PROGRAMMATIC AGREEMENT
BETWEEN
THE CITY OF ROCKFORD, ILLINOIS AND
THE ILLINOIS HISTORIC PRESERVATION AGENCY
REGARDING EECBG UNDERTAKINGS

April 6, 2010

WHEREAS, the United States Department of Energy (DOE) administers the following financial assistance program: ***the Energy Efficiency and Conservation Block Grant Program*** under the Energy Independence and Securities Act of 2007 (EECBG);

WHEREAS, the unprecedented levels of funding available to the Program, due in large measure to ARRA, has created a large volume of projects requiring expedited historic preservation reviews to ensure the timely obligation of funds, that create new jobs, and improve local and state economies;

WHEREAS, the Illinois State Historic Preservation Office (SHPO) is experiencing unprecedented numbers of requests for historic preservation review of undertakings funded by all Federal Agencies, including undertakings funded by the Program;

WHEREAS, the City of Rockford, Illinois (CITY) is receiving financial assistance from DOE to carry out the Program;

WHEREAS, the projects funded by the Program are undertakings subject to review under Section 106 of the National Historic Preservation Act, 16 U.S.C 470f (NHPA) and its implementing regulations at 36 CFR part 800 and include rehabilitation, energy efficiency retrofits, and renewables;

WHEREAS, DOE has determined that these undertakings may adversely affect properties that are listed in or eligible for listing in the National Register of Historic Places (National Register) and subject to the requirements of the National Historic Preservation Act;

WHEREAS, DOE, the Advisory Council on Historic Preservation (ACHP), and the National Conference of State Historic Preservation Officers (NCSHPO) have determined that the requirements of Section 106 can be more effectively and efficiently fulfilled if a programmatic approach is used to stipulate roles and responsibilities, exempt undertakings from Section 106 review, establish tribal protocols, facilitate identification and evaluation of historic properties, establish treatment and mitigation measures, and streamline the resolution of adverse effects;

WHEREAS, by memorandum dated August 28, 2009, DOE delegated certain tasks necessary for compliance with Section 106 of the NHPA to grantees and subgrantees of funding from the Program (CITY);

WHEREAS, according to the August 28, 2009 memorandum, the CITY is authorized, to

initiate Section 106 compliance in accordance with 36 CFR 800.2 (c)(4);

WHEREAS, the undertakings covered under this Programmatic Agreement (PA) are not located on Tribal lands and are primarily smaller scale activities and routine projects, without the potential for adversely affecting historic properties, rather than complex undertakings with a greater potential to adversely affect historic properties, which would require completion of the typical Section 106 review process;

NOW, THEREFORE, the CITY and the SHPO agree that the Program shall be administered in accordance with the following stipulations to satisfy Section 106 responsibilities for all individual undertakings of the Program:

STIPULATIONS

CITY and the SHPO shall ensure that the following stipulations are carried out:

I. Roles and Responsibilities
   A. The CITY shall be responsible for consulting and conducting Section 106 reviews in a timely manner, preparing documentation for the SHPO, and maintaining records on undertakings. Undertakings that involve properties greater than fifty (50) years old and are not listed on Appendix A shall be submitted to the SHPO for review in accordance with this agreement.
   C. CITY shall ensure that the provisions of this PA apply to its sub-awards.
   D. The CITY is encouraged to use qualified professionals in conducting their Section 106 requirements.
   E. The SHPO shall be responsible for reviewing project documentation and participation in consultation as set forth in this PA.
   F. The ACHP shall be responsible for providing technical guidance, participating in dispute resolutions if appropriate, and monitoring the effectiveness of this PA.

II. Exemptions from Section 106 review
   A. The CITY shall not submit to the SHPO undertakings in accordance with Appendices A or B as they do not have the potential to cause effects on historic properties even when historic properties may be present. The CITY and the SHPO **may agree to modify Appendix A.** CITY will maintain file records with verification that undertakings were determined to be exemptions for a period of three (3) years from project completion and make them available for review if requested by SHPO.
   B. If a property has been determined to be ineligible for inclusion in the National Register within the last five (5) years from the date the CITY made its application for DOE financial assistance, then no further review is required under this PA.

III. Identification and Evaluation
   A. The CITY shall establish the Area of Potential Effect (APE) for all program undertakings defined in the DOE grant agreement for the State.

B. The CITY shall complete the identification and evaluation of historic properties utilizing existing information including the National Register, state surveys, and county and local surveys. In addition, the CITY and SHPO may use or develop protocols that are consistent with 36 CFR Section 800.4 for the review of consensus determinations of eligibility.
Archaeology surveys are required only for new ground disturbing project undertakings and shall be limited in scope subject to the concurrence of Indian tribes or Native Hawaiian Organizations (NHO) that may attach religious or cultural significance to historic properties in the project area. Project undertakings requiring more than minimal ground disturbance shall be forwarded to the SHPO or Indian tribes or NHOs concurrently for review.

D. In order to avoid potential delays, prior to initiating undertakings the SHPO may review the CITY's scopes of work for above ground surveys and archaeology surveys that are deemed necessary to administer the CITY's Programs and to implement the terms of this PA.

E. The CITY shall refer disputes regarding determinations of eligibility to DOE for review and referral to the Keeper of the National Register in accordance with 800.4(c)(2).

IV. Treatment of Historic Properties

A. When the CITY and the SHPO concur that an undertaking is designed and planned in accordance with the Secretary of the Interior's *Standards for the Treatment of Historic Properties* (36 CFR Part 68, July 12, 1995 *Federal Register)* (Standards), that undertaking will not be subject to further Section 106 review.

B. The CITY and SHPO will make best efforts to expedite reviews through a finding of "No Adverse Effect with conditions" when the CITY and the SHPO concur that plans and specifications or scopes of work can be modified to ensure adherence to the Standards. If the undertaking cannot meet the Standards or would otherwise result in an adverse effect to historic properties, the CITY will proceed in accordance with Stipulation V.

V. Resolution of Adverse Effects

A. The CITY shall consult with the SHPO to resolve adverse effects. The CITY will notify DOE of the pending consultation, and DOE will participate through its designated representative.

B. The CITY may use standard stipulations included in Attachment A of this PA, or as negotiated as part of this PA between the SHPO and the CITY, or if the project warrants, use of an alternate PA due to the complexity of the project activity.

C. Consultation shall be coordinated to be concluded in 45-days or less to avoid the loss of funding. In the event the consultation extends beyond this period, DOE shall formally invite the ACHP to participate in consultation. The ACHP will consult with DOE regarding the issues and the opportunity to negotiate a Memorandum of Agreement (MOA). Within seven (7) days after notification, the ACHP will enter consultation and provide its recommendation for either

concluding the Section 106 review through an MOA or Chairman's comment from the ACHP to the Secretary of DOE within 21 days.

D. In the case of an ACHP Chairman comment, DOE may proceed once DOE provides its response to the ACHP.

VI. Emergency Situation Undertakings

A. When an emergency undertaking is required for historic properties associated with the undertakings, the CITY shall allow SHPO five (5) business days to respond, if feasible. Emergencies exist when there is a need to eliminate within thirty (30) days an imminent threat to health and safety of residents as identified by local or County building inspectors, fire department officials, or other local or County officials.

1. The CITY shall forward documentation to the SHPO for review immediately upon notification that an emergency exists. Documentation should include a) nature of the emergency; b) the address of the historic property involved; c) photographs showing the current condition of the building; and d) the time-frame allowed by local officials to respond to, or correct, the emergency situation.
2. The CITY shall consider mitigation measures recommended by the SHPO and implement them, if feasible.

VII. Public and Consulting Party Involvement

A. The CITY shall maintain a list of undertakings and shall make the documentation available to the public. The CITY shall notify the SHPO if its notified of other consulting parties or public interest in any undertakings covered under the terms of the PA.

B. The CITY, independently or at the recommendation of the SHPO, may invite interested persons to participate as consulting parties in the consultation process for adverse effects in accordance with Stipulation V.

VIII. Administrative Coordination

A. The CITY, in consultation with the SHPO, may develop procedures allowing for the use of local reviews conducted by Certified Local Governments (CLG) when such procedures avoid the duplication of efforts.

B. The CITY, in consultation with the SHPO, may determine that an undertaking has already been reviewed under an existing Section 106 effect determination or agreement document, then no further Section 106 review under this PAis required.

C. The SHPO shall provide comments to the CITY within thirty (30) days, unless otherwise agreed upon by the SHPO and the CITY, for reviews required under the terms of this PA with the exception of emergency undertakings. In the event that the SHPO fails to comment within the established period, the CITY can assume the SHPO has concurred, and proceed.

D. The CITY shall advise sub-grantees in writing of the provisions in Section 110 (k) of the Act and will advise the sub-grantees that Section 106 reviews may be

compromised when project undertakings are initiated prematurely.

E. The SHPO and the CITY shall make every effort to expedite Section 106 reviews for a period of less than the 30-day review when consistent with the terms of the DOE grant agreements and the CITY intends to utilize the services of qualified professionals.

F. For projects that will require either an Environmental Assessment or an Environmental Impact Statement under the National Environmental Policy Act (NEPA), nothing contained in this PA shall prevent or limit the CITY and DOE from utilizing the procedures set forth in 36 CFR 800.8 to coordinate and conduct the historic preservation review in conjunction with the NEPA review.

IX. Discoveries

If historic properties are discovered or unanticipated effects on historic properties located within a project's APE after the undertaking has been initiated, the CITY will implement the following procedures:

A. The CITY shall immediately cease all operations for the portion of the undertaking with the potential to affect an historic property;

B. The subgrantee shall advise the CITY of the National Register eligibility of the historic property and the potential of the undertaking to impact its qualifying characteristics and an explanation of the whether the SHPO or Indian tribes and NHOs concur with proposed avoidance, treatment plan or mitigation plan;

C. The CITY or DOE shall notify Indian tribes or NHOs of any discoveries that have the potential to adversely affect sites or buildings of religious or cultural significance to them. After reviewing such discoveries, the Indian tribes or NHOs can request further consultation on the project by notifying DOE, ACHP, and the SHPO in writing.

D. The CITY or subgrantee shall implement the avoidance, treatment or mitigation plan and advise the CITY and DOE, if appropriate, of the satisfactory completion of the approved work. Once the approved work is complete may resume the activities that were halted to address the discovery situation.

X. Dispute Resolution

A. Should the SHPO object within the time frames outlined in this PA to any project undertakings, the CITY shall **consult further with the** SHPO to attempt to remove the basis for the SHPO's objection. In the event that the SHPO's objection is not withdrawn, then the CITY shall refer the matter to DOE. The CITY shall forward all documentation relevant to DOE, who will notify and consult with the ACHP.

B. The ACHP will provide its recommendations, if any, within 21 days following receipt of relevant documentation. DOE will take into account the ACHP's recommendations or formal comments in reaching a final decision regarding the dispute.

XI. Reporting and Monitoring

A. DOE, the ACHP, and the SHPO may monitor any undertakings carried out pursuant to this PA. The ACHP may review undertakings, if requested by DOE. DOE shall be entitled to address and make determinations on overall policy or administrative issues related to the implementation of these Programs.
B. The CITY shall adhere to DOE's established protocols for ARRA reporting program undertakings.
C. DOE will submit annual reports to ACHP and NCSHPO commencing October 15,2010 summarizing the Programs' undertakings, to include data on number of undertakings, the number of exempt undertakings, and reviews conducted under this PA.

XII. Amendments

The SHPO or the CITY may request that this PA be amended, whereupon DOE and the SHPO, and the ACHP, if involved, will consult to consider such an amendment. Any such amendments shall be developed and executed among DOE, the CITY, and the SHPO in the same manner as the original P A, and pertain only to this State PA.

XIII. Duration of Agreement

This PA will be valid for five (5) years from the date of execution, as verified with DOE filing the PA with the ACHP.

XIV. Termination of Agreement

DOE, the SHPO, or the CITY may terminate the PA, provided that the party proposing termination notifies the other signatories and the ACHP in writing explaining the reasons for termination and affording the other signatories at least thirty (30) days to consult and seek alternatives to termination.

Signatories:

4/6/2010

Mayor, City of Rockford, Illinois — Date

4/7/2010

Anne E. Haaker — Date
Deputy State Historic Preservation Officer

APPENDIX A - EECBG UNDERTAKINGS EXEMPT FROM SECTION 106 REVIEW

A. Category 1 – No Consultation required

DOE and the SHPO have concluded that the following undertakings do not have the potential to cause effects on historic properties per 36 CFR § 800.3(a)(1):

1. ***General efficiency measures not affecting the exterior of the building*:**

   a. Energy audits and feasibility studies
   b. Caulking and weather-stripping around doors and windows in a manner that does not harm or obscure historic windows or trim.
   c. Water conservation measures - like low flow faucets, toilets, shower heads, urinals - and distribution device controls
   d. Repairing or replacing in kind existing driveways, parking areas, and walkways with materials of similar appearance
   e. Excavating to gain access to existing underground utilities to repair or replace them, provided that the work is performed consistent with previous conditions
   f. Ventilating crawl spaces
   g. Replacement of existing HVAC equipment including pumps, motors, boilers, chillers, cooling towers, air handling units, package units, condensers, compressors, heat exchangers that do not require a change to existing ducting, plumbing, electrical, controls or a new location, or if ducting, plumbing, electrical and controls are on the rear of the structure or not visible from any public right of way.
   h. Adding or replacing existing building controls systems including HVAC control systems and the replacement of building-wide pneumatic controls with digital controls, thermostats, dampers, and other individual sensors like smoke detectors and carbon monoxide detectors (wired or non-wired)
   i. New installation of non-hard wired devices including photo-controls, occupancy sensors, carbon dioxide, thermostats, humidity, light meters and other building control sensors, provided the work conforms with applicable state and local permitting requirements
   j. Adding variable speed drive motors
   k. Insulation of water heater tanks and pipes
   l. Furnace or hot water tank replacement that does not require a visible new supply or venting

2. ***Insulation measures not affecting the exterior of the building*:**

   a. Thermal insulation installation in walls, floors and ceilings (excluding spray foam insulation)
   b. Duct sealing, insulation, repair or replacement in unoccupied areas
   c. Attic insulation with proper ventilation; if under an effective R8 - add additional R-19 up to R-38 (fiberglass bat only)
   d. Band joist insulation - R-II to R19 as applicable
   e. Water heater tank and pipe insulation

3. Electric base load measures not affecting the exterior the building:

a. Appliance replacement (upgrade to EnergyStar appliances)
b. Compact fluorescent light bulbs
c. Energy efficient light fixtures, including ballasts (Replacement)
d. LED light fixtures and exit signs (Replacement)
e. Upgrade exterior lighting (replacement with metal halide bulbs, LEDs, or others) along with ballasts, sensors and energy storage devices not visible from any public right of way

4. Lighting retrofitting of municipal parking structures and municipal parking lots

B. Category 2 - No Consultation Required if SOI Standards are Adhered to and Verified by Qualified Staff, if Applicable

1. Efficiency and repair measures:

a. Painting over previously painted exterior surfaces, provided destructive surface preparation treatments are not used (such as water-blasting, sandblasting and chemical removal)
b. Installation or replacement of downspout extensions, provided that the color of the extensions is historically appropriate for the period and style of the property
c. Repairing or upgrading electrical or plumbing systems and installing mechanical equipment, in a manner that does not permanently change the appearance of the interior or exterior of the building
d. Installation of new HVAC equipment (such as pumps, motors, boilers, chillers, cooling towers, air handling units, package units, condensers, compressors, or heat exchangers) in a manner that does not permanently change the appearance of the building.
e. Integrated shingle-style or thin film solar systems on the rear roof of the structure, behind the parapet or not visible from the public right of way.
f. Solar systems (including photovoltaic and solar thermal) not visible from the public right of way and if ground-mounted can be installed without ground disturbance and if roof-mounted will not require new building reinforcement.
g. Wind system additions to existing wind power facilities that will not require ground disturbance and if building mounted will not require building reinforcement.
h. Lead-based paint abatement in accordance with the Standards and Preservation Brief #37
i. Building cleaning in accordance with the Standards and Preservation Briefs #1, #6, and #10
j. Repairing masonry, including re-pointing and rebuilding chimneys in accordance with the Standards and Preservation Brief # 2
k. New lighting controls including photo-sensors and shading elements if not visible from the public right of way

l. New metering devices in a manner that does not permanently change the appearance of the interior or exterior of the building, or if the addition is on the exterior of the structure and is not visible from the public right of way
m. New water efficient fixtures and fittings in a manner that does not permanently change the appearance of the interior or exterior of the building

2. Installation or repair of roofing, siding and ventilation:

a. White Roofs, Cool Roofs, Green Roofs, Sod or Grass Roofs not visible from the public right-of-way
b. Rainwater catches and/or gray water systems not viewable from the public right of way
c. Repair or replacement of existing exterior siding provided that new siding closely resembles the existing siding in dimension, profile and texture
d. Flat or shallow pitch roof replacement (shallow pitch is defined as a pitch with a rise-to-run ratio equal to or less than 3" to 12") with no part of the surface of the roof visible from the ground
e. Roof repair or replacement with materials that closely resemble the historic materials and form, or with replacement materials that are close to the original in color, texture, composition and form to restore the original feature based on historic evidence, and in a manner that does not alter the roofline
f. Installing vents (such as continuous ridge vents covered with ridge shingles or boards, roof vents, bath and kitchen vents, soffit and frieze board vents or combustion appliance flues) if not located on a primary roof elevation or not visible from the public right-of-way
g. Installing foundation vents, if painted or finished to match the existing foundation material.

3. Windows and doors:

a. Installing storm windows, storm doors or wood screen doors in a manner that does not harm or obscure historic windows, doors or trim
b. Installing insulated exterior replacement doors where the door openings are not altered and are not visible from the public right-of-way
c. Window or glazing treatments that do not change the appearance of the interior or exterior of the building, or if the addition is on the exterior of the structure

ATTACHMENT A: STANDARD MITIGATION MEASURES FOR ADVERSE EFFECTS

The CITY and the SHPO may develop and execute an Agreement that includes one or more of the following Standard Mitigation Measures, as may be modified to a particular activity, with the concurrence of both parties, for undertakings determined to have an adverse effect on listed or eligible historic resources. The ACHP will not be a party to these Agreements. However, the CITY must submit a copy of each signed Agreement to the SHPO, and the ACHP within 30 days after it is signed by the CITY and the SHPO.

1. Recordation

The CITY shall ensure that the historic property is recorded prior to its alteration in accordance with methods or standards established in consultation with the SHPO. The SHPO shall identify appropriate archive locations for the deposit of recordation materials and the CITY shall be responsible for submitting required documentation to identified archive locations. The CITY and the SHPO may mutually agree to waive the recordation requirement in situations where the integrity of the building has been compromised or other representative samples of a similar historic resources has been previously recorded.

2. Architectural Salvage

The CITY, in consultation with the SHPO, shall identify significant architectural features for salvage, and appropriate parties to receive the salvaged features. The CITY shall ensure that any architectural features identified for salvage are salvaged prior to initiation of undertakings and properly stored and curated. When feasible, and determined appropriate in consultation with SHPO, salvaged architectural features shall be reused in other preservation projects.

3. Rehabilitation

The CITY shall ensure that the treatment of historic properties which the SHPO has determined does not meet the *Standard,* or SHPO approved design guidelines, is carried out in accordance with treatments agreed upon by the CITY and the SHPO and are incorporated in the final plans and specifications. The final plans and specifications shall be approved by the SHPO prior to initiating the undertaking.

4. New Construction

The CITY shall ensure that the design of new buildings, or additions, which the SHPO has determined does not meet the *Standards,* or SHPO approved design guidelines, is carried out in accordance with the final plans and specifications reviewed and approved by the SHPO prior to initiating the undertaking.

5. Archaeology

In cases where the undertaking will cause unavoidable adverse effects to National Register eligible archaeological properties, the CITY shall consult with the SHPO to determine whether data recovery or some other treatment measure is in the public interest. If data recovery is the agreed upon treatment measure, the CITY shall consult further with the SHPO to develop and implement a data recovery plan for those portions of the historic property that will be adversely affected. The data recovery plan shall:

- be based on firm background data, sound planning, and accepted archaeological methods;
- be consistent with applicable State laws and regulations;
- be accomplished in a thorough, efficient manner, using the most cost effective techniques practicable;
- provide for appropriate curation of archeological materials and records, and
- provide for reporting and interpretation of what has been learned in a format understandable and accessible to the public;
- be consistent with the National Park Service's *Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines* (at: http://www.nps.gov/history/local-law/arch_stnds_7.htm). and shall take into account the ACHP's publications, *Recommended Approach for Consultation on Recovery of Significant Information from Archeological Sites* (1999), ACHP Section 106 *Archaeology Guidance* (at: http://www.achp.gov/archguide/), and any archaeological guidance issued by the SHPO.