

**THIRD AMENDMENT TO AGREEMENT**

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2 THIS THIRD AMENDMENT TO AGREEMENT (hereinafter "Amendment III") is made and  
3 entered into this 22<sup>nd</sup> day of February, 2022, by and between COUNTY OF FRESNO, a Political  
4 Subdivision of the State of California, Fresno, California (hereinafter "COUNTY"), and TWO Q. INC, a  
5 California Corporation, whose address is 7589 North Wilson Avenue, Suite 103, Fresno, CA. 93711  
6 (hereinafter "CONTRACTOR").

**WITNESSETH:**

7  
8 WHEREAS, COUNTY and CONTRACTOR entered into Agreement number 18-252, dated the  
9 8<sup>th</sup> day of May 2018, (hereinafter "Agreement"), pursuant to which CONTRACTOR agreed to provide  
10 to the COUNTY, through its Department of Public Health, full-service advertising, and media  
11 communications; and

12 WHEREAS, COUNTY and CONTRACTOR entered a First Amendment number 18-252-1,  
13 dated the 26<sup>th</sup> day of March 2019 (hereinafter "Amendment I"), pursuant to which CONTRACTOR  
14 agreed to amend the Agreement in order to provide similar services for Phase I of the Department of  
15 Public Works & Planning's Environmental Compliance Center neighborhood outreach (Agreement No.  
16 A-18-252 and Amendment I shall herein be collectively referred to as the "Agreement"); and

17 WHEREAS, COUNTY and CONTRACTOR entered a Second Amendment number 18-252-2,  
18 dated the 23<sup>rd</sup> day of February, 2021 (hereinafter "Amendment II"), pursuant to which CONTRACTOR  
19 agreed to amend the Agreement in order to provide full-service advertising and media communications  
20 as part of a statewide engagement campaign targeted to support effort under the Black Infant Health  
21 program and increase the maximum compensation to accommodate further full-service advertising  
22 and media communications to improve the Department of Public Health's public education and  
23 engagement campaigns to influence positive changes in the health and well-being of Fresno County  
24 residents related to the COVID-19 pandemic and the pending COVID-19 vaccination campaign  
25 (Agreement No. A-18-252, Amendment I, and Amendment II shall herein be collectively referred to as  
26 the "Agreement"); and

27 WHEREAS COUNTY and CONTRACTOR now desire to amend the Agreement to increase  
28 compensation to support increased efforts in encouraging public health awareness including an

1 enhanced COVID vaccination campaigns, health equity participation, and smoking cessation  
2 campaigns, clarify CONTRACTOR's remediation rights in the event of late payment or breach of  
3 contract on the part of the COUNTY, intellectual property rights for creative materials, insurance  
4 language, noticing of COUNTY and CONTRACTOR, and the option for Electronic Signature of the  
5 Agreement and any future amendments.

6 NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which  
7 is hereby acknowledged, COUNTY and CONTRACTOR agree as follows:

8 1. That Section Four (4) of the Agreement, "TERMINATION," located on Page Two (2),  
9 beginning on Page Three (3) after line nine (9), have added the following:

10 "C. COUNTY's Breach of Contract – The CONTRACTOR may immediately suspend or  
11 terminate this Agreement in whole or in part in the event of a material breach by the COUNTY by  
12 giving the COUNTY ten (10) days written notice of the identified breach. If the COUNTY fails to cure  
13 the breach within ten (10) day cure period, the CONTRACTOR may terminate the Agreement  
14 immediately upon written notice to the COUNTY."

15 2. That Section Five (5) of the Agreement, "COMPENSATION," Subsection C, located on  
16 Page Four (4), beginning on line Eighteen (18) with the word "For" and ending on line Twenty-Four  
17 (24) with the word "CONTRACTOR." be deleted in its entirety and replaced with the following:

18 "For the period commencing upon execution through and including June 30, 2019, in no event  
19 shall services performed under this Agreement be more than Nine hundred Eighty Thousand and  
20 No/100 Dollars (\$980,000.00). For the period July 1, 2019 through June 30, 2020, in no event shall  
21 services performed under this Agreement exceed Seven Hundred Thousand and no/100 Dollars  
22 (\$700,000.00). For the period July 1, 2020 through June 30, 2021, in no event shall services  
23 performed under this Agreement exceed One Million Seven Hundred Six Thousand Seven Hundred  
24 Forty-One and no/100 Dollars (\$1,706,741.00). For the period July 1, 2021 through June 30, 2022, in  
25 no event shall services performed under this Agreement exceed Two Million Sixty-Seven Thousand  
26 Seven Hundred Forty-One and no/100 Dollars (\$2,067,741.00). For the period July 1, 2022 to June  
27 30, 2023, should the term of this Agreement be extended for an additional twelve (12) month period, in  
28 no event shall services performed under this Agreement exceed One Million Four Hundred Forty-Two



1 Thousand Seven Hundred Forty-One and no/100 Dollars (\$1,442,741.00). In no event shall services  
2 performed under this Agreement be more than Six Million Eight Hundred Ninety-Seven Thousand Two  
3 Hundred Twenty-Three and no/100 Dollars (\$6,897,223.00) during the term of this Agreement. It is  
4 understood that all expenses incidental to CONTRACTOR's performance of services under this  
5 Agreement shall be borne by CONTRACTOR."

6 3. That Section Five (5) of the Agreement, "COMPENSATION," located on Page Four (4),  
7 beginning after Line Twenty-Four (24) have added the following:

8 "D. If invoices that are itemized by cost center and approved by the COUNTY are not paid  
9 within forty-five (45) days of the date the invoice is submitted to COUNTY, COUNTY will be  
10 considered in breach of contract. Upon breach, CONTRACTOR would follow guidelines set forth in  
11 Section 3 – Termination, Subsection C until the identified breach has been cured or until the cure  
12 period has ended.

13 E. For services performed by CONTRACTOR prior to the termination date of this Agreement  
14 but that remain unpaid by COUNTY, CONTRACTOR shall submit all invoices to COUNTY for  
15 services provided within ninety (90) days after the Agreement is terminated. If invoices are not  
16 submitted within ninety (90) days following termination date of the Agreement, COUNTY shall have  
17 the right to deny payment on such invoices."

18 4. That Section Ten (10) of the Agreement, "INSURANCE," located on Page Six (6),  
19 beginning after Line Six (6) be deleted in its entirety and replace with following:

20 **"A. Commercial General Liability**

21 Commercial General Liability Insurance with limits of not less than Two Million Dollars  
22 (\$2,000,000.00) per occurrence and an annual aggregate of Four Million Dollars (\$4,000,000.00). This  
23 policy shall be issued on a per occurrence basis. COUNTY may require specific coverages including  
24 completed operations, products liability, contractual liability, Explosion-Collapse-Underground, fire legal  
25 liability or any other liability insurance deemed necessary because of the nature of this contract.

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1           **B.     Automobile Liability**

2           Comprehensive Automobile Liability Insurance with limits of not less than One Million Dollars  
3           (\$1,000,000.00) per accident for bodily injury and for property damages. Coverage should include any  
4           auto used in connection with this Agreement.

5           **C.     Professional Liability**

6           Professional Liability Insurance with limits of not less than One Million Dollars (\$1,000,000.00) per  
7           occurrence, Three Million Dollars (\$3,000,000.00) annual aggregate. CONTRACTOR agrees that it shall  
8           maintain, at its sole expense, in full force and effect for a period of three (3) years following the  
9           termination of this Agreement, one or more policies of professional liability insurance with limits of  
10          coverage as specified herein.

11          **D.     Worker's Compensation**

12          A policy of Worker's Compensation insurance as may be required by the California Labor  
13          Code.

14          **E.     Molestation**

15          Sexual abuse/molestation liability insurance with limits of not less than One Million Dollars  
16          (\$1,000,000.00) per occurrence. Two Million Dollars (\$2,000,000.00) annual aggregate. This policy  
17          shall be issued on a per occurrence basis.

18          **F.     Additional Requirements Relating to Insurance**

19          CONTRACTOR shall obtain endorsements to the Commercial General Liability  
20          insurance naming the County of Fresno, its officers, agents, and employees, individually and  
21          collectively, as additional insured, but only insofar as the operations under this Agreement are  
22          concerned. Such coverage for additional insured shall apply as primary insurance and any  
23          other insurance, or self-insurance, maintained by COUNTY, its officers, agents and  
24          employees shall be excess only and not contributing with insurance provided under  
25          CONTRACTOR's policies herein. This insurance shall not be cancelled or changed without a  
26          minimum of thirty (30) days advance written notice given to COUNTY.

27          Within thirty (30) days from the date CONTRACTOR signs and executes this  
28          Agreement, CONTRACTOR shall provide certificates of insurance and endorsement as stated

1 above for all of the foregoing policies, as required herein, to the County of Fresno, (Name and  
2 Address of the official who will administer this contract), stating that such insurance coverage  
3 have been obtained and are in full force; that the County of Fresno, its officers, agents and  
4 employees will not be responsible for any premiums on the policies; that such Commercial  
5 General Liability insurance names the County of Fresno, its officers, agents and employees,  
6 individually and collectively, as additional insured, but only insofar as the operations under this  
7 Agreement are concerned; that such coverage for additional insured shall apply as primary  
8 insurance and any other insurance, or self-insurance, maintained by COUNTY, its officers,  
9 agents and employees, shall be excess only and not contributing with insurance provided  
10 under CONTRACTOR's policies herein; and that this insurance shall not be cancelled or  
11 changed without a minimum of thirty (30) days advance, written notice given to COUNTY.

12 In the event CONTRACTOR fails to keep in effect at all times insurance coverage as  
13 herein provided, the COUNTY may, in addition to other remedies it may have, suspend or  
14 terminate this Agreement upon the occurrence of such event. All policies shall be issued by  
15 admitted insurers licensed to do business in the State of California, and such insurance shall  
16 be purchased from companies possessing a current A.M. Best, Inc. rating of A FSC VII or  
17 better.”

18 5. That Section 6.1 be added to the Agreement, beginning on Page Five (5), after Line  
19 Eighteen (18) and include the following:

20 **6.1: INTELLECTUAL PROPERTY RIGHTS**

21 All materials or deliverables developed and produced for COUNTY by CONTRACTOR agreed  
22 upon by both parties become the property of COUNTY upon payment received by CONTRACTOR.  
23 Upon payment, CONTRACTOR will be required to provide native and editable files to COUNTY on  
24 COUNTY's Cloud-based repository within fifteen (15) days. Failure to provide these within forty-five  
25 (45) days of payment received will result in a breach of contract and COUNTY may exercise Section 3  
26 – Termination, Subsection B. Additional hours will be estimated for approval and included in budgets  
27 for the preparation and delivery of speculative, competitive, and/or optional work presented to  
28

1 COUNTY and/or any native and/ or editable files, billed at the contracted hourly rate as identified in  
2 Exhibit C.

3 CONTRACTOR retains the right to utilize materials for portfolio work samples and/or awards  
4 submissions without further consent from COUNTY. After native and/or editable files have been  
5 delivered to the COUNTY, COUNTY assumes responsibility for licensed assets, including but not  
6 limited to images, footage, fonts, music, sound effects, voice, or on-camera talent. CONTRACTOR's  
7 licensed usage is non-transferrable."

8 6. That Section Twelve (12) of Agreement, "NOTICES," located on Page Eight (8),  
9 beginning on Line Fifteen (15) be removed in its entirety and replace with the following:

10 "The persons and their addresses having authority to give and receive notices under this  
11 Agreement include the following:

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|----|--|--|
| 12 | COUNTY   | CONTRACTOR   |
| 13 | Director, County of Fresno   | TWO Q, INC.  |
| 14 | Department of Public Health  | President, JP Marketing                              |
| 15 | P.O. Box 11867   | 7589 N. Wilson Ave. #103                             |
| 16 | Fresno, CA 93775   | Fresno, CA 93711                                     |
| 17 | <a href="mailto:DPHContracts@fresnocountyca.gov">DPHContracts@fresnocountyca.gov</a> | <a href="mailto:jane@jpmktg.com">jane@jpmktg.com</a> |

18 All notices between the COUNTY and CONTRACTOR provided for or permitted under this  
19 Agreement must be in writing and delivered either by personal service, by first-class United States  
20 mail, by an overnight commercial courier service, or by telephonic facsimile transmission or delivered  
21 via email. A notice delivered by personal service is effective upon service to the recipient. A notice  
22 delivered by first class United States mail is effective three COUNTY business days after deposit in the  
23 United States mail, postage prepaid, addressed to the recipient. A notice delivered by an overnight  
24 commercial courier service is effective one COUNTY business day after deposit with the overnight  
25 commercial courier service, delivery fees prepaid, with delivery instructions given for next day delivery,  
26 addressed to the recipient. A notice delivered by telephonic facsimile or electronic mail is effective  
27 when transmission to the recipient is completed (but, if such transmission is completed outside of  
28 COUNTY business hours, then such delivery shall be deemed to be effective at the next beginning of  
a COUNTY business day), provided that the sender maintains a machine record of the completed

1 transmission. For all claims arising out of or related to this Agreement, nothing in this section  
2 establishes, waives, or modifies any claims presentation requirements or procedures provided by law,  
3 including but not limited to the Government Claims Act (Division 3.6 of Title 1 of the Government  
4 Code, beginning with section 810).”

5 7. That Section 16 be added to the Agreement, beginning on Page Ten (10), after Line  
6 Seven (7) and include the following:

7 The parties agree that this Agreement and subsequent Amendments may be executed by  
8 electronic signature as provided in this section. An “electronic signature” means any symbol or process  
9 intended by an individual signing this Agreement and subsequent Amendments to represent their  
10 signature, including but not limited to (1) a digital signature; (2) a faxed version of an original  
11 handwritten signature; or (3) an electronically scanned and transmitted (for example by PDF  
12 document) of a handwritten signature. Each electronic signature affixed or attached to this Agreement  
13 (1) is deemed equivalent to a valid original handwritten signature of the person signing this Agreement  
14 for all purposes, including but not limited to evidentiary proof in any administrative or judicial  
15 proceeding, and (2) has the same force and effect as the valid original handwritten signature of that  
16 person. The provisions of this section satisfy the requirements of Civil Code section 1633.5,  
17 subdivision (b), in the Uniform Electronic Transaction Act (Civil Code, Division 3, Part 2, Title 2.5,  
18 beginning with section 1633.1). Each party using a digital signature represents that it has undertaken  
19 and satisfied the requirements of Government Code section 16.5, subdivision (a), paragraphs (1)  
20 through (5), and agrees that each other party may rely upon that representation. This Agreement is not  
21 conditioned upon the parties conducting the transactions under it by electronic means and either party  
22 may sign this Agreement and subsequent Amendments with an original handwritten signature.

23 COUNTY and CONTRACTOR agree that this Amendment is sufficient to amend the  
24 Agreement and, that upon execution of this Amendment, the Agreement, Amendment I, Amendment II,  
25 and this Amendment III, together shall be considered the Agreement.

26 The Agreement, as hereby amended, is ratified, and continued. All provisions, terms,  
27 covenants, conditions, and promises contained in the Agreement and not amended herein shall  
28 remain in full force and effect.

1 IN WITNESS WHEREOF, the parties hereto have executed this Amendment III as of the day and year  
2 first hereinabove written.

3


4 **CONTRACTOR:**  
5 **TWO Q, INC**

**COUNTY OF FRESNO:**

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8 (Authorized Signature)



9 Brian Pacheco, Chairman of the Board of  
10 Supervisors of the County of Fresno

11

12 Jane Olvera, President

13 Print Name & Title  
14 (Chairman of the Board, or President or Vice  
15 President)

16 **ATTEST:**  
17 Bernice E. Seidel  
18 Clerk of the Board of Supervisors  
19 County of Fresno, State of California

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Mailing Address

By:   
Deputy

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FOR ACCOUNTNG  
USE ONLY:  
Fund: 0001  
Subclass: 10000  
ORG No.: 5620  
Account No.: 7295