

## **PROGRAMMATIC AGREEMENT**

By and Among

**CITY OF MILES CITY, MONTANA,**

**THE ADVISORY ACHP ON HISTORIC PRESERVATION,**

and

**THE MONTANA STATE HISTORIC PRESERVATION OFFICER**

*Regarding properties affected by the use of Community Development Block Grant, Home Investment Partnership Program, and other Department of Housing and Urban Development funds*

**WHEREAS**, the CITY of MILES CITY, Montana (CITY), proposes to administer and fund projects and programs in the CITY of MILES CITY with monies from the Community Development Block Grant (CDBG) Program of the department of Housing and Urban Development under Title I of the Housing and Community Development Act of 1974; the Home Investment Partnership (HOME) Program; and any other programs delegated to the CITY pursuant to 24 CFR Part 58; and

**WHEREAS**, the CITY sponsors several rehabilitation and homebuyer purchase programs with CDBG and HOME Program funding; and

**WHEREAS**, the CITY has determined that the administration of these projects and programs may have an effect on properties included in or eligible for inclusion in the National Register of Historic Places (historic properties) and has consulted with the Montana State Historic Preservation Officer (SHPO) and the Advisory ACHP on Historic Preservation (ACHP) pursuant to 36 CFR §800.14(b) of the regulations implementing Section 106 of the National Historic Preservation Act (16.U.S.C.470f); and

**WHEREAS**, all references within this Programmatic Agreement (Agreement) are to the ACHP's regulations that became effective on August 5, 2004;

**NOW, THEREFORE**, the CITY, SHPO, and ACHP 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 programs involving rehabilitation and purchase.

### **Stipulations**

The CITY of MILES CITY shall ensure that the following measures are carried out:

#### **I. Applicability of Agreement**

The CITY shall comply with the stipulations set forth in this Agreement for all undertakings within the CITY of MILES CITY, or the surrounding area for which the

CITY is responsible, which involve the purchase, exterior or interior rehabilitation of residential and non-residential structures, and/or compliance with the Americans with Disabilities Act that is assisted entirely or in part by monies from the CDBG, HOME Investment Partnership Program, 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 Part 58. The review established by this Agreement shall be completed prior to the CITY's final approval of any application for assistance under these programs, and prior to the CITY or the property owner initiating the alteration of the property, or initiating or making an irrevocable commitment for construction that may affect a property that is fifty (50) years of age or older. Any undertaking that does not qualify for review under the terms of this Agreement shall be reviewed in accordance with the procedures outline in 36 CFR Part 800.

## **II. Undertakings Not Requiring Review by SHPO or ACHP**

- A. Undertakings not requiring review by SHPO or ACHP are listed in Attachment A. An undertaking consisting of activities listed in Attachment A as well as activities not listed in Attachment A shall be reviewed pursuant to the terms of this Agreement.
- B. Undertakings affecting properties that are less than fifty (50) years of age do not require review pursuant to the terms of this Agreement.

## **III. Area of Potential Effects**

It is agreed for purposes of this Agreement, with the exception of Stipulation V, B, that the Area of Potential Effects (APE) will be limited to the individual building when a proposed project is limited to the rehabilitation of its existing interior or exterior features.

## **IV. Identification of Historic Properties**

- A. The CITY shall review existing information on any property within the APE that may be affected by the use of these funds, including the National Register of Historic Places and lists of historic properties maintained by the CITY.
  - 1. If the property proposed for purchase and/or rehabilitation is listed on the National Register or has already been determined eligible for inclusion in the National Register, the CITY shall proceed with the review of the project pursuant to Stipulation V, unless exempted under Stipulation II.
  - 2. If the property has been determined by the CITY in written consultation with SHPO within the last five (5) years prior to the current undertaking to be ineligible for inclusion in the National Register and the property did not

become 50 years old during the five (5) year period, then the undertaking may proceed without further review under the terms of this Agreement.

- B. If the CITY identifies a previously unevaluated property within the APE, or if the property proposed for purchase and/or rehabilitation is not listed in the National Register, has not been evaluated for National Register eligibility within the last five (5) years, and is at least 50 years of age, then the CITY shall ensure that it provides the SHPO with a **Montana Historical and Architectural Inventory Form**, as well as sufficient documentation pursuant to 36 CFR §800.11 to enable SHPO to review the CITY's determination, and shall consult with SHPO to establish documentation standards. The CITY shall apply the National Register criteria and notify SHPO of its determination in this submittal.
1. If SHPO agrees with the CITY that a property is eligible under the criteria, the property shall be considered eligible for the National Register for purposes of this Agreement, and shall hereinafter be referred to as an historic property. The CITY shall continue consultation in accordance with the terms of this Agreement for all such properties.
  2. If SHPO agrees with the CITY that the criteria are not met, the property shall be considered ineligible for inclusion in the National Register for a period of five (5) years from the date of 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 a property's reevaluation. Such properties require no further review under this Agreement.
  3. If SHPO disagrees with the CITY's determination regarding eligibility, the CITY shall consult further with SHPO to reach agreement. If agreement cannot be reached, the CITY shall obtain a final determination from the Keeper of the National Register pursuant to the applicable National Park Service regulations, 36 CFR Part 63.

## **V. Assessment of Effects**

- A. Prior to undertaking any activities that are not exempt under Stipulation II, the CITY shall provide SHPO with clear, unobstructed photographs of the historic property and a general work description that adequately details the scope of work for each purchase, and/or rehabilitation project that may affect an historic property. The work description shall include working drawings and specifications, or work write-ups, as appropriate, and any additional documentation necessary for the SHPO to understand and make comments on the undertaking. SHPO shall consult with the CITY to apply the Criteria of Effect, 36 CFR §800.16(i) and Adverse Effect (36 CFR §800.5(a)(1)) to any historic property that may be affected by an undertaking, and will review the scope of work to determine if the undertaking conforms to the recommended approaches

contained in *The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings* (the Standards). 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 CITY determines that an undertaking will have no effect, the CITY shall notify SHPO in writing of this finding. If SHPO does not object to this written notice within fifteen (15) working days, the undertaking may proceed without further review.
  2. If SHPO determines that an undertaking conforms to the *Standards*, the CITY and SHPO will concur that it will not adversely affect historic properties, the CITY shall document this finding in writing and the project may proceed without further review pursuant to this Agreement. If SHPO does not object in writing to this determination within thirty (30) days after receipt, the undertaking shall be considered to not adversely affect historic properties, and may proceed as submitted without further review.
  3. If SHPO finds that an undertaking does not conform to the *Standards*, the undertaking will be considered to adversely affect historic properties. The CITY shall consult further with the SHPO to identify modifications to the scope of work or ways to avoid, minimize, or mitigate 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 affect historic properties and the project may proceed without further review pursuant to this Agreement. If the CITY and 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 ACHP in accordance with 36 CFR §800.6.
  4. The CITY shall notify SHPO of any changes to the scope of work, and shall provide SHPO with the opportunity to review and approve such changes. If the changes do not conform to the *Standards*, the parties shall consult further and the CITY will initiate consultation with SHPO and the ACHP in accordance with 36 CFR §800.6 if an adverse effect cannot be avoided.
- B. Additionally, CITY shall consult in writing with SHPO to determine if an undertaking which includes ground-disturbing activities has the potential to affect archaeological properties that may be eligible for inclusion in the National Register. The CITY shall investigate available historical records and pertinent information, and shall complete any further studies recommended by SHPO to determine if the undertaking has the potential to affect archeological properties that may be eligible for inclusion in the National Register. It is agreed that the following ground-disturbing activities have potential to affect historic properties: excavation for footings and foundations, installation of utilities such as sewer, water, storm drains, electrical, gas, leach lines, and septic tanks **except where**

**installation is restricted to areas previously disturbed by the installation of such systems.** Archeological investigations are also not necessary for new construction, if ground disturbance in the form of farmed land or other ground disturbing agricultural, commercial or industrial activities have occurred. The CITY, however, in letting contracts for work to be done with federal funding covered by this agreement shall insure that any work done by contractors that might uncover previously unknown archeological sites or buried human remains, has contractual provisions for immediately stopping work and notifying the State Archeologist and SHPO.

C.

1. If an undertaking has the potential to adversely affect any known archeological property eligible for inclusion in the National Register, the CITY shall consult with the SHPO to determine if the project can be adequately modified or redesigned to avoid the archeological property, and shall provide SHPO with documentation regarding the property and the steps it has taken to avoid such property.
2. If the undertaking cannot be modified or redesigned to avoid the adverse effects to the archeological property, the CITY shall develop a plan in consultation with SHPO to complete the identification, evaluation, and, if necessary, mitigation of the property. If the CITY and SHPO cannot agree that the potential to affect archeological properties exists or cannot agree on a plan for the consideration of such properties, the CITY will initiate consultation in accordance with 36 CFR §800.6.

## **VI. Combined Reviews of Effect**

The CITY may elect to submit the documentation set out in Stipulation IV and V above in one package for SHPO's review. SHPO will provide comments on the CITY's determinations of effect within thirty (30) days after receipt of such submission. The CITY will review any such comment of SHPO and refer to the detailed procedures set out in Stipulations IV and V to determine if additional review by SHPO or ACHP is required to fulfill the terms of this Agreement.

## **VII. SHPO Responsibilities**

- A. SHPO is permitted thirty (30) calendar days after the receipt of any submitted documentation to review and comment on such material, with the exception of Stipulation V, A, 1. If SHPO does not provide comments within this time period, the CITY may assume that SHPO does not object to its determination.
- B. SHPO will provide technical assistance and training on the application of the *Standards* to the CITY to the extent possible.

## **VIII. Discoveries and Unforeseen Effects**

If during the implementation of these programs, a previously unidentified property that may be eligible for inclusion in the National Register is encountered, or a known historic property may be affected in an unanticipated manner, the CITY will assume its responsibilities pursuant to 36 CFR §800.13(b).

## **IX. Monitoring**

SHPO and ACHP may monitor any activities carried out pursuant to this Agreement, and ACHP will review such activity if requested. The CITY will cooperate with SHPO and ACHP in carrying out these monitoring and review responsibilities.

## **X. CITY Staffing**

The CITY will assign staff to assure that purchase and/or rehabilitation work is carried out in accordance with the specifications and work descriptions provided to SHPO for review in determining effect, including any project modifications recommended by SHPO which were adopted by the CITY. Such CITY staff will also monitor undertakings limited to work items listed in Attachment A which are exempted from review by SHPO to assure that qualifying work items are properly performed. Responsible CITY staff will assure that work was carried out as planned, and will maintain records for each project with documented compliance with the terms of this Agreement.

## **XI. Dispute Resolution**

- A. Should any of the signatories object to the manner in which the terms of this Agreement are implemented, they will consult further with the objecting party to resolve the objection. If the CITY determines that such objection cannot be resolved, the CITY will forward all documentation relevant to the dispute to ACHP including the CITY's proposed response to the objection. If the dispute relates to the National Register eligibility of a property, the CITY will follow the procedures of Stipulation IV, B, 3. Within thirty (30) calendar days after receipt of all pertinent documentation, ACHP will either:
1. Advise the CITY that it concurs with the CITY's proposed response, whereupon the CITY will respond to the objection accordingly; or
  2. Advise the CITY that it should enter into adverse effect consultations pursuant to 36 CFR §800.6; or
  3. Provide the CITY with recommendations, which the CITY will take into account in reaching a final decision regarding the dispute; or
  4. Notify the CITY that it will comment pursuant to 36 CFR §800.7(c), and proceed to comment on the subject in dispute. Any ACHP comment provided in response to such a request will be taken into account by the CITY in accordance with 36 CFR §800(c)(4) with reference only to the

subject of the dispute, and the CITY's responsibility to carry out all actions under this Agreement that are not the subject of the dispute will remain unchanged.

- B. Any recommendation or comment provided by ACHP will be understood to pertain only to the subject of the dispute, and the responsibility of the CITY to carry out all actions under this Agreement that are not the subject of the dispute will remain unchanged. The CITY may implement that portion of any undertaking covered by this Agreement that is subject to dispute under this Stipulation after complying with 36 CFR §800.7(c)(4).
- C. If ACHP fails to provide recommendations or to comment within the specified time period, the CITY may implement that portion of the undertaking subject to dispute under this Stipulation in accordance with the documentation submitted to ACHP for review.
- D. At any time during the implementation of the measures stipulated in this Agreement, should an objection to any such measure or the manner of implementation to be raised by a member of the public, the CITY shall take the objection into account and consult as needed with the objecting party, SHPO, or ACHP to address the objection.

## **XII. Amendments and Termination**

- A. If any of the parties to this Agreement believes that the terms of the Agreement cannot be carried out, or that the Agreement should be amended, that party shall immediately consult with the other parties to develop amendments to the Agreement. The process of amending the Agreement shall be the same as that used in creating the original Agreement. If the parties cannot agree upon an amendment, the disagreement shall be addressed pursuant to Stipulation XI.
- B. If the terms of the Agreement are not carried out, the CITY shall immediately notify the other parties to the Agreement and shall consult to determine if amendments are necessary. If the terms of this Agreement are not carried out, the CITY shall not sanction any adverse effect to the historic property that would foreclose the ACHP's consideration of modifications or alternatives to the Undertaking.
- C. 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 termination to seek agreement on amendments or other actions that will avoid termination. In the event of termination, the CITY in consultation with ACHP and SHPO will determine how to carry out the CITY's responsibilities under Section 106 in a manner consistent with applicable provision of 36 CFR Part 800.

### **XIII. Anticipatory Actions**

- A. The CITY will not grant assistance to an applicant who, with intent to avoid the requirements of this Agreement or Section 106 of NHPA, has intentionally significantly adversely affected a historic property to which the assistance would relate, or having legal power to prevent it, allowed such significant adverse effect to occur. If the CITY determines, based on the actions of an applicant, that Section 110(k) of the National Historic Preservation Act is applicable and that circumstances may justify granting the assistance, the CITY shall consult with ACHP pursuant to 36 CFR §800.9(c).
  
- B. The CITY shall advise the applicant they may not initiate any undertaking on projects for which they are seeking federal funding prior to compliance with this Agreement and that they will jeopardize federal funding if activities are initiated prior to compliance with this Agreement.

### **XIV. Failure to Comply with Terms of Agreement**

In the event the CITY cannot carry out the terms of this Agreement, it shall not take any action or make any irreversible commitment that would result in an adverse effect to historic properties or would foreclose the ACHP's consideration of modifications or alternatives to the undertaking, and the CITY will comply with 36 CFR Part 800 with regard to each individual undertaking covered by this Agreement.

### **XV. Duration**

This agreement will be null and void 10 years from its effective date as described in Stipulation XVI. Prior to such time, the CITY may consult with the other signatories to reconsider the terms of the Agreement and amend in accordance with Stipulation XII.

### **XVI. Execution**

This Agreement may be executed in counterparts, with a separate page for each signatory, and the CITY will ensure that each party is provided with a fully executed copy. This Agreement shall become effective on the date of the last signature to this Agreement.



**Execution and Implementation** of this Agreement evidences that the CITY has afforded ACHP a reasonable opportunity to comment on the program and that the CITY has taken into account the effects of the program on historic properties.

CITY OF MILES CITY, MONTANA

By: C.A. Grenz Date: 9/8/05  
C.A. Grenz, Mayor -- Environmental Certifying Official

MONTANA STATE HISTORIC PRESERVATION OFFICER

By: Mark F. Faumber Date: 9/7/2005  
State Historic Preservation Officer

ADVISORY ACHP ON HISTORIC PRESERVATION

By: John M. Fowler Date: 10/11/05  
John M. Fowler, Executive Director

ATTACHMENT A  
TO  
CITY OF MILES CITY, MONTANA  
PROGRAMMATIC AGREEMENT

**Project Activities Not Requiring Review:**

1. Cleaning masonry surfaces with low pressure water and detergents using natural bristle brushes.
2. Removing damaged or deteriorated paint on wood surfaces by hand scraping and hand sanding to the next sound layer of paint.
3. Applying exterior paint in colors which are compatible with the style of architecture that the property represents, and the characteristics of the neighborhood.
4. Repointing with mortar that matches the original in strength, composition, color, aggregate size, texture, and duplicating the joints and profiles.
5. Repairing wood siding by patching or piecing in of in-kind materials.
6. Repairing or replacing historic roofing materials in-kind.
7. Replacing non-historic 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.
8. Repairing existing windows and doors.
9. Correcting structural deficiencies in basement, crawl spaces, attics, and beneath porches.
10. Modifications to non-significant interior spaces that 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.

11. Repairing or replacing site features, such as sidewalks, driveways, and fencing in-kind.
12. 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.
13. 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.
14. Installing interior storm windows.
15. Repairing, replacing, or modifying mechanical, electrical, or plumbing systems, if this activity does not require the removal of historically or architecturally significant systems or building fabric.
16. Installing caulking and weatherstripping, provided that the color of the caulk is consistent with the appearance of the property.
17. Installing water heater tank wraps.
18. Trimming trees or other plantings, provided that such activity does not noticeably change the size or shape of the tree or planting.
19. 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.