

RESOLUTION NO. R2012-20

A RESOLUTION AUTHORIZING THE TOWN MANAGER TO SIGN AN AGREEMENT WITH THE AMERICAN CHESTNUT FOUNDATION, ACCEPTING THE DONATION OF A CHESTNUT TREE TO BE PLANTED ON THE PROPERTY OF THE TOWN OF SIGNAL MOUNTAIN.

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WHEREAS, The American chestnut tree was once a plentiful native species of our area, accounting for as much as one forth of the hardwood growth throughout the Appalachian Mountains; and,

WHEREAS, Chestnut blight was identified in North America in the early 1900's and virtually wiped out the species by 1940; and,

WHEREAS, The American Chestnut Foundation is in the process of developing a disease and pest resistant chestnut tree, closely resembling pure American Chestnut trees; and,

WHEREAS, the American Chestnut Foundation has offered to donate one such tree to the Town of Signal Mountain for planting on Town property,

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF SIGNAL MOUNTAIN, TENNESSEE, That the Town Manager is authorized to sign The American Chestnut Foundation Germplast Agreement, accepting the donation and associated terms and conditions.

  
\_\_\_\_\_  
MAYOR

4/9/12  
\_\_\_\_\_  
DATE

  
\_\_\_\_\_  
RECORDER

4-9-12  
\_\_\_\_\_  
DATE

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

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.

THE AMERICAN CHESTNUT FOUNDATION®

BY: \_\_\_\_\_

NAME & TITLE: Bryan Burhans, TACF President & CEO

DATE: \_\_\_\_\_

RECIPIENT:

NAME: \_\_\_\_\_

SIGNATURE:  \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

ADDRESS & PHONE: \_\_\_\_\_

LANDOWNER \_\_\_\_\_