



January 21, 2020

M E M O R A N D U M

TO: Jim Murdaugh, Ph.D.
President

FROM: Barbara Wills, Ph.D.
Vice President for Administrative Services and Chief Business Officer

SUBJECT: Revenue Sharing Agreement

Item Description

This item is a request for approval of the Revenue Sharing Agreement Between TCC and Restord Tech, LLC.

Overview and Background

TCC has the assignment of invention of the oyster dome, provided March 26, 2019. The previous board item provided to Restord Tech a license to develop commercial applications of the oyster reef dome. This Revenue Sharing Agreement establishes the financial relationship of Restord Tech, LLC and the College. Restord Tech will pay TCC 100% of the net profits until such time the College has fully recouped costs. After initial recovery of costs, Restord Tech agrees to pay TCC 10% of net profits.

Funding/ Financial Implications

Financial implications are to be determined.

Past Actions by the Board

There have been no past actions by the Board. Also presented to the Board at this meeting is the Exclusive License Agreement.

Recommended Action

Approve the Revenue Sharing Agreement between TCC and Restord Tech, LLC.

REVENUE SHARING AGREEMENT
Tallahassee Community College and Restord Tech LLC

This Revenue Sharing Agreement (the “Agreement”) is entered into as of _____ by and between The District Board of Trustees of Tallahassee Community College (“TCC”), having its principal place of business located at 444 Appleyard Drive, Tallahassee, Florida 32304 and Restord Tech LLC, having its principal place of business located at 3189 Mulberry Park Blvd., Tallahassee, Florida 32311, collectively the “Parties.”

WHEREAS, Restord Tech LLC is a Florida Limited Liability Company, owned by Robert Ballard.

WHEREAS, Robert Ballard is the inventor of the “Oyster Reef Dome,” the patented concrete dome, used for creating an artificial oyster reef, as more fully described in Appendix A.

WHEREAS, Robert Ballard is, and was at the time of invention of the Oyster Reef Dome, an employee of TCC.

WHEREAS, per his employment agreement with TCC, Robert Ballard transferred his rights of the Oyster Reef Dome patent to TCC via transfer agreement, dated March 26, 2019.

WHEREAS, TCC has given Restord Tech, LLC an exclusive license to manufacture, deploy, and sell the Oyster Reef Dome.

WHEREAS, TCC has given Restord Tech, LLC an exclusive license to manufacture, deploy, and sell the Oyster Reef Dome and the sole right to sublicense or transfer the license with prior written approval by Licensor, which approval shall not be unreasonably withheld, conditioned, or delayed.

WHEREAS, the Parties desire to enter into an agreement whereby Restord Tech will pay to TCC 10 percent of the net profits of the Oyster Reef Dome, after costs of production, installation, taxes, insurance, and legal costs (“Net Profits”) due to the efforts of Restord Tech, LLC according to the terms and conditions herein.

NOW, THEREFORE, in consideration of the mutual covenants and promises made to the parties hereto, TCC and Restord Tech, LLC covenant and agree as follows:

SECTION 1: REVENUE SHARE

1.1 Restord Tech LLC shall pay TCC 100 percent of Net Profits until such time as TCC has fully recouped all direct and indirect costs incurred by TCC in the development of the Patent Rights.

1.2 Restord Tech LLC shall pay 10 percent of its net profits to TCC annually on March 1 for the preceding calendar year. The percentage shall be split, 30 percent to TCC, 30 percent to the Wakulla Environmental Institute (“WEI”), the TCC aquaculture program, and 40 percent to Robert Ballard.

1.3 All payments shall be in the form of certified check.

SECTION 2: TCC'S REPRESENTATIONS AND WARRANTIES

2.1 TCC represents and warrants to Restord Tech, LLC, with the intent and understanding which Restord Tech, LLC will rely thereon in entering into this Agreement:

(a) it has the legal power, right, capacity and authority to accept, execute and deliver this Agreement and to carry out its obligations under this Agreement;

(b) the statements and information provided in the Revenue Sharing Application are true and accurate in all material respects;

(c) this Agreement is binding upon, and enforceable against, TCC in accordance with its terms;

(d) the undersigned representative of TCC is duly authorized to enter into this Agreement by TCC's Board of Directors;

(e) it has obtained or had the opportunity to obtain the advice of its own financial, legal, tax, and other professional advisors with respect to this Agreement.

SECTION 3: RESTORD TECH, LLC'S REPRESENTATIONS AND WARRANTIES

3.1 Restord Tech, LLC represents and warrants to TCC with the intent and understanding which Restord Tech, LLC will rely thereon in entering into this Agreement:

(a) it has the legal power, right, capacity and authority to accept, execute and deliver this Agreement and to carry out its obligations under this Agreement;

(b) the statements and information provided in the Revenue Sharing Application are true and accurate in all material respects;

(c) this Agreement is binding upon, and enforceable against, Restord Tech, LLC in accordance with its terms;

(d) the undersigned representative of Restord Tech, LLC is duly authorized to enter into this Agreement;

(e) it has obtained or had the opportunity to obtain the advice of its own financial, legal, tax, and other professional advisors with respect to this Agreement.

SECTION 4: INDEPENDENT CONTRACTOR

4.1 The Parties shall be considered independent contractors and not agents or employees of the other Party. A Party shall not have authority to make any statements, representations, or

commitments of any kind, and shall not take any action which shall be binding on the other Party, except as expressly provided for herein or authorized by the Parties in writing.

SECTION 5: INDEMNITY

5.1 Restord Tech, LLC will indemnify and save harmless TCC, from and against any and all losses, claims, damages, actions, causes of action, cost and expenses which TCC may sustain, incur, suffer or be put to by reason of any act or omission of Restord Tech, LLC or by any servant, employee, affiliate, or agent of Restord Tech, LLC in relation to the performance or non-performance of Restord Tech's obligations under this Agreement or breaches of the Warranties and Representations of Restord Tech under Section 2.

SECTION 6: APPROPRIATION

6.1 Appropriation of net profits of Restord Tech will be allocated on an annual basis on March 1 for the preceding calendar year unless otherwise agreed upon in writing by the parties.

SECTION 7: DISPUTE RESOLUTION

7.1 If a dispute arises between TCC and Restord Tech, LLC regarding any aspect of this Agreement, the individuals identified under section 10.2 will meet as soon as is practicable to resolve the dispute.

SECTION 8: CONFIDENTIALITY

8.1 Restord Tech, LLC shall not, in any fashion, form, or manner, either directly or indirectly:

(a) Disclose or communicate to any party information relating to TCC's business (the "Confidential Information");

(b) Duplicate any Confidential Information;

(c) Use any Confidential Information other than solely for the benefit of TCC;

(d) Assist a third party in using any Confidential Information in any manner not solely for the benefit of TCC;

(e) If Restord Tech, LLC has questions regarding the application of Chapter 119, Florida Statutes, related to the duty to provide public records relating to this Agreement, TCC's Custodian of Public Records should be contacted at Tallahassee Community College, 444 Appleyard Drive, Tallahassee, Florida 32304 or publicrecords@tcc.fl.edu;

(f) Restord Tech, LLC acknowledges TCC cannot and will not provide legal advice or business advice to Restord Tech, LLC with respect to its obligations pursuant to this section related to public records. Restord Tech, LLC further acknowledges it will not rely on TCC or its counsel to provide such business or legal advice, and Restord Tech, LLC has been advised to seek

professional advice with regard to public records matters addressed by this Agreement. Restord Tech, LLC acknowledges its failure to comply with Florida Law and this Agreement with respect to public records shall constitute a material breach of this Agreement and grounds for termination.

(g) In the event Restord Tech, LLC is exposed to any TCC or student non-public personal information (“NPPI”) while performing services hereunder, Restord Tech, LLC agrees to maintain the confidentiality of and protect such NPPI in accordance with the Fair Credit Reporting Act, the Health Insurance Portability and Accountability Act (“HIPPA”), FERPA, Florida Public Records Act, Chapter 119, Florida Statutes, and any other provision of Florida law which requires the protection and non-disclosure of NPPI, and all other regulations applicable to the services being performed hereunder. Restord Tech, LLC shall maintain information security policies for NPPI, consistent with prevailing United States Industry standards.

(h) Unless otherwise required by this Agreement, TCC will use its best effort to prevent Restord Tech, LLC from receiving student data or NPPI which Restord Tech, LLC does not need in order to satisfy the duties of the Parties under this Agreement.

SECTION 9: GENERAL PROVISIONS

9.1 This Agreement shall be governed and construed in accordance with the internal laws of the State of Florida, and venue for all claims or other causes of action arising out of this Agreement is Leon County, Florida.

9.2 This Agreement and any amendments to it, made in accordance with Section 13.1, constitute the entire agreement between the Parties with respect to the subject matter of the Agreement, unless otherwise agreed in writing by the Parties.

9.3 There will be no presumption any ambiguity in any of the terms of this Agreement should be interpreted in favor of either TCC or Restord Tech, LLC.

9.4 If any part of this Agreement is void or unenforceable at law, it shall be severed from this Agreement and the rest of the Agreement shall remain in effect and fully enforceable.

9.5 All funds are in US dollars.

9.6 This Agreement may be entered into by TCC and Restord Tech, LLC signing a separate copy of the Agreement (including a photocopy or facsimile copy) and delivering it to the other TCC and Restord Tech, LLC by facsimile or digital transmission.

9.7 This Agreement will not limit the positions TCC and/or Restord Tech, LLC may take in future negotiations or court actions.

SECTION 10: NOTICE

10.1 Any notice or other communication which is required to be given or TCC wishes to give to Restord Tech, LLC or which is required to be given or Restord Tech, LLC wishes to give to TCC with respect to this Agreement will be in writing.

10.2 A notice or communication must be delivered, mailed or sent by facsimile to the intended recipient at the address below:

**The District Board of Trustees of
Tallahassee Community College
Attn. Vice President of Administrative Services**
444 Appleyard Drive
Tallahassee, Florida 32304
Telephone: _____
Facsimile: _____

**Restord Tech, LLC
Robert Ballard**
3189 Mulberry Park Blvd.
Tallahassee, Florida 32311
Telephone: _____
Facsimile: _____

SECTION 11: TERM AND TERMINATION

11.1 This Agreement takes effect on execution.

11.2. This Agreement shall terminate upon termination of the Exclusive License Agreement Between TCC and Restored Tech, LLC.

SECTION 12: AMENDMENT

12.1 Any amendments to this Agreement must be in writing and executed by the Parties.

Section 13: Entire Agreement

13.1 This Agreement represents the full understanding of the Parties and shall supersede all previous oral or written agreements regarding the subject matter herein.

IN WITNESS WHEREOF, each of the Parties has executed this Revenue Sharing Agreement, each Party by its duly authorized officer, as of the day and year set forth below.

Restord Tech LLC

The District Board of Trustees of
Tallahassee Community College

/s/

By: /s/

Date:

Date:

Description of the Oyster Reef Dome

The present invention provides for a dome shaped, semi-hemispherical structure designed to be submerged in tidal waters. Preferably, a plurality of such structures are concentrated within a particular area to provide the infrastructure necessary.

Each structure is preferably formed from high-strength concrete, or other material suitable for long term submersion in tidal waters. Each structure includes a plurality of openings through the structure that allow for communication of water between the interior and the exterior of the structure. Preferably, between 5 – 10 openings are provided, and are randomly positioned about the structure.

Each structure further includes a removable oyster seed source holder. Preferably, this seed source holder is a PVC pipe with removable end caps. This PVC pipe is connected to the top portion of the structure and extends into the interior area created by the dome structure. The PVC pipe includes a plurality of openings that allow for fluid communication between the interior of the pipe and interior space of the dome structure. An effective number of live, adult oysters are placed into the pipe and are secured within the pipe by the removable caps.

These oysters then go through a normal spawning process, during which the eggs and sperm that are released are initially within a semi-contained environment. This can increase the efficiency of the spawning process. As oyster larva develop, they require a hard surface for attachment. Once attached, the larva develop into adult oysters. The dome structures provide (on both the interior and exterior of the dome) the hard surface required by oyster larvae. Thus, the dome structures both facilitate efficient spawning and provide the required environment for oyster growth.

In operation, a plurality of dome structures are submerged in near proximity over a designated area in tidal waters. These structures are then provided with live oysters which are allowed to naturally spawn. The resulting larva find attachment on the plurality of dome structures and begin the oyster reef establishment process.