

**PROGRAMMATIC AGREEMENT
BETWEEN THE CITY OF AURORA
AND THE ILLINOIS STATE HISTORIC PRESERVATION OFFICER
FOR THE ADMINISTRATION OF SECTION 106 FOR CERTAIN PROGRAMS FUNDED BY
THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SEPTEMBER 1, 2020 TO AUGUST 31, 2025**

WHEREAS, the City of Aurora, Illinois, (City), through its Department of Neighborhood Redevelopment, is a recipient of HUD funds; and

WHEREAS, projects that receive such funds constitute Undertakings subject to the National Historic Preservation Act of 1966, as amended, 54 U.S.C. § 306108, and its implementing regulations (36 CFR Part 800) (Act); and

WHEREAS, collectively, these programs provide financial support for a wide variety of activities, including rehabilitation, new construction, demolition, infrastructure improvements, and other eligible activities; and

WHEREAS, as used herein, the term “Illinois State Historic Preservation Officer” (SHPO) means the Illinois governmental official appointed or designated pursuant to section 101(b)(1) of the Act to administer the State Historic Preservation Program or a representative designated to act for the SHPO (see 36 C.F.R. § 800(v)); and

WHEREAS, the responsibilities of the SHPO under Section 106 and 36 C.F.R. Part 800 are to advise, assist, review, and consult with federal agencies as they carry out their historic preservation responsibilities, and to respond to federal agencies requests within a specified period of time; and

WHEREAS, the Illinois State Historic Preservation Office currently resides within the Illinois Department of Natural Resources (IDNR), and the Director of IDNR is the duly designated SHPO; and

WHEREAS, the City has consulted with SHPO pursuant to the Act; and

WHEREAS, the City and the SHPO have determined that the City can more effectively fulfill its responsibilities under the Act for the specified HUD-funded activities if a programmatic approach is used to delegate to the City compliance responsibilities pursuant to the Act; and

WHEREAS, the City is a Certified Local Government with a Historic Preservation Commission (Commission) and Qualified Personnel who will carry out duties enumerated below;

NOW, THEREFORE, the City and the SHPO agree that the programs shall be implemented in accordance with the following stipulations in this Programmatic Agreement (Agreement) in order to take into account the effect of Undertakings on historic and potentially historic properties.

STIPULATIONS

I. Qualified Personnel

- A. The City shall ensure that it maintains a staff, whether employed or contracted, hereafter referred to as Qualified Personnel, that meets the following:
1. Qualifications outlined in 36 CFR Part 61, the Secretary of the Interior's Professional Qualification Standards, for History or Architectural History (see: www.nps.gov/history/local-law/arch_stnds_9.htm); and
 2. Successful completion of "The Section 106 Essentials" course given by the Advisory Council on Historic Preservation (ACHP) (see: www.achp.gov/training/classroom). To be considered as Qualified Personnel, contractors must have successfully completed the course at the time of hiring, and City employees must successfully complete the course within 12 months of hiring or within 12 months of the acceptance of this Agreement and provide proof of that completion to the SHPO. Alternative training other than the "The Section 106 Essentials" course may be allowed to meet this requirement if prior approval is obtained from the SHPO.
 3. The requirement for completion of the "The Section 106 Essentials" course will be waived if Qualified Personnel can demonstrate a minimum of one year experience reviewing projects under Section 106.

Qualified Personnel's curriculum vitae and proof of successful completion of "The Section 106 Essentials" course, if required, shall be submitted to the SHPO for review.

- B. The City shall ensure that all historic preservation work carried out pursuant to this Agreement is carried out by or under the direct supervision of Qualified Personnel.
- C. The City shall notify the SHPO of Qualified Personnel changes or vacancies. During periods of Qualified Personnel vacancy, the City must forward all Undertakings to the SHPO for review under the Act.
- D. If the City does not have Qualified Personnel in place for a period longer than 6 months, then this Agreement will become null and void, and the City will comply with 36 CFR §§ 800.4 through 800.6 with regard to Undertakings covered by this Agreement.

II. Activities that constitute an Undertaking and are governed by this Agreement

A project, activity, or program that is partially or wholly funded, licensed, or permitted by the federal programs listed in Appendix A constitutes an Undertaking and is, therefore, subject in its entirety to this Agreement.

III. Exemptions

The following undertakings do not require further review or consultation with the SHPO as they do not have the potential to cause adverse effects on historic properties even when historic properties may be present. Further compliance with 36 C.F.R. 800 is not required. The City of Aurora will maintain file records with verification that the Undertakings were determined to be exemptions.

- A. Involvement of properties less than 50 years old provided that the property is not listed or eligible for listing.
- B. Painting of any interior or exterior component that has previously been painted.
- C. Repair, removal, or replacement in kind of existing utilities, such as sewer, water, electrical, gas, and leach lines; storm drains; septic tanks; and wells. Repair, removal, or replacement in kind of existing, non-historic infrastructure, such as foundations, sidewalks, curbs, driveways, roadways, and parking areas. Activities involving historic infrastructure, such as but not limited to stone and brick sidewalks, curbs, and roads, and historic street furniture, such as but not limited to street lighting, benches, and water fountains, are NOT exempt from review.
- D. Repair or replacement of electrical, plumbing, heating, and ventilation systems or their components, when no structural alteration or wall/ceiling finishes is involved. This includes repair or replacement of electrical panels, breakers, circuits, switches, receptacles, plumbing and water lines, HVAC equipment, furnaces, boilers, drains, sewers, fixtures, water heaters, heating vents, floor furnaces, wall heaters, central heat systems, and gas lines.
- E. Treatment of interior surfaces (floors, walls, ceilings, woodwork) when work is limited to repainting, refinishing, re-papering, or laying carpet or flooring, provided that installation damages no underlying wood or masonry floor surfaces.
- F. Roof repair or replacement of roofing with material which closely matches the existing material and form.
- G. All kitchen and bathroom remodeling provided the location of walls, windows, or doors are not altered.
- H. Property acquisition, down payment assistance, rental assistance, and financial assistance to companies and organizations that entail no physical activities.

IV. Determining a Historic Property and an Area of Potential Effects (APE)

- A. When an Undertaking is proposed for a resource, Qualified Personnel must evaluate the resource as set forth in Stipulation IV.C, regardless of whether the resource undergone

previous evaluations.

B. Determining the Area of Potential Effects (APE)

For each Undertaking, Qualified Personnel shall determine an Area of Potential Effects, as defined in 36 CFR § 800.16 and described in 36 CFR § 800.4.

C. Determination of a “Historic Property”

1. Qualified Personnel shall review existing information on historic resources within the APE to determine the presence of previously determined historic resources or properties. For resources 50 years or older not individually listed or a contributing resource within a historic district listed on the National Register of Historic Places (NRHP), Qualified Personnel shall apply the NRHP criteria. Materials consulted will include:
 - a. The current listing of the NRHP
 - b. The current listing of the County's Register of Historic Places
 - c. Kane County Rural Structures Survey (1987)
 - d. The current City of Aurora historic preservation database
 - e. The Illinois Historic Sites survey (1972)
 - f. Designations of “primary significance” cataloged as part of the general survey of Aurora buildings
2. Additional surveys shall be conducted in a manner responsive to the nature of the Undertaking if Qualified Personnel determine additional information is required to adequately assess the presence of historic properties. As appropriate, the focus of identification surveys shall not be property-by-property but may focus on select resources in proportion to, and depending on the location of, the Undertaking.
3. In the case that Qualified Personnel has questions concerning NRHP eligibility of a certain property or resource, he or she may forward documentation to the Aurora Historic Preservation Commission (Commission) for evaluation and recommendation.
4. In the case that the Commission has questions concerning the NRHP eligibility of a certain property or resource, the Commission may forward documentation to the SHPO for evaluation and recommendation. If the Commission chooses not to accept the recommendation of the SHPO, Qualified Personnel may forward adequate documentation, including the recommendation of the SHPO, to the Keeper of the NRHP for the formal determination of NRHP eligibility, in accordance with 36 CFR § 800.4(c). Qualified Personnel shall notify the SHPO of the Commission’s decision.

5. Qualified Personnel may submit NRHP eligibility determinations for properties to the Commission and SHPO concurrently in order to expedite the Section 106 review.
 6. Properties not listed in the NRHP and determined by Qualified Personnel to not be eligible to be listed in the NRHP will be documented as such by Qualified Personnel, and a copy of the determination will be included in the individual project files and submitted to the SHPO as part of the annual Certified Local Government report.
- D. A property shall be considered a “Historic Property” under this Agreement when one or more of the following applies:
1. A property is individually listed in the NRHP
 2. A property is located within the boundaries of an existing NRHP-listed historic district and has been determined by Qualified Personnel to be contributing to that district
 3. A property has been determined by Qualified Personnel to be eligible for individual listing in the NRHP
 4. A property that Qualified Personnel has determined to be contributing to an area that Qualified Personnel has determined eligible for listing in the NRHP as a historic district
- E. If Qualified Personnel determines that there are no Historic Properties present in an Undertaking’s APE, the Undertaking can proceed.
- F. Undertakings for which Qualified Personnel determined that no Historic Properties were affected must be re-reviewed under this Agreement if the Undertaking does not proceed within two (2) years of the date of the determination.

V. Reviewing Undertakings that Effect “Historic Properties”

- A. Undertakings that Involve Interior and/or Exterior Rehabilitation of Historic Properties
1. Prior to the initiation of the Undertaking, Qualified Personnel shall review work write-ups, plans and/or specifications, photographs for all activities not listed as exempt under Stipulation III to determine whether they meet *The Secretary of the Interior’s Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings* (Standards). The City of Aurora may also use the “City of Aurora Historic Districts and Landmarks Guidelines,” which are based upon the Standards and have been approved by the SHPO.
 2. Should Qualified Personnel recommend modifications to the plans and specifications to ensure that the project meets the Standards, program recipients shall make the

appropriate modifications and submit revised work reports or plans to Qualified Personnel. Should program recipients determine that they cannot make the modifications recommended by Qualified Personnel to meet the Standards, program recipients shall consult further with the Commission. If Qualified Personnel, in consultation with the Commission, determine that the project meets the criteria of adverse effect, the Undertaking will constitute an Adverse Effect, and the City will consult with the SHPO and initiate the consultation process set forth in 36 CFR Part 800.6.

3. If Qualified Personnel determine that an Undertaking will have no Adverse Effect on a Historic Property, the Undertaking may proceed. Qualified Personnel shall place review and documentation in individual project files.
4. If an Undertaking's scope of work has been determined by Qualified Personnel to have no adverse effect upon Historic Properties and the scope of work is later modified, the Neighborhood Redevelopment Department must submit the modified scope of work to Qualified Personnel for re-review.

B. Undertakings that Involve the Demolition and Relocation of Historic Properties

For Undertakings that involve the demolition or relocation of a Historic Property, Qualified Personnel will submit the following documentation to the Commission for review:

1. Location (including map) and description of the property proposed for demolition or relocation, including views of the public.
2. Reasons for demolition, including documentation of building code violations, structural reports citing building deficiencies and estimated cost for rehabilitation; or reasons for relocation.
3. Reasons for demolition, including documentation of building code violations, structural reports citing building deficiencies and estimated cost for rehabilitation; or reasons for relocation.
4. A cost comparison of rehabilitation versus property acquisition and demolition and summary of alternatives considered.
5. Photographs of the property depicting its current condition.
6. Future plans for the site.
7. Proposed site for relocation

If Qualified Personnel, in consultation with the Commission, determines that demolition or relocation cannot be avoided, the Undertaking will constitute an Adverse Effect, and the City will consult with the SHPO and initiate the consultation process set forth in 36 CFR § 800.6.

C. Undertakings that Involve New Construction

For Undertakings that involve new construction within existing or potential NRHP historic districts or within APEs that contain Historic Properties, the ground disturbing portions of the Undertakings are not covered by this Agreement and must be submitted prior to initiation to the SHPO for review pursuant to Section 106 of the NHPA. If the SHPO determines that the ground disturbing activities constitute an Adverse Effect, the SHPO will initiate the consultation process set forth in 36 CFR § 800.6.

Program recipients shall develop preliminary design plans in consultation with the City. Final plans and specifications will be submitted to Qualified Personnel for review.

Qualified Personnel will review the portion of the Undertaking concerning the design of the new construction prior to ensure that it meets the Standards. If Qualified Personnel, in consultation with the Commission, determines that the design of the new construction cannot be made to meet the Standards, the Undertaking will constitute an Adverse Effect, and the City shall consult with the SHPO and initiate the consultation process set forth in 36 CFR § 800.6.

D. Undertakings that Involve Handicapped Accessibility Compliance

For Undertakings on Historic Properties that seek to comply with the American Disabilities Act and other local and federal requirements, the City will explore all alternative methods to provide handicapped accessibility consistent with the Standards and the National Park Service Brief Number 32 "Making Historic Properties Accessible". Undertakings inconsistent with the Standards will constitute an Adverse Effect, and the City shall consult with the SHPO and initiate the consultation process set forth in 36 CFR § 800.6.

E. Undertakings that Involve Site Improvements and Public Improvements

For Undertakings that involve site and public improvements within existing and potential NHRP historic districts and that are not exempt under Stipulation III, including sidewalk and streetscape improvements, repaving of streets with materials different than existing, installation of landscaping, street lighting and street furniture and other infrastructure improvements, will be reviewed by Qualified Personnel prior to initiation to ensure that the Undertaking meets the Standards. If upon consultation with the Commission, the Undertaking cannot be made to meet the Standards, it will constitute an Adverse Effect, and the City shall consult with the SHPO and initiate the consultation process set forth in 36 CFR § 800.6.

F. Emergency Undertakings

1. When an Undertaking on a Historic Resource involves emergency demolition, Qualified Personnel will conduct an immediate review. The City shall forward documentation to Qualified Personnel to review immediately upon notification that an emergency exists. Documentation shall 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 to correct the emergency situation

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 the City building inspectors or fire department officials. If Qualified Personnel determines that an Undertaking involves an emergency situation, the Undertaking shall be considered an Emergency Undertaking.

2. In the event of an Emergency Undertaking, the City shall consult with the SHPO to the greatest extent possible given the particular circumstances.
3. The City shall ensure that any mitigation measures recommended by the Certified Staff or SHPO are implemented, if feasible.
4. The City shall consult with the SHPO to address any unforeseen events or post-review discoveries that occur during project implementation.
5. If the Emergency Undertaking cannot be made to meet the Standards, it will constitute an Adverse Effect, and the City shall consult with the SHPO and initiate the consultation process set forth in 36 CFR § 800.5 (c), which may be modified as the Emergency Undertaking may not permit all of 800.5 to be followed or within the timeframe as outlined.

VI. Resolution of Adverse Effects

When an Undertaking constitutes an Adverse Effect, the City shall initiate the consultation process set forth in 36 CFR § 800.6 and shall submit to the SHPO the Undertaking, including an analysis of alternatives, recent structural reports or assessments of conditions, cost estimates for rehabilitation, programmatic and economic considerations, and marketing

studies, as applicable.

VII. Undertakings that Involve Ground-Disturbing Activities

For Undertakings that involve ground-disturbing activities not exempted in Section III, including but not limited to excavation for new footings (excluding footings for new ramps adjacent to a single-family or two-family house) and new foundations and installation of new utilities, such as sewer, water, electrical, gas, and leach lines; wells; storm drains; and septic tanks, prior to the initiation of the Undertaking, the City shall submit the Undertaking to the SHPO for review for the potential effect of such activities on below ground resources pursuant to Section 106 of the NHPA. HUD's *Guidance on Archeological Investigations in HUD Projects* will be taken into account if there is a potential presence of archeological sites within the project area.

VIII. Tribal Consultation

The City will make a reasonable and good faith effort to identify federally recognized Native-American tribes that may attach religious and cultural significance to properties potentially affected by Undertakings covered by this Agreement and will follow federal guidance on consulting with tribes and HUD's *When to Consult with Tribes* checklist, to identify and evaluate historic properties and assess and resolve effects.

IX. Public Involvement

- A. Annually, the City will notify the public of the programs covered under this Agreement through a Public Hearing on the Annual Action Plan in accordance with the Aurora's "Citizen Participation Plan" and the requirements of the U.S. Department of Housing and Urban Development and make available for public inspection documentation of those programs. Included in this documentation will be general information on the types of activities undertaken, information on identified Historic Properties in the community that might be affected by these activities if known, the amount of program funds available in the current program year, and how interested persons can receive further information on the programs.
- B. At any time during the implementation of this Agreement, should the public raise an objection pertaining to an Undertaking on a Historic Property, the City shall notify the Commission and take the objection into consideration. Program recipients, the City, the Commission, the SHPO, or the ACHP, when requested by the objector, shall consult to resolve the objection. Program recipients are not required to cease work on the Undertaking while objections are being reviewed, but the City reserves the right to halt work in light of arguments from the public the City deems valid.

X. Administration, Monitoring, and Reporting

- A. The SHPO shall provide comments within 30 days for reviews or comments requested by the City 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 City can assume that the SHPO concurs.
- B. The SHPO shall conduct periodic training workshops for Qualified Personnel to review the requirements of this Agreement. The SHPO shall also provide guidance related to implementation of the terms of the Agreement.
- C. Documentation shall be available for review by the SHPO following reasonable notice.
- D. The SHPO shall conduct periodic monitoring visits of the City's project sites and files to ensure compliance with this Agreement.
- E. Nothing in this Agreement shall be construed as meaning that the City cannot request the advice or assistance of the SHPO at any time.
- F. As a component of the Certified Local Government Annual Report, the City shall summarize activities carried out under the terms of this Agreement. The report will be submitted no later than the following June 1st of each year this Agreement is in effect. The Annual Report shall include:
 - 1. List of property addresses submitted for review
 - 2. Program in which the Undertaking took place
 - 3. Assertion of NRHP eligibility for evaluated properties
 - 4. The finding of effect for Undertakings involving Historic Properties

XI. Effective Date and Extension

- A. This Agreement shall be in effect from October 1, 2020 to September 30, 2025, unless terminated earlier due to failure to comply with the terms of the Agreement.
- B. The signatories may collectively agree to extend this Agreement to cover additional calendar years or portions thereof, through an amendment per Stipulation XII, provided that the original Agreement has not expired.

XII. Amendments

- A. Any party to this Agreement may request it be amended or modified, whereupon the City and the SHPO will consult in accordance with 36 CFR § 800.13 to consider such revisions.

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

XIII. Termination

Any party to the 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.

XIV. Compliance with Agreement

Execution and implementation of this Agreement and carrying out its provisions evidences that the City has satisfied its responsibilities under Section 106 of the NHPA for all individual Undertakings of the programs.

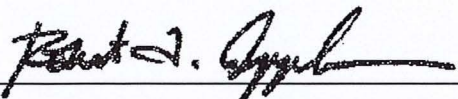
XV. Counterparts; Facsimile or PDF Signatures

This Agreement may be executed in counterparts, each of which shall be considered an original and together shall be one and the same Agreement. A facsimile or pdf copy of this Agreement and any signatures thereon will be considered for all purposes as an original.

[Signature pages to follow]

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SEPTEMBER 1, 2020 TO AUGUST 31, 2025**

Illinois Deputy State Historic Preservation Officer (SHPO)

By:  Date: August 13, 2020

Robert Appleman, Illinois Deputy State Historic Preservation Officer

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City of Aurora (City)

By:  Date: 10/1/2020

Alex Alexandrou, Chief Management Officer
City of Aurora

Appendix A

Programs Administered by the City of Aurora

U.S. Department of Housing and Urban Development Programs

1. Community Development Block Grants (CDBG)
2. Home Investment Partnership Program (HOME)
3. Emergency Solutions Grants Program
4. Section 108 Loan Guarantee Program
5. Community Development Block Grant Coronavirus (CDBG-CV)
6. Homeowner assistance loans
7. Supplemental funds received by the Department of Housing and Urban Development