

EDWARDS AQUIFER HABITAT CONSERVATION PROGRAM CONTRACT No. 13-663-HCP BETWEEN THE EDWARDS AQUIFER AUTHORITY AND

HAJOCA CORPORATION D/B/A MOORE SUPPLY COMPANY FOR PURCHASE AND DISTRIBUTION OF LOW FLOW PLUMBING FIXTURES

This Contract is made and entered into this 9th day of October, 2013, by and between the EDWARDS AQUIFER AUTHORITY, ("EAA"), a political subdivision of the State of Texas, with its principal place of business located at 900 E. Quincy Street, San Antonio, Texas 78215, and HAJOCA CORPORATION D/B/A MOORE SUPPLY COMPANY ("Contractor"), a plumbing supply company with its principal place of business located at 817 North Frio Street, San Antonio, Texas 78207. Each of these entities is, at times, referred to individually as a "Party," and both are referred to collectively as "Parties."

RECITALS

WHEREAS, the EAA was created in 1993 by the Edwards Aquifer Authority Act ("EAA Act"), Act of May 30, 1993, 73rd Leg., R.S., ch. 626, 1993 Tex. Gen. Laws 2350, as amended; and

WHEREAS, under Section 1.14(a)(6), and (7) of the Act, the EAA is required to protect aquatic and wildlife habitat, and protect species that are designated as threatened or endangered under federal or state law.

WHEREAS, under Section 1.14(h) of the EAA Act, the EAA is required to implement a plan to ensure that springflows at Comal Springs and San Marcos Springs are maintained to protect endangered and threatened species to the extent required by federal law; and

WHEREAS, on March 18, 2013, the U.S. Fish and Wildlife Service ("Service") under Section 10(a) (16 U.S.C.A. § 1539(a)) of the Federal Endangered Species Act of 1973 ("ESA") (16 U.S.C.A. §§ 1531-1544 (West 2010)) issued an Incidental Take Permit ("ITP") to the EAA, among others; and

WHEREAS, accompanying the EAA's application for the ITP was a Habitat Conservation Plan which, among other things, provides for various Conservation Measures intended to minimize and mitigate the impact of incidental take of Covered Species, as that term is defined in the EAHCP at Section 1.4, due to low springflows at Comal Springs or San Marcos Springs; and

WHEREAS, the Edwards Aquifer Habitat Conservation Plan ("EAHCP") supports the ITP by providing for, among other things, the implementation of various Conservation Measures intended to minimize or mitigate the impact of the use of the Edwards Aquifer ("Aquifer") on the

authorized taking of the threatened and endangered species associated with the Aquifer or contribute to the recovery of such species; and

WHEREAS, Section 5.1.3 of the EAHCP sets forth a Regional Water Conservation Program (the "Conservation Program"), and implementation of the Conservation Program "will minimize and mitigate the impacts of pumping from the Aquifer by building on the expertise of the successful programs to realize savings throughout the Edwards Aquifer region" with the goal of conserving 20,000 acre feet per year (AF/yr) of permitted and exempt Aquifer withdrawals, of which 10,000 AF/yr will be managed such that it remains in the Aquifer and not be withdrawn for beneficial use; and

WHEREAS, Section 5.1.3.2.2 of the HCP requires the EAA to implement a High-Efficiency Plumbing Fixtures and Toilet Distribution Program; and

WHEREAS, subject to certain limitations, Subsection 7.1.2 of the EAHCP and Section 3.2 and Article 5 of the FMA obligate the EAA to fund the Conservation Measures and Program Activities being implemented.

NOW THEREFORE, for and in consideration of the mutual promises and benefits contained herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I DEFINITIONS

As used in this Contract, the following terms will have the following meanings:

Section 1.1. "Conservation Measure" means a measure identified in Chapter 5 of the EAHCP, as such measure may be modified pursuant to adaptive management, or a new measure developed and approved through adaptive management, to minimize or mitigate to the maximum extent practicable the impacts of the authorized taking of the Covered Species or contribute to the recovery of the Covered Species.

Section 1.2. "Edwards Aquifer Habitat Conservation Plan" (or "EAHCP" or "HCP") means the conservation plan prepared by the EAA, the City of San Marcos, Texas State University-San Marcos, City of New Braunfels, and San Antonio Water System, approved by the EAA Board of Directors, required by Section 10(a)(2)(A) of the ESA, and submitted to and approved by the Service as part of the application for an ITP.

- Section 1.3. "Funding and Management Agreement" (or "FMA") means the Contract effective January 1, 2012, as may be amended, to which the EAA, the City of San Marcos, Texas State University-San Marcos, City of New Braunfels, and San Antonio Water System are parties, which provides for the funding and management of the EAHCP.
- Section 1.4. "Implementing Committee" means the committee established in accordance with Section 7.7 of the FMA to supervise the implementation of the EAHCP. The Guadalupe Blanco River Authority is a non-voting member of the committee.

Section 1.5. "Incidental Take Permit" (or "ITP") means a permit issued by the Service to the EAA and others, pursuant to Section 10(a) (16 U.S.C. § 1539(a)) of the Endangered Species Act (ESA).

Section 1.6. "Plumbing Fixtures" means one low-flow, high efficiency toilet; one low-flow, high efficiency showerhead; and two low-flow, high efficiency sink aerators, each meeting the specifications described in the Scope of Work.

ARTICLE II DESCRIPTION OF EQUIPMENT AND SERVICES

Section 2.1. Equipment and Services. Subject to the terms and conditions of this Contract, the Contractor agrees to sell Plumbing Fixtures to the EAA. The EAA hereby agrees to purchase the Plumbing Fixtures in such amounts as it agrees and specifies from time to time, and engages the Contractor to perform the work set forth as described in this Contract and in the following documents which are attached hereto and incorporated herein for all purposes: (1) the Scope of Work which is attached hereto as Exhibit A; (2) the Budget which is attached hereto as Exhibit B. The Contractor hereby accepts such engagement and agrees to devote its commercially reasonable best efforts and abilities in furtherance of its engagement hereby.

Section 2.2. Delivery. The Contractor will provide delivery of the Plumbing Fixtures to the EAA designated facility at the Contractor's cost. Delivery will be F.O.B. Freight Prepaid and Charged Back. It will be the Contractor's responsibility to ensure that the completion times for the tasks required for this project are met. All work contracted for this Contract will be completed by December 31, 2016 (the "Completion Date"), with an EAA option to renew for two additional one-year periods, which options to extend may be exercised by the EAA, in writing delivered to the Contractor, at any time prior to the Completion Date, or the first extended term Completion Date.

ARTICLE III ALTERATIONS TO CONTRACT AND SCOPE OF WORK

Section 3.1. Notice of Changes. The EAA may, at its own option or upon the recommendation of the Contractor, request changes or additions to the Scope of Work during the term of the contract. All changes or additions shall be acknowledged by both Parties, in writing.

Section 3.2. Change Orders. The Contractor agrees to honor any change orders to the Scope of Work issued by the EAA provided that the total amount of change orders issued for this Contract will not exceed twenty-five percent (25%) of the total amount paid pursuant to this Contract. Notwithstanding the foregoing, in the event that the additional Plumbing Fixtures requested by the EAA pursuant to the change orders exceed twenty-five percent (25%) of the total compensation amount paid pursuant to this Contract, the Parties to this Contract agree that such Services must be the subject of either a written amendment to this Contract or a supplemental agreement approved by the EAA in accordance with its procedures for approving such an agreement.

ARTICLE IV PURCHASE PRICE

Section 4.1. Purchase Price. The Purchase Price of the Plumbing Fixtures will not exceed a total of four million, five hundred one thousand, five hundred sixteen dollars and zero cents (\$4,501,516.00). This Contract is a three-year supply agreement through which the EAA may purchase Plumbing Fixtures, as needed, according to Exhibit B, which itemizes all fees and costs associated with the performance of this Contract and will constitute the total amount of compensation, including the Purchase Price for the Plumbing Fixtures, to be paid to the Contractor hereunder, if the entire quantity of equipment specified in Exhibit B was ordered by the EAA during the contract term. The EAA shall not be obligated to purchase the entire quantity of equipment specified in Exhibit B, and therefore the total amount of consideration paid to the Contractor hereunder may be less than the maximum total contract amount specified herein. The Contractor will be responsible for the payment of all of its other additional costs and expenses. The Contractor may not exceed the contract amount unless agreed to by the EAA, in writing as provided in Section3.2. The Contractor is not authorized to perform any additional work or spend any additional funds without prior written approval from the EAA. The EAA will not be held accountable for any unauthorized work performed or funds spent by the Contractor.

Section 4.2. Payment. All invoices from the Contractor to the EAA, for the Plumbing Fixtures, will be sent monthly for all the Plumbing Fixtures delivered during the preceding calendar month, and will provide an itemization of the costs for the tasks set out in the Scope of Work and the equipment itemized in the Budget. The terms of each invoice will be net thirty (30) days upon the EAA receipt and approval of that invoice.

ARTICLE V INDEPENDENT CONTRACTOR

Section 5.1. No Employment Relationship. Nothing contained in this Contract will be construed to constitute the Contractor as a partner, employee, or agent of the EAA, nor will either Party have any authority to bind the other in any respect, it being intended that each will remain an independent contractor responsible for its own actions. The Contractor will accommodate reasonable requests from the EAA to allow EAA employees, agents or representatives to accompany and observe Contractor personnel in carrying out the work under this Contract.

ARTICLE VI CONTRACTOR PERSONNEL

Section 6.1. Personnel. The Contractor will provide any and all personnel necessary for its performance hereunder. The Contractor will be responsible for its employees in all respects, including, without limitation, their compliance with applicable laws and their safety, including without limitation, all Occupational Safety and Health Administration standards, requirements, and regulations. The Contractor hereby indemnifies and holds harmless the EAA, its officers, employees and directors, from and against any claims brought by any employee, subcontractor or other agent of the Contractor relating in any way to the Plumbing Fixtures or the work performed under this Contract.

ARTICLE VII TERMINATION

Section 7.1. Termination. The EAA may terminate this Contract at any time, including the expiration of each budget or payment period, with or without cause, upon ten (10) days prior written notice to the Contractor. Upon receipt of such termination notice, the Contractor will immediately stop all work in progress, including, without limitation, all work performed by subcontractors. Insofar as possible, all work in progress will be brought to a logical termination point. Within 30 days of termination, the EAA will pay the Contractor all moneys due and owing for the Services rendered, costs and expenses reasonably incurred up to the time of termination, which shall include payments to the Contractor for any non-cancellable, non-stock and/or special order items that the Contractor purchased or order on behalf of the EAA, whether or not such items have been delivered to the EAA, are in transit to the EAA or are being fabricated on the EAA's behalf.

ARTICLE VIII OWNERSHIP OF MATERIALS

Section 8.1. Ownership. All information, property and materials produced, created or supplied under this Contract (whether by the Contractor, its employees, agents or subcontractors) will be the property of the EAA. Specifically, the Contractor will furnish the EAA with all manufacturer owner manuals and specifications for the Plumbing Fixtures, and copies of all warranty information. Upon termination of this Contract, all such information, property and materials not already in the possession of the EAA will be promptly delivered to the EAA. The EAA will have unlimited rights to technical and other data resulting directly from the performance of Contractor's work under this contract.

Section 8.2. Nondisclosure of Confidential Information. The information, property and materials produced, created or supplied under this Contract, including preliminary technical reports and studies, will not be disclosed to any third-party without the prior written consent of the EAA. Unauthorized disclosure of such information, property or materials in violation of this Section 8.2 will constitute a breach of contract and will be subject to all applicable remedies of law.

Section 8.3. Record Copies. The Contractor will retain a record or copies of all materials developed in the course of performing the work hereunder and said materials will be supplied to the EAA upon request, including after expiration or termination of the Contract. The EAA will reimburse the Contractor for actual cost of time and expenses of reproduction of materials requested.

ARTICLE IX NON-PERFORMANCE

Section 9.1 Failure to timely perform any of the work identified in the Exhibit A Terms and Description of Work will constitute a breach of contract and will be subject to all applicable remedies of law. Judgment of nonperformance will rest solely with the EAA.

ARTICLE X LIQUIDATED DAMAGES

[This section intentionally left blank.]

ARTICLE XI NOTICES

Section 11.1. Notices to EAA. All notices or communication under this Contract to be mailed or delivered to the EAA will be in writing and will be sent to the EAA's principal place of business as follows, unless and until the Contractor is otherwise notified:

EDWARDS AQUIFER AUTHORITY 900 E. Quincy Street San Antonio, Texas 78215 ATTENTION: ROLAND RUIZ, GENERAL MANAGER

Section 11.2. Notices to Contractor. All notices or communication under this Contract to be mailed or delivered to the Contractor will be in writing and will be sent to the address of the Contractor as follows, unless and until the EAA is otherwise notified:

HAJOCA CORPORATION D/B/A MOORE SUPPLY COMPANY 817 N. Frio Street San Antonio, TX 78207 ATTENTION: JOEL KEMPF, BRANCH MANAGER

Section 11.3. Effective Date of Notice. Any notices or communication required to be given in writing by one party to the other will be considered as having been given to the addressee on the date the notice of communication is posted by the sending party.

ARTICLE XII INSURANCE

Section 12.1. Insurance Coverage. During the term of this Contract, the Contractor will obtain and maintain in effect, at Contractor's expense, appropriate insurance policies protecting Contractor and the EAA, and their respective officers, directors and employees, against any loss, liability, personal injury, death, property damage or any expense arising out of the performance of the Services under this Contract, including, without limitation: (1) worker's compensation insurance in compliance with Texas law; (2) comprehensive general liability insurance, insuring against property damage, personal injury and death, in an amount of no less than \$1,000,000.00 per occurrence; (3) automobile liability insurance in an amount no less than \$1,000,000.00; (4) umbrella liability insurance in an amount of no less than \$1,000,000.00. Said insurance policies will be with insurance carriers licensed to do business in Texas.

Section 12.2. Additional Insureds. Where permitted by law, the Contractor will name the EAA and its officers, directors and employees as "additional insureds" on all of the insurance policies specified in Subsection 12.1 above, or with respect to the worker's compensation insurance, contain waivers of subrogation by Contractor and the insurance carrier in favor of the EAA. Not later than the date of commencement hereunder, the Contractor must provide the EAA with certificates of insurance to be issued directly to the EAA by the Contractor's insurance agent, identifying the specified coverage. The naming of the EAA as an "additional insured" will not make the EAA a partner or joint venture with the Contractor, and the Contractor, through its agent of record, will notify the EAA of any changes in coverages within thirty (30) days prior to any effective date of change.

Section 12.3. Contractor's obligation to obtain and maintain the foregoing policy or policies in the amounts specified will not be limited in any way by reason of any insurance which may be maintained by the EAA, nor will Contractor's performance of this obligation relieve it of liability under the indemnity provisions set forth in Section 12.2 of this Agreement.

ARTICLE XIII ASSUMPTION OF RISK AND INDEMNIFICATION

Section 13.1. Risk. The Contractor will assume all risks associated with the Contractor's or its Subcontractor's performance under this contract and will waive any claim against the EAA and other participants for damages arising out of the performance of the work specified.

Section 13.2. Indemnification. The Contractor will indemnify and hold harmless the EAA, it directors, employees and agents from any and all damages, loss, or liability of any kind whatsoever, including the costs of litigation and attorneys' fees arising from (a) the Contractor's breach of this Contract or (b) the Contractor's, or its employees' own acts, omissions, negligence or willful misconduct in supplying the Plumbing Fixtures.

ARTICLE XIV MISCELLANEOUS

Section 14.1. Entire Agreement. This Contract and the attached Exhibits constitutes the entire agreement between the Parties regarding the Plumbing Fixtures to be performed by the Contractor and there are no representations, warranties, agreements or commitments between the Parties hereto except as set forth herein. Unless otherwise authorized herein, no amendments or additions to this Contract will be binding on the Parties hereto unless in writing and signed by the parties.

Section 14.2. Non-Waiver. No delay or failure by either party hereto to exercise any right under this Contract, and no partial or single exercise of that right, will constitute a waiver of that or any other right, unless otherwise expressly provided herein.

Section 14.3. Headings. Headings in this Contract are for convenience only and will not be used to interpret or construe its provisions.

Section 14.4. Governing Law. This Contract will be deemed to have been executed and performed in the State of Texas and will be construed in accordance with and governed by the laws of the State of Texas.

Section 14.5. Counterparts. This Contract may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.

Section 14.6. Binding Effect. The provisions of this Contract will be binding upon and insure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that the Contractor may not assign any of its rights nor delegate any of its duties hereunder without the EAA's prior written consent.

Section 14.7. Validity. The invalidity of any provision or provisions of this Contract will not affect any other provision of this Contract, which will remain in full force and effect, nor will the invalidity of a portion of any provision of this Contract affect the balance of such provision.

Section 14.8. Non-Waiver of Immunity. Nothing in this Contract is intended as any waiver by the EAA of any immunity from suit to which it is entitled under Texas law.

Section 14.9. Survival. Termination of this Contract for breach will not constitute a waiver of any rights or remedies available at law or in equity to a party to redress such breach. All remedies, either under this Contract or at law or in equity or otherwise available to a party, are cumulative and not alternative and may be exercised or pursued separately or collectively in any order, sequence or combination. In addition, to these provisions, applicable provisions of this Contract will survive any termination of this Contract.

Section 14.10. Attachments. The Exhibits, schedules and/or other documents attached hereto or referred to herein are incorporated herein and made a part hereof for all purposes. As used herein, the expression "Contract" means the body of this Contract and such attachments, Exhibits, schedules and/or other documents, and the expressions "herein," "hereof," and "hereunder" and other words of similar import refer to this Contract and such attachments, exhibits, schedules and/or other documents as a whole and not to any particular part or subdivision thereof.

Section 14.11. Costs. If any legal action, arbitration or other proceeding is brought for the enforcement of this Contract or because of an alleged breach or default relating to this Contract, the successful or prevailing party or parties will be entitled to recover reasonable costs incurred, including but not limited to attorney's fees, in such action or proceeding in addition to any other relief to which it or they may be entitled.

IN WITNESS WHEREOF, this Contract is executed as of the day and date first written below.

EDWARDS AQUIFER AUTHORITY

By: Roland Ruiz

General Manager

ATTEST:

By: Jennifer Wong Esparza
Assistant to the Board Secretary

APPROVED AS TO FORM:

Darcy Alan Frownfelter General Counsel

Edyards Aquifer Authority

HAJOCA CORPORATION D/B/A MOORE SUPPLY COMPANY

By: Joel Kempf

Branch Manager

ATTEST:

By: Mark Jochuhart Name Mark Tochirhart

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EXHIBIT A SCOPE OF WORK TO CONTRACT No. 13-663-HCP BETWEEN THE EDWARDS AQUIFER AUTHORITY AND

HAJOCA CORPORATION D/B/A MOORE SUPPLY COMPANY FOR PURCHASE AND DISTRIBUTION OF LOW FLOW PLUMBING FIXTURES

The Contractor will be responsible for warehousing an adequate inventory and providing for delivery (F.O.B. Freight Prepaid and Charged Back) of Plumbing Fixtures to program participants as specified by the EAA, in its orders for the purchase of Plumbing Fixtures.

The Contractor will be responsible for the proper and timely delivery of Plumbing Fixtures to EAA designated locations, which will include unloading from the Contractor's or carrier's vehicle at the final destination. The Contractor shall not be responsible for the placing the Plumbing Fixtures in the applicable EAA designated facility. Timely distribution will be defined as a period no longer than one (1) week from the time of notification of each order by the EAA Program Manager.

EAA will provide Contractor with documentation specifying customer name, point of contact (POC), phone number, address, date and time of delivery, and number of Plumbing Fixtures to be delivered.

The Contractor will generate electronic monthly invoice statements on the total number of Plumbing Fixtures distributed during the preceding calendar month, and will invoice EAA on the same basis. The invoice statement should include the location, delivery date, and number and types of Plumbing Fixtures delivered. The report should also include any problems encountered or concerns, and should be accompanied by copies of signed receipts from each delivery made.

Plumbing Fixture Specifications:

As specified in the bid submission, the Contractor will provide the following toilets:

- 1. Caroma® Sydney Smart 305 Round Front Plus
- 2. Caroma® Sydney Smart 270 Easy Height Round Front Plus

All toilets must meet the following specifications:

- 1.28 gallons/flush Water Saving Dual Flush High Efficiency, Two Piece Ultra Low Flow Vitreous China Washdown Toilet
- Tank and internal components MUST come fully preassembled and adjusted to deliver consistent water and flush volumes at time of installation
- Unit shall use a conventional floor flange mount using two (2) closet bolts

• A porcelain finish shall be uniformly applied to unit, and shall be even to sight and touch

Each unit shall include:

- o (1) standard wax ring
- o (1) set of 5/16 inch by 2-1/4 inch standard closet bolts
- o (1) Toilet seat

As specified in the bid submission, the Contractor will provide the following Showerheads:

- 1. Fluid® 1.5 gpm Showerhead with self-cleaning nozzle (Model FP10100-1)
 - Flow Rate Not to Exceed 1.5 Gallons Per Minute at 60 psig
 - Single spray pattern showerhead
 - Chrome plated brass collar
 - Chrome plated finish regardless of construction material
 - Units will be delivered in no more than 50 units per box and must be individually wrapped or enclosed in either plastic or bubble wrap
- 2. Fluid® 1.5 gpm Handheld Shower with self-cleaning nozzle (Model FP6003048-1)
 - Flow Rate Not to Exceed 1.5 Gallons Per Minute at 60 psig
 - Single spray pattern showerhead
 - Chrome plated brass collar
 - Made of a durable material with tamper resistant flow restriction device
 - Chrome plated finish regardless of construction material
 - Units should be delivered in no more than 50 units per box and must be individually wrapped or enclosed in either plastic or bubble wrap

As specified in the bid submission, the Contractor will provide the following Showerheads:

Fluid® 1.5 gpm Laminar Flow Aerator with dual-thread chrome housing (Model FP150RDTLAM) (2 per showerhead)

- Must be able to mount to standard faucet
- Aerators should be shipped in boxes of no more than 500
- Individual aerators should individually wrapped or contained with tape designating flow rate and capable of preventing the aerator from coming apart prior to installation

All warranties provided by any third party manufacturer of the Plumbing Fixtures are extended to the EAA and no further warranties, express or implied, are provided by the Contractor. The Contractor specifically disclaims any and all other warranties, express or implied, whether of merchantability, suitability, fitness for a particular purpose, infringement or otherwise. Defects for Plumbing Fixtures manufactured by a third party shall be governed solely by the warranties provided by such manufacturer and the Contractor shall not be liable for any costs associated with the such defective Plumbing Fixtures including, without limitation, costs of labor, repair or replacement. The Contractor will facilitate any and all warranty claims the EAA may have with the applicable third party manufacturer.

EXHIBIT B BUDGET

TO CONTRACT No. 13-663-HCP

BETWEEN THE

EDWARDS AQUIFER AUTHORITY

AND

HAJOCA CORPORATION D/B/A MOORE SUPPLY COMPANY FOR PURCHASE AND DISTRIBUTION OF LOW FLOW PLUMBING FIXTURES

PLUMBING FIXTURES

	Estimated		
<u>Item</u>	Number of Units	Price per Unit	<u>Cost</u>
Caroma® – Sydney Smart 305 Round Front Plus 12"	32,000	\$101.99	\$3,263,680.
Caroma® – Sydney Smart 305 Round Front Plus 10"	1,200	\$119.37	\$ 143,244.
Caroma® - Sydney Smart 270 Easy Height Round Front Plus 12"	6,000	\$101.99	\$ 611,940.
Caroma® - Sydney Smart 270 Easy Height Round Front Plus 10"	800	\$119.37	\$ 95,496.
Fluid® 1.5 gpm Showerhead (Model FP10100-1)	33,200	\$ 5.79	\$ 192,228.
Fluid® 1.5 gpm Handheld Shower (Model FP6003048-1)	6,800	\$ 5.96	\$ 40,528.
Fluid® 1.5 gpm Laminar Flow Aerator (Model FP150RDTLAM)	80,000	\$ 1.93	\$ 154,400.
Delivery of Plumbing Fixtures			No Charge

TOTAL \$4,501,516.