

Enclosure (1)

MEMORANDUM OF UNDERSTANDING
between

USDA FOREST SERVICE-WASHINGTON OFFICE
and

THE AMERICAN CHESTNUT FOUNDATION

04-MU-11132421-229

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. 528-531); 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. 558a-558d); 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 not-for-profit corporation (originally founded in 1983 as a District of Columbia not-for-profit 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 long-term 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 “century-plus” goal and time line. The Foundation is taking this very long-term 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 E-3 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 60-day 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 re-introduction 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	Mr. Marshal T. Case
Stop Code: 1100	469 Main Street
1400 Independence Ave. SW	P.O. Box 4044
Washington, DC 20250-1110	Bennington, VT 05201
Phone: 703-605-5341	Phone: 802-447-0110
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E-Mail: ssamman@fs.fed.us mmaldonado@fs.fed.us	E-Mail: marshalc@acf.org

Forest Service Administrative Contact	Cooperator Administrative Contact
Dr. Safiya Samman	Mr. Marshal T. Case
USDA Forest Service	American Chestnut Foundation
1621 North Kent Street – RM 707	P.O.Box 4044
Arlington, VA 22209	Bennington, VT 05201
Phone: 703-605-4744	Phone: 802-447-0110
FAX: 703-605-5100	FAX: 802-442-6855
E-Mail: ssamman@fs.fed.us	E-Mail: marshalc@acf.org

7. NON-FUND 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 E-3 of this Agreement.

 - b. The Forest Service understands and agrees that this MOU conveys only a right to carry out research, evaluations and/or field-testing 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 century-plus 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

USDA Forest Service

/s/ Marshal T. Case

/s/ Dale Bosworth

Marshal T. Case, President & CEO

Dale Bosworth, Chief

October 12, 2004

Date

October 12, 2004

Date

cc: Grants and Agreements/WO