

# Climate Change Mitigation Easement Template

*Disclaimer – A Climate Change Mitigation Easement (CCME) is a legal document that should be developed and recorded by attorneys representing communities and other parties to the easement. This template is a starting point for municipalities and their attorneys to draft acceptable CCMEs that are uniquely suited to their conditions. The New York State Department of Environmental Conservation Office of Climate Change does not warrant this template and is not liable for any consequences related to the use of the template. Any form of legal template can not to be appropriate for all cases, and this template may contain errors and omissions.*

## **Introduction**

Recent New York State legislation, Environmental Conservation Law Article 54, Title 15, a.k.a. “Climate Smart Communities (CSC) Projects” authorized NYS DEC to set up a funding program to support climate change related projects that have a clear public benefit. This funding is only available to municipalities (cities, towns, villages, and counties) through the Consolidated Funding Application (CFA) and through other rolling rebate programs.

The program entitles municipalities to install projects on property they do not own so long as they can obtain a “Climate Change Mitigation Easement” (CCME) from the owners to ensure the project will meet intended public interest. A municipality may be granted an CCME for lands owned by individuals, business, non- profits, and by other municipalities. Examples include: (1) one municipality granting an easement to another to improve property it owns and but shares with the other, and (2) a private landowner granting a municipality an easement to improve property the private owner leases to the municipality.

NYS DEC provides general guidelines for minimum rights that must be conveyed in a CCME but recommends no format and structure. The goal of this template is to present a standardized format that may be customized and used by communities across New York. The main portion of the CCME is intended to be relatively boilerplate, excepting names, locations, and conventional property descriptions. Schedule B, the “CSC Project Management Plan” contains unique project details and conveys associated rights.

## **Template Format**

### Main Easement

This section is intended to be boiler plate for most conveyances of CCMEs and can be customized by names of the parties and municipalities and other basic information commonly required to identify parcels. This section refers to appropriate laws and establishes the legal framework for the easement.

### Schedule A: Property Description

This is a description for public record to identify the property upon which the CCME is placed. It is usually consistent with what is already in public record and is often a copy of the property description in the parcel’s most recent deed, a schedule also often referred to as “Schedule A.” *Note-* the rights conveyed in the CCME are limited to specific locations on the parcel and to specific uses in Schedule B.

### Schedule B: CSC Project Management Plan (CPMP)

This section is where most customization is required. It holds the project description and intent,

describes users, and assigns access rights for use and for project management. Subsections describe exact improvements, intended use and rights of users, and contain a detailed site plan showing location of equipment, right of ways, and other features needed to convey adequate property access rights to ensure that the projects public purpose is met for the expected useful life of the project.

### **Using the Template**

Project developers, communities' staff, and volunteers may begin to populate content of easement template, with a focus on Schedule B prior to handing over the package to attorneys to complete. The Word version of this template identifies locations where input is needed.

As stated in the Disclaimer, this format is not necessarily optimal, and it is not requisite, rather it is just one of many ways this easement can be constructed. Communities that use this template are encouraged to (1) report any errors in the template that can be corrected to improve the template, or (2) make recommendations to update it to ensure it is of best value.

**CLIMATE CHANGE MITIGATION EASEMENT GRANTED PURSUANT TO ARTICLE 54, TITLE 15, OF THE NEW YORK STATE ENVIRONMENTAL CONSERVATION LAW (ECL) §54-1513**

**THIS INDENTURE** made this [day] day of [month], [year], between Owner(s) [Town/City/Village] of [name of muni], having a principal office at [property owner's address], County of [county], State of New York (the "Grantor"), and [Town/City/Village], having an office at [easement holder's address], County of [county], State of New York (the "Grantee."),

**WHEREAS**, the Legislature of the State of New York has declared that it is in the public interest to establish within the Department of Environmental Conservation (the "Commissioner", or "NYS DEC" or "Department" as the context requires) with its headquarters located at 625 Broadway, Albany, New York 12233, a climate smart communities project funding program ("CSC Funding Program") to provide competitive funding to municipalities to implement eligible climate change mitigation and adaptation projects as described Article 54, Title 15, of the New York State Environmental Conservation Law.

**WHEREAS**, pursuant ECL §54-1513 a municipality that receives funding from the CSC Funding Program is entitled to develop, improve, restore or rehabilitate real property that is not owned by the municipality so long as it obtains a Climate Change Mitigation Easement from the owner of the real property to be enforced as Conservation Easement pursuant to §ECL 49-0305.

**WHEREAS**, NYS DEC has promulgated minimum standards Climate Change Mitigation Easements to be the following:

- The property shall be accessible to the municipality (Grantee) for any necessary work to achieve the funded purpose throughout the anticipated life of the project;
- The property shall provide the identified public benefit, e.g., publicly accessible clean vehicle charging or fueling, throughout the anticipated life of the project;
- The property shall be used to achieve climate protection and mitigation goals pursuant to ECL Article 54 Title 15 "Climate Smart Communities Projects," e.g., reduction of GHG emissions from municipal and community transportation, throughout the anticipated life of the project.
- The property owner (Grantor) shall provide information and data to the municipality or will provide access to the municipality for collection of data, as specified in the rebate contract.
- A minimum ten-year term for the easement to adequately reflect the useful life of both subcategory types of infrastructure."

**WHEREAS**, Grantee and Grantor jointly declare that it is in public interest to collaborate to pursue funding from the CSC Funding Program for the project described in Schedule B, and that property subject to this easement shall be used to achieve climate protection and mitigation goals pursuant to ECL Article 54 Title 15 "Climate Smart Community Projects," including reduction of GHG emissions from municipal and community transportation throughout the anticipated life of the project.

**WHEREAS**, Grantor is the owner of the real property upon which this Climate Change Mitigation Easement is placed (the "Controlled Property"). The Controlled Property is located at [street address of property] in the [town/city/village] of [muni name], County of [county] and State of New York, known and designated on the tax map of the County Clerk of [county] as tax map parcel numbers: [Tax ID Section # Block # Lot #], being the same as that property conveyed to Grantor by deed dated [deed

[date](#)] and recorded in the [\[county\]](#) County Clerk's Office in Liber and Page [\[Instrument # or Liber and Page #s\]](#). The Controlled Property description is set forth in and attached hereto as Schedule A; and

**NOW THEREFORE**, in consideration of the mutual covenants contained herein, Grantor conveys to Grantee a Climate Change Mitigation Easement pursuant to ECL Article 54, Title 15 in, on, over, under, and upon the Controlled Property described herein.

1. Purposes. Grantor and Grantee acknowledge that the purpose of this Climate Change Mitigation Easement is to convey to Grantee real property rights and interests as elaborated in the CSC Project Management Plan (CPMP) attached as Schedule B, and that these rights are binding on the Grantor and the Grantor's successors and assigns, and are enforceable in law or equity against any owner of the Controlled Property, any lessees and any person using the Controlled Property.
2. CSC Project Management Plan (CPMP). Grantor and Grantee agree to structure the CPMP in the following format, and that the intent of each section is as described herein:
  - A. Description and Public Use Purpose: This section describes the project, and its intended users and overall public benefit. Grantor and Grantee agree that if ever further interpretation of the rights conveyed in this easement are needed, that they are intended to be the minimum needed to achieve the public use purpose described in this section.
  - B. Controlled Improvements: This section includes a list of equipment, materials, and other improvements installed or implemented with funding from the CSC Funding Program and therefore subject to this Climate Change Mitigation Easement. Improvements not listed, are not subject to this easement.
  - C. Easement Term: This section sets the duration and sunset date of the easement that adequately reflect the useful life of the Controlled Improvements. After the sunset date, the easement is automatically extinguished.
  - D. Site Description: This section includes a site map, sketch, or description of the Controlled Property to adequately describe the location of improvements and any access right of way's necessary to ensure the improvements are adequately accessible to fulfill the projects intended public purpose.
  - E. Access Rights: This section describes and covenants physical access rights and procedures, including limitations, on time of use and number of spaces. Grantor and Grantee agree that access rights, excepting those provided to Grantee as described in Site Management, are limited to and must be associated with making use of Controlled Improvements at permitted locations and times as described in the CPMP.
  - F. Site Management: This section describes the Grantor and Grantee's plan for managing the Controlled Improvements, and covenants and lists access rights needed by Grantee and its designees to support implementation of the plan. This may include, but is not limited to, site access to collect data as required to the project or rebate contract.

3. Right to Enter and Inspect. Grantee, its agents, employees, or other designees of the Grantee may enter and inspect the Controlled Property in a reasonable manner and at reasonable times to assure compliance with this Climate Change Mitigation Easement and the CPMP.
4. Reserved Grantor's Rights. Grantor reserves for itself, its assigns, representatives, and successors in interest with respect to the Property, all rights as fee owner of the Property, including:
  - A. Use of the Controlled Property for all purposes not inconsistent with, or limited by the terms of this Climate Change Mitigation Easement;
  - B. The right to give, sell, assign, or otherwise transfer part or all of the underlying fee interest to the Controlled Property, subject and subordinate to this Climate Change Mitigation Easement
5. Enforcement.
  - A. This Climate Change Mitigation Easement may be enforced in law or equity by the Grantor and the Grantee and is enforceable against the owner of the Controlled Property. Enforcement shall not be defeated because of any subsequent adverse possession, laches, estoppel or waiver. No general law of the state which operates to defeat the enforcement of any interest in real property shall operate to defeat the enforcement of this easement unless such general law expressly states the intent to defeat the enforcement of such easement or provides for the exercise of the power of eminent domain. It is not a defense in any action to enforce this easement that: it is not appurtenant to an interest in real property; it can be or has been assigned to another holder; it is not of a character that has been recognized traditionally at common law; it imposes a negative burden; it imposes affirmative obligations upon the owner of any interest in the burdened property, or upon the holder; the benefit does not touch or concern real property; or there is no privity of estate or of contract.
  - B. Grantee shall notify Grantor of a breach or suspected breach of any of the terms of this Climate Change Mitigation Easement. Such notice shall set forth how Grantor can cure such breach or suspected breach and give Grantor a reasonable amount of time from the date of receipt of notice in which to cure. At the expiration of such period of time to cure, or any extensions granted by Grantee, the Grantee shall notify Grantor of any failure to adequately cure the breach or suspected breach, and Grantee may take any other appropriate action reasonably necessary to remedy any breach of this Climate Change Mitigation Easement, including the commencement of any proceedings in accordance with applicable law.
  - C. The failure of Grantee to enforce any of the terms contained herein shall not be deemed a waiver of any such term nor bar any enforcement rights.
6. Recordation. Grantor shall record this instrument, within thirty (30) days of execution of this instrument by Grantee or her/his authorized representative in the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

7. Amendment. Any amendment to this Climate Change Mitigation Easement may only be executed by an agreement between the Grantor and Grantee and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.
  
8. Extinguishment. This Climate Change Mitigation Easement will extinguish automatically at the end of term specified in the CPMP in Schedule B. Otherwise, it can only be extinguished if a duly executed release is filed by the Grantee with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.
  
9. Joint Obligation. If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.
  
10. Notice. All notices and correspondence between Parties shall be delivered by hand, by registered mail or by Certified mail and return receipt requested to the following contacts:

**Representative of the Grantor**

[Contact information for Grantor]

**Representative of the Grantee**

[Contact information for Grantee]

The Parties may provide for other means of receiving and communicating notices.

**IN WITNESS, WHEREOF,** [City/Town/Village] of [name of municipality], Grantor, acting by and through the Office of the [Executive] has caused this instrument to be signed in its name.

**Enter Grantor's Name:**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

**Grantor's Acknowledgment**

STATE OF NEW YORK )



the general public, during the facility’s normal business hours, excepting holidays and weekends. Grantor covenants that it will ensure that site will remain accessible for this purpose, excepting routine needs for site maintenance”]

F. Site Management:

[Narrative of basic agreement for managing site, and will cover who is responsible for managing improvements and collecting data as may be needed specific to the projects, etc. This section should covenant access rights needed by the Grantee and its designees to implement the components of this section.