

MEMORANDUM OF AGREEMENT
BETWEEN THE CHARLES GEORGE VETERANS AFFAIRS MEDICAL CENTER,
ADVISORY COUNCIL ON HISTORIC PRESERVATION
AND
NORTH CAROLINA STATE HISTORIC PRESERVATION OFFICER
FOR
THE DEVELOPMENT OF EXPANDED INFUSION THERAPY AND
POLYSOMNOGRAPHY FACILITY AND INTEGRATED MENTAL HEALTH CLINIC
ASHEVILLE, BUNCOMBE COUNTY, NORTH CAROLINA

WHEREAS, the Charles George Veterans Affairs Medical Center (CGVAMC) proposes to construct facilities to house expanded Infusion Therapy and Polysomnography (ITPSG) programs on the CGVAMC campus, including parking area(s) to support the ITPGS expansion; and

WHEREAS, pending receipt of funding, CGVAMC also proposes to provide permanent facilities for its Integrated Mental Health Clinic (IMHC), which is housed in a temporary facility; and

WHEREAS, pursuant to 36 CFR § 800.3(a), these proposed activities constitute Undertakings subject to review under Section 106 of the National Historic Preservation Act (NHPA) and its implementing regulations (36 CFR 800); and

WHEREAS, CGVAMC initially proposed to construct its ITPSG facility on the site occupied by Building 9, a contributing element to the Greater Oteen Veterans Administration Hospital Historic District (District), a property included in the National Register of Historic Places; and

WHEREAS, Building 9 has deteriorated over time and CGVAMC uses the area around it for the storage of excess building and waste materials as well as a newly installed parking area. Undertakings that are adversely affecting the District; and

WHEREAS, pursuant to 36 CFR § 800.5(d), CGVAMC determined that demolition of Building 9 and associated garages would constitute an adverse effect on the District, requiring consultation to explore alternatives that would resolve the adverse effect; and

WHEREAS, CGVAMC has consulted with the North Carolina State Historic Preservation Officer (SHPO) to explore alternatives to the demolition of Building 9; and

WHEREAS CGVAMC has notified the Advisory Council on Historic Preservation (ACHP) of this consultation; and

WHEREAS CGVAMC has notified the Eastern Band of Cherokee Indians and the Cherokee Nation of Oklahoma (Tribes), the Preservation Society of Asheville and Buncombe County, the Historic Resource Commission of Asheville and Buncombe County, the Swannanoa Valley Museum, Preservation North Carolina, the Western North Carolina Historical Association, and Mountain Housing Opportunities of this consultation, and invited them to concur in this Memorandum of Agreement (MOA);

NOW, THEREFORE, it is mutually agreed that CGVAMC will implement the following stipulations in order to resolve the adverse effects of the expansion of its ITPSG facility, IMHC project, and the continued deterioration of Building 9 and its surrounding area (the Undertakings) on the District.

STIPULATIONS

I. Building 9

- a. CGVAMC will not demolish Building 9.
- b. Pursuant to Section 110(a)(1) of NHPA, CGVAMC will seek funding to rehabilitate Building 9 for use as its IMHC.
 - i. To the greatest extent feasible, the parties to this agreement will assist the CGVAMC in seeking support and funding for the rehabilitation and adaptive use of Building 9.
 - ii. Should CGVAMC receive such funding, it will rehabilitate Building 9 in accordance with the *Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings* (<http://www.nps.gov/lps/standards/rehabilitation/rehab/stand.htm> and related pages; hereinafter, *Secretary's Standards*), in consultation with the SHPO.
 - iii. CGVAMC need not subject rehabilitation of Building 9 per Stipulation I.b.ii. to further review as a separate undertaking under Section 106 of NHPA, except pursuant to Stipulation IV. However, CGVAMC will consult with the SHPO when initiating design and at the 35%, 50%, and 95% design stages to ensure reasonable conformance with the *Secretary's Standards*.
 - iv. In consultation with the SHPO, CGVAMC will immediately secure Building 9 against further damage by weather and vandalism (This work may be undertaken prior to execution of this MOA).
 - v. Should funding for such rehabilitation not be forthcoming within six (6) months after execution of this MOA, the CGVAMC will notify the parties to this MOA to reopen consultation under Section 106 of NHPA and consult further to seek other alternatives for the treatment of Building 9.
- c. Without regard to future funding and within sixty (60) days of execution of this MOA, CGVAMC shall undertake the removal of the building debris and waste materials stored in the area surrounding Building 9. The newly installed parking area may remain as parking and/or serve as a staging site for the construction of the new ITPSG facility.

II. ITPSG Program Facility

- a. CGVAMC will construct a new building for its ITPSG Program on a site west of Building 9, at the location shown in Attachment A hereto, entitled "Proposed

Location for Expanded Infusion Therapy and Polysomnography Facility” and dated July 5, 2012.

- b. In consultation with the SHPO, CGVAMC will ensure that the ITPSG Program Building’s design and construction are responsive to the recommended measures for new construction set forth in the *Secretary’s Standards*, and will consult with the SHPO when initiating design and at the 35%, 50%, and 95% design stages to ensure reasonable application of such measures;
- c. In consultation with the SHPO and the Tribes, CGVAMC will conduct archaeological testing in all areas where ground disturbance may occur in connection with constructing the ITPSG Program Building.
 - i. Should this testing reveal the presence of significant archaeological resources, CGVAMC will consult further with the parties to this MOA to establish a program to preserve and/or recover data from such resources in accordance with pertinent professional standards.
 - ii. Should the testing or subsequent data recovery reveal the presence of Native American cultural items as defined in the regulations implementing the Native American Graves Protection and Repatriation Act (43 CFR 10), CGVAMC will comply with 43 CFR 10 in consultation with the Tribes.

III. Parking and Landscaping

- a. Should the needs of the ITPSG Program and/or the IMHC so demand, CGVAMC may construct new parking facilities on the land west of Buildings 3, 4, 5, 6, and 7, as shown on Attachment A, and may demolish the garages currently occupying this space without further review under NHPA Section 106.
 - i. Plans for the parking facility(ies) will be developed in consultation with the SHPO to minimize the effect upon the District.
- b. Prior to demolishing the garages, in consultation with the SHPO, CGVAMC will document them via digital photography, using the guidance for such photography found at http://www.hpo.ncdcr.gov/digital/NCHPO_Digital_Start_Page.html. The photographs will depict the garages’ exteriors and interiors. The resulting digital images will be provided to the SHPO and a copy will be made available to the Asheville public library.
- c. Upon completion of the new ITPSG Program Building or the rehabilitation of Building 9, whichever comes later, CGVAMC will remove the temporary parking lot southeast of Building 9 and restore the lawn.

IV. Resolving Objections

- a. Should any party to this MOA object in writing to the CGVAMC regarding any action carried out or proposed with respect to any of the Undertakings, or to implementation of this MOA, the CGVAMC will consult with the objecting party to resolve the objection.

- b. If after initiating such consultation the CGVAMC determines that the objection cannot be resolved through consultation, the CGVAMC will forward all documentation relevant to the objection to the ACHP, including the CGVAMC's proposed response to the objection.
- c. Within 30 days after receipt of all pertinent documentation, the ACHP will exercise one of the following options:
 - i. Advise the CGVAMC that the ACHP concurs in the CGVAMC's proposed response to the objection, whereupon the CGVAMC will respond to the objection accordingly; or
 - ii. Provide the CGVAMC with recommendations, which the CGVAMC will take into account in reaching a final decision regarding its response to the objection; or
 - iii. Notify the CGVAMC that the objection will be referred for comment pursuant to 36 CFR 800.7(a)(4), and proceed to refer the objection and comment. The CGVAMC will take the resulting comment into account in accordance with 36 CFR 800.7(c)(4) and Section 110(l) of NHPA.
- d. Should the ACHP not exercise one of the above options within 30 days after receipt of all pertinent documentation, the CGVAMC may assume the ACHP's concurrence in its proposed response to the objection.
- e. The CGVAMC will take into account any ACHP recommendation or comment provided in accordance with this stipulation with reference only to the subject of the objection; the CGVAMC's responsibility to carry out all actions under this MOA that are not the subjects of the objection will remain unchanged.
- f. At any time during Implementation of the measures stipulated in this MOA, should an objection pertaining to this MOA or the effect of the Undertakings on historic properties be raised by a member of the public, the CGVAMC will notify the parties to this MOA and take the objection into account, consulting with the objector and, should the objector so request, with any of the parties to this MOA to resolve the objection.

V. Annual Report and Review

- a. On or before September 30 of each year until the CGVAMC and SHPO agree in writing that the terms of this MOA have been fulfilled, CGVAMC will prepare and provide an annual report to the parties to this MOA:
 - i. Progress in planning and constructing the ITPSG Program Facility;
 - ii. Progress in funding, planning, and constructing the IMHC;

- iii. Progress in funding, planning, and rehabilitating Building 9;
 - iv. Any problems or unexpected issues encountered during the year; and
 - v. Any changes that the CGVAMC believes should be made in implementation of this MOA.
- b. The CGVAMC will ensure that its annual report is made available for public inspection both at the CGVAMC itself and at local libraries, that potentially interested members of the public are made aware of its availability through press releases and other means, and that interested members of the public are invited to provide comments to the SHPO and ACHP as well as to the CGVAMC.
 - c. The signatories to this MOA will review the annual report and provide comments to the CGVAMC. Non-signatory parties to this MOA may review and comment on the annual report at their discretion.
 - d. At the request of any party to this MOA, the CGVAMC will ensure that a meeting or meetings are held to facilitate review and comment, to resolve questions, or to resolve adverse comments.
 - e. Based on this review, the signatories to this MOA will determine whether this MOA will continue in force, be amended, or be terminated.

VI. Amendment and Termination

- a. If the terms of this MOA have not been implemented by December 1, 2017, this MOA will be considered null and void. In such event the CGVAMC will so notify the parties to this MOA, and if it chooses to continue with the Undertakings, will re-initiate review of the Undertakings in accordance with 36 CFR Part 800.
- b. Any party to this MOA may propose to the CGVAMC that the MOA be amended, whereupon the CGVAMC will consult with the other parties to this MOA to consider such an amendment. 36 CFR 800.6(c)(1) will govern the execution of any such amendment.
- c. If the CGVAMC determines that it cannot implement the terms of this MOA, or if the SHPO or ACHP determines that the MOA is not being properly implemented, such party may propose to the other parties to this MOA that it be terminated.
- d. The party proposing to terminate this MOA will notify all parties to this MOA, explaining in writing the reasons for termination and affording them at least 30 days to consult and seek alternatives to termination. The parties will then consult.
- e. Should such consultation fail, the CGVAMC or other signatory party may terminate the MOA by notifying all parties in writing.

- f. Should this MOA be terminated, the CGVAMC will either
 - i. Consult in accordance with 36 CFR 800.6 to develop a new MOA; or
 - ii. Request the comments of the ACHP pursuant to 36 CFR 800.7.

Execution and submission of this MOA, and implementation of its terms evidence that CGVAMC has afforded the ACHP an opportunity to comment on the Undertakings and their effects on historic properties, and that CGVAMC has taken into account the effects of the undertakings on historic properties

AGREED.

U.S. DEPARTMENT OF VETERANS AFFAIRS, CHARLES GEORGE VETERANS AFFAIRS
MEDICAL CENTER

By: Cynthia Breyfogle Date: 12/6/12
Cynthia Breyfogle, Director

NORTH CAROLINA STATE HISTORIC PRESERVATION OFFICER

By: Kevin Cherry Date: 1/29/2013
Kevin Cherry

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: John Fowler Date: 2/14/13
John Fowler, Executive Director

CONCUR:

EASTERN BAND OF CHEROKEE INDIANS

By: _____ Date: _____

CHEROKEE NATION OF OKLAHOMA

By: _____ Date: _____

PRESERVATION SOCIETY OF ASHEVILLE AND BUNCOMBE COUNTY

By: _____ Date: _____

CONCUR (continued):

HISTORIC RESOURCE COMMISSION OF ASHEVILLE AND BUNCOMBE COUNTY

By: _____ Date: _____

SWANNANOVA VALLEY MUSEUM

By: _____ Date: _____

PRESERVATION NORTH CAROLINA

By: _____ Date: _____

WESTERN NORTH CAROLINA HISTORICAL ASSOCIATION

By: _____ Date: _____

MOUNTAIN HOUSING OPPORTUNITIES

By: _____ Date: _____

ATTACHMENT A

TO THE MEMORANDUM OF AGREEMENT

BETWEEN THE CHARLES GEORGE VETERANS AFFAIRS MEDICAL CENTER,
ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND
NORTH CAROLINA STATE HISTORIC PRESERVATION OFFICER FOR
THE DEVELOPMENT OF EXPANDED INFUSION THERAPY AND POLYSOMNOGRAPHY FACILITY
AND INTEGRATED MENTAL HEALTH CLINIC,
ASHEVILLE, BUNCOMBE COUNTY, NORTH CAROLINA

PROPOSED LOCATION FOR EXPANDED INFUSION THERAPY AND POLYSOMNOGRAPHY FACILITY

July 5, 2012

