

Model Municipal Green Building Ordinance
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1. Purpose & Intent

- A. The [city/town/village] of [] is committed to enhancing the public welfare and assuring that further development is consistent with the [city/town/village]'s desire to create a more sustainable community by incorporating green building measures into the design, construction, and maintenance of buildings that minimize short-term and long-term negative impacts on the environment.
- B. In recent years, green building design, construction, and operational techniques have become increasingly widespread. Many homeowners, businesses, and building professionals have voluntarily sought to incorporate green building techniques into their buildings. A number of local and national systems have been developed to serve as guides to green building practices. The [city/town/village] finds that requiring certain buildings to incorporate green building measures is necessary and appropriate to realize the benefits of green building.
- C. The intent of this article is to mandate green building practices designed to encourage the following: resource conservation; reduction of waste generated by construction; reduction in the use of energy in both initial construction and daily operations; energy efficiency; promoting the health and productivity of residents, workers, and visitors to the [city/town/village]; construction of environmentally sustainable municipal and privately owned buildings; and reduction of greenhouse gas emissions to mitigate the impacts of climate change. A further intent of this article is for the owners and occupants of new commercial buildings, offices, mixed-use buildings, and residences to gain the economic benefits of energy and water savings, and the health benefits of good indoor air quality.

2. Applicability

- A. This article shall apply to all applications for building permits in the following categories:
 - 1. All new construction of municipal buildings greater than 5,000 square feet of conditioned space or major modifications to municipal buildings greater than 5,000 square feet of conditioned space;
 - 2. All new construction of commercial and high rise multi-family residential buildings greater than 5,000 square feet of conditioned space or major modifications to commercial and high rise multi-family residential buildings greater than 5,000 square feet of conditioned space;

3. All new construction of [or major modifications to] one- and two-family dwellings, and low rise multi-family residential buildings regardless of size.
- B. Optional add-on: [This article shall apply to all existing municipal purpose buildings greater than 5,000 square feet of conditioned space.]
- C. Optional add-on: [This article shall apply to all existing buildings greater than 5,000 square feet of conditioned space.]

3. Definitions

APPLICANT

Any person, corporation, partnership, firm, or any other entity making an application to the municipality pursuant to this article.

BENCHMARKING

Collecting building data regarding the total energy and water usage for the previous calendar year, to be used in comparing data from that building in other calendar years, and data for other similar buildings.

BENCHMARKING TOOL

The U.S. Environmental Protection Agency's Energy Star Portfolio Manager internet-based database system and any complementary interface used to track and assess the energy and water use of certain buildings relative to similar buildings.

BUILDING

Any edifice of any kind or any piece of work artificially built or composed of parts joined together in some definite manner and permanently attached to the ground, used or intended for supporting or sheltering any use or occupancy.

CERTIFIABLE

To attain the number of points, as determined by the Green Building Compliance Official, that are necessary to meet the requirements of the applicable level of the green building rating system. It is not required that the building be certified by the USGBC or other applicable green building authority.

COMMERCIAL BUILDING

Any building other than a residential, manufacturing, utility, or municipal building, including without limitation: offices, retail facilities, warehouses, mixed-use buildings, schools and other educational buildings, houses of worship, and sports and entertainment facilities.

CONDITIONED SPACE

Any area within a building that is artificially heated or cooled by fixed equipment.

CONSTRUCTION

The erection of any building or structure or any portion thereof.

COVERED BUILDING

A building that is required to meet the green building standards of this article.

ENERGY STAR HOMES RATING SYSTEM

A set of guidelines for energy efficiency developed by the EPA and the Department of Energy.

ENERGY STAR HOME REPORT

A report completed by a Home Energy Rating System rater which yields a projected Energy Star rating for a home before construction begins.

FIXED EQUIPMENT

Equipment that is fixed or attached to real property permanently as an appendage and is not readily portable. For example a space heater and a floor fan are not fixed equipment.

FUNDED

To provide direct financial contributions to the building; it does not include to guarantee a loan, provide incentives, or otherwise provide indirect financial assistance.

GREEN BUILDING

A whole systems approach to the design, construction, and operation of buildings that helps mitigate the environmental impact of buildings. Green building practices recognize the relationship between natural and built environments and seek to minimize the use of energy, water, and other natural resources and provide a healthy indoor environment. Green building can also refer to a building built to standards that are more environmentally friendly than normal building standards.

GREEN BUILDING COMPLIANCE OFFICIAL

The [] or his or her designee. Optional add-on [The Green Building Compliance Official must be a LEED AP or equivalent or have a LEED AP or equivalent on his or her staff.]

HERS

See Home Energy Rating System.

HIGH RISE MULTI-FAMILY RESIDENTIAL

Multi-family residential construction of four stories or more.

HISTORIC BUILDING

Buildings that are listed in or have been officially declared eligible for listing in the National Register of Historic Places, or are designated as historic under an applicable state or local law.

HOME ENERGY RATING SYSTEM (HERS) RATER

A person who has passed the Residential Energy Services Network (RESNET) National Rater Test.

HOME ENERGY RATING SYSTEM (HERS) INDEX

A scoring system established by RESNET in which homes are compared to a HERS Reference Home (based on the 2006 International Energy Conservation Code).

LEADERSHIP IN ENERGY AND ENVIRONMENTAL DESIGN (LEED) STANDARDS

A voluntary, third-party rating system developed by the USGBC where credits are earned for satisfying specified green building criteria.

LEED ACCREDITED PROFESSIONAL (AP)

Any person who has passed the LEED Professional Accreditation Exam administered by the Green Building Certification Institute.

LEED CHECKLIST

A checklist developed by the USGBC for the purpose of calculating a score on the LEED Rating System.

LOW RISE MULTI-FAMILY RESIDENTIAL

Multi-family residential construction, including townhomes, of three stories or less.

MAJOR MODIFICATION

Modification of an existing building where the scope of work of the project includes at least one of the following:

1. Rehabilitation work in at least two of the following three systems: electrical, HVAC (heating, ventilating and air conditioning), and plumbing;
2. Construction work which affects at least fifty percent of the building's floor area; or
3. Construction work which increases the square footage of conditioned space in the building by at least fifty percent.

MULTI-FAMILY

Containing three or more dwelling units.

MUNICIPAL BUILDING

Any building that is either:

1. Owned,
2. At least fifty percent funded,
3. Funded with over \$2 million,
4. On land owned, or
5. Where greater than fifty percent of the conditioned floor area is leased

by [city/town/village] or any unit thereof. This definition applies notwithstanding any outside federal or state funding for the building.

Optional add-on: [MUNICIPAL PURPOSE BUILDING: Any building that is: at least fifty percent owned by, on land owned by, or where greater than sixty percent of the conditioned floor area is leased for a term of at least [20] years by any unit of local government.]

PROJECT

A design and construction undertaking comprised of work related to one or more site improvements. Multiple modifications of the same building or simultaneous related work in conjoined structures under common ownership or control may constitute a single project for the purposes of the size requirements of this article. Separate modifications within a project may have different design professionals and job numbers, and may result in the issuance of one or more permits.

RATING SYSTEM

A system designed to rate green building criteria for particular buildings. For example, LEED for New Construction (LEED-NC), LEED for Existing Buildings: Operations and Maintenance (LEED EB:OM), LEED for Schools, and LEED for Homes are all different rating systems.

REHABILITATION

Renovation, alteration, or reconstruction.

RESIDENTIAL BUILDING

Any building used for living, sleeping, eating, and cooking. Residential buildings include one-family, two-family, and multi-family residences and dormitories. For the purposes of this article, a residential building does not include long term care facilities, assisted-living facilities, or hotels, motels, inns, or any similar commercial enterprises wherein rooms or suites of rooms are occupied transiently. Buildings used for purposes identified in the preceding sentence are considered commercial buildings.

SPECIAL PURPOSE UNIT OF GOVERNMENT

Independent governmental units that exist separately from, and with substantial administrative and fiscal independence from, general purpose local governments such as county, city, town, and village governments, and that are created to provide a specific service in a specific region.

VERSION

A particular iteration of a specific LEED green building rating system. For example, LEED-NC 3.0 is a version of the LEED-NC rating system.

4. Green Building Rating Systems

- A. The [city/town/village] hereby adopts the USGBC's LEED for New Construction (LEED-NC) Rating System, Version 3.0. The [city/town/village] also adopts the USGBC's LEED for Schools Rating System, Version 3.0. The [city/town/village] also adopts the EPA Energy Star Rating System in effect on the date of adoption of this article. [The [city/town/village] also adopts the USGBC's LEED for Existing Buildings: Operations and Maintenance (LEED EB:OM) Rating System, Version 3.0.] The [municipal clerk] shall maintain copies of the current green building standards in effect under this article and any additional documents necessary for applicants to comply with the standards of this article.

- B. Because green building standards are highly technical and the Green Building Compliance Official has the proper expertise to determine whether new standards are appropriate, he or she shall be in charge of adopting new LEED or Energy Star rating systems, new versions of LEED or Energy Star, a green construction code, or a different green building rating system. Whenever the Green Building Compliance Official considers adopting a new system, version, or code, he or she shall follow the process below.
 - 1. Public notice of the intent to adopt the new rating system, version, or code shall be given in the manner customary for the municipality and public comment on the adoption shall be allowed for [30] days.

 - 2. The Green Building Compliance Official shall determine whether or not to adopt the new rating system, version, or code based on the following standards:
 - a. The new rating system, version, or code must have been established by a government agency or by a not for profit organization whose standards have achieved widespread acceptance,

 - b. The new rating system, version, or code, looked at as a whole, must be no less protective of the environment than the prior rating system, version, or code,

- c. The new rating system, version, or code must be designed to reflect recent scientific, engineering, and technological knowledge,
 - d. The new rating system, version, or code cannot be adopted primarily for the benefit of a particular project or applicant, and
3. If the Green Building Compliance Official decides to adopt the new rating system, version, or code, he or she must make public this adoption by filing the adoption with the [municipal clerk] and giving public notice of the adoption in the manner customary for the municipality.
 4. Nothing in this section shall abrogate the authority of the [municipal governing body] to adopt, modify, or repeal green building standards that have been adopted by the [municipal governing body] or Green Building Compliance Official.

Optional alternative (use in lieu of section B above): [B. The Green Building Compliance Official shall remain informed of changes in rating systems, versions, and codes, and shall notify the [municipal governing body] of these changes so that the [municipal governing body] can adopt these changes should it so choose.]

C. If a different green building rating system other than LEED or Energy Star is adopted pursuant to § 4(B), the same process described in § 4(B) can be used to change other provisions of this article accordingly if and to the extent required by this adoption.

5. Standards for compliance

- A. All new construction of and major renovations to covered buildings must comply with the following standards:
 1. All municipal buildings greater than 5,000 square feet of conditioned space must be LEED Silver certifiable.
 2. All commercial and high rise multi-family residential buildings greater than 5,000 square feet of conditioned space must be LEED Silver certifiable.
 3. All one- or two-family dwellings and low rise multi-family residential buildings must meet the level of an Energy Star qualified home by achieving a HERS Index of [80 or 85].
- B. Applicants for covered buildings are not required to attain LEED certification from the USGBC or to have buildings Energy Star qualified by the EPA nor are they required to share energy and water usage data with USGBC under LEED's minimum program requirements.

- C. Optional add-on: [In addition to complying with the requirements of § 5(A), all new construction of and major renovations to covered buildings must attain at least [2] points from the Energy and Atmosphere Credit 1 of the LEED-NC checklist.]
- D. Optional add-on: [All existing municipal purpose buildings greater than 5,000 square feet of conditioned space must be LEED EB:OM Silver certifiable.]
- E. Optional add-on: [All existing buildings greater than 5,000 square feet of conditioned space must complete energy and water benchmarking.]

6. Compliance Process

- A. New construction and major modifications.
 - 1. Applications. Every applicant who files a building permit application for new construction of or major modification to a covered building must submit to the Green Building Compliance Official:
 - a. A completed LEED checklist demonstrating the LEED points a building is designed to obtain, or an Energy Star home report conducted by a third party HERS rater, or other equivalent rater as determined by the Green Building Compliance Official, demonstrating a projected Energy Star rating score for the home,
 - b. A written explanation of how the building will obtain the LEED points identified in the checklist or the Energy Star rating score shown in the home report,
 - c. Design plans that demonstrate compliance with the applicable standard required by § 5 of this article, and
 - d. Any other documents or information the Green Building Compliance Official finds necessary to decide whether the building will achieve the applicable standard required by § 5 of this article.
 - e. If the applicant can show a clear and specific inconsistency between meeting a state or federal legal requirement and the attainment of one or more particular LEED points, or that anti-trust laws prevent the municipality from requiring a particular LEED point or set of points, either of which could invalidate this article or a provision thereof, the applicant should document the conflict in the application. The Green Building Compliance Official shall review the documentation in consultation with the municipality's legal counsel and if such inconsistency exists, will deem the LEED point to have been achieved by

the building if otherwise applicable building and energy conservation code requirements have been met.

2. Approval. No building permit shall be issued for any covered building unless the Green Building Compliance Official determines the application demonstrates that the covered building will attain the applicable standard as required by § 5 of this article.
 3. Non-approval. If the Green Building Compliance Official determines that the documentation is incomplete or indicates that the covered building will not meet the required standard in § 5 of this article, the Green Building Compliance Official shall either:
 - a. Return the documentation to the applicant marked "denied," including a statement of reasons for the denial; or
 - b. Return the documentation to the applicant marked "further explanation required," and detail the additional information needed.
 4. Resubmission. If the documentation is returned to the applicant, the applicant may resubmit the documentation with such additional information as may be required or may apply for a partial exemption under § 8 of this article.
 5. Decisions by Green Building Compliance Official. All decisions by the Green Building Compliance Official, including but not limited to: approval or non-approval of applications for a building permit, issuance of a stop work order, substitution of LEED points or Energy Star features, and temporary approval and mitigation measures, shall be in writing. These decisions will be provided to the affected applicants. Copies will be retained by the municipality and made available for public inspection.
- B. Optional add-on: [Existing municipal purpose buildings that are required to meet the standard in § 5(D)].
1. Applications. The following documents must be submitted to the Green Building Compliance Official within [6] months from the date of adoption of this article.
 - a. A completed LEED EB:OM checklist demonstrating the LEED EB:OM points a building will obtain,
 - b. A written explanation of how the building will obtain the LEED EB:OM points identified in the checklist,
 - c. Design plans that demonstrate compliance with the applicable standard required by § 5(D) of this article, and

- d. Any other documents or information the Green Building Compliance Official finds necessary to decide whether the building will achieve the applicable standard required by § 5(D) of this article.
 2. **Deadline for compliance.** Once the application is submitted, the Green Building Compliance Official shall exercise discretion in determining a reasonable deadline for compliance. Once the Green Building Compliance Official reviews the plans and sets a deadline for compliance, the building must complete the necessary retrofits to meet the standard required by § 5(D) by that deadline.
 3. **Final approval.** The Green Building Compliance Official shall conduct a final inspection to verify that the building complies with the standard required by § 5(D) on or after the deadline specified by the Green Building Compliance Official in § 6(B)(2).]
 4. **Optional add-on:** [The Green Building Compliance Official shall make public via the internet a list of municipal purpose buildings which must comply with § 5(D) and shall indicate whether those buildings comply by the deadline specified by the Green Building Compliance Official in § 6(B)(2).]
- C. **Optional add-on:** [Existing buildings that are required to meet the standard in § 5(E).
1. **Benchmarking.** Within [1] year from the date of adoption of this article, energy and water benchmarking data must be submitted to the [city/town/village] from the agency or entity responsible for the management of the covered building via the benchmarking tool. Subsequently, benchmarking data must be submitted to the [city/town/village] via the benchmarking tool on an annual basis by [January 1st].
 2. **Disclosure.** The municipality shall make information generated by the benchmarking tool public via the internet no later than [3] months after the data has been generated.]

7. Enforcement

- A. **Compliance Review.** The Green Building Compliance Official shall determine whether the specifications identified in the documentation provided pursuant to § 6(A) have been implemented by conducting inspections at any time during construction or until the issuance of a final certificate of occupancy. The applicant shall provide the Green Building Compliance Official with access to the premises in order to conduct inspections to ensure compliance with this article. The [city/town/village] may require the applicant to provide information and documents showing use of products, equipment, and materials specified in the documentation provided pursuant to § 6(A). If the [city/town/village] determines that the building is not being constructed in accordance with the

documentation, the Green Building Compliance Official may issue a stop work order. This order may apply to a portion of the building or to the entire building and shall remain in effect until the Green Building Compliance Official determines that the building will be brought into compliance with the documentation and the requirements of this article.

- B. Substitution of LEED points or Energy Star features. During compliance review, the Green Building Compliance Official may exercise flexibility to substitute the approved LEED points with other LEED points or to substitute approved Energy Star features with other Energy Star features so long as the building will still attain the green building rating required by this article. Substitution shall occur only at the request of the applicant and when it is determined by the Green Building Compliance Official that the originally approved points or features are no longer feasible or that the substitute point or feature will realize a more favorable result as determined by the Green Building Compliance Official. Substitution is at the discretion of the Green Building Compliance Official.
- C. Final Approval. The [Green Building Compliance Official/Building Department] shall not issue a final certificate of use and occupancy for any construction of a covered building unless [he or she/it] finds that the building has achieved the standard required under § 5 of this article.
 - 1. Energy Star Homes. For buildings required to achieve Energy Star Homes qualified status, a home energy rating certificate must be submitted to the Green Building Compliance Official from a third party HERS rater, or other equivalent rater as determined by the Green Building Compliance Official, indicating that the building has complied with the applicable standard under § 5 of this article including all performance and field-testing verification.
 - 2. Temporary Approval and Mitigation. If, upon completion of construction, the building does not comply with the requirements of § 5 of this article, the [Green Building Compliance Official/Building Department] may issue a temporary certificate of occupancy if the deviations are reasonable and there is assurance from the applicant that the deviations will be corrected or mitigated. The Green Building Compliance Official shall determine the reasonable mitigation measures. The temporary certificate of occupancy shall be in place for [30] days and may be renewed no more than two times after which the applicant must apply to the [appellate body] for any further temporary certificates of occupancy. Once the building has met the requirements of § 5 of this article or the applicant has completed the necessary mitigation measures, the [Green Building Compliance Official/Building Department] will issue a final certificate of use and occupancy for the building.
 - a. Optional add-on: [Disclosure of the Issuance of Temporary Certificates of Occupancy. When a temporary certificate of occupancy is issued in accordance with § 7(C)(2), the [Green Building Compliance

Official/Building Department] shall make public the date of the issuance of the temporary certificate of occupancy and the address and any other designation of the building that received it.]

8. Exemptions

The provisions of this article apply to all covered buildings with the following exemptions.

- A. Hardship or infeasibility. If an applicant believes that circumstances exist that make it a hardship or infeasible to meet the requirements of this article, the applicant may apply for a partial exemption as set forth below. The burden is on the applicant to show hardship or infeasibility.
1. Factors to consider in determining whether hardship or infeasibility exist include, but are not limited to: availability of green building materials and technologies, compatibility of green building requirements with other government requirements and building standards, and availability of markets for materials to be recycled.
 2. "Hardship" means some verifiable level of difficulty or adversity arising from the factors identified in § 8(A)(1) or other circumstances beyond the control of the applicant, by which the applicant cannot reasonably comply with the requirements of this article.
 3. "Infeasible" means the existence of verifiable obstacles arising from the factors identified in § 8(A)(1) or other circumstances beyond the control of the applicant which render the applicant incapable of complying with the requirements of this article.
 4. Application. The applicant may apply for an exemption at the time of submission of the documentation required in § 6 of this article. The applicant shall indicate the maximum number of credits he or she believes is feasible for the building to obtain and the circumstances that make it a hardship or infeasible to fully comply with this article.
 5. Granting of Exemption. If the Green Building Compliance Official determines that it is a hardship or infeasible for the applicant to meet the requirements of this article, he or she shall determine the maximum feasible number of credits reasonably achievable for the building. If an exemption is granted, the applicant shall be required to comply with this article in all other respects and shall be required to attain the number of credits determined to be achievable by the Green Building Compliance Official.
 6. Denial of Exemption. If the Green Building Compliance Official determines that it is not a hardship or infeasible for the applicant to meet the requirements of this

article, he or she shall so notify the applicant in writing with a statement of reasons for the denial.

- B. Optional add-on: [Historic buildings. If an applicant believes that circumstances exist under which a historic building should not be required to meet the standards of this article to maintain historic integrity, he or she may apply for a partial exemption. The process for granting a partial exemption shall be the same as that in §§ 8(A)(4) – (6) above.]
- C. Optional add-on: [Cost. If compliance with this article would cause the cost of construction of the covered building to increase by [25]%, the building is exempt from the requirements of this article.]

9. Exclusions

County, state, and federal facilities, special purpose unit of government facilities, buildings of municipalities other than the one enacting this article [, houses of worship][, and healthcare facilities] are excluded from the requirements of this article.

10. Appeals

Any person aggrieved may appeal in writing any decision or determination by the Green Building Compliance Official under this article including the granting or denial of an exemption or compliance with the article to the [appellate body]. Any appeal must be filed with the secretary of the [appellate body] not more than [30] days after the decision or determination by the Green Building Compliance Official is furnished to the applicant. The appeal shall state the alleged error or reason for the appeal. The [appellate body] shall review the decision or determination under the same standard of review the [appellate body] would generally use in its appellate capacity and may uphold, reverse or modify the decision or determination, or refer the matter back to the Green Building Compliance Official for such further action as may be directed by the [appellate body].

11. Severability

If any subsection, subdivision, paragraph, sentence, clause or phrase of this article, or any part thereof, is for any reason held to be unconstitutional, invalid, or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions or any part thereof.

12. Other Applicable Regulations

Notwithstanding anything in this article, nothing in this article obviates the need to comply with otherwise applicable building code requirements for building permits, temporary certificates of use and occupancy, final certificates of use and occupancy, fire, safety and electrical codes, and any other applicable land use or environmental requirements such as subdivision regulations, site plan review, or special use permit approval.

Appendix A: Intermunicipal Agreements

Intermunicipal agreements are allowed pursuant to Article 9, § 1 of the State Constitution and Article 5-G § 119-o of the General Municipal Law. Article 5-G provides broad authority for municipal corporations and districts to cooperate with each other in carrying out their responsibilities. A municipal corporation is defined to include any county outside the City of New York, a city, town, village, board of cooperative educational services, fire district, or school district. These intermunicipal agreements can help small municipalities share costs and officers thus saving money and work for the municipalities.

Under Article 5-G, municipal corporations and districts have the power to enter into, amend, cancel and terminate agreements for the performance among themselves, or one for the other, of their respective functions, powers, and duties on a cooperative or contract basis or for the provision of a joint service. These agreements may only extend to a maximum term of five years but may be renewed. Each participant in the agreement must have statutory authority, independent of Article 5-G, to perform the function that is the subject of the cooperation agreement.

In the context of the green building ordinance, municipalities may want to share resources through an intermunicipal agreement to share a Green Building Compliance Official or other enforcement or inspection officials that are necessary for the implementation and enforcement of the ordinance. In this way, municipalities can pool resources and green building knowledge without having to spend a large amount of money or time training an employee to be a green building specialist. The following two sample intermunicipal agreements show the form that such an agreement could take. The samples state that the officer being shared is the Green Building Compliance Official, but municipalities could specify any other officer of the municipality to be shared between them. The municipalities would need to specify what services will be provided and how payment will be calculated as these are not fully detailed in the sample agreements.

SAMPLE INTERMUNICIPAL AGREEMENT #1

THIS AGREEMENT is made as of the ___ day of _____, 201_ between the Town of _____, a municipal corporation located at [address], New York (“[Town #1]”), and the Town of _____, a municipal corporation located at [address], New York (“[Town #2]”).

Whereas, the [Green Building Compliance Official (“GBCO”)] is responsible for enforcing the green building ordinance and the [GBCO] and/or Building Department staff also receive applications and issue permits or certificates in connection with various green building and construction- related activities; and

Whereas, Town #1 currently has a fully staffed office for the purpose of undertaking the aforementioned green building enforcement duties; and

Whereas, it is in the interest of the taxpayers of the aforementioned Towns to share resources in the undertaking of such green building enforcement and inspection services; and

Whereas, Town #1 and Town #2 are authorized, pursuant to both Article 9, § 1 of the State Constitution and Article 5-G of the General Municipal Law to enter into intermunicipal agreements; and

Whereas, it is expected that assistance, in whatever form, will be reciprocal and proportionally equitable over a period of time, and that the exchange and sharing of office equipment and personnel will result in more cost effective work performance at manageable cost to either party; and

Whereas, flexibility in operating local governments and their green building enforcement programs is necessary to insure efficiency and maximum benefits; and

Whereas, general oversight by appropriate Town officials will be accomplished through monthly and annual log reports by the appropriate [GBCO] to the respective Town Boards.

Now, therefore, be it hereby agreed as follows:

1. Town #1 hereby contracts with Town #2 to provide services by Town #1 [GBCO] to Town #2.
2. The services to be provided are to be those set forth on Schedule A hereof.
3. In return for said services Town #2 shall reimburse Town #1 pursuant to the rates set forth on Schedule B hereof.
4. Town #2 hereby indemnifies and holds Town #1 harmless for any claim or liabilities arising against Town #1 from actions performed by the [GBCO] on behalf of Town #2.
5. Town #1 hereby indemnifies and holds Town #2 harmless for any claim or liabilities arising against Town #2 from actions performed by the [GBCO] on behalf of Town #1.
6. This Agreement shall expire one (1) year from the date hereof unless extended in writing by the parties hereto.

TOWN #1

By: _____
_____, Supervisor

TOWN #2

By: _____
_____, Supervisor

SAMPLE INTERMUNICIPAL AGREEMENT #2

THIS AGREEMENT, is made and entered into this [date] between the TOWN OF [TOWN 1], a municipal corporation of the State of New York [mailing address] (“[Town 1]”), the TOWN OF [TOWN 2], a municipal corporation of the State of New York [mailing address] (“[Town 2]”), and the TOWN OF [TOWN 3], a municipal corporation of the State of New York [mailing address] (“[Town 3]”).

WITNESSETH:

WHEREAS, [Town 1], [Town 2] and [Town 3] have each enacted local green building ordinances which require the appointment of a [Green Building Compliance Official (“GBCO”)] to enforce the provisions of said ordinances, and

WHEREAS, the Town Boards of [Town 1], [Town 2] and [Town 3], pursuant to the provisions of General Municipal Law section 119-o, are desirous of joining together to share a duly qualified and trained [Green Building Compliance Official]

NOW, THEREFORE, IT IS HEREBY AGREED, by the Towns of [Town 1], [Town 2], and [Town 3] as follows:

1. [Town 1] , [Town 2] and [Town 3] each agree to cooperate with each other in hiring and sharing a [GBCO] to implement and enforce their green building ordinances.
2. The services to be provided by the [GBCO] are those set forth in Schedule A hereof.
3. The payment for said services shall be provided as set forth in Schedule B hereof.
4. Each municipal corporation shall respond to any need and request for the [GBCO] as soon as able.
5. Each municipal corporation shall:
 - (a) be responsible for injury to the [GBCO] providing cooperative services for the municipality if it is a workers’ compensation injury.
 - (b) pay the [GBCO] for green building inspection and compliance services according to the payment schedule in Schedule B.
 - (c) be liable for negligence of the [GBCO] occurring in the performance of his/her duties for the municipal corporation.
6. [Town 1], [Town 2] and [Town 3] do each hereby agree to obtain and thereafter continue to keep in full force and effect general liability insurance, and public officers liability insurance relative to this Agreement during all phases of the performance of the various provisions to be performed herein.

7. The term of this Agreement shall be from the date of acceptance through to [date], and shall be renewed automatically for additional terms of one (1) year each, unless either party shall notify the other, no later than sixty (60) days prior to the end of the term, of its election not to renew.

8. Should any dispute arise between the parties respecting the terms of this Agreement, the disputed matter shall be settled by arbitration, in accordance with the laws of the State of New York, by three arbitrators, one of whom shall be selected by each of the parties hereto, and the third by the two arbitrators so selected. If the selection of any arbitrator shall not be made within 15 days of the time that either party shall notify the other of the name of the arbitrator selected by the notifying party, then the arbitrator or arbitrators not selected shall be appointed in the manner provided by the laws of the State of New York.

9. This Agreement constitutes the complete understanding of the parties. No modification of any provisions thereof shall be valid unless in writing and signed by both parties.

10. [Town 1] represents and warrants that the Supervisor of the Town of [Town 1] has executed this Agreement pursuant to a Resolution adopted by the [Town 1] Town Board at a meeting thereof held on _____, 201_. [Name] , Supervisor whose signature appears hereafter, is duly authorized and empowered to execute this instrument and enter into such an agreement on behalf of the Town of [Town 1].

11. [Town 2] represents and warrants that the Supervisor of the Town of [Town 2] has executed this Agreement pursuant to a Resolution adopted by the [Town 2] Town Board at a meeting thereof held on _____, 201_. [Name] , Supervisor, whose signature appears hereafter, is duly authorized and empowered to execute this instrument and enter into such an agreement on behalf of the Town of [Town 2].

12. [Town 3] represents and warrants that the Supervisor of the Town of [Town 3] has executed this Agreement pursuant to a Resolution adopted by the [Town 3] Town Board at a meeting thereof held on _____, 201_. [Name] Supervisor, whose signature appears hereafter, is duly authorized and empowered to execute this instrument and enter into such an agreement on behalf of the Town of [Town 3]

13. This Agreement shall be executed in duplicate. At least one copy shall be permanently filed, after execution thereof, in the offices of the Town of [Town 1] Town Clerk, the Town of [Town 2] Town Clerk and the Town of [Town 3] Town Clerk.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the date first above written.

[Add signatures and acknowledgment]

Appendix B: SEQRA review

The New York State Environmental Quality Review Act (SEQRA) governs the discretionary decisions of state and local governments, including municipal governing bodies. Thus the Model Green Building Ordinance would be subject to SEQRA. It does not fit the description of any of the types of actions that are classified under SEQRA as Type I (meaning actions that are more likely than others to require an environmental impact statement (EIS)) or as Type II (meaning that it is of the sort that never requires an EIS). Therefore it would be classified as an “unlisted” action.

Under DEC’s regulations, unlisted actions may be analyzed under the Short Environmental Assessment Form (EAF). A completed sample Short EAF for the model ordinance is available on the CCCL website. The Short EAF form can be found as a pdf document here: http://www.dec.ny.gov/docs/permits_ej_operations_pdf/shorteaf.pdf. As the Short EAF does not identify any impacts or conditions that could require an EIS, the CCCL website also includes a completed sample Negative Declaration -- a document concluding that no EIS is needed. The Negative Declaration form can be found as a pdf document here: http://www.dec.ny.gov/docs/permits_ej_operations_pdf/negdec.pdf.

Each municipality should carefully review these model forms before acting on them, in order to ensure that they are accurate with respect to the municipality’s own circumstances, and make any appropriate changes. If the municipality decides to issue a Negative Declaration, issuance would complete the SEQRA process for a proposed action. The resolution declaring the municipal governing body to be the lead agency, the Short EAF, and the Negative Declaration may all be adopted at the same time, which may be simultaneously with or prior to the ordinance itself. For unlisted actions involving only one agency, no advance public notices or hearings are required by state law.

Appendix C: Changing the green building rating system

Under § 4(B) of the model ordinance, a municipality may change either or both of the green building rating systems used in the ordinance from LEED and Energy Star to another green building rating system. If a municipality chooses to do this, there are multiple sections of the model ordinance that need to be changed to reflect the new green building rating system that is being used. Below is a comprehensive list of the sections of the model ordinance that mention LEED or Energy Star and the changes that are necessary to make to them if a municipality adopts a different green building rating system.

If LEED is changed to a different green building rating system the following sections of the model ordinance will need to be amended:

§ 3: Remove the definitions for Leadership in Energy and Environmental Design (LEED) Standards, LEED Accredited Professional (AP), and LEED checklist. The definitions for Rating System and Version will also need to be changed or removed to reflect the new green building rating system. New definitions will need to be added to reflect the new green building rating system that is in place.

§ 4(A): Change the names of the green building rating systems that are adopted in the ordinance to reflect the new green building rating system or systems.

§ 4(B): Change the name of the green building rating system.

§ 5(A): Change the name of the standard required under the new green building rating system.

§ 5(B): Change the name of the green building rating system or delete if no longer applicable.

§ 5(C) and 5(D) (optional provisions): If adopted, change to the new green building rating system or delete if no longer applicable.

§ 6 (A)(1): (a) Change LEED checklist and LEED points, (b) Change LEED points, (e) Change LEED points to the new green building rating system.

§ 6(A)(5): Change LEED points to the new green building rating system.

§ 6(B)(1)(a) (optional provision): If adopted, change LEED EB:OM checklist and LEED EB:OM points to the new green building rating system.

§ 7(B): Change LEED points to the new green building rating system.

If Energy Star is changed to another green building rating system the following sections of the model ordinance will need to be amended:

§ 3: Remove the definitions for Energy Star Homes Rating System, Energy Star Home Report, HERS, Home Energy Rating System (HERS) Rater, and Home Energy Rating System (HERS) Index. New definitions will need to be added to reflect the new green building rating system that is in place.

§ 4(A): Change the names of the green building rating systems that are adopted in the ordinance to reflect the new green building rating system or systems.

§ 4(B): Change the name of the green building rating system.

§ 5(A): Change the name of the standard required under the new green building rating system.

§ 5(B): Change the name of the green building rating system or delete if no longer applicable.

§ 5(C) and 5(D) (optional provisions): If adopted, change to the new green building rating system or delete if no longer applicable.

§ 6 (A)(1)(a): Change Energy Star home report conducted by third party HERS rater to the new green building rating system.

§ 6(A)(5): Change Energy Star features to the new green building rating system.

§ 7(B): Change Energy Star features to the new green building rating system.

§ 7(C)(1): Change Energy Star Homes to the new green building rating system or delete if no longer applicable.