Bluefield and the funds are deposited with the Escrow Agent.

(h) Notices. Any written notices required in this Escrow Agreement 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 addresses noted below:

National Oceanic and Atmospheric Administration



Bluefield Holdings, Inc.



Bay Area Escrow



## ESCROW INSTRUCTIONS

Page 5 of 8

  
NOAA, Bluefield and/or Escrow Agent may change the contact to which notices or other written communications to them are to be given by giving notice as required under this section.

(i) Jurisdiction. Any action, lawsuit or proceeding that may arise pursuant to this Agreement, unless otherwise specified in this Agreement, 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 and in which a potentially responsible party (PRP) funded implementation 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. However, NOAA has sole discretion to determine whether Bluefield has met its requirements regarding the operation and maintenance to be conducted pursuant to the Guaranteed Work.

(j) Modifications of Guaranteed Work. Both Bluefield and NOAA recognize that the Guaranteed Work or in the work to be done there under may be modified, revised, or amended and such changes will not affect the terms and conditions of this Agreement.

(k) Term. The term of this Escrow Agreement is from the Effective Date for ten years. The term may be extended upon the written agreement of Bluefield, NOAA, and the Escrow Agent.

**ESCROW INSTRUCTIONS**

Page 6 of 8

IN WITNESS WHEREOF, this Escrow Agreement has been executed by the parties with the Effective Date as defined in the Escrow Agreement.

Bluefield Holdings, Inc.  
By:   
Name: Shawn R. T. Severn  
Title: President  
Date: March 29, 2011

**ESCROW INSTRUCTIONS**

Page 7 of 8

IN WITNESS WHEREOF, this Escrow Agreement has been executed by the parties with the Effective Date as defined in the Escrow Agreement.

By:           National Oceanic and Atmospheric Administration          



Craig O'Connor, Special Counsel  
General Counsel for Natural Resources

Date: 3/25/11

**ESCROW INSTRUCTIONS**

Page 8 of 8

IN WITNESS WHEREOF, this Escrow Agreement has been executed by the parties with the Effective Date as defined in the Escrow Agreement.

**ESCROW AGENT:**

By: Anna M Luce  
Name: Anna M Luce  
Title: Escrow officer  
Date: 3-30-11

AMENDMENT TO ESCROW AGREEMENT

This Amendment to that certain Escrow Agreement by and between Bluefield Holdings, Inc. ("BFH"), the National Oceanic and Atmospheric Administration ("NOAA") on behalf of the Department of Commerce and Bay Area Escrow ("Escrow Agent") recites and states as follows:

WHEREAS, the Parties, BFH, NOAA and Bay Area Escrow entered into an Escrow Agreement dated March 29, 2011; and

WHEREAS, banking instructions for disbursements to BFH pursuant to the Escrow Agreement were inadvertently omitted from the original document; and

WHEREAS, the Parties now desire to amend the Escrow Agreement to include banking instructions for disbursements to BFH.

NOW THEREFORE, the Parties agree to amend the final sentence in Section 2(d)(i) of the Escrow Agreement to state:

"The disbursement shall be made to:

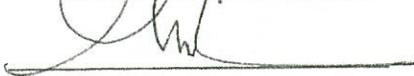
Bluefield Holdings, Inc.



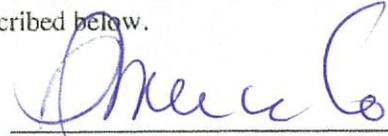
IN WITNESS WHEREOF, the undersigned authorized signatories have executed this Amendment to Escrow Agreement as of the date ascribed below.

  
Bluefield Holdings, Inc.

By its: Resident / CEO  
Date: Jan 27, 2016

  
National Oceanic and Atmospheric Administration

By its: Special Counsel  
Date: 2/1/2016

  
Bay Area Escrow P. Mercado

By its: Escrow Officer  
Date: 02-19-16