

PROGRAMMATIC AGREEMENT
BY AND AMONG THE CITY OF MILES CITY, MONTANA,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AND THE MONTANA STATE HISTORIC PRESERVATION OFFICER
REGARDING HISTORIC PROPERTIES AFFECTED BY THE USE
OF COMMUNITY DEVELOPMENT BLOCK GRANT, HOME INVESTMENT
PARTNERSHIP, AND OTHER HUD MONIES FOR REHABILITATION

WHEREAS, the City of Miles City, State of Montana, (City) propose to administer their Community Development Block Grant (CDBG), HOME Investment Partnership (HOME), and any other programs that may fall under 24 CFR §58, with funds from the Department of Housing and Urban Development (HUD) under Title I of the Housing and Community Development Act of 1974, and

WHEREAS, the City has determined that the administration of these programs may have an effect on properties included in or eligible for inclusion in the National Register of Historic Places and has consulted with the Montana State Historic Preservation Officer (SHPO) and the Advisory Council on historic Preservation (Council) pursuant to 36 CFR §800.13 of the regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. §470f),

NOW, THEREFORE, the City, the SHPO, and the Council agree that the programs shall be administered in accordance with the following stipulations to satisfy the City's Section 106 responsibilities for all individual undertakings of the program.

Stipulations

The City of Shelby shall ensure that the following measures are carried out:

I. APPLICABILITY OF AGREEMENT

The City that is the recipient of the grant funds shall comply with the stipulations set forth in this Agreement for all programs and projects which involve the purchase and/or rehabilitation of housing, and/or compliance with the Americans With Disabilities Act (ADA) assisted entirely or in part by monies from the CDBG, HOME Investment Partnership, and any other programs of the U.S. Department of Housing and Urban Development under Title I of the Housing and Community Development Act of 1974 that may fall under 24 CFR §58. The review established by this Agreement shall be completed prior to the City's final approval of any application for assistance, under the ADA Compliance, CDBG, HOME, or other HUD programs that may fall under 36 CFR §58, and prior to the City or property owner altering the property or initiating or making an irrevocable commitment for construction that may effect a property that is 50 years of age or older. Any ADA, CDBG, HOME, or other program funded or assisted project that does not qualify for review under the terms of this Agreement shall be reviewed in accordance with the procedures outlined in 36 CFR Part 800.

The City, the Montana SHPO, and the Council furthermore agree that the following project activities are also categorically excluded from review, and projects comprised **ONLY** of listed project activities need not be reviewed by the Montana SHPO or the Council to determine the National Register eligibility or effect:

- a. Cleaning masonry surfaces with low pressure water and detergents using natural bristle brushes.
- b. Removing damaged or deteriorated paint on wood surfaces by hand scraping and hand sanding to the next sound layer of paint.
- c. Applying exterior paint in colors which are compatible with the style of architecture that the property represents, and the characteristics of the neighborhood.
- d. Repointing with mortar which matches the original in strength, composition, color, aggregate size, texture, and duplicating the joints and profiles.
- e. Repairing wood siding by patching or piecing-in of in-kind materials.
- f. Repairing or replacing historic roofing materials in-kind.
- g. Replacing nonhistoric or non-character defining roofing materials with a substitute material that is appropriate in texture and color to the style of the property, i.e. replacing the roofs of Victorian or Bungalow era houses with three tab black or brown asphalt shingles.
- h. Repairing existing windows and doors.
- i. Correcting structural deficiencies in basement, crawl spaces, attics, and beneath porches.
- j. Modifications to non-significant interior spaces which do not result in the loss of woodwork, fireplaces, historic light fixtures, pressed metal ceilings, or other decorative details, if such modifications do not affect the exterior appearance of the property.
- k. Repairing or replacing site features, such as sidewalks, driveways, and fencing in-kind.
- l. Insulating attics, basement walls, perimeter crawl spaces, under floors, and around pipes and ducts in such cases where the installation can be accomplished without permanent change to the appearance of any interior or exterior finish materials. This exclusion does not include the installation of any foam type materials that would be introduced into wall cavities in a liquid form, thereby introducing moisture into the wall cavities.
- m. Installing wood or enameled low-profile aluminum storm windows and doors, or insulated glazing provided that these items match the size and configuration of the historic window or door, and do not detract from the appearance of the building.

- n. Installing interior storm windows.
- o. Repairing, replacing, or modifying mechanical, electrical, or plumbing systems, if this activity does not require the removal of historically or architecturally significant systems, or historically or architecturally significant building fabric.
- p. Installing caulking and weatherstripping, provided that the color of the caulk is consistent with the appearance of the property.
- q. Installing water heater tank wraps.
- r. Trimming trees or other plantings, provided that such activity does not noticeably change the size or shape of the tree or planting.
- s. Installing plywood on openings of vacant buildings in a manner that does not result in permanent damage to existing window or door frames, or architectural features such as siding and cornices.

II. IDENTIFICATION OF HISTORIC PROPERTIES

A. The City shall review existing information on historic properties that may be affected by the use of CDBG, HOME, or other HUD funds within the area or areas where work will be performed as designated under the City's block grant agreement, this area will hereinafter be referred to as the project area. The City shall consult with the SHPO to determine if any properties that are included in or that have been determined to be eligible for inclusion in the National Register of Historic Places are located within the project area. The City shall also consult with the SHPO to determine if previously unevaluated properties may be located within the project area.

B. If the City, in consultation with the SHPO, apply the National Register Criteria, 36 CFR §60.4. and determine that no historic districts or individually eligible properties are located within the project area, the City shall document this finding in writing, provide a copy of this finding to the SHPO and proceed with the individual housing purchase, and/or housing rehabilitation project within the project area without further consultation or review by the SHPO or the Council.

C. If the City, in consultation with the SHPO identify a previously unevaluated historic district or individual property that appears to meet the National Register Criteria, and/or a individual property or historic district that has not been evaluated for National Register eligibility within the last five (5) years, and is at least 45 years of age, within the project area, the City shall complete and submit a "Montana Historical and Architectural Inventory Form" to the SHPO for any individually identified property or any property located within historic district boundaries. This form need only be submitted for those such properties which are proposed for purchase, and/or rehabilitation with CDBG, HOME, and/or HUD funds being administered by the City. The form shall include a minimum of two clear, unobstructed photographs of each property, close-up photos of exterior architectural features that are proposed for replacement, such as, windows, doors, and exterior siding, and shall be accompanied by a letter from the City that includes the City's application of the National Register Criteria for the property, sets out its determination if any of the

Criteria are met, and requests the SHPO's evaluation of this determination. The SHPO may ask for additional information, if necessary, and shall inform the City in writing if it agrees with the City's determination within 15 working days following receipt of adequate documentation.

1. If the City and the SHPO agree that the property appears to meet one or more of the National Register Criteria, the property shall be considered eligible for the National Register for purposes of this Agreement. The City and the SHPO shall continue consultation in accordance with the terms of this Agreement for all such properties.

2. If the SHPO agrees with the City that the National Register Criteria are not met, the property shall be considered ineligible for the National Register for a period of five (5) years from the date of the SHPO's review. Such properties need not be reevaluated during this five (5) year period, unless a party to this Agreement notifies the City in writing that it has determined that changing perceptions of significance warrants the property's reevaluation. Such properties require no further review under this Agreement.

3. If the City and the SHPO do not agree that a property meets one or more of the National Register Criteria, the City shall consult further to reach agreement with the SHPO. If agreement cannot be reached, the City shall obtain a final determination from the Secretary of the Interior pursuant to the applicable National Park Service regulations.

III. ASSESSMENT OF EFFECTS

A. The City shall provide the SHPO with a general work description which adequately details the scope of work for each rehabilitation project that may affect an individual property or a contributing property within a historic district which is listed on or determined eligible for inclusion in the National Register. The SHPO shall consult with the individual City to apply the Criteria of Effect and Adverse Effect, 36 CFR §800.9, to all such projects, and will review the scope of work to determine if the project conforms to the recommended approaches contained in the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (Standards). The SHPO shall provide recommendations regarding the application of these Criteria to the City within 15 working days following receipt of adequate documentation.

1. If the SHPO finds that a project conforms to the Standards, the City and the SHPO will concur that it will not adversely effect historic properties, the City shall document this finding in writing and provide a copy to the SHPO, and the project may proceed without further review pursuant to this Agreement.

2. If the SHPO finds that a project does not conform to the Standards, the project will be considered to adversely effect historic properties. The City shall consult further with the SHPO to identify modifications or conditions that will avoid the adverse effect. If the City amends the work description to bring it into conformance with the Standards, the project will be considered to not adversely effect historic properties, and the project may proceed without further review pursuant to this

Agreement. If the City and the SHPO are unable to agree on modifications or conditions that will avoid an adverse effect, the City and the SHPO shall obtain the comments of the Council in accordance with 36 CFR §800.5(e).

IV. MONITORING

The SHPO and the Council may monitor any activities carried out pursuant to this Agreement, and the Council will review such activity if so requested.

The City will cooperate with the SHPO and the Council in carrying out these monitoring and review responsibilities.

V. DISPUTE RESOLUTION

Should the SHPO or the Council timely object to any plans provided for review or any actions proposed by the individual Counties pursuant to this Agreement, the City shall consult with the objecting party to resolve the objection. If the City determines that the objection cannot be resolved, the City shall request the further comments of the Council pursuant to 36 CFR §800.6(b). Any Council comment provided in response to such a request will be taken into account by the City in accordance with 36 CFR §800.6(c)(2) with reference only to the subject of the dispute; the individual City's responsibility to carry out all actions under this Agreement that are not the subjects of the dispute will remain unchanged.

VI. CITY STAFFING

The City of Miles City will assign staff to assure that rehabilitation work is carried out in accordance with the specifications and work descriptions provided to the SHPO for review in determining effect. Responsible City staff will certify that work was carried out pursuant to those specifications and work descriptions prior to the completion of each review of the grant.

VII. DURATION

This Agreement will continue in full force and effect until **January 1, 2005**. At any time in the six month period prior to this date, the City may request the Council and the SHPO in writing to review the City's programs and consider an extension or modification of the Agreement. No extension or modification will be effective unless all parties to the Agreement have agreed to it in writing.

VIII. AMENDMENTS

Any party to this Agreement may request that it be amended, whereupon the parties will consult in accordance with 36 CFR §800.13 to consider such amendment.

IX. TERMINATION

Any party to this Agreement may terminate it by providing thirty (30) days notice to the other parties, provided that the parties will consult during the period prior to the termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the City will comply with 36 CFR §§800.4-800.6 with respect to individual undertakings covered by this Agreement.

X. FAILURE TO COMPLY WITH TERMS OF AGREEMENT

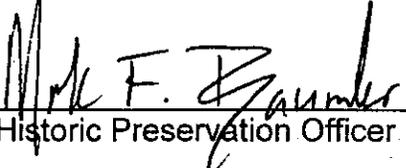
In the event the City cannot carry out the terms of this Agreement, it shall not take or sanction any action or make any irreversible commitment that would result in an adverse effect to historic properties or would foreclose the Council's consideration of modifications or alternatives to the undertaking, and the City will comply with 36 CFR §§800.4-800.6 with regard to each individual undertaking covered by this Agreement.

EXECUTION AND IMPLEMENTATION of this Programmatic Agreement evidences that the City of Miles City, MT has afforded the Council a reasonable opportunity to comment on the program and that the City have taken into account the effects of the program on historic properties.

CITY OF MILES CITY, MONTANA

By:  Date: 04-10-01
Title: Environmental Certifying Officer

MONTANA STATE HISTORIC PRESERVATION OFFICER

By:  Date: 4/6/2001
State Historic Preservation Officer

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By:  Date: 5/18/01
Executive Director