

**SERVICE AGREEMENT  
ANNUAL EXTENSION – YEAR 4 OF 4  
(RFP No. 12-13-373)**

---

Pursuant to Section 7, EXTENSION, CHANGES AND AMENDMENTS of the Graphic Design Services & Destination Marketing Price Agreement Service Agreement (Agreement) dated February 20, 2013 between the City of Las Cruces (City) and Moetiv8 Marketing (Contractor), the City and Contractor agree to renew the Agreement for a period of one (1) year, to begin March 1, 2016 and terminate February 28, 2017.

All other terms of the Service Agreement remain the same.

---

AGREED:

MOETIV8 MARKETING

*Valerie Snow*

Signature

Digitally signed by Valerie Snow  
DN: cn=Valerie Snow, o=moetiv8, ou,  
email=brightidea@mindspring.com,  
c=US

Date: 2015.11.23 12:52:03-05'00'

Date

CITY OF LAS CRUCES

*Deb Smith*

Deb Smith

Purchasing Manager

*11/23/15*

Date

---

Printed Name/Title

**SERVICE AGREEMENT  
ANNUAL EXTENSION – YEAR 3 OF A POSSIBLE 4  
(RFP No. 12-13-373)**

---

Pursuant to Section 7, EXTENSION, CHANGES AND AMENDMENTS of the Graphic Design Services & Destination Marketing Price Agreement Service Agreement (Agreement) dated 2/20/2013 between the City of Las Cruces (City) and Moetiv8 Marketing (Contractor), the City and Contractor agree to renew the Agreement for a period of one (1) year, to begin March 1, 2015 and terminate February 28, 2016.

All other terms of the Service Agreement remain the same.

---

AGREED:

MOETIV8 MARKETING

CITY OF LAS CRUCES

Valerie Snow

Signature

2/4/15

Date

Victoria Fiedel

2/9/15

Date

Purchasing Manager

Valerie Snow

Printed Name/Title





# City of Las Cruces

## 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

Valerie Snow

7/29/13

Date

President

Title

CITY OF LAS CRUCES

Robert Telles

Robert Telles

9/24/13

Date

✓  
Purchasing Manager

APPROVED AS TO FORM:

[Signature]

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: Moetiv8 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  
[Signature] # 3101062

AS TO FORM - CITY ATTORNEY:

[Signature]

SECTION B COST PROPOSAL

1. Direct Costs:

Direct costs for creative, layout and design services as outlined in RFP-12-13-373 is based on an agency rate of \$85 per hour.

2. Indirect Costs:

Indirect costs such as printing, display materials, or promotional items that are paid for and coordinated by the agency will be marked up at a reduced industry rate of 5%.

3. Labor (hours) by major task:

Creative/Design	10-15 hours - p/month
Layout/Production	30-35 hours - p/month
Digital/Interactive	15-20 hours - p/month
Administrative	5 hours - p/month

Total estimated: 60-65 hours per month

4. Materials:

There are no materials costs for design services. Comps that require specific materials or color output will be billed at industry cost such as paper, ink, bindery or other print media output.

5. Equipment:

There are no equipment costs for design services

6. Sub consultants:

Photography & Video                      quoted upon request

7. Any other proposed costs that may be incurred by the City:

There are no other proposed costs for design services