

TOILET RETROFIT PURCHASE AGREEMENT BETWEEN
THE CITY OF SANTA FE AND TOBIN ORUCH

THIS AGREEMENT is made by and between Tobin Oruch, hereinafter referred to as the "Seller", and the City of Santa Fe, hereinafter referred to as the "City". The Seller and the City are hereinafter referred to as the "Parties."

RECITALS

1. The Seller owns three (3) toilet retrofit credits in the City of Santa Fe Water Bank as established by Ordinance No. Ord. 2002-29 §§ 5-11, attached hereto as Exhibit A.
2. These credits are described more particularly by the attached letter from Amanda Encinias to Andrew Erdmann, dated November 9, 2017, attached hereto as Exhibit B.

AGREEMENT

1. **Toilet Retrofit Quantity and Price.** The Seller is willing to sell all of the Seller's right, title, and interest in these toilet retrofits and the City is willing to buy all of the Seller's right, title, and interest in 0.075 AFY of toilet retrofit credits for twelve thousand dollars (\$12,000) per AFY.
2. **Warranty of Title.** The Seller warrants that the title it conveys to the City is good, and its transfer lawful; and that the toilet retrofit credits shall be delivered free from any security interest, lien, or other encumbrance.
3. **City's Obligation to Purchase Toilet Retrofit Credits.** In consideration for the Seller's title and interest in these toilet retrofit credits, the City shall pay to the Seller nine hundred (\$900.00) for 0.075 AFY. The City shall make its best efforts to pay the Seller within forty-five (45) days of the date that the Council or City Manager approves the Contract.
4. **Method of Payment.** The City shall pay for the toilet retrofit credits by check or ACH payment.
5. **Breach.** The parties retain all available remedies under law and equity in the event of a breach of this agreement.
6. **Duration and Termination of Contract Term.** This agreement shall be in effect for one (1) year from the execution of the agreement. The agreement may be extended by the

agreement of both parties. Such agreement shall be made in writing by the agreement of both Parties. Such agreement shall be made in writing.

If the promised performance and payment occurs within one year, or longer if the Parties make an extension, this agreement terminates. The Parties may also agree to terminate this agreement. The City may terminate this agreement if the Seller cannot provide clear title the toilet retrofit credits. On termination all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

7. **Final Agreement and Modifications to be in Writing.** The parties intend that the term set forth in this agreement represent a final expression of their agreement, and may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement. Any modifications to this agreement shall be in writing signed by both parties.

8. **Assignment of Rights.** All rights of either the Seller or the City can be assigned except where the assignment would materially change the duty of the other party increase materially the burden or risk imposed on him by his contract or impair materially his chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of his entire obligation can be assigned despite agreement otherwise. The Parties will give notice of any assignment of rights within three (3) business days of the assignment.

9. **New Mexico Tort Claims Act.** Any liability incurred by the City in connection with this Agreement is subject to the immunities and limitations of the new Mexico Tort Claims Act, NMSA 1978 §§ 41-4-1 through 41-4-3.

10. **Bateman Act.** This Agreement shall comply with the Bateman Act, NMSA 1978 §§, 6-6-11.

11. **Choice of Law Clause.** The Parties agree that the law of the State of New Mexico govern this agreement and its interpretation.

12. **Notice.** Notice to either party under this agreement shall be by United States Mail, first class, certified, return receipt requested.

Notice to the City shall be to:

City of Santa Fe
City Attorney's Office
P.O. Box 909
Santa Fe, NM 87504

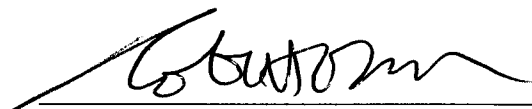
Notice to Seller shall be to:

Tobin Oruch
1011 Paseo de la Cuma
Santa Fe, NM 87501

13. **Signature of Parties.** This agreement is effective upon the signature of all the Parties.

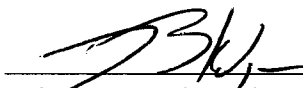
Executed this ____ day of ____, 2017

For the Seller:



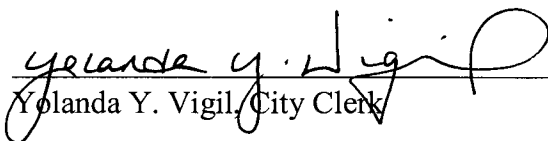
Seller 11/26/2018
Date

For the City:




Brian K. Snyder, City Manager 12/19/2018
Date

Attest:




Yolanda Y. Vigil, City Clerk 2-1-18
Date

Approved as to Form:



Kelley A. Brennan, City Attorney 12/18
Date



Adam K. Johnson, Finance Director 1-15-18
Date

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