

## SONOMA COUNTY ENERGY INDEPENDENCE PROGRAM

## ASSESSMENT CONTRACT

SCEIP File No. 41484

This Assessment Contract ("Contract") is made and entered into as of the last day signed below by and between the COUNTY OF SONOMA, California, ("County") and **VALENCIA GAMUNDI LLC, 5770 SKYLANE LLC, J&J SKYLANE LLC EACH TO A ONE-THIRD INTEREST** ("Owner").

**RECITALS**

A. The County has established the Sonoma County Energy Independence Program ("SCEIP" or "Program") pursuant to which County may levy assessments against developed properties in the County, with the consent of the owners of the properties, to finance the acquisition and construction on and/or installation in the assessed properties of certain qualifying renewable energy systems, energy efficiency improvements, water efficiency improvements, seismic strengthening improvements, and wildfire safety improvements. The purpose and method of administration of the assessments under the SCEIP are described in the Sonoma County Energy Independence Program Report adopted by the Board of Supervisors of the County on March 25, 2009, as it may be amended from time to time (the "Report").

B. The SCEIP is authorized by Chapter 29 of Part 3 of Division 7 of the California Streets and Highways Code (the "Act").

C. Owner wishes to participate in the SCEIP by executing this Contract with County and using the moneys advanced by County to finance the Improvements as provided in the Implementation Agreement.

D. Concurrently with the execution of this Contract, the parties hereto have executed that certain Implementation Agreement (the "Implementation Agreement"), a copy of which is on file in the office of the SCEIP Administrator (the "Program Administrator"). The Implementation Agreement provides for the renewable energy systems, energy efficiency improvements, water efficiency improvements, seismic strengthening improvements, and wildfire safety improvements to be financed, and constructed on and/or installed in the property of Owner described in Exhibit A attached and incorporated by this reference (the "Property"). In this Contract, the improvements, together with their acquisition, construction and/or installation on the Property, are referred to as the "Improvements."

NOW THEREFORE, in consideration of the mutual covenants contained herein and other valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

**CONTRACT****1. Contract Documents.**

This Contract, together with the Implementation Agreement and the documents and instruments attached to or referenced in this Contract and the Implementation Agreement are collectively referred to herein as the "Contract Documents."

**2. Contract Term.**

The term of this Contract shall be until the Assessment described herein and all accrued interest thereon, together with any applicable penalties, costs, fees, and other charges have been paid in full.

**3. Assessment and Lien.**

(a) Owner agrees that upon the execution of this Contract by the parties, the Property is subject to an

assessment levied against the Property pursuant to this Contract, the Act and applicable law (the "Assessment") together with interest, and consents to levy of the Assessment on and recordation of a lien against the Property. Upon execution of this Contract, County will execute and cause to be recorded in the office of the County Recorder a notice of assessment substantially in the form on file in the office of the Program Administrator (the "Notice of Assessment").

(b) The execution of this Contract by the parties constitutes the levy of the Assessment and the Annual Administrative Assessment, as defined in paragraph 5(h) below, by the Board of Supervisors against the Property without any further action required by the parties.

(c) Upon recordation of the Notice of Assessment in the office of the County Recorder, the Assessment and each installment, together with any interest and penalties that become due on the Assessment, shall constitute a lien upon the Property until paid. Initially, as reflected in the Notice of Assessment, upon recordation of the Notice of Assessment, the Assessment shall equal the Maximum Assessment shown on Exhibit B, attached and incorporated by this reference. Following County's disbursement of the Disbursement Amount, as defined in Section 4 below, the actual Assessment shall equal the Disbursement Amount plus Prepaid Interest, as defined in Section 5 below.

(d) Failure to pay any installment of the Assessment or any interest thereon, like failure to pay any property taxes pertaining to the Property, will result in penalties and interest accruing on the amounts due. In addition, under those circumstances, the County has the right to foreclose the lien of the Assessment, as set forth in paragraph 5(i) below.

#### 4. **Disbursement Amount.**

Subject to the terms and conditions in the Implementation Agreement, County agrees to disburse moneys to Owner in the amount of the actual cost of the Improvements (the "Disbursement Amount"); provided the Disbursement Amount shall not exceed **SEVEN HUNDRED FIFTY-ONE THOUSAND NINE HUNDRED NINETY DOLLARS AND 00/100 (\$751,990.00)** (the "Maximum Disbursement Amount").

#### 5. **Collection of Assessment and Interest Thereon and Annual Administrative Assessment on Property Tax Bill; Prepaid Interest; Other Remedies.**

(a) Annual installments of the Assessment, together with the annual interest on the Assessment (collectively, the "Annual Payment"), shall be collected on the property tax bill pertaining to the Property. The Annual Payment coming due in any Tax Year (each being the period from July 1<sup>st</sup> through the following June 30<sup>th</sup>) shall be payable in the same manner and at the same time and in the same installments as the general taxes of the County on real property are payable and shall become delinquent at the same times and in the same proportionate amounts and shall bear the same penalties and interest after delinquency, and be subject to the same provisions for redemption and sale, as the general taxes on real property of the County.

(b) Following disbursement of the Disbursement Amount or the first interim payment if the County makes multiple disbursements pursuant to the Implementation Agreement, Annual Payment installments shall be placed on the property tax bill as provided in Exhibit B.

(c) Subject to paragraph (d) below, interest shall accrue on the unpaid Assessment from the date the Disbursement Amount is disbursed to Owner at the interest rate of six and ninety-nine hundredths percent (6.99%) per annum. Interest shall be computed on the basis of a three hundred sixty (360) day year. If a court of competent jurisdiction determines the interest or other charges provided for herein in connection with the Assessment or the Annual Administrative Assessment (described in paragraph 5(h), below) exceed the limits permitted by applicable law, then: (i) any such interest or charge shall be reduced by the amount necessary to reduce the interest or charge to the permitted limit; and (ii) any sums already collected which exceed permitted limits will be refunded by County. The Program Administrator may make the refund by making a direct payment to Owner or by crediting the refund amount against the next Annual Payment(s).

(d) In the event interim payments are made, interest shall accrue on the unpaid Assessment at the interest rate of six and ninety-nine hundredths percent (6.99%) per annum as follows: (i) interest shall accrue on the Maximum Disbursement Amount from the date of the disbursement of the first interim payment to Owner, through the date of the disbursement of the final payment to Owner; and (ii) following the disbursement of the final

payment, interest shall accrue (A) on the Disbursement Amount from the day following the date on which the final payment is disbursed to Owner and (B) on the amount, if any, representing the difference between the Maximum Disbursement Amount and the Disbursement Amount, from the day following the date on which the final payment is disbursed to Owner through the date selected for redemption of any bond issued in accordance with the Report and relating to this Contract to be redeemed with the amount representing the difference between the Maximum Disbursement Amount and the Disbursement Amount. Any redemption date shall not exceed 185 days from the date the final payment is disbursed to Owner.

(e) The amount of interest accrued from the date of disbursement of the Disbursement Amount (or the first interim payment if the County makes multiple disbursements of the Disbursement Amount) through September 1<sup>st</sup> of the first Tax Year ("Prepaid Interest") shall be added to the Disbursement Amount and included in the Assessment as principal.

(f) The Maximum Assessment and the Estimated Maximum Annual Payments that may be placed on the tax roll each Tax Year are set forth in Exhibit B. The amounts set forth on Exhibit B are based on the assumption that the County disburses the Maximum Disbursement Amount to Owner on the first Business Day (being a day the County is open for business ("Business Day")) of the month following the month in which this Contract is executed by the County. Following disbursement of the Disbursement Amount (or the final payment if the County makes interim disbursements of the Disbursement Amount), the Program Administrator will adjust the Annual Payments to reflect the actual Assessment based on the Disbursement Amount, the date of disbursement of the Disbursement Amount (or the dates of the first interim payment and final payment if the County makes multiple disbursements of the Disbursement Amount), the actual amount of Prepaid Interest and any credit applied in accordance with Section 7 of the Implementation Agreement. If any refund is required, the Program Administrator may make the refund by making a direct payment to Owner or by crediting the refund amount against the next Annual Payment(s).

(g) The lien of the Assessment shall be coequal to and independent of the lien for general taxes, and, except as provided in Government Code Section 53936, not subject to extinguishment by the sale of the Property on account of the nonpayment of any taxes, and prior and superior to all liens, claims and encumbrances on or against the Property except (i) the lien for general taxes or ad valorem assessments in the nature of and collected as taxes levied by the State of California or any county, city, special district or other local agency, (ii) the lien of any special assessment or assessments the lien date of which is prior in time to the lien date of the Assessment, (iii) easements constituting servitudes upon or burdens to the Property, (iv) water rights, the record title to which is held separately from the title to the Property, and (v) restrictions of record.

(h) In addition to the Assessment, until the Assessment and the interest thereon is paid in full, Owner agrees that the Property is subject to an annual administrative assessment levied against the Property pursuant to this Contract, the Act and applicable law to pay costs incurred by County which result from the administration and collection of the Assessment and from the administration or registration of any associated bonds or other financing arrangement, as described in the Report, and from the administration of any reserve fund and other related funds (the "Annual Administrative Assessment"). The Annual Administrative Assessment shall not exceed forty dollars (\$40.00) for the 2009-10 Tax Year, and shall thereafter be adjusted annually for cost of living based on the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index for all urban consumers for the Northern California counties. The Program Administrator shall annually determine the amount of the Annual Administrative Assessment, not to exceed the amount determined in accordance with the preceding sentence. The Annual Administrative Assessment shall be collected in the same manner as the Assessment. The Annual Administrative Assessment shall become a lien upon the Property at the same time as the property tax becomes a lien each year upon the Property.

(i) Owner acknowledges that as a cumulative remedy, if any installment of the Assessment, or any interest thereon, together with any penalties, costs, fees, and other charges accruing under applicable taxation provisions are not paid when due, the Board of Supervisors of County may order that the same be collected by an action brought in a court of competent jurisdiction to foreclose the lien of the Assessment to the extent permitted, and in the manner provided by, applicable law.

## 6. Use of Proceeds.

Owner shall use the Disbursement Amount for the sole purpose of paying for the reasonable costs and

expenses of the Improvements on the Property as provided in the Implementation Agreement.

**7. Prepayment of Assessment.**

(a) Owner may prepay the Assessment by paying the principal amount owing on the Assessment, plus any accrued interest, less a credit for interest paid and not yet accrued, if any, all as determined by the Program Administrator in accordance with the Report. Interest on the Assessment may accrue until the next available redemption date for any bonds issued pursuant to a financing relationship contemplated by the Report and related to this Contract. Such redemption date shall not exceed 185 days from the date of prepayment of the Assessment. Owner shall notify the Program Administrator in writing of Owner's determination to prepay the Assessment at least ten (10) Business Days prior to the date Owner intends to prepay the Assessment.

(b) Assessments may only be prepaid in full; provided, however, Owner has an option for a one-time partial payment of the Assessment. The one-time partial payment must be a minimum of \$5,000, and will not change the term of this Contract or the Assessment, but Annual Payments will be adjusted accordingly.

**8. Severability.**

Each and every provision of this Contract is, and shall be construed to be, a separate and independent covenant and agreement. If any term or provision of this Contract or the application thereof shall to any extent be held to be invalid or unenforceable, the remainder of this Contract, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Contract shall be valid and shall be enforced to the extent permitted by law.

**9. Governing Law.**

This Contract shall be governed by the substantive law of the State of California, regardless of any law of conflicts to the contrary in any jurisdiction. Any legal action brought under this Contract must be instituted in the Superior Court of the County of Sonoma, State of California.

**10. Assignment.**

(a) County, at its option, may (i) assign any or all of its rights and obligations under this Contract, and (ii) pledge and assign its right to receive the Assessment and the Annual Administrative Assessment, and any other payments due to County hereunder, without obtaining the consent of Owner.

(b) In no event shall Owner assign or transfer any portion of this Contract or Owner's obligations under the Contract without the prior express written consent of County, which consent may be granted or withheld in the sole and absolute discretion of the County, nor shall Owner assign or transfer Owner's rights under this Contract without prior written notice to County. Sale, transfer, or rental of the Property is not an assignment or transfer of this Contract.

**11. Entire Agreement; Counterparts; Amendment.**

(a) This Contract, together with the other Contract Documents, is the entire agreement between the parties. Any other agreement related to the Improvements, and any amendment to this Contract, must be signed in writing by both parties. If there is more than one "Owner," the obligations hereunder of all Owners shall be joint and several.

(b) This Contract may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, Owner and County have entered into this Contract as of the last day signed below.

**Owner 1:**

\_\_\_\_\_  
*Owner Name (Please Print)*

By: \_\_\_\_\_  
*Owner Signature (Must be Notarized)*

Date of Execution by Owner 1:

\_\_\_\_\_, 20 \_\_\_\_  
*Date Year*

**Owner 3:**

\_\_\_\_\_  
*Owner Name (Please Print)*

By: \_\_\_\_\_  
*Owner Signature (Must be Notarized)*

Date of Execution by Owner 3:

\_\_\_\_\_, 20 \_\_\_\_  
*Date Year*

**Owner 2:**

\_\_\_\_\_  
*Owner Name (Please Print)*

By: \_\_\_\_\_  
*Owner Signature (Must be Notarized)*

Date of Execution by Owner 2:

\_\_\_\_\_, 20 \_\_\_\_  
*Date Year*

**County:**

COUNTY OF SONOMA

By: \_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Name (Please Print)*

\_\_\_\_\_  
*Program Administrator or Designee Title*

EXHIBIT A

DESCRIPTION OF THE PROPERTY

**Owner(s) Name:** VALENCIA GAMUNDI LLC, 5770 SKYLANE LLC, J&J SKYLANE LLC EACH TO A ONE-THIRD INTEREST  
**Term of Contract:** 20 YEARS  
**Property Address:** 5770 SKYLANE DR., WINDSOR, CA, 95492  
**APN:** 164-150-059-000

Legal Description:

Owner's Initials: \_\_\_\_\_

SCEIP USE ONLY:

CONTRACT DATE	AMOUNT FUNDED \$
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**EXHIBIT B**

**SCHEDULE OF ESTIMATED MAXIMUM ANNUAL PAYMENTS  
AND THE MAXIMUM ANNUAL ADMINISTRATIVE ASSESSMENT**

<u>MAXIMUM</u> <u>ASSESSMENT</u>	<u>TAX</u> <u>YEARS</u>	<u>MAXIMUM ANNUAL</u> <u>PAYMENTS</u>
\$800,173.76	1-20	\$74,881.30

The Maximum Assessment and Estimated Maximum Annual Payments are based on the following assumptions:

1. The County disburses the Maximum Disbursement Amount to Owner.
2. The County disburses to Owner on the first Business Day of the month following the month in which the County executes this Contract. Interest accrues from the date of disbursement.
3. Repayment shall commence as indicated in the table below:

<u>DISBURSEMENT DATE(S)</u>	<u>FIRST TAX YEAR</u>	<u>FIRST-HALF OF ANNUAL PAYMENT DUE</u>
October 2022 - September 2023	2023 - 2024	December 2023
October 2023 - September 2024	2024 - 2025	December 2024
October 2024 - September 2025	2025 - 2026	December 2025
October 2025 - September 2026	2026 - 2027	December 2026

4. The amount of interest accrued on the Maximum Disbursement Amount from the date of disbursement through September 1<sup>st</sup> of the first Tax Year ("Prepaid Interest") is added to the Maximum Disbursement Amount as principal to determine the Maximum Assessment.

Following the disbursement of the Disbursement Amount, the Program Administrator will adjust the Maximum Assessment and the Estimated Maximum Annual Payments, if necessary, to reflect the Actual Assessment based upon the Disbursement Amount, the date of disbursement of the Disbursement Amount (or the date of the first progress payment and the date of the final progress payment if the County makes partial disbursements of the Disbursement Amount pursuant to the Implementation Agreement), and any credit applied in accordance with Section 7 of the Implementation Agreement. If any refund is required, the Program Administrator may make the refund by making a direct payment to Owner or by crediting the refund amount against the next Annual Payment(s).

In addition to the Annual Payments, the Property is subject to an Annual Administrative Assessment which shall not exceed forty dollars (\$40.00) in the 2009-10 Tax Year, and which shall thereafter be adjusted annually for cost of living based on the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index for all urban consumers for the Northern California counties. The Annual Administrative Assessment shall be levied against the Property annually for as long as the Assessment and the interest thereon is unpaid.

**Owner's Initials:** \_\_\_\_\_

NOTARY ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California } before me,  
County of \_\_\_\_\_ }  
On \_\_\_\_\_ } \_\_\_\_\_, Notary Public  
Date Name and Title of Officer

personally appeared \_\_\_\_\_

Name(s) of Signers

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

This area for official notary seal.

Signature of Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California } before me,  
County of \_\_\_\_\_ }  
On \_\_\_\_\_ } \_\_\_\_\_, Notary Public  
Date Name and Title of Officer

personally appeared \_\_\_\_\_

Name(s) of Signers

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

This area for official notary seal.

Signature of Notary Public