

**CITY OF EL PASO, TEXAS  
REQUEST FOR COUNCIL ACTION (RCA)**

**DEPARTMENT:** PARKS & RECREATIONS  
**AGENDA DATE:** JUNE 24, 2008  
**CONTACT PERSON/PHONE:** TERRY FREIBURG, PURCHASING MANAGER, 541-4313  
**DISTRICT(S) AFFECTED:** All

**SUBJECT:** APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

That the City Manager be authorized to sign a Consent to Assignment of the contract by and between the City of El Paso, Frontera Sanitation, LLC ("Assignor") and Hot Properties, Inc. aka Sarabia's Portable Jons ("Assignee") with respect to the City of El Paso Contract No. 2007-135.

**BACKGROUND / DISCUSSION:** Discussion of the what, why, where, when, and how, to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

On or after May 29, 2007, the City entered into Contract No. 2007-135 for Rental of Portable Restrooms with Frontera Sanitation, LLC. Frontera Sanitation, LLC was purchased by Hot Properties, Inc. aka Sarabia's Portable Jons. Assignee agrees to assume and perform all duties, obligations and responsibilities under Contract No. 2007-203 until September 30, 2008.

**PRIOR COUNCIL ACTION:** Has the Council previously considered this item or a closely related one?

Common Council action when vendor changes ownership/name and vendor agrees to assume and perform all duties, obligations and responsibilities of a contract.

**AMOUNT AND SOURCE OF FUNDING:** How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

No change to funding

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**LEGAL:** (if required) \_\_\_\_\_ **FINANCE:** (if required) \_\_\_\_\_

**DEPARTMENT HEAD:** \_\_\_\_\_  
(Example: if RCA is initiated by Purchasing, client department should sign also)  
*Information copy to appropriate Deputy City Manager*

**APPROVED FOR AGENDA:** \_\_\_\_\_

**CITY MANAGER:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**RESOLUTION**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

**THAT** the City Manager be authorized to sign Consent to Assignment of the contract by and between the City of El Paso, Frontera Sanitation, LLC (“Assignor”) and Hot Properties, Inc. a/k/a Sarabia’s Portable Jons (“Assignee”) with respect to the City of El Paso Contract No. 2007-135 for Rental of Portable Restrooms until September 30, 2008 and that the Contract be mutually terminated for convenience on September 30, 2008.

**PASSED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

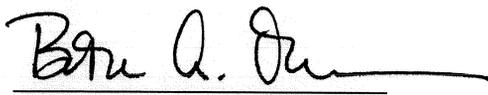
**THE CITY OF EL PASO**

\_\_\_\_\_  
John F. Cook  
Mayor

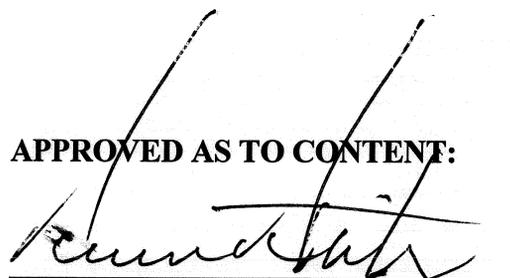
**ATTEST:**

\_\_\_\_\_  
Richarda D. Momsen  
Municipal Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Bertha A. Ontiveros  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Terrence Freiburg  
Purchasing Manager, Financial Services

STATE OF TEXAS            )  
  )  
COUNTY OF EL PASO        )

**CONSENT TO ASSIGNMENT**

This Consent to Assignment is executed this 6<sup>th</sup> day of June, 2008,  
by and between the City of El Paso (the "City"), Frontera Sanitation, LLC ("Assignor") and Hot  
Property, Inc. d/b/a Sarabia Portable Jons ("Assignee").

**WHEREAS**, on May 29, 2007, the City entered into Contract No. 2007-135 (Rental of  
Portable Restrooms) with Assignor, which is fully incorporated herein by reference. This contract  
is herein referred to as the Contract;

**WHEREAS**, pursuant to the Contract, the Assignor was to provide portable restrooms for  
City Parks and other departments to the City;

**WHEREAS**, after entering into the Contract, the assets of Assignor were sold to Assignee;

**WHEREAS**, the Contract provides that it is not assignable without the consent of the City;

**WHEREAS**, the Assignor has requested that the City approve an assignment of the  
Contract to Assignee;

**WHEREAS**, the Assignee has agreed to be responsible for all duties and obligations under  
the Contract until September 30, 2008;

**WHEREAS**, the City has agreed to the assignment of all rights, duties and obligations  
encompassed in the Contracts to the Assignee and Assignee's assumption until September 30,  
2008; and

**WHEREAS**, City has agreed it will rebid the services and the City and the Assignee have  
agreed that the Contract will be mutually terminated on September 30, 2008.

**NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES OF THE PARTIES, IT IS HEREBY AGREED as follows:**

1. The City consents to the assignment of the rights, duties and obligations under Contract No. 2007-135 to Assignee and releases Assignor from any further liability under the Contract.
2. Assignee agrees to assume and perform all duties, obligations and responsibilities under Contract No. 2007-135 but only until September 30, 2008.
3. The Assignee and the City agree that Contract No. 2007-135 will be terminated for mutual convenience on September 30, 2008.
4. Except as set forth herein, all terms and conditions of Contract No. 2007-135 shall remain in full force and effect.
4. **Assignee agrees to indemnify, defend and hold harmless the City from and against any and all claims, demands, causes of action, court costs, expenses, and attorney's fees which are connected with or arise from the assignment of this Contract or the City's acceptance and recognition of the assignment of Contract No. 2007-135.**

*(Signature Page to follow)*

STATE OF TEXAS )  
 )  
COUNTY OF EL PASO )

**CONSENT TO ASSIGNMENT**

*(Signature Page)*

EXECUTED this the 6<sup>th</sup> day of June, 2008.

**THE CITY OF EL PASO**

\_\_\_\_\_  
Joyce A. Wilson  
City Manager

**APPROVED AS TO FORM:**

Bertha A. Ontiveros  
Bertha A. Ontiveros  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

Terrence Freiburg  
Terrence Freiburg  
Purchasing Manager, Financial Services

**ASSIGNOR:  
Frontera Sanitation, LLC**

Richardo Valdes  
Name: Richardo Valdes  
Title: LLC Member

**ASSIGNEE:  
Hot Property, Inc. d/b/a Sarabia's  
Portable Jons**

Lorraine Wardy  
Lorraine Wardy, President

Hot Property, Inc. d/b/a Sarabia's Portable Jons  
1830 Texas  
El Paso, Texas 79901

June 6, 2008

Terrence Freiburg  
Purchasing Manager  
City of El Paso  
2 Civic Center Plaza  
El Paso, Texas 79901

Re: Assignment and Assumption of  
Contract #2007-135 Parks & Recreation Department  
Rental of Portable Restrooms ("Contract")

Dear Mr. Freiburg:

On February 29, 2008, Hot Property, Inc. d/b/a Sarabia Portable Jons ("Sarabia") acquired certain assets of Frontera Sanitation, LLC ("Frontera"). By Assignment of Contract dated February 29, 2008, Frontera assigned to Sarabia the rights (but not the obligations) under that certain Contract referenced above with the City of El Paso Parks & Recreation Department, as evidenced by the document attached hereto as Exhibit "A" attached hereto.

The Contract provides that it is not assignable without the consent of the City.

By this letter, Sarabia's accepts a partial assignment of the Contract, and agrees to assume and perform all the duties and obligations under the Contract, at the rates and pursuant to all the other terms of the Contract, but only through September 30, 2008. Frontera will be released from any further liability under the Contract.

The City of El Paso has agreed that by September 30, 2008, it will re-bid the services provided for in the Contract pursuant to the requirements of state law and the City's purchasing procedures.

The City and Sarabia's will also agree that the Contract will terminate on September 30, 2008 and Sarabia's will have no obligation to provide the services under the Contract.

Teuence Freiburg  
June 6, 2008  
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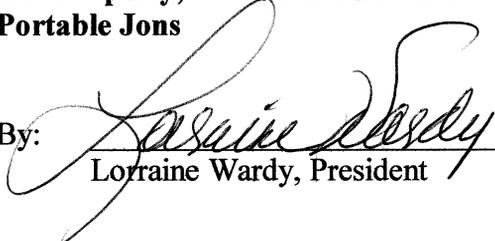
Finally, upon the City's consent of the assignment and assumption through September 30, 2008 by the City of El Paso, the City will timely pay to Sarabia the outstanding invoices for services which Sarabia has provided since February 29, 2008, at the rates set forth in the Contract.

We request that the City consent to the assignment and assumption on the terms described in this letter and that you provide to us a copy of the City's resolution and written consent.

Very truly yours,

**Hot Property, Inc. d/b/a Sarabia's  
Portable Jons**

By:

  
Lorraine Wardy, President

Frontera Sanitation, LLC  
Post Office Box 17539  
El Paso, Texas 79917-7539

February 29, 2008

### ASSIGNMENT OF CONTRACT

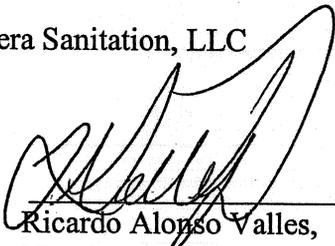
Effective February 29, 2008, Frontera Sanitation, LLC, a Texas limited liability company ("Assignor"), hereby assigns to Hot Property, Inc., a Texas corporation d/b/a Sarabia's Portable Jons ("Buyer"), all of Assignor's right, title and interest in and to Frontera's contract with the City of El Paso Parks Department for the rental and servicing of portable jons.

Assignee shall not be obligated to assume Assignor's obligations under said contract. Assignee shall be obligated to perform Assignor's service obligations under said contract only in the event that Assignee and the City of El Paso Parks Department are able to renegotiate the terms of said contract.

ASSIGNOR:

Frontera Sanitation, LLC

By:

  
\_\_\_\_\_  
Ricardo Alonso Valles,  
Vice President