

Examples of Chestnut Planting Agreements between TACF Chapters and University Partners

ME-TACF and the University of Maine – Orono

The ME Chapter of TACF established a breeding orchard, and plans to establish two 5-block seed orchards, on the Penobscot Experimental Forest (PEF) in Bradley, ME. According to ME Chapter President Glen Rea, the land is owned by the University of Maine (UMO) and managed by the US Forest Service (USFS). The ME Chapter relies on the MOU between TACF and the USFS to serve as the planting agreement for these orchards. Management decisions for the PEF are made by a committee of USFS and UMO scientists and managers, and all decisions require a majority vote. Lucky for the ME Chapter, both UMO and the USFS are supportive of the Chapter's work and presence on the PEF. If the PEF was managed by UMO alone, the Chapter likely would have sought a more firm agreement. However, due to the PEF management structure they feel fairly comfortable with the current arrangement.

PA-TACF and The Pennsylvania State University

The PA Chapter of TACF established a 10-block seed orchard on Penn State (PSU) land in State College, PA. The orchard is located within a parcel with plans for inclusion in the arboretum PSU has begun to establish, however these plans are not yet formal. The planting agreement between the PA Chapter and PSU is TACF's Germplasm Agreement (GPA). This agreement was facilitated by PA-TACF Board members, who were also staff and faculty members at PSU, and were instrumental in getting the GPA signed and the planting looked after. The main take-home from this planting is that having someone on the faculty or higher up on the staff at the University is very helpful in advocating for the planting's continued existence. However, there is still no guarantee that if a faculty or staff member moves on the planting won't be abandoned or removed.

VA-TACF and the University of Virginia

The VA Chapter of TACF established a breeding orchard at the University of Virginia's (UVA) Blandy Arboretum in Boyce, VA. The VA Chapter has a GPA signed by UVA, which serves as the planting agreement. The nice "safety net" for this planting is that it is located in an arboretum and the land use is not likely to be re-allocated anytime soon. According to VA Chapter President Cathy Mayes, this seems to be working quite well.

Additional Comments on University Agreements

Dr. Paul Sisco, former TACF Southern Appalachian Regional Science Coordinator and current TACF Board member, shared the following advice on planting agreements between TACF Chapters and University Partners:

“There are two types of generic agreements relevant here. One is the Material Transfer Agreement (MTA)...The other is the Cooperative Research and Development Agreement (CRADA). Our standard Germplasm Agreement is a type of MTA. But with institutions we also need a CRADA. Here's the relevant excerpt from the 2001 GPA report that Bruce Wakeland, Ann Leffel, Judy Dorsey, and I put together:

Material Transfer Agreement (MTA)

An agreement for transfer of proprietary material from one entity to another. Our committee interprets the present TACF Germplasm Agreement to be a type of MTA. A Uniform Biological MTA has been developed by the National Institutes of Health (NIH) and can be found on-line at:

<http://www.niehs.nih.gov/techxfer/ubmta.htm> Many universities have signed this MTA to standardize transfers of biological material.

Cooperative Research and Development Agreement (CRADA)

A working agreement between two entities for a joint research and development effort. The agreement spells out the responsibilities of both entities and the proprietary rights of each entity to the results of the joint effort. A standard CRADA developed by the NIH can be found on-line at:

<http://www.niehs.nih.gov/techxfer/crada.htm>

MTA/CRADA

Where cooperative research also involves a transfer of material, an MTA/CRADA is signed by both parties to the joint development effort. This is the kind of document that TACF needs to develop to work with public agencies.”

Additional Resources

The following resources are appended: TACF's current GPA and TACF's MOU with the USFS.

**THE AMERICAN CHESTNUT FOUNDATION @
GERMPLASM AGREEMENT
Regional Adaptability Breeding Program**

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This Agreement, dated and effective _____, 20___, is between The American Chestnut Foundation®, a Virginia nonprofit corporation with its principal facility in the State of Virginia (hereinafter referred to as "TACF"), and the entity executing this Agreement at the foot hereof (hereinafter referred to as the "Recipient").

The Reasons for this Agreement: TACF is in the process of breeding hybrid chestnut trees for eventual release into the public domain closely resembling pure American chestnut trees but without susceptibility to the disease known as chestnut blight and with resistance to insect pests and other major pathogens of chestnuts. The method of plant breeding being used by TACF is commonly referred to as the "backcross method" wherein lines of American chestnut stock are outcrossed once to other species of chestnut carrying genetic resistance to chestnut blight, and successive generations of such outcrosses are then repeatedly backcrossed to American chestnut to recover the desirable characteristics of the American chestnut tree while incorporating blight resistance. It is in the interests of TACF and of the Recipient to be able to test and observe the characteristics of hybrids which are in the earlier stages of such backcrossing (i.e., the original outcross and first through third backcrosses [and intercrosses between individual trees of the same generation of backcrossing] since selected offspring of third backcross trees are considered to be genetically primarily an American chestnut type of tree). But the Recipient and TACF do not want the Recipient or others to use genetic material from such early stages for propagation purposes because: (1) the Recipient and TACF wish to preserve TACF's rights to such genetic material; and (2) the Recipient and TACF *most emphatically* do not want any person to take such material and market it, or to market any progeny from it; the material may not have the characteristics desired or have characteristics that are not consistent with the goal of TACF, namely "the Restoration of the *American* Chestnut", and not a Chinese or other type of tree; and (3) the Recipient and TACF do not want to be identified with the distribution, increase or marketing of material that has the potential of diluting the resident American chestnut population in the Appalachian mountains.

The Terms of this Agreement: This Agreement applies to all varieties of chestnut germplasm, and includes but is not limited to: pollen, nuts, scion wood, sprouted seeds, small chestnut plants, rooted cuttings, and all progeny thereof, all of which are owned by TACF and hereinafter referred to as the "germplasm."

TACF agrees to supply samples of germplasm to the Recipient. In consideration of this action by TACF, the Recipient agrees to abide by the following terms and conditions as to said germplasm and any other germplasm which has heretofore been received or will hereinafter be received from TACF which is not otherwise covered by a subsequent agreement, **UNLESS AND UNTIL TACF SPECIFICALLY RELEASES ANY CONDITION IMPOSED BY THIS AGREEMENT ON THE CUSTODY AND USE OF ANY OF SAID GERMPLASM.** This agreement supercedes any and all previously signed germplasm agreements between TACF and this recipient.

1. The Recipient understands and agrees that this Agreement conveys only a right to carry out research, evaluations and/or field testing on the germplasm on behalf of and in consultation with TACF. None of the germplasm (or any material resulting in any manner from the germplasm) may be sold, offered for sale, given (by gift or otherwise), or in any other manner transferred or distributed to any third party (that is, someone who has not signed a TACF Germplasm Agreement) whatsoever (except as provided in paragraph 7 below) without first being covered by a specific written consent from TACF describing the material sold or otherwise transferred, the conditions of the transfer, and other conditions acceptable to TACF in its sole discretion. TACF reserves the right to refuse transfer for any reason whatsoever. It is expressly understood that under this Agreement no implied or express license is granted by TACF to the Recipient for any transfer of the germplasm to a third party.

2. The sample of germplasm provided hereunder may be used for basic research, evaluation and/or field testing on behalf of TACF. However, no transformation techniques are permitted with the germplasm. No mutagenesis, tissue culture, or cellular techniques are permitted with any seeds, plants, or plant parts of the germplasm, or of any plant material resulting from the germplasm, including pollen. Selection may be conducted with the germplasm when done as a part of a cooperative agreement (or "Selection Agreement") between TACF and the recipient, with title and distribution rights to such selections being retained by TACF.

3. Seed stock increases for evaluation are permitted. However no seed, plants, plant parts, seed parts, callous tissue or DNA of or resulting from the germplasm may be transferred or distributed to any third party, except as otherwise provided herein.

4. The Recipient understands that the germplasm is being supplied to the Recipient solely to enable the Recipient to assist TACF in evaluating the germplasm and in furthering the breeding program of TACF. The Recipient agrees to take reasonable care of the germplasm, to make a commitment to the maintenance of the germplasm appropriate to the purposes for which the germplasm has been supplied (and insofar as the Recipient is reasonably able to do so), to cooperate with the State TACF Chapter and TACF so that they may carry out their responsibilities regarding the Regional Adaptability Breeding Program, and to do such other things as are reasonably necessary (and reasonably within the capabilities of the Recipient) to further TACF research projects by means of the germplasm being supplied to the Recipient.

5. The Recipient will permit scientists or other personnel of TACF to view and take samples of germplasm growing at such locations at reasonable times and after reasonable prior notice to the Recipient.

6. The germplasm is provided "as is." TACF MAKES NO WARRANTIES, EITHER EXPRESSED OR IMPLIED, AS TO ANY MATTER WHATSOEVER RELATED TO THE GERMPLASM INCLUDING WITHOUT LIMITATION THE CONDITION OF THE SAMPLE, ITS MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTIES REGARDING INFRINGEMENT OF THIRD PARTY RIGHTS.

7. TACF retains ownership of all germplasm transferred to the Recipient and of all germplasm created therefrom, unless the parties negotiate a separate, joint-ownership agreement. The Recipient retains ownership of all real property on which germplasm is planted. Nothing in this Agreement shall restrict or impair the free transferability of the Recipient's real property, including that real property on which any trees produced from germplasm are located. In the case of a transfer of property interest by inheritance, the heirs of the Recipient shall be bound by the terms and conditions of this Agreement unless terminated by them as provided below. If the transferee of the real property interest has entered into its own agreement with TACF governing such trees, the Recipient will be under no further obligation. In all other instances of sale or other transfer of Recipient's interest in real property on which trees produced from germplasm are located, this Agreement shall automatically terminate upon such transfer and Recipient agrees to destroy all such trees prior to transfer.

8. The Recipient may terminate this Agreement at any time by destroying trees produced from germplasm or otherwise returning germplasm to TACF. The Recipient shall provide TACF with 60 days' written notice prior to destruction, in order to give TACF the opportunity to move the trees or otherwise preserve the germplasm.

This Agreement is nonassignable, is governed by the laws of the State of Virginia and may be amended only with the mutual written consent of both parties. This Agreement is effective when signed by the Recipient. Each individual signing for a corporate entity or any other entity hereby personally warrants his or her legal authority to bind that entity. If either party prevails in any litigation alleging violation of this Agreement, that party shall also be entitled to an award of attorneys' fees incurred in connection with such litigation to the extent permitted by the law of the State in which the germplasm is located.

RECIPIENT:

THE AMERICAN CHESTNUT FOUNDATION®

NAME: _____

BY: _____

SIGNATURE: _____

NAME & TITLE: Brvan Burhans, TACF President & CEO

TITLE: _____

DATE: _____

DATE: _____

ADDRESS & PHONE: _____

LANDOWNER _____

MEMORANDUM OF UNDERSTANDING
 between
 USDA FOREST SERVICE WASHINGTON
 OFFICE
 and
 THE AMERICAN CHESTNUT FOUNDATION
 FS Agreement No. **04MU11132421229**

This **MEMORANDUM OF UNDERSTANDING** is hereby entered into by and between the **USDA Forest Service**, Washington Office, hereinafter referred to as the Forest Service, and **THE AMERICAN CHESTNUT FOUNDATION**, hereinafter referred to as the Foundation.

AUTHORITIES: This agreement is made under the provisions of the Multiple Use, Sustained Yield Act of 1960 (16 U.S.C. 528531); the Cooperative Funds Act of June 30, 1914 (16 U.S.C. 498); the USDA Acceptance of Gifts Act, (7 U.S.C. 2269); the Volunteers in National Forests Act of 1972 (16 U.S.C. 558a558d); the Forest and Rangeland Renewable Resource Research Act of 1978 (16 U.S.C. 1641 et. seq.); and The Cooperative Forestry Assistance Act of 1978, as Amended through 2002.

A. PURPOSE: The purpose of this MOU is to establish a framework for cooperative research and management activities necessary to maintain and enhance the eastern forest ecosystems by reintroduction of blight resistance seedlings of *Castanea dentata*, or American chestnut (*hereinafter sometimes referred to as "AC"*) on National Forest System lands for the best interests of the people of the United States. This MOU sets forth the intent of the parties to coordinate their respective efforts and work cooperatively to restore American chestnut by studying and evaluating the planting of AC seedlings on National Forest System lands. American chestnut was historically a major component of eastern hardwood forests from Maine to Georgia, and from the Piedmont to the Ohio valley and the Great Lakes region. As the result of the introduction in the early 1900's of an exotic fungus, *Chryphonectria parasitica* the tree succumbed. By 1950, all that remained were ghostly trees. Currently only sprouts are found within its range. The Forest Service and Foundation believe that it is in the best interests of the American people to cooperate in AC restoration efforts. The Forest Service and the Foundation envision that coordination of American chestnut restoration effort will be carried until termination by either party in writing.

B. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:

(a) The Forest Service is a land management agency responsible for 191 million acres of National Forest System lands in 43 states. As part of this management responsibility, one of the Forest Service goals is to restore, maintain, and enhance forest ecosystems. One of these ecosystems, the eastern hardwood forest, was seriously damaged and its species composition altered by the introduction of an exotic fungus known as chestnut blight. The Forest Service has an interest in restoring the presence of American chestnut within its natural range on National Forest System lands.

(b) The Foundation is a Virginia notforprofit corporation (originally founded in 1983 as a District of Columbia notforprofit corporation) with one overarching goal, namely “the restoration of the American chestnut throughout the forests of the eastern United States.”

(c) The Foundation is in the process of breeding hybrid chestnut trees that closely resemble AC genetically, but which are resistant to chestnut blight. However, the Foundation is very concerned about insuring that its efforts result in chestnut material that, while disease resistant, is essentially “American chestnut” in character and in ability to survive and flourish in the forests of the United States, and is very aware that previous attempts (by governmental agencies and others) to produce disease resistant chestnuts have resulted in chestnut material that is incapable of such survival and ultimate flourishing in United States forest habitats. Accordingly, the Foundation is taking a number of steps to test its materials on a longterm basis to insure that it does not fall into the “traps” that have ruined previous chestnut breeding efforts and have resulted in products that—while initially hailed as successes—turned out to be ecological failures, and resulted both in a considerable waste of decades of time and of scientific and financial resources and also resulted in the release into the environment of entirely unsuitable materials.

(d) The Foundation believes that the achievement of its ultimate and overarching goal of breeding disease resistant chestnuts that are essentially “American chestnut” in all other characteristics throughout the forests of the eastern United States may take 100 years or more, and as such the Foundation is seeking to structure itself, its operations and its extremely limited resources to achieve that “centuryplus” goal and time line. The Foundation is taking this very longterm approach because it has seen the failure and abandonment of other chestnut breeding efforts commenced by the United States Government, state governments, universities and private business organizations, and the Foundation wishes to avoid repeating such failures.

(e) The Foundation desires to use space available on National Forest System lands to test and evaluate the results of its breeding program for use in restoration on National Forests.

(f) The parties agree on the desirability of restoring blight resistant chestnut material that otherwise has all the superior characteristics of the American chestnut to the eastern hardwood forest within the tree's native range through scientific research and breeding of blight resistant trees.

NOW, THEREFORE, in consideration of the above premises, the parties agree as follows:

C. FOREST SERVICE SHALL:

1. Whenever possible, make National Forest System lands available for the furtherance of this program, subject to applicable Federal laws, regulations, Forest plans, and State comprehensive plans for the affected area, and subject to approval by the organization head or its designated representative. but in any case subject to the Foundation’s rights as set out in paragraph E3 of this Agreement upon any termination hereof.
2. Ensure that activities such as planting comply with all environmental laws and

regulations and are in accordance with approved NEPA documents. Environmental analysis for AC planting will be incorporated and developed in conjunction with other management activities.

3. Assist the Foundation by planning, implementing, and monitoring of project or research work undertaken pursuant to this MOU and supplemental to this MOU.

4. Whenever possible and subject to available funding, provide resources to complete project development on National Forest System lands based on project plans and mutual agreements.

D. THE AMERICAN CHESTNUT FOUNDATION SHALL:

1. Provide at the Foundation's expense material (chestnuts, seedlings, and /or pollen or other propagules) from resistant or potentially resistant American chestnut trees for use in evaluating products of the Foundation's chestnut breeding efforts for possible eventual use in restoration efforts on National Forest System lands.

2. Periodically, meet with representatives of the Forest Service to review projects and agree on guidelines for new activities to meet the purposes of this MOU.

3. Make available to the Forest Service the list of project proposals within National Forest System lands and develop strategies to work together on these projects.

4. Provide an interim report of accomplishments by July 1 of each year, and a final report of accomplishments by November 15.

5. Assist the Forest Service with the evaluation of American chestnut tree planting projects on National Forest System lands, and with planning, implementing, and monitoring of these projects or research work.

E. IT IS MUTUALLY AGREED AND UNDERSTOOD BY ALL PARTIES THAT:

1. FREEDOM OF INFORMATION ACT (FOIA). Any information furnished to the Forest Service under this instrument is subject to the Freedom of Information Act (5 U.S.C. 552).

2. PARTICIPATION IN SIMILAR ACTIVITIES. This instrument in no way restricts the Forest Service or the Foundation from participating in similar activities with other public or private agencies, organizations, and individuals.

3. COMMENCEMENT/EXPIRATION/TERMINATION. This MOU takes effect upon the signature of the USDA Forest Service and The American Chestnut Foundation and shall remain in effect for five years from the date of execution. This MOU may be extended or amended upon written request of either the USDA Forest Service or The American Chestnut Foundation and the subsequent written concurrence of the other(s). Either the USDA Forest Service or The American Chestnut Foundation may terminate this MOU with a 60day written notice to the other(s) after ten years. Upon termination of this MOU by either party or for any other reason, the USDA Forest Service will negotiate with the Foundation removal or destruction of chestnut material that the Foundation believes is necessary to protect its rights toward restoration of AC in forests of the eastern United States. The USDA Forest Service will allow the Foundation enough time (up to 545 days or as much thereof as is determined by the Foundation to be necessary) following the date of termination to remove and/or

destroy any and all chestnut material. The right of removal will include all necessary or desirable free and unfettered access to all chestnut material on government land that is planted or otherwise exists as a result of this MOU.

4. RESPONSIBILITIES OF PARTIES. The Department of Agriculture and the Foundation and their respective agencies and offices will handle their own activities and utilize their own resources, including the expenditure of their own funds, in pursuing these objectives. Each party will carry out its separate activities in a coordinated and mutually beneficial manner.

5. LONG TERM IRREVOCABLE COMMITMENT OF THE FOUNDATION AND ITS SUCCESSORS OR ASSIGNS TO THE FOREST SERVICE. In consideration of the Forest Service's commitment in this MOU to assist the Foundation in their ultimate goal of restoring the American Chestnut to the forests of the eastern United States, the Foundation agrees that for as long as it remains in existence, at such time as the Foundation has chestnut material that it deems sufficiently "American chestnut" in character and that it deems suitable for general release into the forests of the United States of America, the Foundation and its successors or assigns will always offer to the Forest Service (or any organization which is the successor to the present Forest Service) the Foundation's chestnut material at the lowest cost at which such released material is offered to any other organization, or, in other words, the Foundation (and any successor) will always treat the Forest Service (and any successor) as the "most favored recipient" of any chestnut material generally offered for release by the Foundation for reintroduction of chestnut material into the forests of the eastern United States. This obligation of the Foundation and its successor to the Forest Service and its successor organizations shall survive any termination of this Agreement for any reason whatsoever, and shall be a perpetual obligation of the Foundation and its successor for so long as it shall continue in existence, and may not be revoked, modified, amended or otherwise changed by the Foundation and its successor without the specific written consent of the Forest Service, which consent the Forest Service may withhold in its sole discretion for any reason or for no reason.

6. PRINCIPAL CONTACTS. The principal contacts for this instrument are:

Forest Service Project Contact Cooperator Project Contact
Safiya Samman or Monty Maldonado President & CEO
Forest Service FHP & F&RGE
Stop Code: 1100
1400 Independence Ave. SW
Washington, DC 202501110
Phone: 7036055341
FAX: 7036055353
EMail:
ssamman@fs.fed.us
mmaldonado@fs.fed.us

Forest Service Administrative Contact Cooperator Administrative Contact
Dr. Safiya Samman
USDA Forest Service

1621 North Kent Street – RM 707
Arlington, VA 22209 Bennington, VT 05201
Phone: 7036054744
FAX: 7036055100
EMail:
ssamman@fs.fed.us

Marshal T. Case, President and CEO
The American Chestnut Foundation
469 Main Street, Suite 1
P.O. Box 4044
Bennington, VT 05201
Phone: 802-447-0110
Fax: 802-442-6855
E-mail: marshalc@acf.rog

7. NONFUND OBLIGATING DOCUMENT. This instrument is neither a fiscal nor a funds obligation document. Any endeavor or transfer of anything of value involving reimbursement or contribution of funds between the parties to this instrument will be handled in accordance with applicable laws, regulations, and procedures including those for Government procurement and printing. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority. This instrument does not provide such authority. Specifically, this instrument does not establish authority for noncompetitive award to the cooperator of any contract or other agreement. Any contract or agreement for training or other services must fully comply with all applicable requirements for competition.

8. ESTABLISHMENT OF RESPONSIBILITY. This MOU is not intended to, and does not create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.

a. All improvements, such as irrigation system, structures, and roads, placed on National Forest System lands at the direction of either or the parties, shall thereupon become the property of the United States, and shall be subject to the same regulations and administration of the Forest Service as all other National Forest System improvements of a similar nature. Chestnut materials are subject to the Foundation's rights under section E3 of this Agreement.

b. The Forest Service understands and agrees that this MOU conveys only a right to carry out research, evaluations and/or fieldtesting of the chestnut materials on behalf of and in consultation with the Foundation. None of the chestnut materials may be sold, offered for sale, given (by gift or otherwise), or in any other manner transferred or distributed to any third party without first being covered by a specific written consent from the Foundation.

c. To the extent necessary to achieve the Foundation's centuryplus goals of

restoration of chestnuts that are disease resistant but otherwise have all of the characteristics of the American chestnut, the Foundation reserves the right to refuse transfer of plant material to a third party for any reason whatsoever, subject, however, to the Foundation's perpetual and irrevocable obligation to treat the Forest Service and any successor organization as its most favored purchaser of chestnut material at such time as the Foundation determines generally to release disease resistant chestnut material that the Foundation has determined is otherwise essentially American chestnut in character. It is expressly understood that under this MOU no implied or express license is granted by the Foundation to the Forest Service for any transfer of the germplasm.

THE PARTIES HERERTO have executed this instrument by their duly authorized officers as of the dates set out besides the signatures of such officers.

The American Chestnut Foundation
/s/ Marshal T. Case
Marshal T. Case, President & CEO
October 12, 2004 _____
Date

USDA Forest Service
/s/ Dale Bosworth
Dale Bosworth, Chief
October 12, 2004 _____
Date