

Roots Restoration Project Landowner Agreement

POINT BLUE CONSERVATION SCIENCE

Project #XXXXXX

This Landowner Agreement ("Agreement") is entered into by and between Point Blue Conservation Science ("Point Blue") a California non-profit benefit corporation, and **The City of Cotati** ("Landowner"). Point Blue and Landowner are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

A. Point Blue is a non-profit benefit corporation.

B. Point Blue has received funding from the California Wildlife Conservation Board ("WCB") for the Building Wildlife-Friendly Resilience and Equity in California's Working Landscapes Project for wildlife habitat restoration projects on approximately 40,000 acres throughout California.

C. Landowner owns, operates, or is a tenant of the real property described in Exhibit A ("Property"). Landowner is authorized to permit Point Blue, its employees, agents, and designees, including its Subgrantees and Subcontractors (collectively, "Point Blue"), to access the Property to complete wildlife habitat restoration on the Property ("Project").

D. The Project Plan described in Exhibit B outlines the restoration and enhancement work for the Project ("Work") that will be conducted during the Work Term as defined in Section 1(b). All or part of the Work will be conducted by third parties retained by Point Blue ("Subgrantees"). Point Blue's Subgrantees shall have all rights of Point Blue under Section 1. After the Work Term, monitoring, inspection, and/or maintenance activities ("Post-Implementation Activities") shall be conducted during the Post-Implementation Term as defined in Section 1(c).

E. Landowner acknowledges the benefits of the Project and therefore has agreed to allow Point Blue to enter the Property to implement the Project on the terms and conditions set forth herein.

NOW THEREFORE, Point Blue and Landowner agree as follows:

1. Right of Access.

(a) Right of Access. Landowner grants to Point Blue the right of access to the Property to implement and inspect the Project. The right of access to the Property shall be subject to all terms and conditions in this Agreement.

(b) Work Term. The Work Term shall commence on **Work Start Date** and expire on **Work End Date**.

(c) Post-Implementation Term. The Post-Implementation Term shall commence on the expiration of the Work Term and expire on January 13, 2038.

(d) Work Areas. Except for ingress and egress to the Property, the Work and Post-Implementation Activities shall be confined to the area shown in Exhibit C ("Work Areas").

(e) Advance Notice. Point Blue and its Subgrantee(s) shall give no less than seven (7) days advance notice prior to entering the Property to conduct the Work or Post-Implementation Activities. The notice shall be sufficient if made either by telephone, or e-mail directed to the address and telephone number shown below or to an alternate address provided by Landowner.

(f) Nonexclusive Right - Protection of Project. Point Blue's right of access to the Property is not exclusive. Landowner and its employees, licensees and invitees shall each have the right to use the Property for all purposes permitted by federal, state, and local statutes, laws, ordinances, codes, regulations, and rules, so long as such use does not interfere with the rights of Point Blue under this Agreement, interfere with or delay the Work or Post-Implementation Activities, or damage, destroy, or reduce the effectiveness of any part of the Property restored or enhanced for the Project. Landowner shall make reasonable efforts to prevent any such practices or acts by any person acting for, on behalf of, or under right or permission granted by Landowner. If during the Work or Post-Implementation Terms Landowner willfully destroys the parts of the Property improved by the Project, without replacing in kind, such failure shall be a material default under Section 3.

(g) Inspection. Landowner shall permit Point Blue and the agents and employees of WCB and the California Department of Fish and Wildlife ("DFW") to inspect the Property on at least an annual basis during the Work and Post-Implementation Terms to determine whether the Project has been implemented in compliance with the Grant Agreement and this Agreement. Point Blue, WCB, and DFW shall give Subgrantee 30 days' advance written notice before entering the Property for an inspection.

(h) No Property Interest Conveyed. This Agreement does not convey a property interest to Point Blue in the Property or any portion thereof.

2. Successors Bound By Agreement. The terms and conditions of this Agreement shall be binding on, and inure to, the benefit of the Parties and their personal representatives, heirs, successors, and assigns. Landowner shall provide written notice to Point Blue of any sale or transfer of title or possession of the Property or the Work Areas. Landowner shall provide written notice of this Agreement to buyers, lessees, licensees, and operators ("Successors") and shall secure the agreement of all Successors to be bound by the terms of this Agreement.

3. Default. In the event of a material default by either Party, this Agreement may be terminated by the non-defaulting Party if (a) the non-defaulting Party gives written notice to the defaulting Party describing the nature of the default, (b) the non-defaulting Party provides the defaulting party a reasonable timeline to cure the default, and (c) the defaulting party fails to cure the default within such period. If the material default is Landowner's failure to maintain the parts of the Property improved by the Project during the Work and Post-Implementation Terms, in addition to the right to terminate the Agreement and other remedies provided by law or equity, Point Blue shall be entitled to reimbursement from Landowner for Point Blue's soft and hard costs to restore the Property to its condition prior to Landowner's failure to maintain the parts of the Property improved by the Project.

4. Cooperation and Coordination. During the Work and Post-Implementation Terms, Landowner shall take proper, reasonable, necessary, and sufficient precautions, safeguards,

and protections against the occurrence of any accidents, injuries, or damage to any person or the Property. Landowner shall notify any licensees of this Agreement and require that they comply with the terms herein.

5. Informational Products

Landowner has been made aware that all informational products (e.g. data, studies, findings, management plans, manuals, photos, etc.) relating to California's natural environment and produced with the use of Grant Funds, Point Blue's funds, or other public funds shall be catalogued in the California Geoportal (<https://gis.data.ca.gov>), maintained by the California Department of Technology.

6. Insurance and Indemnification.

(a) Insurance. Point Blue agrees to maintain insurance during the Work and Post-Implementation Terms at its own cost and expense Point Blue shall maintain limits no less than:

1. General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
3. Employers Liability: \$1,000,000 per accident for bodily injury or disease
4. Worker's Compensation, Statutory Limits: \$1,000,000 per accident for bodily injury or disease.
5. Umbrella Insurance: No less than \$5,000,000 per occurrence and aggregate.

Point Blue shall name Landowner, and Landowner's elected and appointed officials, employees and agents as additional insured in the insurance policies. Any insurance policy shall include a statement that the coverage is primary and non-contributory; and include an endorsement of waiver of subrogation.

Point Blue shall be obligated to require any Subgrantee and Subcontractor to provide the same insurance coverage as Point Blue is obligated to provide, including all required endorsements, as stated above.

(b) Indemnification. Point Blue shall indemnify, defend, and hold Landowner harmless from any and all claims, liability, losses, costs, charges, or expenses ("Claim") resulting from the acts or omission of Point Blue or its Subgrantees in the performance of this Agreement. This indemnification obligation shall not apply to the extent a Claim is the result of a negligent or wrongful act or omission of Landowner.

(c) Repair of Damage. Point Blue shall promptly repair any damage to the Property caused by Point Blue or its Subgrantee's acts or omissions.

7. Force Majeure. A Force Majeure Event is an event that is beyond a Party's reasonable control that materially and adversely affects a Party's ability to perform its obligations under this Agreement, including wildfire, extreme flood or landslides, earthquake, explosion, war, civil unrest, or other similar forces. A Party will not be responsible for a failure to perform its obligations under this agreement if such failure to perform is caused by a Force Majeure Event.

The Parties shall resume performance under this Agreement as soon as practicable under the circumstances when the Force Majeure Event has abated. If a Force Majeure Event occurs, the Party seeking to avoid or delay its obligations under this Agreement as a result of the event shall notify the other Party as soon as practicable of the date and details of the event and confer with the other Party to determine the best course of action.

8. Compliance with Applicable Laws. The Parties agree to comply in all respects with any and all applicable federal, state, and local statutes, laws, ordinances, codes, regulations, and permit conditions in connection with the Project.

9. Notice.

(a) Method of Notice. The Parties shall give all notices and communications between the Parties by (i) personal delivery, (ii) a nationally-recognized, next-day courier service, (iii) first-class registered or certified mail, postage prepaid, (iv) fax, or (v) electronic mail to the Party's address specified in this agreement, or to the address that a Party has notified to be that Party's address for the purposes of this section.

(b) Receipt of Notice. A notice given under this Agreement will be effective on the other Party's receipt of such notice.

Landowner:

City Manager
201 West Sierra Avenue
Cotati, CA 94931
Phone: 707.665.3622
Email: info@cotaticity.org

Point Blue Conservation Science:

Danielle Valverde
Point Blue Conservation Science
3820 Cypress Dr., #11
Petaluma, CA 94954
707-781-2555 x404
dvalverde@pointblue.org

10. General Provisions.

(a) Recitals. The recitals set forth above are, by this reference, incorporated into and deemed a part of this Agreement.

(b) Integration. This Agreement contains the complete and entire agreement between the Parties and cannot be altered, modified, or amended except by the written agreement of the Parties. The Parties agree that there are no oral agreements, understandings, representations, or warranties which are not expressly set forth herein.

(c) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

(d) Captions. All sections and paragraph headings and captions appearing in this Agreement are included for convenience only and shall not be considered in interpreting this Agreement.

(e) Severability. If any term, provisions, condition, or covenant of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and this Agreement shall otherwise be valid and enforceable to the fullest extent permitted by law.

(f) Exhibits. All exhibits attached hereto are hereby incorporated by reference and made a part of this Agreement.

(g) Waiver. A waiver by one Party of the performance of any covenant, agreement, obligation, or condition, shall not be construed as a waiver of any other covenant, agreement, or condition. A waiver by any Party of the performance of any act shall not constitute a waiver of the performance of any other act or an identical act required to be performed at a later time.

(h) Interpretation. Each Party and its counsel have reviewed and revised this Agreement and any rule of contract interpretation to the effect that ambiguities or uncertainties are to be interpreted against the drafting Party or the Party who caused it to exist shall not be employed in the interpretation of this Agreement or any document executed in connection herewith.

(i) Mediation of Disputes. If a dispute arises out of or relates to this Agreement or the breach thereof, the Parties agree to first try in good faith to settle the dispute by non-binding mediation before resorting to binding arbitration or litigation.

(j) Jurisdiction and Venue. The Parties acknowledge and understand that the making of this Agreement is in Sonoma County, California. The exclusive venue for any suit, action, or proceeding shall be Sonoma County, California.

(k) Counterparts. This Agreement may be executed and delivered in counterparts, each of which shall be deemed to be a duplicate original hereof. This Agreement may also be executed in multiple counterparts and shall be effective when counterparts hereof, when taken together, bear the signatures of all the Parties set forth below.

(l) Authority. The undersigned Parties affirm that the individuals signing this Agreement have been granted the authority to do so.

(m) Litigation Costs. In any legal proceeding to enforce this Agreement, the prevailing party shall be entitled to recover its costs of suit, attorneys' and experts' fees in the trial court and on appeal, and costs of enforcing any judgment.

IN WITNESS WHEREOF, this Agreement has been entered into as of the date and year set forth below.

Signatures:

Damien O'Bid, City Manager on behalf of Landowner

Date

Padmini Srinivasan, CFO Point Blue Conservation Science

Date

PB Project Director LEAD

Date

Exhibit A
Description of Property

Exhibit B
Project Plan

Exhibit C
Diagram of Work Areas