



May 20, 2024

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 Bob Ballard and/or Mary Ballard.

Overview and Background

TCC holds the assignment of invention of the oyster dome, provided March 26, 2019. This Revenue Sharing Agreement establishes the financial relationship of Bob Ballard and/or Mary Ballard and the College, related to revenue generated by the intellectual property. After initial recovery of costs, TCC agrees to pay Bob Ballard and/or Mary Ballard 40% of the revenue.

Funding/ Financial Implications

Financial implications are to be determined based on future profits.

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 Bob Ballard and/or Mary Ballard.

REVENUE SHARING AGREEMENT
Tallahassee Community College and Robert Ballard and Mary Ballard

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 Robert Ballard and/or Mary Ballard, whose residence is located at 3189 Mulberry Park Blvd., Tallahassee, Florida 32311, collectively the “Parties.”

WHEREAS, Robert Ballard is an individual Florida resident.

WHEREAS, Mary Ballard is an individual Florida resident.

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

WHEREAS, Robert Ballard 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 intellectual property to TCC via transfer agreement, dated March 26, 2019.

WHEREAS, the Parties desire to enter into an agreement whereby Robert Ballard and/or Mary Ballard will share a percentage of College revenue related to the profits generated by the licensing of the Oyster Reef Dome, after direct and indirect costs incurred by the College in the development or protection of the intellectual property are recovered, in accordance with College Policy and according to the terms and conditions herein.

NOW, THEREFORE, in consideration of the mutual covenants and promises made to the parties hereto, TCC and Robert Ballard and/or Mary Ballard covenant and agree as follows:

SECTION 1: REVENUE SHARE

1.1 The College receives profit from sales related to the licensing of the Oyster Reef Dome. After recovery of all direct and indirect costs incurred by the College in the development or protection of the intellectual property, the College agrees to pay Robert Ballard and/or Mary Ballard forty percent (40%) of the revenue. The College further agrees to provide thirty percent (30%) of the revenue generated to the Wakulla Environmental Institute to further support the research, conservation and instructional efforts of the Institute.

1.2 The College shall pay the amount due to Robert and/or Mary Ballard annually on March 1 for the preceding calendar year.

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 Robert Ballard and Mary Ballard, with the intent and understanding which Robert Ballard and Mary Ballard 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 Agreement 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 The District Board of Tallahassee Community College.

(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: ROBERT BALLARD'S REPRESENTATIONS AND WARRANTIES

3.1 Robert Ballard and/or Mary Ballard represent and warrant to TCC with the intent and understanding which TCC will rely thereon in entering into this Agreement:

(a) they have 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 Agreement are true and accurate in all material respects;

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

(d) Robert Ballard and Mary Ballard are duly authorized to enter into this Agreement;

(e) they have obtained or had the opportunity to obtain the advice of their 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 Robert Ballard and Mary Ballard 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 Robert Ballard and/or Mary Ballard or by any servant, employee, affiliate, or agent of Robert Ballard and Mary Ballard in relation to the performance or non-performance of Robert Ballard and Mary Ballard's obligations under this Agreement or breaches of the Warranties and Representations of Robert Ballard and Mary Ballard under Section 2.

SECTION 6: APPROPRIATION

6.1 Appropriation of revenue sharing 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 Robert Ballard and/or Mary Ballard 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 Robert Ballard and Mary Ballard 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 Robert Ballard and Mary Ballard have 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) Robert Ballard and Mary Ballard acknowledge TCC cannot and will not provide legal advice or business advice to Robert Ballard and Mary Ballard with respect to its obligations pursuant to this section related to public records. Robert Ballard and Mary Ballard further acknowledges it will not rely on TCC or its counsel to provide such business or legal advice, and Robert Ballard and Mary Ballard have been advised to seek professional advice with regard to public records matters addressed by this Agreement. Robert Ballard and Mary Ballard acknowledge their 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 Robert Ballard and Mary Ballard are exposed to any TCC or student non-public personal information (“NPPI”) while performing services hereunder, Robert Ballard and Mary Ballard agree 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. Robert Ballard and Mary Ballard 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 Robert Ballard and Mary Ballard from receiving student data or NPPI which Robert Ballard and Mary Ballard do 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 Robert Ballard and Mary Ballard.

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 Robert Ballard and Mary Ballard signing a separate copy of the Agreement (including a photocopy or facsimile copy) and delivering it to the other by facsimile or digital transmission.

9.7 This Agreement will not limit the positions TCC and/or Robert Ballard and Mary Ballard 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 Robert Ballard and Mary Ballard or which is required to be given or Robert Ballard and Mary Ballard wish 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 email 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: 850.201.8590
Email:

**Robert Ballard and Mary
Ballard**
3189 Mulberry Park
Blvd. Tallahassee,
Florida 32311
Telephone:
850.294.3653
Email:
rarechicks@gmail.com

SECTION 11: TERM AND TERMINATION

11.1 This Agreement takes effect on June 1, 2024.

11.2. This Agreement shall terminate upon termination of the Exclusive License Agreement Between TCC and Robert Ballard and Mary Ballard.

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.

Robert Ballard

The District Board of Trustees of Tallahassee
Community College

/s/ _____

/s/ _____

Date: _____

By: _____

Mary Ballard

Date: _____

/s/ _____

Date: _____