

**THIRD AMENDMENT
TO
PROFESSIONAL SERVICES AGREEMENT**

This Third Amendment ("Amendment"), dated as of June 4, 2019, is by and between the County of Sonoma, a political subdivision of the State of California ("County"), and e360 LLC, hereinafter referred to as ("Consultant").

RECITALS

WHEREAS, County and Consultant entered into that certain Agreement, dated October 1, 2016, for planning support services with an amount not to exceed \$175,000 for a term of 2 years ending September 30, 2018; and

WHEREAS, County and Consultant amended the original Agreement by executing that certain Amendment One, dated January 23, 2018, extending the Term of the Agreement to end December 31, 2019, increasing the amount not to exceed to a total amount of \$575,000, and adjusting the Scope of Work in Exhibit A to include processing timelines; and

WHEREAS, County and Consultant further amended the Agreement by executing that certain Second Amendment, dated August 28, 2018, to increase the not to exceed amount of \$1,765,000; and

WHEREAS, County has determined that it is necessary and desirable to increase the funding for the amended Agreement and to make certain other changes in order to provide necessary planning support services;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. Agreement Section 1. Scope of Services, 1.4 Assigned Personnel. Subsection b. shall be deleted and amended to read as follows:

- b. Any and all persons identified in this Agreement or any exhibit hereto as the project manager, project team, or other professional performing work hereunder are deemed by County to be key personnel whose services were a material inducement to County to enter into this Agreement, and without whose services County would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of County. The requirements in Paragraph 4 of Exhibit C (Professional Liability/Errors and Omissions Insurance) apply only to MIG, Consultant's subcontractor, and not to Consultant. Consultant must get prior approval prior to changing subcontractors. With respect to performance under this Agreement, Consultant shall employ the following key personnel: MIG (Moore Iacofano Goltsman, Inc.).

2. The first paragraph of Agreement Section 2. Payment, shall be deleted and amended to read as follows:

2. Payment for Consultant's Services. For all services and incidental costs required hereunder, Consultant shall be paid on an hourly rate basis in accordance with the rate schedule set forth in Exhibit B, provided however, that total payments to Consultant shall not exceed \$3,857,500, without the prior written approval of County. Travel expenses and other expenses not listed in Exhibit B are not reimbursable under the Agreement. Consultant shall submit its bills in arrears on a monthly basis in a form approved by County's Auditor and the Head of the County Department receiving the services. The bills shall show or include: (i) the task(s) performed; (ii) the time in quarter hours devoted to the task(s); and (iii) the hourly rate or rates of the persons performing the task(s). Expenses not expressly authorized by the agreement shall not be reimbursed.

3. Agreement Section 3. Term of Agreement, shall be deleted and amended to read as follows:

3. Term of Agreement.

3.1 Initial Term. The initial term of this Agreement shall be from October 1, 2016 to December 31, 2019 unless extended pursuant to Section 3.2 or terminated earlier in accordance with the provisions of Article 4 below.

3.2 Option to Extend. County, by and through its Permit and Resource Management Director, may extend the term of this Agreement once on all the same terms and conditions for a period of six additional months by giving notice of exercise of the option to Consultant at least thirty (30) days before expiration of the Initial Term.

4. Agreement Section 5. Indemnification, shall be deleted and amended to read as follows:

5. Indemnification. Consultant agrees to accept all responsibility for loss or damage to any person or entity, including County, and to indemnify, hold harmless, and release County, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to Consultant's (or its agents', employees', contractors', subcontractors', or invitees') negligence, recklessness, or willful misconduct in the performance or obligations under this Agreement. Consultant agrees to provide a complete defense upon request for any claim or action brought against County based upon a claim relating to such Consultant's (or its agents', employees', contractors', subcontractors', or invitees') performance or obligations under this Agreement, except to the extent and until it is ultimately determined said claim or action was not caused by Consultant's (or its agents', employees', contractors', subcontractors', or invitees') negligence, recklessness, or willful misconduct. Consultant's obligations under this Section apply whether or not there is concurrent or contributory negligence on County's part, but to the extent required by law, excluding liability due to County's conduct. Except to the extent caused by Consultant's (or its agents', employees', contractors', subcontractors', or invitees') negligence, recklessness, willful misconduct, or breach of its the obligations under this Agreement, Consultant shall not be liable for, and County shall indemnify Consultant from and against, all third-party claims, demands, liabilities and costs

arising out of Consultant's performance or non-performance of services, including all on-site activities. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.

5. Except to the extent the Agreement is expressly amended hereby, the Agreement, as amended and together with exhibits, is and shall continue to be in full force and effect as originally executed, and nothing contained herein shall, or shall be construed to modify, invalidate or otherwise affect any provision of the Agreement or any right of County arising thereunder.
6. This Amendment shall be governed by and construed under the internal laws of the state of California, and any action to enforce the terms of this Amendment or for the breach thereof shall be brought and tried in the County of Sonoma.

COUNTY AND CONSULTANT HAVE CAREFULLY READ AND REVIEWED THIS AMENDMENT AND EACH TERM AND PROVISION CONTAINED HEREIN AND, BY EXECUTION OF THIS AMENDMENT, SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the effective date.

CONSULTANT:

e360 LLC

By: SD Messner

Name: Steven Messner

Title: Principal

Date: May 14, 2019

COUNTY OF SONOMA:

**CERTIFICATES OF INSURANCE ON
FILE WITH:**

By: _____
Director,
Permit & Resource Management Dept.

Date: _____

**APPROVED AS TO FORM FOR
COUNTY:**

By: _____
County Counsel

Date: _____

**APPROVED AS TO
SUBSTANCE FOR COUNTY:**

By: _____
Director,
Permit & Resource Management Dept

Date: _____