




November 20, 2017

MEMORANDUM

TO: District Board of Trustees
FROM: Jim Murdaugh, President 
SUBJECT: Agreement with the Panacea Oyster Co-Op Corporation

Item Description

This item presents an agreement between the College and the Panacea Oyster Co-Op Corporation for collaboration of services.

Overview and Background

Through its program designs and instruction of aquaculture curriculum to its students, the College's Wakulla Environmental Institute (WEI) has been able to provide its students with the knowledge and tools required create sustainable aquaculture opportunities in Wakulla County. To further assist WEI students and their efforts, the Panacea Oyster Co-Op Corporation (Co-Op) was formed by area county residents and have expressed a desire to grow their relationship with WEI. An agreement between WEI and the Co-Op will provide opportunities for internships, jobs, and other related services to WEI's students.

Past Actions by the Board

None

Funding/Financial Implications

There are no funding implications of the College with this agreement.

Staff Resource

Bob Ballard

Recommended Action

Approve the Panacea Oyster Co-Op Corporation Agreement.

COOPERATION AND DEVELOPMENT AGREEMENT

This Cooperation and Development Agreement (“Agreement”) is entered into by and among, Panacea Oyster Co-Op Corporation (“Co-Op”) and The District Board of Trustees of Tallahassee Community College, Florida/Wakulla Environmental Institute (“WEI”) this ____ day of _____, 2017 (“Effective Date”).

PREMISES

WHEREAS, WEI has as a primary mission to educate students and create sustainable jobs in Wakulla County, Florida; and

WHEREAS, WEI designs and provides necessary aquaculture knowledge and curriculum which will be utilized by the Co-Op; and

WHEREAS, WEI designs and provides to the Co-Op for its use and for the use of its aquaculture students (“Ranchers”), the farming method improvements including the sleeve technology to facilitate the attachment of lines to the support poles that hold the cages, the cleaning equipment for the lines and poles, and the “catwalk” that attaches to the side of the boat allowing the Rancher to work at any point during the day, which were all developed by WEI (which, along with the aquaculture knowledge, are described in this Agreement as “WEI Technology”); and

WHEREAS, subsequent to the completion of the WEI aquaculture course, former Ranchers applied for and obtained state-owned sovereignty submerged land aquaculture leases from the State of Florida and are growing oysters for commercial distribution; and

WHEREAS, Ranchers need oyster spat, cages, and markets for the sale of their oysters; and

WHEREAS, the Co-Op was formed to assist Ranchers and to provide a market for aquaculture oysters; and

WHEREAS, WEI intends to expand its course offerings to include aquaculture, coastal biology, and shellfish programs and intends to provide its students the opportunity to intern at the Co-Op facilities to augment their education in the hatchery, nursery, ranching, processing, and marketing of oysters (“Aquaculture Educational Programs”); and

WHEREAS, the Co-Op desires to utilize the WEI Technology and to work with WEI and utilize its continuing development and improvements to the WEI Technology, to benefit each other, WEI students, the Wakulla County, Florida community, the Ranchers, and to assist in the establishment of sustainable jobs in Wakulla County, all in accordance with the terms and conditions described below; it is

NOW, THEREFORE, in consideration of the Premises and for other good and valuable consideration, the receipt of which are hereby acknowledged, agreed as follows:

1. **WEI'S OBLIGATIONS TO THE CO-OP.** WEI shall preform the following enumerated services from the Effective Date through the termination of this Agreement:
 - A. **DESIGN ASSISTANCE** The Co-Op desires to design and construct facilities for the delivery of oysters from Ranchers, the processing and grading of the delivered oysters, the development of oyster nurseries and hatcheries, transportation of oysters, and related activities (the "Facilities"). WEI has knowledge with respect to the design and development of said Facilities and, during the term of this Agreement, will assist the Co-Op in the planning, design and development of the Facilities; provided, however, the cost of said design, development, and construction of the Facilities shall be borne solely by the Co-Op.
 - B. **GRANTS** During the term of this Agreement, WEI and the Co-Op may research, identify and apply for grants that may be appropriate for the operations of WEI and its partnership with the Co-Op. All grant applications or proposals, must be in compliance with College policies and procedures, and approved by the Director of Contracts and Grants prior to submission. Grant administration may be provided when such grant permits the cost of the administration to be taken from the grant funds. The College will use the latest federally approved indirect rates.
 - C. **COORDINATION WITH OTHER UNIVERSITIES AND GOVERNMENTS.** WEI shall coordinate with other colleges, universities, and governmental agencies to assist the Co-Op in providing services to Ranchers, providing jobs and internships for students, and providing opportunities for both the Co-Op and other colleges, universities, and governmental agencies to participate in creating jobs, and developing oyster aquaculture.
 - D. **EDUCATIONAL SUPPORT** WEI intends to provide Aquaculture Educational Programs to prepare students for state certifications in aquaculture, aquaculture leases, college credits, and job training. In conjunction with its Aquaculture Educational Programs, WEI will recommend qualified students to the Co-Op for internships at the Co-Op, throughout the term of this Agreement.
 - E. **WEI TECHNOLOGY** WEI hereby grants the Co-Op the non-exclusive right to utilize the WEI Technology, as it may be amended or modified during the term of this Agreement.
 - F. **WEI BRANDING** WEI hereby grants the Co-Op the right to use the WEI name and logos in connection with the Co-Op's business and in all media during the term of this Agreement. Said use must be approved in advance by the Vice President of Communications and Marketing, the approval of which shall not be unreasonably withheld.

2. **CO-OP'S OBLIGATIONS TO WEI** Co-Op shall perform the following enumerated services during the period from the Effective Date through the termination of this Agreement:

A. **COOPERATION WITH EDUCATIONAL MISSION OF WEI** Co-Op will cooperate with WEI by providing access to the Co-Op's facilities for use in WEI's Aquaculture Educational Programs and assist WEI in its Aquaculture Educational Programs by providing internship opportunities for WEI students, all subject to Co-Op's reasonable rules. However, the Co-Op's obligation of cooperation and assistance shall not impair the Co-Op's day-to-day business operations. The internships will be governed by a separate affiliation agreement.

B. **PAYMENT OF COMPENSATION** Co-Op shall issue to The District Board of Trustees of Tallahassee Community College, Florida, a sufficient number of shares of the Co-Op's Common Stock, which, when issued, will be in the name of The District Board of Trustees Tallahassee Community College and equal to two percent (2%) of the outstanding stock (common and preferred) in the Co-Op.

C. **INSURANCE** Co-Op agrees to maintain general liability and property insurance to cover risks of its operation, which names WEI as an additional insured and provides coverage not less than \$1,000,000 per incident or occurrence.

D. **SIGNAGE** Co-Op agrees to include, at its cost, reference to WEI on the primary signage at each of its locations, which signage must be approved by WEI, the approval of which shall not be unreasonably withheld.

E. **BOAT SLIP** Co-Op agrees to provide WEI, at no cost to WEI, during the term of this Agreement, one boat slip at the Co-Op marina, which slip will accommodate up to a 32 foot boat.

F. **CO-OP DIRECTOR'S SEAT** Co-Op agrees to provide the Executive Director of WEI with a seat on the Co-Op Board of Directors, as long as this Agreement is in effect. As a Director, the Executive Director of WEI shall have the same duties and powers as the other Board of Directors. However, the Executive Director of WEI, as a Director of the Co-Op, shall not receive compensation in any form from the Co-Op for the performance of his or her duties as a Director.

3. **TERM AND TERMINATION**. This Agreement shall commence on the Effective Date and shall continue until terminated in accordance with the terms of this Agreement. Either Party may terminate this Agreement for cause if the other Party commits a material breach of this Agreement and fails to cure such breach within thirty (30) days of its receipt of

written notice of the breach from the non-breaching Party; provided, however, if the cure takes longer than 30 days and the party has commenced and diligently pursuing the cure, the time for cure shall be extended until the efforts to cure have failed to achieve a cure.

Further, either party may terminate this Agreement without cause at any time with forty five (45) days written notice to the other party.

4. **UPON TERMINATION.** Upon termination of this Agreement, each party's obligations to the other party shall terminate, including, but not limited to;
 - A. The Co-Op shall no longer be entitled to use the Tallahassee Community College or WEI logo
 - B. WEI shall no longer be entitled to have a Co-Op Board of Directors seat
 - C. WEI shall no longer be entitled to a boat slip from the Co-Op
 - D. The Co-Op shall not be entitled to any assistance with grant work from WEI

Notwithstanding the foregoing, WEI shall continue to retain the Co-Op Common Stock previously provided to it by the Co-Op pursuant to paragraph 2.B. of this Agreement.

5. **REPRESENTATIONS AND WARRANTIES.** WEI represents that it has the required skills and experience to perform the duties and responsibilities required as described above. WEI represents and warrants that it is authorized to execute this Agreement and to perform the services required. WEI further represents and warrants that it is not a party to any other agreement or subject to any restriction which would prohibit, impair or limit its ability to perform the services required of WEI under this Agreement.

The Co-Op represents that it has the required skills and expertise to perform the duties and responsibilities required as described above. The Co-Op represents and warrants that it is authorized to execute this Agreement and to perform the services required. The Co-Op further represents and warrants that it is not a party to any other agreement or subject to any restriction which would prohibit, impair or limit its ability to perform the services required of the Co-Op under this Agreement.

6. **AMENDMENT.** This Agreement shall not be amended or modified except by a writing executed and delivered by both parties. Any provision of this Agreement may be waived only if such waiver is in writing and signed by both parties.
7. **ASSIGNMENT.** Neither WEI nor the Co-Op shall have the right to assign their respective rights or obligations under this Agreement.
8. **GOVERNING LAW.** This Agreement shall be governed by, construed and interpreted in accordance with the laws of the State of Florida. Exclusive venue for any litigation shall be Leon County, Florida. THE PARTIES HEREBY WAIVE THEIR RIGHT TO A JURY TRIAL.

9. **ENTIRE AGREEMENT.** This Agreement represents the entire understanding of the parties concerning the subject matter hereof and supersedes all prior communications, agreements and understandings, whether oral or written, relating to the subject matter thereof.

10. **COUNTERPARTS.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

11. **MISCELLANEOUS**

A. **Notices:** All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given when delivered personally or sent by email:

If to WEI, at ballardb@tcc.fl.edu

If to Co-Op, at rob@olinandassociates.com

or for any party, at such other email address as such party shall have specified in writing to each of the others in accordance.

B. **Section Headings:** The section headings of this Agreement are for convenience of reference only and shall not be deemed to limit or affect any of the provisions hereof.

IN WITNESS WHEREOF, Co-Op and WEI, intending to be legally bound, have executed this Agreement to memorialize their agreements.

Panacea Oyster Co-Op Corporation

By: _____

Its: _____

Date: _____

The District Board of Trustees of
Tallahassee Community College, Florida

By: _____

Its _____

Date: _____