



BOARD OF COUNTY COMMISSIONERS

DATE: May 7, 2013

AGENDA ITEM NO. 12

Consent Agenda ☐

Regular Agenda ☒

Public Hearing ☐

County Administrator's Signature:

Subject:

Approval of the Termination of an Economic Development Grant Funding Agreement in the Amount of \$1,275,000 Between Pinellas County and Jabil Circuit, Inc. (Company).

Department:

Economic Development

Staff Member Responsible:

Mike Meidel, Director

Recommended Action:

I RECOMMEND THAT THE BOARD OF COUNTY COMMISSIONERS (BOARD) APPROVE THE TERMINATION OF THE ECONOMIC DEVELOPMENT GRANT FUNDING AGREEMENT.

Summary Explanation/Background:

Florida Statute 125.045 authorizes counties to expend public funds to support economic development activities, including making grants for the attraction of new businesses to the community. Pursuant to Florida Statute 125.045, Pinellas County Resolution 08-92, approved at the Board's June 17, 2008 meeting, established a financial commitment of \$1,275,000 to the Company (which was known as Project A7110961090 at that time).

The Company intended to expand its Pinellas County production, research & development, and headquarters facilities. The estimated value of this capital investment was \$54 million. The 2,696 jobs associated with this project would have paid, on average, annual wages above the County average. The City of St. Petersburg would have contributed \$1,275,000 in grant and infrastructure improvements. Other local agencies had also committed their support to the project, which the Governor's Office of Trade, Tourism and Economic Development had selected to receive a Quick Action Closing Fund award of \$12,438,000 as project milestones were met.

Fiscal Impact/Cost/Revenue Summary:

No payments have been made, as the project failed to commence. The State's Quick Action Closing Fund Agreement has already been terminated.

Exhibits/Attachments Attached:

Economic Development Grant Funding Agreement
Release and Termination of Agreement



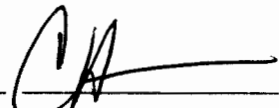
NON-PURCHASING CONTRACT REVIEW TRANSMITTAL SLIPPROJECT: Release and Termination Agreement between Jabil Circuits, Inc. and Pinellas County Government.CONTRACT NO.: N/AESTIMATED EXPENDITURE / REVENUE: N/A

(Circle or underline appropriate choice above.)

In accordance with Contract Administration and its Review Process, the attached documents are submitted for your review and comment.

Please complete this Non-Purchasing Contract Review Transmittal Slip below with your assessment, and **forward to the next Review Authority on the list, skipping any authority marked "N/A."** Indicate suggested changes by noting those in "Comments" column, or by revising, in RED, the appropriate section(s) of the document(s) to reflect the exact wording of the desired change(s).

OTHER SPECIFICS RELATING TO THE CONTRACT: Termination of the grant funding agreement between Jabil Circuits, Inc. and Pinellas County Government dated November 4, 2008, as project failed to commence. No payments have been made. State Agreement has already been terminated.

REVIEW SEQUENCE	DATE	INITIALS/ SIGNATURE	COMMENTS (IF ANY)	COMMENTS REVIEWED & ADDRESSED OR INCORPORATED (ORIGINATOR'S INITIALS & DATE)
Originator Mike Meidel	<u>3/27/13</u>			
Legal Dennis Long	<u>4/10/13</u>			
Assistant County Admin Carl Harness	<u>7/11/13</u>			

All inquiries should be made to Suzanne Christman ext. 48122. Thank you.

RELEASE AND TERMINATION OF AGREEMENT

THIS RELEASE AND TERMINATION OF AGREEMENT is made and entered into as of the 22 day of March, 2013 ("Effective Date"), by and between Pinellas County, a political subdivision of the State of Florida ("County") and Jabil Circuits, Inc., a Delaware Corporation authorized to do business in Florida, hereinafter referenced to as ("Jabil").

WITNESSETH:

WHEREAS, the County and Jabil previously entered into an Economic Development Grant Funding Agreement dated November 4, 2008, ("Agreement"); and

WHEREAS, the parties now desire to terminate the Agreement as provided herein.

NOW, THEREFORE, in consideration of the above and the mutual promises set forth herein, the parties hereby agree that the Agreement is hereby terminated as of the Effective Date. Each party hereby releases the other party from all rights and obligations in the Agreement arising on or after the date of termination.

IN WITNESS WHEREOF, the parties hereto have executed this Release and Termination of AGREEMENT as of the date set out above.

JABIL CIRCUITS, INC.

By: 
Print Name: WILLIAM E. PETERS
Title: PRESIDENT


PINELLAS COUNTY, by and through
its Board of County Commissioners

By: _____
Chairman

ATTEST:
KEN BURKE

By: _____
Deputy Clerk

APPROVED AS TO FORM

By: 
Office of the County Attorney

ECONOMIC DEVELOPMENT GRANT FUNDING AGREEMENT

THIS ECONOMIC DEVELOPMENT GRANT FUNDING AGREEMENT ("Agreement") is made and entered into on the 4 day of ~~November~~ 2008 ("Effective Date"), by and between Pinellas County, a political subdivision of the State of Florida ("County"), and Jabil Circuits, Inc., a Delaware corporation ("Jabil"). The County and Jabil shall be referred to collectively herein as the "Parties".

W I T N E S S E T H

WHEREAS, because of increasing competition from other states and countries for the location and retention of private enterprises within Florida, counties are authorized, pursuant to §125.045, Florida Statutes, to expend public funds to support economic development activities, including, but not limited to, improving local infrastructure, issuing bonds to finance or refinance the cost of capital projects, leasing or conveying real property, and making grants to private enterprises for the expansion of businesses existing in the community; and

WHEREAS, Jabil has successfully employed hundreds of Pinellas County residents generating billions of dollars in new economic growth, and has expressed an interest in establishing a new facility in Pinellas County, Florida; and

WHEREAS, the State of Florida has targeted entities such as Jabil for retention in Florida to serve as continued catalysts for evolving technology economic development clusters in order to expand the state's economic base; and

WHEREAS, Pinellas County recognizes that the presence of Jabil would help to attract and retain the type of high-wage primary jobs envisioned by Pinellas County's "Pinellas by Design Plan", while helping to facilitate growth in the economic clusters already targeted by the County; and

WHEREAS, pursuant to §288.1088, Florida Statutes, Jabil has been recommended to receive grant funds in the sum of \$12,438,000.00 from the State of Florida needed for the construction of new facilities and the expansion of existing operations in Pinellas County, investing at least \$54,000,000.00 for the construction of facilities and acquisition of furniture, fixtures and equipment for a corporate headquarters, a research and development facility, and a manufacturing/distribution center to be located in the City of St. Petersburg, Pinellas County, Florida (the "Project"); and

WHEREAS, subject to securing additional approvals required for the Project, it is necessary to identify and make available financial support from local partners to be eligible for the above referenced State of Florida grant ; and

WHEREAS, pursuant to Resolution No. 08-92, the Pinellas County Board of County Commissioners previously approved the award of economic development grant funds of \$1,275,000.00 for the Project ("Grant Award") to provide local matching funds to support the County's continued economic vitality; and

WHEREAS, this Agreement sets forth the rights and obligations of the Parties related to the aforementioned Grant Award relating to the Project and related matters.

NOW, THEREFORE, for and in consideration of the foregoing recitals, the mutual promises contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. **RECITALS.** The above recitals are true and correct and are adopted as an integral part of this Agreement.
2. **TERM.** The term of this Agreement shall commence on the Effective Date and continue in full force and effect for a period of fifteen (15) years ("Term"), unless otherwise terminated or extended as provided herein.

3. **CONDITIONS PRECEDENT TO GRANT FUNDING.** The disbursement of the Grant Award and/or continued funding of the Grant from the County is conditioned upon the satisfaction of the following conditions precedent:

A. The State of Florida ("OTTED") and Jabil enter into a State of Florida Governor's Quick Action Closing Fund Agreement ("State Grant"), as evidenced by a signed grant agreement, a copy of which has been provided to the County by Jabil.

B. Jabil commits, upon customary and reasonable business terms and conditions, to commence or cause commencement of the construction of the Project no later than July 1, 2009, or to enter into a lease of the Project for a minimum term of fifteen (15) years, such term to commence no later than December 1, 2010. For purposes of this subsection, "commencement" of construction shall mean issuance of a building permit for any of the buildings comprising the Project. Satisfaction of this condition may be evidenced either by a written lease signed by Jabil, directly or through related entities, and the owner of the land (if not Jabil), or by a copy of a building permit.

C. Upon completion of the Project, Jabil, directly or through related entities as defined herein ("Qualified Related Entities"), will use and occupy the Project in connection with its business operations. For the purposes of this Agreement, "Qualified Related Entities" shall mean those entities in which Jabil or its shareholders own or control (directly or indirectly) more than fifty percent (50%) of the outstanding equity interest, or such lesser percentage equity interest that provides the holder with power to govern the policies or appoint management of such entity under applicable law, or otherwise having the power to govern the financial and the operating policies or to appoint the management of such entity, and which are engaged in one or more of the industries listed on Attachment A hereto and incorporated herein by reference or in the defense industry.

4. **GRANT FUNDING.** The County agrees to fund the Grant Award in fifteen (15) annual payments of \$85,000.00 (such payments, as the same may be revised pursuant to Section 5(B)(4), referred to herein as "Annual Payment") commencing on March 1, 2009, and continuing on the first (1st) day of March for each calendar year thereafter, so long as:

A. Jabil complies with the conditions precedent in Section 3 herein, has not caused an Event of Default as defined in Section 5 herein, and (i) during the term of the State Grant the State of Florida certifies compliance with the State Grant, or (ii) after expiration of the term of the State Grant Jabil certifies in writing to the Pinellas County Economic Development Department ("Department") that it, directly or through Qualified Related Entities, continues to conduct business at the Project.

B. Jabil shall submit the required documentation for the State Grant in accordance with the terms of the State Grant, or the written certification provided in Section 4.A (ii) above after the term of the State Grant commencing no earlier than January 31, 2009, and annually thereafter no later than January 31st of each year during the term hereof.

C. Annual Payments shall be made by the County to Jabil in accordance with §218.70 et seq., Florida Statutes, "The Local Government Prompt Payment Act." For purposes of this Agreement, the payment date for each Annual Payment shall be the date on which Jabil submits the documentation required under this section or the date on which any objection to such documentation is resolved, or March 1, whichever is later.

5. **DEFAULTS AND REMEDIES.**

A. Events of Default. Each of the following shall constitute an event of default (each, an "Event of Default") hereunder if not cured within thirty (30) days after receipt of written notice thereof by the defaulting party:

I. A breach by Jabil or the County of any material term or condition under this Agreement;

II. An event that results in the termination of the State Grant provided such termination is not the subject of an active appeal or dispute resolution proceeding between the parties to such agreement;

III. Jabil's voluntary filing of or consent to a petition under any bankruptcy, insolvency, or reorganization law, Jabil's failure to secure the dismissal of an involuntary bankruptcy petition within 60 days of filing, or a determination by a court of competent jurisdiction that Jabil is insolvent and unable to pay its debts when due;

IV. A payment request containing a misrepresentation of a material fact;

V. Jabil's cessation of operations (directly or through Qualified Related Entities) in Pinellas County in the Project prior to the last day of the Term; and

VI. The failure of the County to timely pay any Annual Payment as provided in Section 3.

B. Remedies. Upon or at any time after the occurrence of an Event of Default which has not been timely cured:

I. If the Event of Default occurs as a direct result of Jabil's action or failure to act, the County may withhold, temporarily or permanently, all or any unpaid Annual Payments and/or may terminate this Agreement upon twenty-four (24) hours written notice to Jabil, after which the County shall have no further funding obligation under this Agreement.

II. If the Event of Default occurs as a direct result of the County's action or failure to act, Jabil may terminate this Agreement upon twenty-four (24) hours written notice to the County and Jabil shall be entitled to retain any and all Annual Payments previously received by Jabil from the County.

III. If and to the extent necessary to effectuate the remedies set forth herein, the County or Jabil may exercise any right, power, or remedy as provided in law or equity pursuant to Florida law.

IV. Notwithstanding the foregoing, and in lieu of the foregoing and any other remedies set forth herein or provided by law, if, in any year prior to the expiration of the term of the State Grant, to wit December 31, 2015, as such term may be extended pursuant to Section 5.0 (d) of the State Grant, Jabil is obligated, pursuant to Sections 10.0 (d), (e) and/or (f) of the State Grant, to repay OTTED a portion of the Closing Fund Award, the County and Jabil agree that the Annual Payment due to Jabil for each year thereafter, commencing with the Annual Payment due on the March 1 immediately following the date on which Jabil is obligated to make a repayment to OTTED, shall be revised to an amount equal to (a) the Grant Award multiplied by the State Grant Percentage (as defined below), (b) minus all Annual Payments previously made to Jabil, (c) divided by the number of Annual Payments remaining to be made during the Term; *provided however* that in any such event Jabil shall not be obligated to repay to the County any Annual Payments made prior to such adjustment. The County further acknowledges and agrees that it shall be solely responsible for monitoring and determining adjustments to the Annual Payments as provided herein, and shall provide Jabil with written notice with the calculation and proposed adjustment at least twenty (20) days prior to implementation of any adjustment to any Annual Payments. For purposes of calculating the Annual Payment pursuant to this Section 5.B.IV, "State Grant Percentage" means the ratio of (i) \$12,438,000 minus all portions of the Closing Fund Award (as defined in the State Grant) required to be repaid by Jabil and/or Qualified Related Entities under Sections 10.0(d), (e) and (f) of the State Grant, excluding interest and penalties, to (ii) \$12,438,000.

C. No consent or waiver, express or implied, by either Party to or of any breach or default by the other Party in the performance of its obligations under this Agreement shall constitute a consent to or waiver of any similar breach or default by that Party. The failure of the either Party to complain of any act or omission to act by the other Party or to declare the other Party in default, irrespective of how long such failure continues, shall not constitute a waiver by the that Party of its rights under this Agreement.

6. **COMPLIANCE WITH LAWS.** The Parties shall comply with all applicable federal, state, and local laws, ordinances, rules and regulations, the federal and state constitutions, and the orders and decrees of any lawful authorities having jurisdiction over the matter at issue (collectively, "Laws") with respect to the Project, including, but not limited to, public records laws. Jabil and its related entities (including without limitation Qualified Related Entities) shall not, by reason of this Agreement or Jabil's receipt of Grant Award payments or Annual Payments, be considered to be an "agency" as that term is defined in §119.011(2), Florida Statutes, or to have consented to the public disclosure of any documents other than those documents required to be disclosed pursuant to Chapter 119 of Florida Statutes.

7. **INDEMNIFICATION.** Jabil shall defend, indemnify and pay the cost of defense, and hold harmless the County from all damages, suits, actions or claims of any character brought on account of any injuries or damages received or sustained by any person, persons, or property, or in any way relating to or arising from the construction or operation of the Project, or on account of any act or omission, neglect or misconduct of Jabil with respect to this Agreement; or arising from or by reason of any actual or claimed trademark, patent or copyright infringement or litigation based thereon related to this Agreement and/or the Project; or by, or on account of, any claim or amounts received under the Workers' Compensation Law or of any other laws, by-laws, ordinance, order or decree related to this Agreement and/or the Project.

8. **DUE AUTHORITY.** Each party to this Agreement represents and warrants to the other party that (i) it has the full right and authority and has obtained all necessary approvals to enter into this Agreement, (ii) each person executing this Agreement on behalf of the party is authorized to do so; and (iii) this Agreement constitutes a valid and legally binding obligation of the party, enforceable in accordance with its terms.

9. **ASSIGNMENT.** No party to this Agreement may assign any rights or delegate any duties under this Agreement without the prior written consent of the other party.

10. **NOTICES.**

A. Unless and to the extent otherwise provided in this Agreement, all notices, demands, requests for approvals and other communications which are required to be given by either party shall be in writing and shall be deemed given and delivered on the date delivered in person to the authorized representative of the recipient provided below, upon the expiration of five (5) days following the date mailed by registered or certified mail, postage prepaid, return receipt requested, to the authorized representative of the recipient provided below, or upon the date delivered by overnight courier (signature required) to the authorized representative of the recipient provided below:

TO THE COUNTY:

Mike Meidel, Director
Pinellas County Economic Dev.
13805 58th Street North, Ste. 1-200
Clearwater, FL 33760

TO JABIL:

Robert Paver, Esq.
General Counsel
Jabil Circuit, Inc.
10560 Dr. ML King Jr. Street North
St. Petersburg, FL 33716

B. Either party may change its authorized representative or address for receipt of notices by providing the other party with written notice of such change. The change shall become effective ten (10) days after receipt by the non-changing party of the written notice of change.

11. **WAIVER.** No act of omission or commission of either party, including without limitation, any failure to exercise any right, remedy, or recourse, shall be deemed to be a waiver, release, or modification of the same. Such a waiver, release, or modification is to be effected only through a duly executed written modification to this Agreement.

12. **GOVERNING LAW.** This Agreement shall be construed in accordance with the Laws of the State of Florida.

13. **JURISDICTION AND VENUE.** Venue for any action brought in state court shall be in Pinellas County, St. Petersburg Division. Venue for any action brought in federal court shall be in the Middle District of Florida, Tampa Division, unless a division shall be created in St. Petersburg or Pinellas County, in which case the action shall be brought in that division. Each party waives any defense, whether asserted by motion or pleading, that the aforementioned courts are an improper or inconvenient venue. Moreover, the Parties consent to the personal jurisdiction of the aforementioned courts and irrevocably waive any objections to said jurisdiction.

14. **BINDING EFFECT.** This Agreement shall inure to the benefit of and be binding upon the Parties' respective successors and assigns.

15. **NO THIRD PARTY BENEFICIARY.** Persons not a party to this Agreement may not claim any benefit hereunder or as third party beneficiaries hereto.

16. **HEADINGS.** The paragraph headings are inserted herein for convenience and reference only and in no way define, limit, or otherwise describe the scope or intent of any provisions hereof.

17. **NO CONSTRUCTION AGAINST PREPARER OF AGREEMENT.** This Agreement has been prepared by County and reviewed by Jabil and its professional advisors. The County, Jabil, and their professional advisors believe that this Agreement expresses their

understanding and that it should not be interpreted in favor of either Jabil or the County or against the County or Jabil merely because of their efforts in preparing it. .

18. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the Parties and no change will be valid unless made by supplemental written agreement executed by the Parties.

19. **SEVERABILITY.** Should any paragraph or portion of any paragraph of this Agreement be rendered void, invalid or unenforceable by any court of law for any reason, such determination shall not render void, invalid or unenforceable any other paragraph or portion of this Agreement.

20. **NON-APPROPRIATION.** The funds to be used for this Grant Award are subject to periodic appropriation of funds by the County. Further, obligations under this Agreement are contingent upon the availability of funds. If funds are not appropriated by the County for any or all of this Agreement, the County shall not be obligated to pay for any services performed under this contract beyond the portion for which funds are appropriated. The County agrees to promptly notify Jabil in writing of such failure of appropriation. In the event of such failure of appropriation, Jabil shall be entitled to terminate this Agreement as provided in Subsection 5.B. and retain all Annual Payments previously received by Jabil from the County.

21. **INDEPENDENT CAPACITY.**

A. The Parties agree that Jabil, its officers, agents, employees, and related entities and their officers, agents and employees, in performance of this Agreement, will not be acting as an officer, employee, or agent of the County. Jabil agrees to take such steps as may be necessary to ensure that any third party Jabil contracts with will not be considered or permitted to be an agent of the County.

B. Jabil has no authority to, and shall not pledge the County's credit or make the County a guarantor of payment or surety for any contract, debt, obligation, judgment lien, or any form of indebtedness.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives on the date first above written.

WITNESSES:

Sign: Kerry Allegre
Print: Kerry Allegre

Sign: Scott Walker
Print: SCOTT WALKER

ATTEST:
KEN BURKE, CLERK OF COURT

By: [Signature]
Deputy Clerk

APPROVED AS TO CONTENT:
OFFICE OF THE COUNTY ATTORNEY

By: [Signature]
Chief Assistant County Attorney

JABIL CIRCUIT, INC.

By: [Signature]
Printed name: Sergio Cadavid
Title: Treasurer

PINELLAS COUNTY, FLORIDA, by and through its Board of County Commissioners

By: [Signature]
Robert B. Stewart, Chairman

ATTACHMENT A

INCENTIVE INFORMATION SHEET

QUALIFIED TARGET INDUSTRY (QTI) TAX REFUND TARGET INDUSTRIES

Effective November 1, 2001

Only businesses serving multi-state and/or international markets are targeted. Business must be able to locate in other states. Retail activities, utilities, mining and other extraction or processing businesses, and activities regulated by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation are statutorily excluded from consideration.

MANUFACTURING FACILITIES

Chemical Manufacturing
Pharmaceutical Manufacturing
Plastics & Rubber Products Manufacturing
Computer & Electronic Product Mfg
Computer & Electronic Component Mfg
Electromedical Apparatus Mfg
Irradiation Apparatus Mfg
Laser Manufacturing
Optoelectronics Manufacturing
Reproducing Magnetic & Optical Media Mfg
Semiconductor Manufacturing
Software Reproducing
Transportation Equipment Manufacturing
Aviation & Aerospace Manufacturing
Machinery Manufacturing
Electronic Flight Simulator Manufacturing
Instruments for Measuring & Testing Electricity
Lens Manufacturing
Optical Instruments Manufacturing
Power Distribution, Generation & Technology
Electrical Equipment Manufacturing
Appliance Component Manufacturing
Fiber Optic Cable Manufacturing
Miscellaneous Manufacturing
Surgical & Medical Instrument Manufacturing
Food & Beverage Products Manufacturing
Textile Mills & Apparel Manufacturing
Wood & Paper Product Manufacturing
Printing & Related Support Activities
Metal Manufacturing
Furniture & Related Products Manufacturing

FINANCE & INSURANCE SERVICES

Nondepository Credit Institutions
Credit Intermediation & Related Activities
Securities, Commodity Contracts
Insurance Carriers
Funds, Trusts & Other Financial Vehicles

WHOLESALE TRADE

Business-to-Business Electronic Marketing

INFORMATION INDUSTRIES

Sound Recording Industries
Integrated Record Production/Distribution
Film, Video & Electronic Media
Production (Excluding temporary "on location" filming)
Postproduction Services
Information Services & Data Processing
Internet Service Providers, Web Search Portals
Data Processing Services
On-line information Services
Publishing Industries
Software Publishing
Music Publishing
Telecommunications
Satellite Communications

PROFESSIONAL, SCIENTIFIC & TECHNICAL SERVICES

Professional, Scientific & Technical
Computer Programming / Software Development
Computer System Design
Management, Scientific & Tech Services
Research and Development
Scientific and Technical Consulting Services
Simulation Training
Testing Laboratories

MANAGEMENT SERVICES

Management Services
National, International & Regional Headquarters
Offices of Bank Holding Companies

ADMINISTRATIVE & SUPPORT SERVICES

Customer Care Centers
Telephonic & On-line Business Services
Customer Support
Transaction Processing
Technical Support
Credit Bureaus

* Those industries in italics are examples of the subsections.