PROGRAMMATIC AGREEMENT
AMONG THE COUNTY OF KANE, AND
THE ILLINOIS STATE HISTORIC PRESERVATION OFFICER
FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT
AND THE HOME INVESTMENT PARTERSHIPS PROGRAMS
OF THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
ADMINISTERED BY THE COUNTY OF KANE

WHEREAS, the County of Kane, Illinois (County) has determined that the implementation of its Community Development Block Grant (CDBG) and HOME Investment Partnerships (HOME) programs for Federal Fiscal Years 2004-2009 may have an effect on properties included or eligible for inclusion in the National Register of Historic Places; and

WHEREAS, these programs are administered by the County's Development Department (Department) and encompass a variety of activities including: rehabilitation, new construction, demolition, and infrastructure improvements and other eligible activities; and

WHEREAS, the County has consulted with the Illinois State Historic Preservation Officer (SHPO) pursuant to Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470f) and its implementing regulations, "Protection of Historic and Cultural Properties" (36 CFR Part 800); and

WHEREAS, the County and the SHPO have determined that the County can more effectively fulfill its Section 106 review responsibilities for CDBG and HOME program activities if a programmatic approach is used to delegate Section 106 compliance responsibilities to the County; and

WHEREAS, the County is a Certified Local Government with a historic preservation commission and qualified professional staff who will carry out duties enumerated below;

NOW, THEREFORE, the County and the SHPO agree that said programs shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

STIPULATIONS

I. Qualified Personnel

A. The County shall ensure that it maintains a staff that meet the qualifications outlined in 36 CFR Part 61, the Secretary of the Interior's Professional Qualification Standard, hereafter referred to as Certified Staff.

B. The County shall ensure that all historic preservation work carried out pursuant to this Agreement is carried out by or under the direct supervision of Certified Staff.

C. The County shall notify the SHPO whether it has employed or contracted with qualified professionals to carry out reviews under the terms of the Programmatic Agreement or whether it will require assistance from SHPO. The vitae of qualified professionals and/or contractors shall be provided to the SHPO for review as a component of the Certified Local Government Annual Report.

D. The County will notify the SHPO of staff changes or vacancies. If the County does not have Certified Staff in place or if the SHPO does not certify a county staff person, or consultant, then this Agreement will become null and void and the County will comply with 36 CFR part 800.4 through 800.6 with regard to individual undertakings covered by this Agreement.

II. Exempt Activities

When the following activities are proposed for properties listed in the National Register or eligible for listing in the National Register, further review is not required because there is limited potential to affect historic resources.

A. Involvement of properties less than 50 years old not listed in or eligible for the National Register.

B. Repair or replacement of electrical, plumbing, heating and ventilation systems or their components, when no structural alteration is involved. This includes repair or replacement of electrical panels, breakers, circuits, switches, receptacles, and fixtures, plumbing and water lines, drains, sewers, fixtures, water heaters, heating vents, floor furnaces, wall heaters, central heat systems and gas lines.

C. Painting of any exterior component which has previously been painted.

D. Repair or replacement of existing infrastructure in kind.

III. Identification and Evaluation of Historic Properties

A. Identification of Historic Properties

1. The County will continue to survey its historic properties and forward information on locally significant properties to the SHPO. This information will be conveyed via the Certified Local Government Annual Report.

2. In conducting a local identification of historic properties the County shall review and consult:

   a. The current listing of the national register of historic places.
   b. The current listing of the Kane County Register of Historic Places.
   c. The Kane County Rural Structures Survey (1987).
   d. The current landmarks list and surveys for the municipalities participating in the Kane County CDBG Program.
   e. The Illinois Historic Sites survey (1972).

3. When the County determines that additional information is required to adequately assess the presence of historic properties, additional surveys shall be conducted that are responsive to the nature of the undertaking. As appropriate, the focus of the identification surveys shall be on target areas rather than property-by-property.

B. Evaluation of National Register Eligibility

1. Documentation for properties 50 years or older involved in a HUD funded undertaking that are not individually listed in the National Register of Historic Places will be evaluated by Certified Staff. Certified Staff shall apply the National Register criteria and determine if the structures qualify for National Register eligibility.

2. If Certified Staff has questions concerning the eligibility of a certain property, he or she will forward documentation to the Kane County Historic Preservation Commission (Commission) for evaluation and recommendation.

3. If the Commission has questions concerning the eligibility of a certain property, they will forward documentation to the SHPO for evaluation and recommendation. If the Commission chooses not to accept the recommendation of the SHPO, in this instance, they will forward adequate documentation, including the views of the SHPO, to the Keeper of the National Register of Historic Places for a formal determination of eligibility in accordance with 36 CFR Part 800.4 (c). The SHPO shall be notified accordingly.

4. Certified Staff may submit eligibility determinations for properties to the Commission and SHPO concurrently in order to expedite the Section 106 review.

5. Properties determined to be not listed in the National Register or not eligible for the National Register will be documented as such by Certified Staff and a copy of the determination will be included in the individual project files.

IV. Treatment of Historic Properties

A. Properties listed in the National Register, eligible for listing in the National Register, and which have been determined to meet the National Register criteria in accordance with Stipulation III shall be treated in accordance with this section.

B. Rehabilitation

1. The County shall ensure that work write-ups of plans and specifications for all rehabilitation activities not listed as exempt under Stipulation II are developed in accordance with the recommended approaches in *The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings* (Standards).

2. Prior to the initiation of rehabilitation activities, program recipients shall submit work write-ups or plans, photographs and specifications which evidence adherence to the Standards to Certified Staff for review and approval. These plans must be complete enough in order to facilitate understanding of the proposed project.

3. Should Certified Staff recommend modifications to the work write-ups or plans and specifications to ensure that the project meets the Standards, program recipients shall make the appropriate modifications and submit revised work write-ups or plans to Certified Staff. If Certified Staff, in consultation with the

Commission, determine that the project meets the criteria of adverse effect, the County will consult with the SHPO to develop a Standard Mitigation Agreement in accordance with Stipulation V. If the SHPO determines that the Standard Mitigation Measures do not apply, the County shall notify the Council and initiate the consultation process set forth in 36 CFR Part 800.5(c).

4. If a project will have no effect or no adverse effect on historic resources, it may proceed after review and documentation in individual project files by Certified Staff.

C. Demolition and Relocation of Historic Properties

1. The County shall not proceed with the demolition or relocation of contributing buildings within an historic district or properties listed in or eligible for listing in the National Register until the procedures set forth in this section are completed.

2. Demolition or relocation of properties that are included in or eligible for inclusion in the National Register, listed as contributing buildings within a historic district or included in the surveys listed in Section III.A.2, parts a through e, will be reviewed by the Commission on a case by case basis. The County and Certified Staff will submit the following documentation to the Commission for review:

   a. Location (including map) and description of the property proposed for demolition or relocation, including views of the public.
   b. Reasons for demolition, including documentation of building code violations, structural reports citing building deficiencies and estimated costs for rehabilitation; or reasons for relocation.
   c. A cost comparison of rehabilitation versus property acquisition and demolition and summary of alternatives considered.
   d. Photographs of the property depicting its current condition.
   e. Future plans for the site.
   f. Proposed site for relocation.

3. If the Certified Staff, in consultation with the Commission, determine that demolition or relocation cannot be avoided, the County will consult with the SHPO to develop a Standard Mitigation Agreement in accordance with Stipulation V. (If the SHPO specifies that the Standard Mitigation Measures do not apply, the County shall notify the Council and initiate the consultation process set forth in 36 CFR Part 800.5 (c).

D. New Construction

The County shall ensure that the design of new construction, infill construction, or additions to historic buildings is compatible with the historic qualities of the historic district or adjacent historic buildings in terms of size, scale, massing, design, features, and materials, and is responsive to the recommended approaches for new construction set forth in the Standards and/or in the Kane County Historic Preservation Ordinance.

1. Program recipients shall develop preliminary design plans in consultation with the County. Final plans and specifications will be submitted to Certified Staff for review and approval prior to the initiation of construction activities.

2. If Certified Staff, in consultation with the Commission, determine that the design of the new construction does not meet the Standards or would otherwise result in an adverse effect to historic properties, the County shall consult with the SHPO to develop a Standard Mitigation Measures Agreement in accordance with Stipulation V.

3. If the SHPO determines that the Standard Mitigation Measures do not apply, the Country shall notify the Council and initiate the consultation process set forth in 36 CFR Part 800.5(c).

E. Handicapped Accessibility

Handicapped Accessibility projects undertaken by the County to comply with the American Disabilities Act and other local and federal requirements will follow these guidelines:

1. The County will explore all alternative methods to provide handicapped accessibility to historic buildings consistent with the Standards, National Park Service Brief Number 32 "Making Historic Properties Accessible," and the Department of the Interior's report *Access to Historic Buildings for the Disabled: Suggestions for Planning and Implementations.*

2. To the extent feasible, handicapped accessibility features will not be located on primary elevations of historic buildings and will not result in the removal of significant historic or architectural features or materials. Final plans and specifications for handicapped accessibility projects shall be reviewed and approved by Certified Staff to determine if the projects meet these guidelines. If the Certified Staff, in consultation with the Commission, determine that the Standards cannot be met or if the project could have an adverse effect on a historic property, then prior to taking any action, the County will consult with the SHPO and initiate procedures set forth in Stipulation V.

F. Site Improvements and Public Improvements

1. Site and public improvements within historic districts including sidewalk improvements, repaving of streets, installation of landscaping, street lighting and street furniture and other infrastructure improvements will adhere to the Standards. These improvements will be designed to ensure that character-defining elements of historic properties are preserved through repair or replacement in kind. Any new materials or features introduced in a historic district will be responsive to the character of that district.

2. Final plans and specifications for site and public improvements shall be reviewed and approved by Certified Staff. If the Standards cannot be met or if the project could have an adverse effect on historic properties, then prior to taking any action the County will consult with the Commission.

G. Emergency Undertakings

1. When emergency demolition is required for historic properties associated with HUD funded activities, Certified Staff will conduct an immediate review, if conditions allow. The existence of an emergency situation shall be based upon the need to eliminate an imminent threat of the health and safety of residents as identified by local building inspectors, fire department officials or other local officials.

2. The County shall forward documentation to Certified Staff to review immediately upon notification that an emergency exists. Documentation should include:

   a. Nature of the emergency
   b. Historic property involved
   c. Current condition of the building, including photographs
   d. Time frame allowed by local officials to respond to, or correct, the emergency situation.

3. The County shall consult with the SHPO to the greatest extent possible given particular circumstances.

4. The County shall ensure that any mitigation measures recommended by the Certified Staff or SHPO are implemented, if feasible.

V. Resolution of Adverse Effects

A. If the County, in consultation with the Commission, determines that a project meets the Criteria of Adverse Effect, the County shall consult with the SHPO to determine whether the historic properties should be treated in accordance with the Standard Mitigation Measures outlined in Appendix A or reviewed, in accordance with 36CFR 800.6.

1. The County shall submit to the SHPO, background documentation to include an analysis of alternatives, recent structural reports or assessments of conditions, cost estimates for rehabilitation, programmatic and economic considerations, and marketing studies.

2. If the SHPO determines that a proposed demolition is an acceptable loss or no prudent and feasible alternatives exist to implementing the undertaking without adverse effects, the County and the SHPO, shall execute a Standard Mitigation Measures Agreement as outlined in Appendix A. No further review required by the Council.

B. Standard Mitigation Measures Agreements shall not be executed when one of the following circumstances exist.

1. The SHPO determines that the Standard Mitigation Measures do not apply to an undertaking.

2. The County fails to respond within 30 days.

3. The undertaking will adversely affect a National Historic Landmark.

4. The public objects during the open Kane County Historic Preservation Commission meeting, the appropriate municipal preservation commission meetings or by certified letter.

5. Historic or prehistoric human remains are present within the area of potential effect.

VI. Treatment of Archeological Sites

A. The County shall notify the SHPO when ground-disturbing activities over an acre are part of a local undertaking.

1. The County shall request the SHPO's opinion regarding the potential effect of such activities on archeological properties prior to initiation of project activities. If the SHPO can determine that there is a high probability for the presence of significant archeological sites of cultural remains within the project area, the County or program recipients shall contract a qualified archeologist to conduct archeological surveys. The County shall forward the scope of work for the archeological survey to the SHPO for review and approval.

2. If the County and the SHPO determine that there is the potential for archeological properties listed in or eligible for listing in the National Register, the County shall seek ways to avoid the archeological properties. If the properties cannot be avoided, the County and the SHPO shall develop a data recovery plan that is consistent with the Secretary of the Interior's Standards and Guidelines for Archeological Documentation (48 CFR 44734-37) and take into account the Council's publication, "Treatment of Archeological Properties", its subsequent revisions and appropriate State guidelines. The County shall ensure that a qualified archeologist will implement the approved plan.

VII. Public Involvement

A. Each year the County will notify the public of the County's current CDBG and HOME Programs and make available for public inspection documentation on the County's CDBG and HOME programs. Included in this documentation will be general information on the amount of CDBG and HOME funds available in the current program year, the types of activities undertaken with CDBG and HOME funds, and how interested persons can receive further information on the program.

B. At any time during the implementation of the measures stipulated in this Programmatic Agreement, should the public raise an objection pertaining to the treatment of an historic property the County shall notify the Commission and take the objection into account. Program recipients, the County, the Commission, or the SHPO, when requested by the objector, shall consult to resolve the objection. Program recipients are not required to cease work while objections are being reviewed, but the County reserves the right to halt work in light of valid arguments from the public.

VIII. Administration, Monitoring and Reporting

A. The SHPO shall provide comments within 30 days for reviews or comments requested by the County or the Commission, with the exception of emergency undertakings. In the event that the SHPO fails to comment, within the 30 day time period, the County can assume that the SHPO concurs.

B. The SHPO shall conduct periodic training workshops for Certified Staff to review the requirements of this Programmatic Agreement. The SHPO shall also provide guidance related to implementation of the terms of the Programmatic Agreement.

C. The County shall ensure the SHPO of documentation for local undertakings, which involve historic properties and were subject to the terms of the Programmatic Agreement in individual project or environmental files. Each project shall include at a minimum:

1. Documentation why one of the exemptions from review is applicable.
2. Comments from Certified Staff, the Commission or the SHPO regarding the National Register eligibility of the property.
3. Proposed treatment of historic properties.
4. Before and after photographs.
5. Work write-ups.
6. Date the project was completed.

D. Documentation shall be available for review by the SHPO following reasonable notice.

E. The SHPO shall conduct periodic monitoring visits of the County's project sites to ensure compliance with actions, plans, documents and agreements approved by the County or the SHPO pursuant to this Programmatic Agreement.

F. Nothing in this agreement shall be construed as meaning that the County cannot request the advice or assistance of the SHPO at any time.

G. As a component of the Certified Local Government Annual Report, the County shall summarize activities carried out under the terms of this Programmatic Agreement. The report will be submitted no later than June 1 of each year. The Annual Report shall include:

1. List of property addresses submitted for review.
2. Program in which the undertaking took place.
3. Evaluation of National Register eligibility, and if eligible, the finding of effect.

IX. Effective Date

This Programmatic Agreement shall take effect on the date it is signed by all the parties, including the County and the SHPO. The Programmatic Agreement will remain in effect until December 1, 2009, unless terminated due to failure to comply with the terms of the agreement.

X. Amendments

A. Any party to this Programmatic Agreement may request it be amended or modified, whereupon the County and the SHPO will consult in accordance with 36 CFR Part 800.14.

B. Any resulting amendments or addenda shall be developed and executed among the County and the SHPO in the same manner as the original Programmatic Agreement.

XI. Termination

Any party to the Programmatic Agreement may terminate the Agreement by providing 30-calendar days notice to the other party, provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination.

XII. Compliance with Agreement

Execution and implementation of this Programmatic Agreement and carrying out its provisions evidences that the County has satisfied its Section 106 responsibilities for all individual undertakings of the programs.

By: _____ Date: 11-18-04
ILLINOIS STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: 11-5-2004
COUNTY OF KANE