

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Department of Energy and Environment

STORMWATER RETENTION CREDIT  
PRICE LOCK PROGRAM

## SRC PURCHASE AGREEMENT

Subgrantee: \_\_\_\_\_

Address:

\_\_\_\_\_

Contact Name: \_\_\_\_\_

E-mail: \_\_\_\_\_

Telephone: \_\_\_\_\_

The Grantee, Center for Watershed Protection [hereinafter referred to as "CWP"], agrees to purchase Stormwater Retention Credits (SRCs) from the SRC Generator \_\_\_\_\_ [hereinafter referred to as "Subgrantee"] on behalf of the Grantor, the District Department of Energy and Environment ("DOEE"), in accordance with the following terms and conditions. CWP, the Subgrantee, and DOEE are deemed "the Parties" to this SRC Purchase Agreement. The Parties agree to and accept these terms and conditions, and understand that these terms and conditions shall apply for the duration of this SRC Purchase Agreement.

### RECITALS

On August 29, 2016, DOEE awarded a grant to CWP [DOEE Grant Award # 2016-1606-SWMD] in the amount of \$12,750,000.00 to, in part, assist DOEE's Regulatory Review Division in developing and managing the SRC Purchase Agreement Program.

As part of this grant, CWP agreed to work on DOEE's behalf by entering into SRC purchase agreements with selected projects on an ongoing basis, administering the SRC purchase agreements, and distributing payments to participants (Subgrantees) who have completed their SRC-generating projects and opted to sell their SRCs to DOEE.

By entering into this SRC Purchase Agreement, the Subgrantee may sell some or all of the SRCs to DOEE through CWP at the price and schedule specified hereinafter, but the Subgrantee also has the option to hold its SRCs or to sell to another buyer.

Now, therefore, in consideration of the mutual promises contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

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**I. Attachments**

The following are incorporated into and made attachments to this SRC Purchase Agreement:

- Attachment A: SRC Price Lock Program Application
- Attachment B: Terms and Schedule
- Attachment C: Intent to Sell Stormwater Retention Credits

**II. Term**

The term of this SRC Purchase Agreement shall be from the Effective Date, and shall continue for a period of up to 15 years in accordance with the schedule established in Attachment B, unless sooner terminated in accordance with this SRC Purchase Agreement. The Effective Date shall be the latest date of the signatures of the Parties.

If the Subgrantee does not sign the SRC Purchase Agreement within 30 days of DOEE's signing of the SRC Purchase Agreement, then the SRC Purchase Agreement shall expire. Each Party shall sign the SRC Purchase Agreement electronically via the Surface and Groundwater System.

**III. Limits on SRC Generation and Purchases**

- A. No part or portion of the GI practice(s) from which the SRCs are produced will be used to meet on-site stormwater retention obligations for a site regulated under DOEE's Stormwater Management Regulations in 21 DCMR Chapter 5.
- B. SRCs shall only be purchased according to the schedule in Attachment B.

**IV. Subgrantee Responsibilities and Representations**

- A. Subgrantee will design and construct the green infrastructure (GI) practice(s) described in Attachment A in accordance with the version of DOEE's Stormwater Management Guidebook (SWMG) in effect on the Effective Date.
- B. Subgrantee will obtain DOEE approval of a Stormwater Management Plan (SWMP) and all other applicable permits within the timeframe outlined in Attachment B.
- C. Following DOEE approval of the SWMP, Subgrantee will proceed with construction of the GI practice(s) within the timeframe outlined in Attachment B, and in accordance with the SWMP, the SWMG, and all applicable federal and District requirements for construction and inspection.
- D. Subgrantee may sell some or all of the SRCs to DOEE at the price and schedule specified in Attachment B, but Subgrantee also has the option to hold its SRCs or sell to another buyer. Once the SRCs are certified, Subgrantee will notify DOEE and CWP (or subsequent DOEE Grantee/designee) in writing of the number of SRCs that it seeks to sell by submitting Attachment C, according to the schedule specified in Attachment B.
- E. If the Subgrantee sells to a buyer other than DOEE (non-DOEE buyer), DOEE shall make a payment to the Subgrantee according to the price and schedule specified in Attachment B. The Subgrantee will notify DOEE and CWP (or subsequent DOEE Grantee/designee) of the sale of SRCs to a non-DOEE buyer by submitting an Application for Transfer of SRC Ownership as described in the DOEE's Stormwater Management Guidebook, according to the schedule specified

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in Attachment B.

- F. Subgrantee agrees to maintain the GI practice(s) in accordance with the DOEE-approved SWMP and the version of DOEE's SWMG in effect on the Effective Date for the certification period of the SRCs unless the Subgrantee quits that obligation in accordance with Section 532 of 21 DCMR Chapter 5.
- G. During the term of this SRC Purchase Agreement, Subgrantee shall maintain the following minimum insurance coverage and limits of liability unless otherwise stated herein:
  - 1. Workers Compensation Insurance in amounts required by the laws of the District of Columbia;
  - 2. Employers Liability Insurance for a limit of not less than \$100,000 per occurrence for bodily injury liability; \$100,000 occupational disease each employee; and \$500,000 aggregate occupational disease; and,
  - 3. Comprehensive General Liability Insurance for bodily injury and property damage in an amount of at least \$500,000 for each occurrence and \$1,000,000 in the aggregate.
- H. The Subgrantee agrees to provide certification to CWP evidencing such insurance in connection with the execution of this Subgrant and to arrange for the insurance company to send copies of all notices related to this insurance coverage in accordance with the Notifications provisions of this Agreement.
- I. The Subgrantee acknowledges that CWP is a corporation and agrees that any claim made by the Subgrantee arising out of any act or omission of any director, officer, or employee of CWP in the performance of this or any other agreement between the Parties shall be made against the corporation and not against such director, officer, or employee individually. Any breach of this agreement shall entitle such director, officer, or employee of CWP to costs and reasonable attorneys' fees, in addition to all other appropriate relief.
- J. In entering into this SRC Purchase Agreement, Subgrantee represents it has relied only upon the warranties or representations (1) set forth in this SRC Purchase Agreement; or (2) implied in law. No statements, representations, warranties, or understandings, unless contained herein, exist between the Parties. No other oral warranties, representations, or statements shall be considered a part of this SRC Purchase Agreement or a basis upon which the Subgrantee relied in entering into said Agreement.
- K. Subgrantee will provide an Internal Revenue Service Form W-9 to CWP (or to DOEE or its designee in accordance with this SRC Purchase Agreement) prior to purchase of SRCs.
- L. If the Subgrantee assigns this SRC Purchase Agreement to a third party, the third party will retain all rights and responsibilities pertaining to the Subgrantee.

**V. Grantee Responsibilities and Representations**

- A. The Grantee, CWP, is responsible for fulfilling the terms of this SRC Purchase Agreement on behalf of the Grantor, DOEE, and for administering the SRC Purchase Agreement Program in accordance with the requirements of DOEE Grant Award # 2016-1606-SWMD and this SRC Purchase Agreement.
- B. The Grantee, CWP, represents that it will make payments to Subgrantee to purchase SRCs or if SRCs are sold to a non-DOEE buyer. Payments shall be made to Subgrantee in accordance with

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the terms of DOEE Grant Award # 2016-1606-SWMD, this SRC Purchase Agreement, and the Terms and Schedule in Attachment B.

**VI. DOEE Responsibilities and Representations**

- A. DOEE is responsible for overseeing the Grantee, CWP, in the performance of DOEE Grant Award # 2016-1606-SWMD.
- B. DOEE represents that it will maintain sufficient funds in escrow under DOEE Grant Award # 2016-1606-SWMD to make payments to the Subgrantee under the terms of this SRC Purchase Agreement, as established in Attachment B.
- C. Should the Grantee, CWP, be terminated as Grantee of DOEE Grant Award # 2016-1606-SWMD, DOEE represents that it will give notice such termination to the Subgrantee and that DOEE (or its subsequent Grantee/designee) will assume the rights and responsibilities of the Grantee under this SRC Purchase Agreement, including to purchase the Subgrantee's SRCs or to make payments to the Subgrantee if SRCs are sold to a non-DOEE buyer. All purchases or payments shall be made under the terms of this SRC Purchase Agreement and Attachments B and C hereto.
- D. If DOEE designates a new Grantee for purposes of DOEE Grant Award # 2016-1606-SWMD and assigns this SRC Purchase Agreement to that new Grantee, DOEE will inform the Subgrantee of such designation and assignment.
- E. Should a new Grantee not be designated, fail to execute its obligations under this agreement, or be terminated by DOEE, then DOEE will assume responsibility for purchase of Subgrantee's SRCs under the terms of this SRC Purchase Agreement and Attachment B hereto.

**VII. Reports**

- A. Subgrantee agrees to report to CWP any change in the GI practice or a GI failure.
- B. For the term of this SRC Purchase Agreement, Subgrantee agrees to report any intended changes in its plans for the operation and maintenance of its GI practice(s) to CWP, and to submit to CWP annual inspection reports stating that each GI practice has been inspected and maintained and is in good working order,
- C. Should the Grantee, CWP, be terminated as Grantee of DOEE Grant Award #2016-1606-SWMD for any reason, required reports shall be submitted to DOEE or its designee.

**VIII. Termination**

- A. CWP (or DOEE or its subsequent Grantee/designee) may terminate this SRC Purchase Agreement if the Subgrantee does not comply with the terms of this SRC Purchase Agreement, does not construct and maintain the practices according to the DOEE-approved SWMP for the site, fails to meet the schedule laid out in Attachment B, or otherwise fails to comply with District and Federal law.
- B. If DOEE determines that CWP can no longer fulfill the obligations of DOEE Grant Award # 2016- 1606-SWMD or this SRC Purchase Agreement, or is otherwise not properly acting on DOEE's behalf, all the rights and responsibilities of CWP under this Agreement will be assumed by DOEE (or its subsequent Grantee/designee). If DOEE's subsequent Grantee/designee fails to fulfill the obligations of this SRC Purchase Agreement, or is otherwise not properly acting on DOEE's behalf, all the rights and responsibilities

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under this Agreement will be assumed by DOEE or a new designee.

**IX. Amendment of SRC Purchase Agreement**

This SRC Purchase Agreement and/or Schedule B may be amended by mutual consent of the Subgrantee, CWP, and DOEE if it is determined by CWP (or DOEE or its subsequent Grantee/designee as appropriate) that an amendment is warranted.

**X. Dispute Resolution**

- A. CWP (or DOEE or its subsequent Grantee/designee) and the Subgrantee shall negotiate in good faith in the event of any dispute during the term of this SRC Purchase Agreement.
- B. Should there be any issue or dispute that arises, CWP (or DOEE's subsequent Grantee/designee) and the Subgrantee agree to seek to resolve it by direct discussion.
- C. If the dispute cannot be resolved by direct discussion, CWP (or DOEE's subsequent Grantee/designee) and the Subgrantee agree to discuss a resolution with DOEE.
- D. If the dispute cannot be resolved in discussion with DOEE, the dispute shall be referred for mediation, and if that fails, then for arbitration.

**XI. Force Majeure**

The Subgrantee shall not be liable if its failure to perform under this SRC Purchase Agreement arises out of causes beyond the control and without the fault and/or negligence of the Subgrantee. Such causes may include, but are not limited to, acts of God, acts of the public enemy, acts of the District or Federal Government in either their sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, or unusually severe weather, but in every case the failure to perform must be beyond the control and without fault or negligence of the Subgrantee. The Subgrantee shall still be responsible for maintenance of GI for the period for which SRCs have been certified by DOEE.

**XII. Indemnification**

The Subgrantee shall, at all times, indemnify and hold harmless CWP (or DOEE's subsequent Grantee/designee) and DOEE, and their officers, agents, and employees on account of any claims, damages, losses, litigation, expenses, counsel fees, and compensation arising out of any claims, damages, personal injuries, property losses, and/or economic damages sustained by or alleged to have been sustained by any person or entity, caused in whole or in part by the Subgrantee or by any negligent act or omission of the Subgrantee, its agents, employees, or subcontractors in connection with the design or construction of the GI practice(s) associated with SRCs that are subject to this SRC Purchase Agreement.

The indemnification obligation under this section shall not be limited by the existence of any insurance policy or by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Subgrantee or any of its agents, employees, or subcontractors, and shall survive the termination of this SRC Purchase Agreement. DOEE and CWP agree to give Subgrantee written notice of any claim of indemnification under this section. Additionally, Subgrantee shall have the right and sole authority to control the defense or settlement of such claim, provided that no contribution or action by DOEE or CWP is required in connection with the settlement.

**XIII. Compliance with the Law**

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Subgrantee shall comply with all applicable federal, state, and local laws, rules, ordinances, decisions, and executive orders, and shall obtain all necessary permits and licenses for the GI practice(s) described in Attachment A.

**XIV. Governing Law**

This SRC Purchase Agreement shall be governed and construed in accordance with the laws of the District of Columbia, regardless of the laws that might otherwise govern under applicable principles of conflicts of law. Subgrantee agrees to submit to the jurisdiction of any court of competent jurisdiction located in the District of Columbia to resolve any dispute relating to this SRC Purchase Agreement, and to waive any right to move to dismiss or transfer any such action brought in any court on the basis of any objection to personal jurisdiction or venue.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the Effective Date.

\_\_\_\_\_  
**Subgrantee**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Center For Watershed Protection, INC.**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Department of Energy and Environment**

\_\_\_\_\_  
**Date**

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**ATTACHMENT A**  
**SRC PRICE LOCK PROGRAM APPLICATION**

(Completed form to be inserted from online application on Surface and Groundwater System.)



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ATTACHMENT B  
TERMS AND  
SCHEDULE

**Property Address:** \_\_\_\_\_

**SRC Eligibility (gallons):**

**Options to Sell SRCs**

The Subgrantee shall have the option to sell SRCs to DOEE at fixed prices, described below in the “DOEE Purchases” section. The Subgrantee shall also have the option to receive a payment from DOEE following the sale of SRCs to a non-DOEE buyer, described below in the “DOEE Payment for Sales to Non-DOEE Buyers” section, in which case DOEE’s payment shall be in addition to the payment made by the non-DOEE buyer to purchase the SRCs.

For an individual SRC, the Subgrantee may only choose one sale option. However, the Subgrantee may choose to sell some SRCs to DOEE and some SRCs to a non-DOEE buyer.

**1. DOEE Purchases**

DOEE will purchase SRCs from the Subgrantee for the constructed GI practice(s) for a period of up to 12 years with up to eight separate purchases. The first purchase(s) will be for the first three years’ worth of SRCs for the newly constructed GI practice(s). Subsequent purchases will be made every three years following DOEE inspection and certification of the SRCS, as described in the most version of the SWMG in effect when the Purchase Contract was signed. Following each certification of SRCs, the Subgrantee will have up to twelve months to sell SRCs to DOEE in up to two sales. All three years’ worth of certified SRCs or a smaller quantity may be sold within the twelve-month period, but DOEE will not make more than two purchases within the twelve-month period, and SRCs not sold within the twelve-month period will not be purchased at a later time.

DOEE will offer the following prices to purchase SRCs:

- \$\_\_\_\_\_per SRC for Year 1 though 3
- \$\_\_\_\_\_per SRC for Year 4 though 6
- \$\_\_\_\_\_per SRC for Year 7 though 9
- \$\_\_\_\_\_per SRC for Year 10 though 12

**2. DOEE Payment for Sales to Non-DOEE Buyers:**

If the Subgrantee sells SRCs to a non-DOEE buyer instead of selling SRCs to DOEE, then DOEE shall make a payment to the Subgrantee. DOEE shall only make a payment to the Subgrantee if the Subgrantee sells an SRC from Year 1 through Year 6 to a non-DOEE buyer instead of selling to DOEE. DOEE’s payment shall be calculated using



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Formula 1.

When the Subgrantee lists an asking price in the list of SRCs for Sale on the SRC Registry, the price shown shall be the price that will be paid by non-DOEE buyers. To achieve this, the Subgrantee shall enter the price the Subgrantee seeks to receive, including the payment from DOEE and the payment from the non-DOEE buyer. The SRC Registry shall calculate the corresponding value that should be charged to the non-DOEE buyer and display this value. This calculation shall be performed using Formula 2.

DOEE shall not make a payment to the Subgrantee if the non-DOEE buyer's price paid exceeds the price DOEE would have paid to purchase the SRC (\$\_\_\_\_\_). DOEE also shall not make a payment to the Subgrantee if the combined price received by the Subgrantee from DOEE and the non-DOEE buyer exceeds \$\_\_\_\_\_.

Formula 1: Calculation of the DOEE's payment based on the price paid by the non-DOEE buyer

$$\text{DOEE payment} = [P + M - B + (A*Q/5,000)]/2$$

P = \$\_\_\_\_\_ The price DOEE would have paid to purchase and retire the SRC

M = \$\_\_\_\_\_ The maximum amount by which the payment can exceed P if fewer than 5,000 SRCs are sold.

B = The price paid by the non-DOEE buyer, not to exceed P. In any sale, if B is less than P minus \$\_\_\_\_\_, then the value of B in Formula 1 shall be \$\_\_\_\_\_ less than P.

A = \$\_\_\_\_\_ The additional payment provided by DOEE, to be multiplied by Q, to incentivize larger transaction sizes.

Q = The quantity of SRC sold, rounded down to the nearest 5,000. Any quantity in excess of \_\_\_\_\_ shall be rounded down to \_\_\_\_\_.

Formula 2: Calculation of the non-DOEE buyer's price based on the price sought by the Subgrantee

*Formula 2a*

$$\text{Non-DOEE Buyer's Price} = S - D$$

S = The price sought by the Subgrantee (the combined price paid by DOEE and the non-DOEE buyer), not to exceed P by more than \$\_\_\_\_\_. In any sale, if S is less than P, then the value of S in Formula 2 shall be the value of P.

D = The value of the DOEE payment, calculating using formula 2b below.

*Formula 2b*

$$\text{DOEE Payment} = P + M - S + (A*Q/5,000)$$

P = \$\_\_\_\_\_ The price DOEE would have paid to purchase and retire the SRC

M = \$\_\_\_\_\_ The maximum amount by which the payment can exceed P if fewer than 5,000 SRCs are sold.

S = The price sought by the Subgrantee (the combined price paid by DOEE and the non-DOEE buyer), not to exceed P by more than \$\_\_\_\_\_. In any sale, if S is less than P, then the value of S in

## SRC Purchase Agreement No

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Formula 2 shall be the value of P.

A = \$ \_\_\_\_\_ The additional payment provided by DOEE, to be multiplied by Q, to incentivize larger transaction sizes.

Q = The quantity of SRC sold, rounded down to the nearest 5,000. Any quantity in excess of \_\_\_\_\_ shall be rounded down to \_\_\_\_\_.

#### Implementation Deadlines:

Deadline	Task
6 months from date of SRC Purchase Agreement	Completion of Design and Submittal of SWMP to DOEE
12 months from the date of SRC Purchase Agreement	SWMP Approval
18 months from the date of SRC Purchase agreement	Pre-Construction Meeting with DOEE
24 months from the date of SRC Purchase Agreement	Completion of Construction
27 months from the date of SRC Purchase Agreement	Certification of SRCs for Year 1 through 3
Within 12 months of certification of SRCs for Years 1 through 3	One of the following; <ul style="list-style-type: none"> <li>• Intent to sell Stormwater Retention Credits from Year 1 through 3 Signed and Submitted to DOEE</li> <li>• SRCs from Year 1 through 3 sold to a non-DOEE with DOEE payment provided according to the formula above</li> </ul>
Within 3 months of the end of Year 3	Certification of SRCs for Year 4 through 6
Within 12 months of certification of SRCs for Years 4 through 6	One of the following; <ul style="list-style-type: none"> <li>• Intent to sell Stormwater Retention Credits from Year 4 through 6 Signed and Submitted to DOEE</li> <li>• SRCs from Year 4 through 6 sold to a non-DOEE buyer with DOEE payment provided according to the formula above</li> </ul>
Within 3 months of the end of Year 6	Certification of SRCs for Year 7 through 9
Within 12 months of certification of SRCs for Years 7 through 9	One of the following; <ul style="list-style-type: none"> <li>• Intent to sell Stormwater Retention Credits from Year 7 through 9 Signed and Submitted to DOEE</li> <li>• SRCs from Year 7 through 9 sold to another buyer</li> </ul>
Within 3 months of the end of Year 9	Certification of SRCs for Year 10 through 12
Within 12 months of certification of SRCs for Years 10 through 12	One of the following; <ul style="list-style-type: none"> <li>• Intent to sell Stormwater Retention Credits from Year 10 through 12 Signed and Submitted to DOEE</li> <li>• SRCs from Year 10 through 12 sold to another buyer</li> </ul>

The Subgrantee SRC payment funds are held and available according to the deadlines in this timetable. The Subgrantee is expected to keep CWP informed about its progress and must contact CWP to request an amendment to Attachment B for variations or extensions in this schedule or to

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increase the number of SRCs that may be sold to DOEE. The amendment shall be effective upon the signature of each of the Parties below. If the Subgrantee does not sign the amendment to Attachment B within 30 days of DOEE's signing of the amendment to Attachment B, then the amendment shall expire. Each Party shall sign the amendment to Attachment B electronically via the Surface and Groundwater System.

Amendment(s):

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**Subgrantee**

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**Date**

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**Center For Watershed Protection, INC.**

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**Date**

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**Department of Energy and Environment**

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**Date**

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**ATTACHMENT C**  
 INTENT TO SELL STORMWATER RETENTION  
 CREDITS

**This form is provided as a PDF document for planning purposes. You must submit your form through DOEE's Surface and Groundwater System.**

**Date:** \_\_\_\_\_

\_\_\_\_\_, the Subgrantee, whose address is \_\_\_\_\_ intends to sell SRCs to the Center for Watershed Protection, Inc., the Grantee, whose address is 3290 North Ridge Road, Suite 290, Ellicott City, MD 21043.

The Subgrantee intends to sell a total quantity of \_\_\_\_\_ SRCs, which are identified by the following ranges of consecutively numbered serial numbers:

Starting Serial Number	Ending Serial Number	SRC Purchase Agreement Number	Quantity of SRCs in Range
<b>Total SRCs:</b>			

Sale of the SRCs is subject to the terms and conditions identified in the Stormwater Retention Credit SRC Purchase Agreement, as well as the terms and conditions identified below.

**1. Transfer Date.**

The transfer of SRCs from Subgrantee to DOEE shall occur on the date of issuance of the Department of Energy and Environment's ("DOEE") letter recording that DOEE has processed the Intent to Sell Stormwater Retention Credits form ("DOEE Letter").

**2. Purchase Price.**

The total price for the SRCs shall be \_\_\_\_\_ dollars and \_\_\_\_\_ cents (\$ . ) ("Purchase Price"), paid directly by CWP to an account designated by Subgrantee. CWP will issue a one-time payment for the Purchase Price via electronic fund transfer to such designated Subgrantee account as detailed in this Intent to Sell SRCs form. Alternative means of payment may be approved on a case-by-case basis.

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**3. Timing and Process.**

- a. Subgrantee shall submit to DOEE this Intent to Sell Stormwater Retention Credits form.
- b. DOEE expects to pay the Subgrantee, through CWP, within thirty (30) days of submittal of the Intent to Sell Stormwater Retention Credits form ("Payment Due Date").
- c. CWP shall submit proof of payment of Subgrantee to DOEE.
- d. After the payment is made, DOEE shall retire the SRCs it has purchased from the Subgrantee.

**4. Representations.**

Subgrantee makes the following representations:

- a. Subgrantee warrants that the person signing this Intent to Sell Stormwater Retention Credits on its behalf is individually authorized and competent to sell the SRCs identified above. Subgrantee has read the Subgrant Purchase Agreement, including this Attachment, and agrees to be bound by its terms.
- b. Subgrantee owns all interests in the SRCs identified above.

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**Subgrantee**

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**Contact Name**

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**Title**

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**Signature**

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**Date**