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City of Las Cruces[®]

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 11

Ordinance/Resolution# 12-13-373

For Meeting of _____
(Ordinance First Reading Date)

For Meeting of September 3, 2013
(Adoption Date)

Please check box that applies to this item:

QUASI JUDICIAL

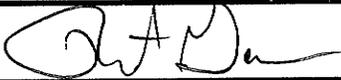
LEGISLATIVE

ADMINISTRATIVE

TITLE: A RESOLUTION TO APPROVE AN AMENDED PRICE AGREEMENT WITH MOETIV8 MARKETING, INC. OF HALLANDALE, FLORIDA FOR A PROJECTED COST NOT TO EXCEED \$88,000 PLUS APPLICABLE TAXES FOR GRAPHIC DESIGN, DESTINATION, AND DIRECT MEDIA PURCHASES, WITH AUTHORIZATION FOR DIRECT MEDIA PURCHASES LIMITED TO \$500,000 PER FISCAL YEAR, SUBJECT TO AVAILABLE BUDGET.

PURPOSE(S) OF ACTION:

To approve an amended agreement.

COUNCIL DISTRICT: N/A		
<u>Drafter/Staff Contact:</u> Phil San Filippo	<u>Department/Section:</u> Community & Cultural Services/Convention & Visitors Bureau	<u>Phone:</u> 575-541-2166
<u>City Manager Signature:</u>		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

To fulfill the need for additional assistance with both graphic design and rebranding of the Las Cruces Convention and Visitors Bureau (CVB), the City's Purchasing Department issued Request for Proposal (RFP) 12-13-373 in the fall of 2012 for destination marketing, branding and graphic design services, with specific emphasis on previous destination branding experience.

The Purchasing section received two qualified responses to the RFP. RFP's were submitted by Wilson Binkley Advertising of Las Cruces and Moetiv8 Marketing, Inc. (Moetiv8 Marketing) from Hallandale, FL. Moetiv8 Marketing was selected through the competitive evaluation process and a contract was executed for \$49,000 through most of FY2013 and early FY2014.

Moetiv8 Marketing was instrumental in leading the CVB through the creation and implementation of the new brand: *Explore. Experience. Discover.* in FY2013. The CVB has been working to incorporate the new messaging into all sales and promotional materials. This includes: a new website design, a new visitors guide design, print ads for the meetings and leisure market, rebranded sales guides, e-newsletter templates, business cards, digital presentations, and

(Continue on additional sheets as required)

various additional other materials. All this was accomplished without having to pay the heavy commissions and fees the CVB was previously paying with its former advertising agency.

Due to the amount of work required to complete the first phase of the rebranding process, the CVB has spent the original contracted amount of \$49,000 and is looking to amend the value and scope of the contract with Moetiv8 Marketing. The CVB proposes to amend the contract to increase the annual service amount to \$88,000 per year for graphic design services and destination marketing, as well as advertising placement on behalf of the CVB. These changes will allow the CVB to continue working with Moetiv8 Marketing to further strengthen and develop the - *Explore. Experience. Discover.* brand with the hope of generating new visitors to Las Cruces.

The change also includes allowing the agency to purchase ads on behalf of the CVB, which will benefit the CVB through additional discounts and expedited responses to time-sensitive offers from advertising vendors. The CVB, in any given fiscal year, spends approximately \$500,000 in advertising. To date in FY2014, the CVB has encumbered \$200,220 for direct advertising. Of the remaining \$299,780 in the budget and subject to the City Council's approval of this amended agreement with Moetiv8 Marketing for \$88,000, this will leave an uncommitted balance of \$211,780 for future advertising expenses.

This method of ad placement should result in an overall savings to the CVB, as typical advertising agencies add a 17.65% to each advertisement placed, which for the current CVB budget for advertising would by itself be \$88,250 in commissions plus any monthly agency service and creative design fees that they charge. The proposed amendment allows the CVB to invest much more into direct advertising rather than the associated overhead expenses. The CVB will make all decisions on which media to purchase; however Moetiv8 Marketing will make recommendations on what media to purchase and submit the ad placement orders.

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", Purchasing Manager's Request for Change Order.
3. Exhibit "B", Amendment to Graphic Design Services & Destination Marketing Price Agreement.
4. Attachment "A", Graphic Design Services & Destination Marketing Price Agreement dated February 20, 2013.

(Continue on additional sheets as required)

SOURCE OF FUNDING:

Is this action already budgeted?	Yes	<input checked="" type="checkbox"/>	See fund summary below.
	No	<input type="checkbox"/>	If No, then check one below:
	Budget Adjustment Attached	<input type="checkbox"/>	Expense reallocated from:
		<input type="checkbox"/>	Proposed funding is from a new revenue source (i.e. grant; see details below)
		<input type="checkbox"/>	Proposed funding is from fund balance in the _____ Fund.
Does this action create any revenue? N/A	Yes	<input type="checkbox"/>	Funds will be deposited into this fund: _____ in the amount of \$ _____ for FY _____.
	No	<input type="checkbox"/>	There is no new revenue generated by this action.

BUDGET NARRATIVE

The CVB budgets approximately \$500,000 in any given fiscal year. To date in FY2014, the CVB has committed to expend \$200,220 for direct advertising. Assuming that Council approves the amended agreement for services of \$88,000, with Moetiv8 Marketing, Inc, this will leave the CVB uncommitted advertising balance of \$211,780 for advertising expenses.

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
Convention and Visitors Bureau (Fund 2710)	27205020-722104-CVB03	\$299,780	\$299,780	\$0	N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will amend the agreement with Moetiv8 Marketing to develop and expand existing marketing plans, as well as for direct ad placement on the CVB's behalf as part of the overall marketing efforts.
2. Vote "No"; this will not amend the agreement and not allow CVB to work with Moetiv8 Marketing on graphic design, destination marketing, and direct advertising placement.
3. Vote to "Amend"; this could modify the Resolution to reflect the wishes of the City Council but could delay marketing efforts as well as limit the marketing tools the CVB has available to promote Las Cruces.
4. Vote to "Table"; this would require further direction of the City Council.

(Continue on additional sheets as required)

REFERENCE INFORMATION:

N/A

(Continue on additional sheets as required)

RESOLUTION NO. 12-13-373

A RESOLUTION TO APPROVE AN AMENDED PRICE AGREEMENT WITH MOETIV8 MARKETING, INC. OF HALLANDALE, FLORIDA FOR A PROJECTED COST NOT TO EXCEED \$88,000 PLUS APPLICABLE TAXES FOR GRAPHIC DESIGN, DESTINATION, AND DIRECT MEDIA PURCHASES, WITH AUTHORIZATION FOR DIRECT MEDIA PURCHASES LIMITED TO \$500,000 PER FISCAL YEAR, SUBJECT TO AVAILABLE BUDGET.

The City Council of the City of Las Cruces is informed that:

WHEREAS, Moetiv8 Marketing, Inc. of Hallandale, Florida was selected through competitive procurement and was instrumental in assisting the Convention and Visitors Bureau (CVB) to create a rebranding of the CVB that more effectively represents what Las Cruces is and has to offer visitors; and

WHEREAS, although we accomplished much during the rebranding process, there are still many things that are still needed, as well as design and branding work that will continue on a regular basis; and

WHEREAS, due to the amount of work required to complete the first phase of the rebranding process, the CVB has spent the original contracted amount of \$49,000 and is looking to amend the value and scope of the contract with Moetiv8 Marketing, Inc. to include additional graphic design, destination, and direct media purchases for the upcoming fiscal year.

NOW, THEREFORE, be it resolved by the governing body of the City of Las Cruces:

(I)

THAT the amended price agreement with Moetiv8 Marketing, Inc. of Hallandale, Florida for a projected cost not to exceed \$88,000, plus applicable taxes for graphic design, destination, and direct media purchases, with authorization for direct media

purchases limited to \$500,000 per fiscal year, subject to available budget be approved.

(II)

THAT the Purchasing Manager is authorized to amend the contract with Moetiv8 Marketing, Inc., as outlined in Exhibit "A", Purchasing Manager's Request for Change Order and Exhibit "B", Amendment to Graphic Design Services & Destination Marketing Price Agreement, attached hereto and made part of this Resolution.

(III)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this _____ day of _____, 2013.

APPROVED:

Mayor

ATTEST:

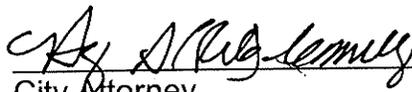
City Clerk

(SEAL)

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:



City Attorney

VOTE:

Mayor Miyagishima: _____
Councillor Silva: _____
Councillor Smith: _____
Councillor Pedroza: _____
Councillor Small: _____
Councillor Sorg: _____
Councillor Thomas: _____

CITY OF LAS CRUCES

PURCHASING MANAGER'S REQUEST FOR CHANGE ORDER

For Meeting of: September 3, 2013

Resolution No.: 12-13-373

**Amendment to Existing Contract For
Graphic Design Services & Destination Marketing**

The Las Cruces City Council is provided the following information concerning this request:

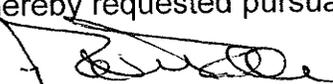
BID/RFP SOLICITATION INFORMATION:

- 1. Original Bid/RFP & Due Date: **RFP #12-13-373 / November 8, 2012**
- 2. Description of Bid/RFP: **Graphic Design Services & Destination Marketing**
- 3. Contract Award: **City Manager Resolution / March 6, 2013**
- 4. Contract Revision:

Previous Contract Award Amount (Excludes Tax & Contingency)	\$49,000.00
Amendment Amount:	<u>\$ 39,000.00</u>
New Contract Amount:	<u>\$ 88,000.00</u>
- 5. Contractor: **Moetiv8 Marketing, Inc. of Hallandale, FL**
- 6. Using Department: **Community and Cultural Services / CVB**
- 7. Contract Duration: **Four year term subject to appropriated budget and annual renewal**

PROCUREMENT CODE COMPLIANCE:

The City of Las Cruces Procurement Code was administered in the conduct of this procurement and approval to change the above contract is hereby requested pursuant to **Section 24-228.**



 Purchasing Manager

/ 8/14/13

 Date

CONFIRMATION OF FUND ENCUMBRANCE:

REQUISITION OR PURCHASE ORDER NUMBER:	PO 13202214
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AMENDMENT TO

GRAPHIC DESIGN SERVICES & DESTINATION MARKETING PRICE AGREEMENT
RFP #12-13-373

This amendment, made this 29th day of July, 2013 by and between the CITY OF LAS CRUCES and MOETIV8 MARKETING, INC. of Hallandale, FL.

WITNESSTH

WHEREAS, the parties desire to modify the terms and conditions of their original contract dated February 20, 2013, the parties hereby agree as set forth below:

The following provisions are added:

1. Moetiv8 Marketing, Inc. will coordinate and complete media buys for the City's CVB projects as needed.
2. Media buys will incorporate both print and online advertising.
3. Moetiv8 Marketing, Inc. will invoice the City for the actual cost of ad for reimbursement as long as the original advertiser's invoice is attached for verification.
4. Service hours will increase by approximately 459 hours per year at \$85 per hour.
5. Media buys must not exceed \$500,000 per fiscal year.

Subject to the modifications set forth in this amendment, the above referenced original agreement dated February 20, 2012 between the parties is hereby ratified and confirmed.

IN WITNESS WHEREOF, the parties, through their authorized representatives, have affixed the signatures below.

Moetiv8 Marketing, Inc.

_____	_____	_____
Valerie Snow	Date	Title

CITY OF LAS CRUCES

_____	_____	_____
Robert Telles	Date	Purchasing Manager

APPROVED AS TO FORM:

City Attorney



**GRAPHIC DESIGN SERVICES & DESTINATION MARKETING PRICE AGREEMENT
CONTRACT #12-13-373**

THIS AGREEMENT made and entered into on this date, **February 20, 2013** by and between the City of Las Cruces, New Mexico, hereinafter called "CITY" and **Moetiv8 Marketing, Inc. of Hallandale, FL** hereinafter called "CONTRACTOR".

1. PROJECT DESCRIPTION

GRAPHIC DESIGN SERVICES & DESTINATION MARKETING PRICE AGREEMENT

2. SCOPE OF SERVICES

In a satisfactory and proper manner, the CONTRACTOR shall perform SERVICES as proposed in response to the CITY'S, **RFP 12-13-373** incorporated herein by reference and made a part of this Agreement.

The CONTRACTOR is authorized to extend the same terms and conditions of this Agreement to other governmental entities conditioned upon the procurement laws and regulations of those entities. The CITY shall not be a party nor have any liability relating to such extensions.

3. APPROPRIATIONS

The terms of this Agreement are contingent on sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement shall terminate upon written notice given by the CITY to CONTRACTOR. The CITY'S, decision as to whether sufficient appropriations and authorizations exist shall be accepted by CONTRACTOR and shall be final.

4. COMPENSATION

The CITY shall compensate CONTRACTOR for the performance of SERVICES under this Agreement an **estimated annual amount of \$49,000.00**, plus applicable taxes. CONTRACTOR shall perform the SERVICES upon receipt of a purchase order from the CITY. The CITY cannot authorize costs to be incurred prior to such purchase order.

CONTRACTOR is responsible for payment of State of New Mexico Gross Receipts Tax levied on the amounts payable under this Agreement. CONTRACTOR agrees to comply with all federal and state tax payments and report all items of gross receipts as income from the operations of its business.

5. DEVOTION OF ADEQUATE TIME

CONTRACTOR will devote the necessary hours each week to the performance of project that are required by the CITY, and it will serve the CITY, diligently and faithfully, and according to its best ability in all respects and will promote the best interests of the CITY.

6. TERM AND SCHEDULE

This Agreement shall become effective on **March 1, 2013 through February 28, 2014** for a four (4) year term subject to annual renewals initiated by the City pending appropriated budget for an **indefinite quantity and indefinite cost**. CONTRACTOR shall perform the SERVICES in accordance with the time set forth as agreed upon by the CITY and CONTRACTOR.

7. EXTENSIONS, CHANGES, AND AMENDMENTS

This Agreement shall not be extended, changed, or amended except by instrument in writing executed by the parties. The CITY shall not be liable for payment of any extra services nor shall CONTRACTOR be obligated to perform any extra services except upon such written agreement. Such written approval shall indicate the date said extension, change, or amendment is effective and shall be signed by the parties to this Agreement. In the event that the parties cannot reach agreement as to a particular change, the issue shall be resolved pursuant to Article 21.

8. CHANGES AND EXTRA SERVICES BY THE CITY

The CITY may make changes within the general scope of the SERVICES plus may also request CONTRACTOR to perform other extra services not incorporated within the Services set forth in this Agreement. If the CONTRACTOR is of the opinion that such change causes an increase or decrease in the cost and/or the time required for performing the changes or other services required by the CITY, CONTRACTOR shall so notify the CITY, of that fact within five (5) business work days from the date of receipt of change by the CITY. The CITY shall provide written response to the CONTRACTOR within five (5) business work days from the date of receipt of CONTRACTOR'S written notification.

9. CHANGES AND EXTRA SERVICES BY THE CONTRACTOR

In the event a condition is identified by the CONTRACTOR which, in the opinion of the CONTRACTOR, changes the services, costs, and/or time required for performance under this Agreement, the CONTRACTOR shall provide written notification to the CITY within five (5) business work days of such identification. The CITY shall respond in writing to such notification within five (5) business work days from the date of receipt of CONTRACTOR'S notification.

10. DELAYS

In the event that performance of SERVICES is delayed by causes beyond reasonable control of CONTRACTOR, and without the fault or negligence of CONTRACTOR, the time and total compensation for the performance of the SERVICES may be equitably adjusted by written agreement to reflect the extent of such delay. CONTRACTOR shall provide the CITY, with written notice of delay pursuant to Article 9 including therein a description of the delay and the steps contemplated or actually taken by CONTRACTOR to mitigate the effect of such delay. The CITY will make the final determination as to reasonableness of delays.

11. TERMINATION

This Agreement may be terminated by either party hereto upon fifteen (15) calendar days written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party. This Agreement may also be terminated by the CITY, for its convenience or because the PROJECT has been permanently abandoned, but only upon fifteen (15) calendar days written notice to CONTRACTOR.

In the event of termination, CONTRACTOR shall be compensated for all services performed and costs incurred up to the effective date of termination for which CONTRACTOR has not been previously compensated.

Upon receipt of notice of termination from the CITY, CONTRACTOR shall discontinue the SERVICES unless otherwise directed and upon final payment from the CITY, deliver to the CITY, the required number of copies of all data, drawings, reports, estimates, summaries, and

such other information and materials as may have been accumulated by CONTRACTOR in the performance of this Agreement, whether completed or in process.

12. RECORDS AND AUDITS

CONTRACTOR will maintain records indicating dates, length of time, and services rendered. The CITY has the right to audit billings both before and after payment, and contest any billing or portion thereof. Payment under this Agreement does not foreclose the CITY'S, right to recover excessive or illegal payments.

13. DISCLOSURE AND OWNERSHIP OF DOCUMENTS, PRODUCTS, DESIGN, ELECTRONIC FILES

All technical data, electronic files, and other written and oral information not in the public domain or not previously known, and all information, electronic files, and data obtained, developed, or supplied by the CITY, will be kept confidential and CONTRACTOR will not disclose to any other party, directly or indirectly, without the CITY'S, prior written consent unless required by lawful order.

All technical data, electronic files, products developed, operational parameters, blueprints, and other information and work of the CONTRACTOR shall be the sole property of the CITY, and shall be delivered to the CITY, when requested and at the end of the Agreement.

14. INDEPENDENT CONTRACTOR

CONTRACTOR represents that it has, or will secure, at its own expense, all personnel required in performing the SERVICES under this Agreement. Such personnel shall not be employees of, nor have any contractual relationship with the CITY, CONTRACTOR, consistent with its status as an independent contractor, further agrees that its personnel will not hold themselves out as, nor claim to be officers or employees of the CITY, by reason of this Agreement.

To the extent that CONTRACTOR employs any employees, CONTRACTOR shall be solely responsible for providing its own form of insurance for its employees and in no event shall CONTRACTOR'S employees be covered under any policy of the CITY.

CONTRACTOR'S retention hereunder is not exclusive. Subject to the terms and provisions of this Agreement: (i) CONTRACTOR is able, during the Term hereof, to perform services for other parties; and (ii) CONTRACTOR may perform for its own account other professional services outside the scope of this Agreement.

CONTRACTOR is and shall be an Independent Contractor and shall be responsible for the management of its business affairs. In the performance of the work under this Agreement, CONTRACTOR will at all times be acting and performing as an Independent Contractor, as that term is understood for federal and state law purposes, and not as an employee of the CITY. Without limitation upon the foregoing, CONTRACTOR shall not accrue sick leave, jury duty pay, retirement, insurance, bonding, welfare benefits, or any other benefits, which may or may not be afforded employees of the CITY. CONTRACTOR will not be treated as an employee for purposes of: Workers' Compensation benefits; the Federal Unemployment Tax Act; Social Security; other payroll taxes, federal or any state income tax withholding; or the employee benefit provisions described in the Internal Revenue Code of 1986, as amended. Neither the CITY, nor its agents or representatives, shall have the right to control or direct the manner, details or means by which CONTRACTOR accomplishes and performs its services.

Nevertheless, CONTRACTOR shall be bound to fulfill the duties and responsibilities contained in the Agreement.

15. NO JOINT VENTURE OR PARTNERSHIP

Nothing contained in this Agreement shall create any partnership, association, joint venture, fiduciary or agency relationship between CONTRACTOR and CITY. Except as otherwise specifically set forth herein, neither CONTRACTOR nor CITY, shall be authorized or empowered to make any representation or commitment or to perform any act which shall be binding on the other unless expressly authorized or empowered in writing.

16. ASSIGNMENT

CONTRACTOR shall perform all the services under this Agreement and shall not assign any interest in this Agreement or transfer any interest in same or assign any claims for money due or to become due under this Agreement without the prior written consent of the CITY.

17. INSURANCE- No insurance is required for this off-site service.

18. INDEMNITY AND LIMITATION

CONTRACTOR shall indemnify, defend, and hold harmless the CITY, from and against any and all claims, suits, actions, judgments, demands, losses, costs, expenses, damages, and liability caused solely by, resulting solely from, or arising solely out of the negligent acts, errors, or omissions of CONTRACTOR, its officers, employees, agents, or representatives in the performance of SERVICES under this agreement.

19. APPLICABLE LAW

This Agreement and the rights and obligations of the parties shall be governed by and construed by the laws of the State of New Mexico applicable to Agreements between New Mexico parties made and performed in that state, without regard to conflicts of law principles. Venue shall be in the Third Judicial District, State of New Mexico.

CONTRACTOR shall abide and be governed by all applicable state law, CITY ordinances, and laws regarding the CONTRACTOR'S services or any work done pursuant to this Agreement.

20. BREACH

In the event CONTRACTOR breaches any obligation contained in this Agreement, prior to instituting any action or dispute resolution procedure, the CITY, shall give CONTRACTOR written notice of such breach. In the event CONTRACTOR fails to remedy the breach within five (5) working days of receiving such written notice, the CITY, at its sole discretion, without any obligation to do so and in addition to other remedies available under applicable law, may remedy CONTRACTOR'S breach and recover any and all costs and expenses in so doing from CONTRACTOR.

21. DISPUTE RESOLUTION

In the event that a dispute arises between CITY and CONTRACTOR under this Agreement or as a result of breach of this Agreement, the parties agree to act in good faith to attempt to resolve the dispute.

In the event of termination, CONTRACTOR shall be compensated for all services performed and costs incurred up to the effective date of termination for which CONTRACTOR has not been previously compensated.

Upon receipt of notice of termination from the CITY, CONTRACTOR shall discontinue the SERVICES unless otherwise directed and upon final payment from the CITY, deliver to the CITY, the required number of copies of all data, drawings, reports, estimates, summaries, and such other information and materials as may have been accumulated by CONTRACTOR in the performance of this Agreement, whether completed or in process.

22. NOTIFICATION

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if served by Registered Mail addressed as follows:

TO CITY: City of Las Cruces,
PO Box 20000
Las Cruces, NM 88004
ATTENTION: (Chris Faivre)

With Copies to: Purchasing Manager

TO CONTRACTOR: Motiv8 Marketing, Inc.
P.O. 2552
Hallendale, FL, 33008
ATTENTION: Valerie Snow

23. SCOPE OF AGREEMENT

This Agreement incorporates all of the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof and that all such covenants, agreements, and understandings have been merged into this written agreement. No prior agreement or understanding verbal or otherwise of the parties or their agents shall be valid or enforceable unless embodied in this agreement.

CONTRACTOR

CITY OF LAS CRUCES

BY: Valerie Snow
PRINCIPAL

BY: [Signature]
PURCHASING MANAGER

DATE: 2/20/13

DATE: 3/8/13
126 # (310) 1062

AS TO FORM - CITY ATTORNEY:

[Signature]