

EXECUTIVE OFFICE OF THE GOVERNOR



OFFICE OF THE CHIEF INSPECTOR GENERAL

**Review of the 2009
Economic Development Incentive Award
to
Digital Domain Media Group, Inc.**

**REPORT NUMBER 2013-11
MARCH 26, 2013**



RICK SCOTT
GOVERNOR

STATE OF FLORIDA
Office of the Governor

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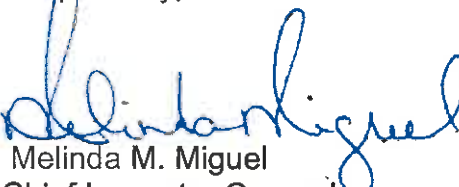
The Honorable Rick Scott
Governor, State of Florida
Plaza Level 05, The Capitol
Tallahassee, FL 32399-0001

Dear Governor Scott:

Enclosed is Chief Inspector General Report Number 2013-11 detailing the findings from our review of the 2009 Economic Development Incentive Award to Digital Domain Media Group, Inc. Responses to our findings are included in this report.

I am available to discuss this report with you at your convenience.

Respectfully,



Melinda M. Miguel
Chief Inspector General

cc: Jesse Panuccio
Gray Swoope, Jr.

Executive Summary

In a letter dated September 10, 2012, Governor Rick Scott requested the Chief Inspector General (CIG)¹ review the economic development² incentive approval process that was in place in 2009 at the Executive Office of the Governor (EOG). Specifically in his letter, Governor Scott wrote:

Recently, Digital Domain Media Group³ announced it would be closing its facility in Port St. Lucie, Florida. It has been brought to my attention that Wyndcrest DD Florida, Inc. [Digital Domain Media Group, Inc.] had received economic development incentives from the state in the past to locate this Digital Domain production facility in Florida. There are questions about the process by which these incentives were approved in 2009 through the Executive Office of the Governor. I want to ensure that the approval process now in place would not allow incentives to be approved in the same manner as was done for Wyndcrest DD Florida, Inc.

Digital Domain Media Group, Inc. [Digital Domain] was granted a \$20 million economic development incentive award from the State of Florida to locate a digital production company in Port St. Lucie, St. Lucie County, Florida. Between September 2009 and April 2011, Digital Domain received four (4) payments totaling \$20 million.

Based on the Governor's letter, a review was conducted to examine the approval process in place and determine how Digital Domain received an economic development incentive award in 2009; document the current process; and determine if incentives could be approved in the same manner today as they were in 2009.

Based on our review, we found the following:

The process designed to award economic development incentive funding under the Quick Action Closing Fund (QACF)⁴ statute did not result in a recommendation by Enterprise Florida, Inc. (EFI) to the Office of Tourism, Trade, and Economic Development (OTTED). Concurrent to that statutory process, Digital Domain sought

¹ Pursuant to Section 14.32(2)(k), Florida Statutes (F.S.), the Chief Inspector General shall conduct special investigations and management reviews at the request of the Governor.

² The International Economic Development Council defines economic development as "a program, group of policies, or activity that seeks to improve the economic well-being and quality of life for a community, by creating and/or retaining jobs that facilitate growth and provide a stable tax base."

³ On January 7, 2009, Articles of Incorporation were filed with the Florida Secretary of State forming a Florida corporation called Wyndcrest DD Florida, Inc. (Wyndcrest). The officers were listed as John Textor, Michael Bay, Carl Stork and Jonathan Teaford. The company's mission was to create digital imagery for animated feature films, live action films, and television commercials and to create video games. On March 2, 2010, Wyndcrest changed its name to Digital Domain Holdings Corporation, and then to Digital Domain Media Group, Inc. on January 24, 2011 [hereafter referred to as Digital Domain].

⁴ QACF was created as a discretionary grant incentive to respond to unique requirements of economic development projects in the state. The purpose of QACF is to provide a stopgap measure for the creation and retention of high wage jobs. It was designed to provide financial incentives to encourage high impact business facilities to locate in Florida's rural areas.

alternative means to obtain funding. In 2009, the funds for QACF that were unexpended in Fiscal Year (FY) 2008-2009, were reverted by the Legislature, appropriated within the same fiscal year to OTTED, and were awarded to recipients, including Digital Domain, without the requirement to follow the statutory process for awarding QACF awards.

Although a statutorily prescribed process in place for determining Digital Domain's eligibility for a QACF award did not result in a recommendation to fund Digital Domain, an award of \$20 million to Digital Domain still occurred. However, we found no apparent violations of law, rule, or regulation in the award of \$20 million economic development incentive funds to Digital Domain in 2009.

While this award does not appear unlawful, gaps in available written documentation combined with limited or conflicting recall, unavailability of key witnesses, and assertion of legislative privilege by a key witness precluded our ability to make a complete determination of all factors considered in the decision to award funds to Digital Domain.

Testimony supported that although improvements have been made to statutes and processes since 2009, an award similar to the one to Digital Domain could happen again today if the Legislature appropriates funds and gives the Executive Branch the discretion to expend those funds.

Current law prescribes a process for economic development incentives including an application process and a method for validating the model used to analyze economic development incentive projects. The process seeks to expedite the award of economic development incentive funding to eligible businesses and provides specific time frames for evaluation of economic development incentive applications. However, certain new requirements, such as giving the Department of Economic Opportunity (DEO) ten (10) days to evaluate economic development incentive applications, including QACF, may not be sufficient time for a robust due diligence process.

Therefore, we recommend that the DEO conduct a formal evaluation of the current statutory provisions to ensure the incentive authority, waiver authority, and time frames for evaluation and decision making adequately protect the state's interests and determine if recommendations for enhancements should be made to the Legislature.

We also recommend that DEO and EFI conduct a review of the economic development incentive processes so that recommendations for improvement may be considered such as documentation and codification of the complete decision making process.

Finally, we recommend that DEO and EFI define and codify the process to be followed when DEO's Division of Strategic Business Development and EFI staff disagree on whether to fund a project. At a minimum, this process should include full disclosure in writing to ensure transparency of the rationale for the final decision.

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Introduction

In 2008, Mr. John Textor¹ initiated contact with State of Florida officials to inquire about obtaining economic development² incentive funding to develop a digital production company focused on feature films, video games, visual effects, and military simulation in the State of Florida.

- Mr. Textor created a Florida-based company in the name of Wyndcrest DD Florida, Inc. (Wyndcrest);³ the company's mission was to create digital imagery for animated feature films, live action films, and television commercials and to create video games. On March 2, 2010, Wyndcrest changed its name to Digital Domain Holdings Corporation, and then to Digital Domain Media Group, Inc. on January 24, 2011 [hereafter referred to as Digital Domain].
- In 2009, Digital Domain was granted a \$20 million economic development incentive award from the State of Florida to locate a digital production company in St. Lucie County, Florida.⁴
- Between September 2009 and April 2011, Digital Domain received four (4) payments totaling \$20 million.
- On September 7, 2012, Digital Domain announced that it had begun the cessation of its Florida operations by reducing its Port St. Lucie workforce of approximately 300 employees. Additionally, on September 11, 2012, Digital Domain filed for Chapter 11 bankruptcy.

In a letter dated September 10, 2012, Governor Rick Scott requested the Chief Inspector General (CIG)⁵ review the economic development incentive approval process that was in place in 2009 at the Executive Office of the Governor (EOG). Specifically in his letter, the Governor wrote:

¹ Mr. Textor was affiliated with Digital Domain, a California-based visual effects and animation company, based in Venice and Los Angeles, California.

² The International Economic Development Council defines economic development as "a program, group of policies, or activity that seeks to improve the economic well-being and quality of life for a community, by creating and/or retaining jobs that facilitate growth and provide a stable tax base."

³ On January 7, 2009, Articles of Incorporation were filed with the Florida Secretary of State forming a Florida corporation called Wyndcrest. The officers were listed as John Textor, Michael Bay, Carl Stork and Jonathan Teaford.

⁴ In August 2009, Port St. Lucie, Florida awarded Digital Domain \$10 million. In November 2009, Port St. Lucie approved a \$51.8 million deal for Digital Domain to build a studio on 15 acres in the Tradition development at a location off Interstate 95 in Port St. Lucie, St. Lucie County, Florida. In August 2011, West Palm Beach awarded Digital Domain a \$10 million grant, a \$15 million loan and a 2.4 acre site for a film school in collaboration with Florida State University. On November 18, 2011, Digital Domain (NYSE: DDMG) sold 4.9 million shares to investors at \$8.50 each in an initial public offering. Shares closed at \$7.15.

⁵ Pursuant to Section 14.32(2)(k), Florida Statutes (F.S.), the Chief Inspector General shall conduct special investigations and management reviews at the request of the Governor.

Recently, Digital Domain Media Group announced it would be closing its facility in Port St. Lucie, Florida. It has been brought to my attention that Wyndcrest DD Florida, Inc. [Digital Domain] had received economic development incentives from the state in the past to locate this Digital Domain production facility in Florida. There are questions about the process by which these incentives were approved in 2009 through the Executive Office of the Governor. I want to ensure that the approval process now in place would not allow incentives to be approved in the same manner as was done for Wyndcrest DD Florida, Inc. [Digital Domain].

Based on Governor Scott's request, a review was conducted to examine the approval process in place and determine how Digital Domain received an incentive award in 2009; document the current process; and determine if incentives could be approved in the same manner today as they were in 2009.

The results of this review are summarized on the following pages. For detailed documentary evidence and relevant testimony, see Appendix A.

Economic Development Incentives Award Process Overview

The State of Florida's economic development incentives program provides incentives paid directly to businesses, grants to local governments for infrastructure and other community development improvements, capital programs, and other intangible resources. These economic development incentives are separated into four categories including: Tax Credits, Tax Refunds, Cash Grants to Third Parties, and Cash Grants (including Quick Action Closing Funds).

In 2009, there were multiple points of entry for a business entity seeking economic development incentive funding. A business could seek funding from a state legislator, a local economic development organization, a local Chamber of Commerce, a county commissioner, etc., but ultimately for state incentives, a business would be directed to Enterprise Florida, Inc. (EFI)⁶ where the official state process for obtaining state economic development incentives would begin.

EFI and the Office of Tourism, Trade and Economic Development (OTTED)⁷ were partners in the administration and oversight of economic development incentives.

⁶ Sections 288.901, F.S., 288.9015, F.S., and 288.905, F.S. (2008), creates and outlines the duties and responsibilities of EFI and the duties of the board of directors of EFI.

⁷ Section 14.2015, F.S., (2008) establishes the roles and responsibilities of OTTED.

EFI is a public-private partnership⁸ that was established in 1992 by the Florida Legislature to serve as Florida's primary organization devoted to statewide economic development. EFI is a not-for-profit corporation responsible for creating high wage jobs, global branding, promoting exports, and increasing economic opportunities for Florida's citizens and businesses.

In 2009, EFI coordinated business introductions to Florida's economic development partners and sought to match businesses with the right economic development incentives program. As a result of this matching process, businesses applied for economic development incentives to EFI. EFI provided assistance to businesses with their expansion and location plans, site selection services, demographic information, incentives information, trade leads and other services.

EFI evaluated project needs compared to the eligibility requirements of various incentive programs to determine which programs may be a good fit. Potential projects were confidential by law and assigned "code names." As part of the evaluation process, EFI assigned a project manager to work with the company and assist the company with preparing a proposal for a particular project. EFI vetted the proposal and then EFI determined, if warranted, what incentive package would be offered to that company. In 2009, EFI was responsible for making recommendations for approval or disapproval of these projects to OTTED.

In 2009, OTTED was housed within the EOG⁹ and was established to assist the Governor, Lieutenant Governor, and Legislature in formulating policies and strategies designed to provide economic opportunities for Floridians and to advocate for economic diversification and improvements in Florida's business climate and infrastructure. OTTED was authorized to enter into contracts or agreements with businesses seeking economic development incentives and provided direct oversight for economic development programs which were implemented through public-private partnerships.

Quick Action Closing Fund

The Quick Action Closing Fund (QACF)¹⁰ is a type of cash grant economic development incentive. In 2009, Section 288.1088, Florida Statutes (F.S.), (2008),¹¹ outlined the

⁸ A public-private partnership is a contractual agreement between a public agency (federal, state or local) and a private sector entity. Through this agreement, the skills and assets of each sector (public and private) are shared in delivering a service or facility for the use of the general public. In addition to the sharing of resources, each party shares in the risks and rewards potential in the delivery of the service and/or facility.

⁹ Effective October 1, 2011, and in accordance with Section 20.60, F.S., the Department of Economic Opportunity (DEO) was created. As part of the creation of DEO, OTTED was transferred from the EOG and became a part of DEO's Division of Strategic Business Development (SBD).

¹⁰ QACF was created as a discretionary grant incentive to respond to unique requirements of economic development projects in the state. The purpose of QACF is to provide a stopgap measure for the creation

requirements that EFI used to evaluate business entities to determine their eligibility for receipt of QACF incentives. The criteria, as outlined in statute, stated that projects shall:

- be an industry as referenced in Section 288.106, F.S.;
- have a positive payback ratio¹² of at least 5 to 1;
- be an inducement to the project's location or expansion in the state;
- pay an average annual wage of at least 125 percent of the areawide or statewide private sector average wage; and,
- be supported by the local community in which the project is to be located.

QACF awards were generally paid out after the business made a substantial capital investment in the project toward tangible personal property.

During 2009, Section 288.1088, F.S., stated that if EFI determined a particular project met the specific criteria¹³ for QACF, EFI forwarded their evaluation and recommendation regarding the use of QACF incentives to the Director of OTTED for review. Conversely, if EFI determined that a project did not meet the requirements, they did not forward an evaluation with a recommendation to OTTED for consideration. Without a recommendation from EFI for funding, OTTED would not be authorized to proceed under the statutory process.

Upon receipt of an evaluation and recommendation from EFI, OTTED conducted a review of the application for funding. The Director of OTTED would recommend to the Governor approval or disapproval of a project for receipt of QACF incentives.

After receiving a recommendation for approval of QACF funding from OTTED, the Governor would seek consultation with the President of the Senate and the Speaker of the House of Representatives before giving final approval for a project. After consultation occurred, the project would be presented to the Legislative Budget Commission (LBC)¹⁴ and the project was required to receive an affirmative vote by the LBC.

and retention of high wage jobs. It was designed to provide financial incentives to encourage high impact business facilities to locate in Florida's rural areas.

¹¹ For the approval of QACF incentive projects through June 30, 2009, the 2008 Florida Statutes governed the review process.

¹² A cost-benefit analysis based on the amount of taxes and related revenues projected to be generated per dollar invested by the state in incentives to a business.

¹³ EFI, in consultation with OTTED, may waive certain criteria based on extraordinary circumstances or in rural areas of critical economic concern if the project would significantly benefit the local or regional economy.

¹⁴ The LBC is a standing joint committee of the Florida Legislature created to review and approve or disapprove agency requests to amend original approved budgets; review agency spending plans; and take other actions related to the fiscal matters of the state, as authorized by law.

Upon approval by the LBC and the Governor, OTTED entered into an agreement with the business that set forth the conditions for payment of QACF.

For Fiscal Year (FY) 2008-2009, the Legislature appropriated \$46.46 million for QACF.¹⁵

For a detailed process flowchart of the FY 2008-2009 QACF process, see Appendix B. For a detailed process flowchart of the current process, see Appendix C.

How Digital Domain Media Group, Inc. Received \$20 Million in 2009

Based on testimony provided to CIG reviewers, Mr. Textor contacted former OTTED Director, Dr. Dale Brill, in June 2008, to inquire about economic development incentive funding opportunities to develop a digital production company to be located in Florida. Dr. Brill said that Mr. Textor contacted him directly by phone. He recalled that Mr. Textor introduced himself as a filmmaker/producer from California who was a Martin County native with a desire to bring jobs and opportunities to his home county. Dr. Brill recalled that Mr. Textor originally told him that an incentive package of \$100 million would be needed for his proposed project. Dr. Brill stated that he thought this figure was too much. Dr. Brill said that he directed Mr. Textor to EFI. He also said that he gave the Digital Domain project the code name "Project Bumblebee."

Based on documentary evidence, Mr. Textor submitted a General Project Overview (GPO) dated January 22, 2009 to EFI. On this form under the section entitled "Capital Investment Overview" which describes the capital investment in real and personal property, it shows "\$25 million in construction of a new facility; and \$15 million to purchase new computer and display equipment and \$4 million to purchase R&D equipment" for an undetermined location. Also included with the GPO was a form entitled "Attachment to the General Project Overview" for QACF. This form indicated the type and amount of financial or other support to be provided by the local community for this project was "\$85 million in the form of land, building construction and county-level incentive funding."

Based on documentary evidence, on February 12, 2009, Digital Domain revised their GPO and indicated a proposed location of Hobe Sound, Martin County, Florida, for their digital production company and projected that 300 jobs would be created as part of the project with an annualized average wage of \$64,233. On this revised form under the section entitled "Capital Investment Overview," it shows "\$35 million in construction of a new facility; and \$17.38 million to purchase new computer equipment, furniture and other capital assets." Also included with the GPO was a form entitled "Attachment to the General Project Overview" for QACF. This form indicated the type and amount of financial or other support to be provided by the local community for this project was

¹⁵ This appropriation is documented in General Appropriations Act (GAA), Chapter 2008-152, Laws of Florida. The GAA became law upon the signature of Governor Crist on June 11, 2008.

"\$46.862 million in the form of land, building construction and county-level incentive financing."

Based on documentary evidence, after Digital Domain's revised GPO was submitted, EFI entered financial data for Digital Domain into an impact analysis model¹⁶ to calculate the anticipated award based on the 5 to 1 payback ratio required by the QACF statute. EFI was only able to justify an award of \$6.1 million which was not acceptable to Digital Domain. The pay back ratio estimated at that time was 3.51 to 1 for a proposed Martin County location.

Based on documentary evidence, on April 13, 2009, Digital Domain submitted two additional revisions for EFI's consideration. One GPO showed Broward County as the location and the other GPO showed a Martin County location. Both projected 500 jobs would be created as part of the project with an annualized average wage of \$68,934 and \$64,233, respectively. Under the section entitled "Capital Investment Overview," it shows "\$29.725 million in construction of a new facility and \$30 million to purchase new computer equipment and furniture and other capital assets" for a Broward County location. Also included was a form entitled "Attachment to the General Project Overview" for QACF. This form indicated the type and amount of financial or other support to be provided by the local community for this project was "\$56.8 million in the form of land, building construction and county-level incentive financing." Under the section entitled "Capital Investment Overview" for the Martin County location, it shows "\$35 million in construction of a new facility and \$17.38 million to purchase new computer equipment and furniture and other capital assets."

Based on testimony provided to CIG reviewers, during the evaluation process, EFI staff repeatedly indicated concerns that Mr. Textor and Digital Domain had not selected a specific site location for the project. According to EFI and OTTED staff, Mr. Textor had been negotiating with several counties that included Broward, Martin, Miami-Dade and Sarasota.

Based on testimony provided to CIG reviewers, John Adams, former President and Chief Executive Officer (CEO) of EFI, recalled that the EFI review showed the financials for the company were "extremely weak." Mr. Adams stated that the process used in Florida by EFI is as robust a model as he is aware of in the country. Mr. Adams indicated that EFI worked on this project for six to seven months and had performed proper due diligence with several iterations of information received from Digital Domain. Mr. Adams noted that, with each iteration of Digital Domain's applications, the return on investment "seemed to get worse."

¹⁶ The Impact Analysis Model is a tool used by EFI that was originally developed by the U.S. Department of Commerce.

Based on documentary evidence, on April 16, 2009, EFI provided a "Closing Fund Review"¹⁷ of Digital Domain's project stating that they were not in a position to recommend the project. Without a recommendation from EFI, the process as described in the QACF statute could not proceed. The "Closing Fund Review" provides company background, summary of the project, proposed incentives and the financial analysis. The project review section states:

This review has been completed based on the information provided by Bumblebee [Digital Domain] as of this date. Bumblebee [Digital Domain] has stated that \$20M is required from the State to locate the company in Florida. In the first year of operation, the State of Florida is requested to provide 95% [sic] of operating costs as compared to 15% [sic] by the company.... This is a project review as Enterprise Florida is not in a position to recommend Project Bumblebee [Digital Domain] to OTTED.

Note: The "Closing Fund Review" cited concerns about the following areas: profitability, income, equity and debt financing, revenue projections, cash position, executive compensation, and recent litigation.

Based on documentary and testimonial evidence, Digital Domain concurrently sought support and other alternatives to acquire funding for their project by meeting with Governor Crist,¹⁸ Lt. Governor Kottkamp,¹⁹ Governor Crist's Chief of Staff,²⁰ and members of the Legislature.²¹

Based on testimony provided to CIG reviewers, Dr. Brill recalled that during the 2009 Regular Legislative Session, he was called into Representative Ambler's²² office, and was informed that there was concern that EFI had not given Mr. Textor fair treatment. He further recalled that during the meeting with Representative Ambler, Mr. Textor, Mr. Teaford and Cynthia Henderson²³ were also present. Dr. Brill opined that during the meeting, the discussion focused on how to legally get around the QACF statute that required an EFI recommendation in order to receive an incentive.

Based on documentary evidence, during the 2009 Regular Legislative Session, the Legislature reverted and immediately appropriated the remaining balance of

¹⁷ The "Closing Fund Review" document shows company background, summary of the project, proposed incentives, and the financial analysis conducted by EFI and states "Enterprise Florida is not in a position to recommend Project Bumblebee [Digital Domain] to OTTED."

¹⁸ Charlie Crist served as Florida's 44th Governor from January 2, 2007 to January 4, 2011.

¹⁹ Jeff Kottkamp served as Florida's Lieutenant Governor from January 2, 2007 to January 4, 2011.

²⁰ Erik Eikenberg was the Governor's Chief of Staff from January 1, 2008 to November 3, 2009.

²¹ See the response provided by Textor's attorney on pages 38-41.

²² Representative Kevin Ambler was elected to the Florida House of Representatives to serve District 47 from November 6, 2002 to November 2, 2010.

²³ According to Ms. Henderson, she was not a lobbyist for Digital Domain, but was hired as a consultant to negotiate the contract at the end of the process.

unexpended QACF funds in FY 2008-2009.²⁴ This gave OTTED the authority to award economic development incentives for the purpose of creating high wage jobs and business recruitment to Florida.

Based on documentary evidence, on May 22, 2009, and prior to signing the General Appropriations Act (GAA), Governor Crist sent letters to Senate President Jeff Atwater²⁵ and Speaker of the House Larry Cretul²⁶ seeking concurrence to fund six projects in the amount of \$21.52 million, including a \$20 million incentive award to Digital Domain.

Additionally, on June 17, 2009, based on testimony provided to CIG reviewers, in what was described by OTTED staff as a continued effort to mirror the QACF statute, Dr. Brill informed the LBC of the proposed incentive awards for the six projects. OTTED's presentation was listed on the LBC agenda as "Other Business." Had the funding been a QACF award, the project was required to be presented to the LBC for an affirmative vote.

Based on testimony provided to CIG reviewers, Dr. Brill said, after the Legislature reappropriated the funds, the funds were no longer considered QACF. He said that Governor Crist wanted to ensure that the approval for incentive funds followed the QACF statutory requirements as closely as possible as if the funds were still QACF. Dr. Brill recalled that Governor Crist was adamant and told him "I want this done exactly the way it would be done if it were a normal process." Dr. Brill further recalled that the Governor wanted to make sure everyone was informed and the incentive deal was in the public eye. Additionally, Dr. Brill said that he received instructions from Governor Crist to make calls to the members of the LBC to brief them on these projects. When asked if the law that had been passed could have been vetoed, Dr. Brill said that he believed it was an item in the back of the budget so he did not believe the Governor could have vetoed it.

Based on testimony provided to CIG reviewers, Dr. Brill described the process leading up to the LBC as a laborious process that required OTTED to offer each member of the LBC a personal briefing on the project. Dr. Brill indicated that members could decline the personal briefing. Dr. Brill said that the idea of placing it on the LBC agenda was "initially resisted," and so it was placed for informational purposes only. He said that he recalled that during his presentation to the LBC, a member of the LBC, although Dr. Brill could not recall whom, pointed out that the briefing was a courtesy and not required. Dr. Brill stated to CIG reviewers that this was done at Governor Crist's insistence so it

²⁴ The GAA became law upon signature of the Governor on May 27, 2009. As a result, OTTED had 35 days to expend the appropriated funds prior to the June 30, 2009, fiscal year end.

²⁵ Senator Jeff Atwater was elected to the Florida Senate to serve District 25 and was Senate President from November 18, 2008 to November 2, 2010.

²⁶ Representative Larry Cretul was elected to the Florida House of Representatives to serve District 22 and served as the Speaker of the House from March 3, 2009 to November 2, 2010.

was done in the public, and that the Legislators were fully informed on Digital Domain and the other projects receiving incentives.²⁷

In a June 1, 2009, memorandum from Dr. Brill to Governor Crist, OTTED provided a funding recommendation for Digital Domain. This funding recommendation, signed by Dr. Brill on June 17, 2009, in pertinent part indicated:

The Office of Tourism, Trade, and Economic Development (OTTED) requests that you approve Wyndcrest DD Florida, Inc. for a funding award in the amount of \$20,000,000 to locate the digital studio operation of Wyndcrest DD Florida, Inc. in Florida by establishing a new digital production campus.

...The Company is looking to occupy a 175,000 square foot facility...committing to create 500 new jobs...**These commitments may vary based on final site selection, which has not yet occurred.** [emphasis added]

...Wyndcrest [Digital Domain] will start land acquisition and construction of a new building. The capital investment ...is expected to be \$52.375 million for the development of a new facility in two phases. **This estimate may vary based on final site selection, which has not yet occurred.** [emphasis added]

In the first year of operation, the State of Florida is requested to provide 95% [sic] of operating costs as compared to 15% [sic] by the company [a calculation that does not compute to 100%]. Based on creation of 500 new jobs total capital investments of \$52.375 (excluding the value of the land), a \$1.6M QTI (state portion), and a \$20 million funding award, *the 10 year payback ratio is 1.66 to 1* [emphasis added].

Documentary evidence shows that Governor Crist approved the award for Digital Domain on June 24, 2009.

Based on testimony provided to CIG reviewers, when asked if he agreed with his own recommendation, Dr. Brill said "no." He said he was not comfortable with the recommendation. He acknowledged that he never "threw himself on the sword" and disagreed with granting the incentive. Dr. Brill said that it was clear that if he had done that he would have been looking for other work. When asked if he expressed his specific objection to Governor Crist, Dr. Brill stated "no."

Based on testimony provided to CIG reviewers, Dr. Brill indicated that he did not know how the incentives package to Digital Domain rose to \$20 million and opined it likely

²⁷ According to SBD staff, three additional projects were funded during this time that were not submitted to the LBC.

would have come from a request from Mr. Textor based on what he thought he needed to make the project work. Dr. Brill said he briefed Governor Crist, and was again asked why EFI would not recommend the project. Dr. Brill said that he informed the Governor that EFI had concerns over the financial ability of the project to be sustainable. According to Dr. Brill, Governor Crist did some research on his own to better understand the project. Dr. Brill said the Governor told him, he had confidence that Digital Domain would be able to meet their financial obligation.

Based on documentary evidence, on June 30, 2009, OTTED and Digital Domain entered into a Grant Funding Agreement and between September 2009 and April 2011, Digital Domain received four (4) payments totaling \$20 million based upon OTTED's evaluation that Digital Domain had complied with the agreement's provisions.²⁸

Based on testimony provided to CIG reviewers, Tim Proctor, former Chief Analyst for Incentives, OTTED, recalled that Digital Domain applied for incentives in 2009. According to Mr. Proctor, Digital Domain had failed to select a single site location and was seeking local incentives from several counties. He indicated that EFI's calculated return on investment and payback ratio analysis could only justify an amount of about \$6 million for Digital Domain but that EFI did not forward an incentive recommendation to OTTED. He said that Digital Domain was not an ideal project for Florida even at \$6 million and that he shared his concerns about the offer. He said that since OTTED could not approve an incentive without EFI's recommendation, no incentive was approved for Digital Domain.

Based on testimony provided to CIG reviewers, Jorge Nunez, Government Operations Consultant III, SBD and formerly of OTTED, said that once the reappropriation language was passed by the Legislature, the project was no longer required to follow the QACF statute. According to Mr. Nunez, the "character" of the money changed with the reappropriation language so that it was at the Governor's discretion to use to develop business or whatever cause he thought would stimulate business and create jobs. Mr. Nunez stated that for the incentives approved that year, Digital Domain was the only project that did not have an EFI recommendation. Mr. Nunez said that although the incentives no longer had to be treated as QACF money, Governor Crist wanted the process for the incentives to mimic the process used for QACF incentives. He said that OTTED had to informally treat them as QACF incentives because there was no other manner in which the funds could be tracked in OTTED's tracking system.

Based on testimony provided to CIG reviewers, in reference to the May 22, 2009, letter from Governor Crist to the Speaker of the House and the Senate President listing six projects, Mr. Nunez, indicated his belief that they were trying to do everything they could in the absence of a process and, "in an abundance of caution," Governor Crist notified the Speaker of the House and the Senate President.

²⁸ See pages 35-36 in Appendix A.

Based on testimony provided to CIG reviewers, Michelle Dennard, Director of SBD and former attorney assigned to OTTED, stated that she and Mr. Proctor prepared briefing information because Governor Crist wanted to follow the statutory process as much as possible.

Based on testimony provided to CIG reviewers, when asked if he believed the process was sidestepped, Dr. Brill answered, "Absolutely." He said that "great energy was put into play to deliberately and intentionally sidestep the process." However, when asked, Dr. Brill stated that he "did not believe anything unethical occurred or that any laws were broken." Dr. Brill stated that this was not the first time the Legislature granted funds to organizations through a direct proviso appropriation [such as member projects or turkeys] and there was precedent for bypassing the EFI process.

Based on testimony provided to CIG reviewers, Dr. Brill stated that Representative Ambler initiated discussions about reverting all of the QACF money so they were no longer considered Closing Funds and could be designated to be spent any way the Legislature chose. Dr. Brill said that that is eventually what the Legislature did. When asked if anyone other than himself and Representative Ambler were going back and forth on ways to legally circumvent the statute, Dr. Brill replied, "no."

Based on testimony provided to CIG reviewers, Tracey Fannon, Planning and Administration Coordinator, Office of Policy and Budget (OPB), EOG, stated after the budget was presented to Governor Crist, OPB battled back and forth about recommending a veto to the Governor concerning the section of the GAA. She explained that for the other projects that were already in the works the money would have been lost if this had been vetoed. She said that the determination was made that the money for the other five projects was more important.

Based on testimony provided to CIG reviewers, Mr. Eikenberg, Governor Crist's former Chief of Staff, EOG, stated his recollection of the project for Digital Domain was that the Crist Administration had a number of questions about the overall deal with Digital Domain. He said that Digital Domain also had a number of concerns that the deal was not moving in the direction they would like. Mr. Eikenberg recalled multiple meetings to work through the issues. He stated that OTTED was involved in the details.

Mr. Eikenberg said that the Crist Administration had difficulty justifying the project, but, at some point, the Legislature stepped in. Mr. Eikenberg recalled that there was some sort of generic proviso language that placed the funding for economic development incentives into the budget.

Mr. Eikenberg said that, ultimately, the Legislature gave the Governor the authority to allocate the resources yet he recalled Governor Crist sending a letter to Senate President Atwater and Speaker of the House Cretul seeking Legislative approval. He said that the proviso language gave the Governor the authority not to go to the LBC for approval, but Governor Crist objected. He recalled Governor Crist making calls to the presiding officers over the LBC and recalled that Governor Crist insisted that the awards

of the incentive projects go before the LBC. He said that Governor Crist was not going to act without the Legislature on this because he wanted the process to be fully transparent.

Mr. Eikenberg said that he recalled Mr. Textor and Digital Domain being very aggressive when they first came to Florida with all the movies in which they were involved. He recalled that the CEO for Digital Domain had a presence in Tallahassee. He recalled that OTTED coordinated the details of the Digital Domain project.

Mr. Eikenberg said that he recalled that Mr. Textor presented the plan to the Governor's office including the various site locations they were considering. Mr. Eikenberg said that he recalled that Digital Domain wanted to move a production facility to Florida that would bring jobs to the state. He said the company wanted a link to higher education as well.

Mr. Eikenberg said that he recalled Representative Ambler being very involved in discussions about this project. Mr. Eikenberg said that the Legislature acted in its authority to appropriate state resources. He did not recall if Digital Domain had lobbyist representation during the process.

Based on documentary evidence, a letter from William N. Shepherd, Holland & Knight, LLP, attorney for Mr. Textor, dated February 5, 2013, stated in pertinent part:

...You have asked for our input in specific areas that range from the initial discussions with the state, to the interactions with the Legislature, the Legislative Budget Commission, various local governments, and then ultimately through the business cycle.

First and foremost, John Textor sought to develop a state of the art facility that would create hundreds of jobs in the expanding field of visual effects and computer animation. His previous success in leadership at Digital Domain Productions, responsible for the visual effects of many leading films such as *The Curious Case of Benjamin Button* and *Tron: Legacy*, showed that his company and people could produce, and had produced, a product at a high level of expertise that would provide marvelous content to the motion picture industry. The revolutionary creation of a holographic Tupac Shakur in the spring of 2012 showed that Digital Domain was able to execute on the technology and continue to create innovative products that were not only significant locally, but in fact made national and international news in his field. Given Florida's continuing efforts to provide jobs in technology and the entertainment and film industry, it made for a natural partnership for consideration by the State of Florida.

Unlike many seeking the support of state partnership, Mr. Textor took a personal, hands-on approach and spent time and effort individually explaining his proposals to those interested in Florida's economic

development. Rather than an outstate CEO with a host of Tallahassee lobbyists who could touch the levers of government, Mr. Textor felt that the story of his company was best told by its CEO through his perspective as a native Floridian.

As an initial matter, Mr. Textor reached out to Enterprise Florida, the agency tasked with recruiting new businesses and expanding existing Florida businesses. As you know, Enterprise Florida has a number of incentive packages that are available to companies. Mr. Textor discussed his project with members of the Enterprise Florida staff and completed the materials that were necessary for the vetting of his proposal. He also worked regularly with staff from the Office of Film and Entertainment given the natural interest and expertise that those members have in this area. At each step he cooperated with requests. This was a back and forth process that is documented in your materials. As you know, but which has not been regularly mentioned in the public discourse, Enterprise Florida did approve Project Bumblebee in March 2009, offering \$11.4 million in exchange for a commitment to create 300 jobs. That approval, which represented the completion of a thorough vetting process, was a significant endorsement of the project even though it was at a level below what Digital Domain believed was feasible to support the scope of its plans for operations in Florida. Thereafter, Mr. Textor and Digital Domain continued to cooperate with Enterprise Florida staff as they prepared a comprehensive report regarding the project.

Not only was staff and senior staff of Enterprise Florida, the Office of Tourism Trade & Economic Development [*sic*], and the Office of Film and Entertainment involved in the process, there were also discussions with Governor Crist himself and members of his executive staff. This was all done with an effort to create the best opportunity for success.

As the Governor's process continued, there was likewise a process in the Florida Legislature as a diverse group of legislators sought to proportionately increase the appropriation offered to Digital Domain in exchange for a larger jobs commitment and a requirement to develop programs with Florida State University. As a result of this process, there was quite a bit of committee debate about the Digital Domain project during budget conference sessions. In fact, out of more than a dozen companies vetted through Enterprise Florida and OTTED, the Digital Domain project was the only project funded in 2009 that was discussed in open televised committee hearings. While the role of the legislature in this project may be beyond the scope of your review, it is helpful to know that Mr. Textor attended legislative meetings and committee meetings personally and had discussions with over 30 legislators in an attempt to answer questions and inform them about Digital Domain's plans. The Conference Committee on Transportation and Economic Development

Appropriations also held several televised and noticed public meetings regarding this proposal. There was a review by the Legislative Budget Commission, including individual reviews by each of its 14 members. There was a robust and full due diligence process by OTTED. At the same time, the project was the subject of a Regional Economic Modeling Study prepared by Florida State University's Center for Economic Forecasting and Analysis. That study projected that the project would result in more than \$480 million of gross regional product across the state and ultimately lead to the creation of 6,100 jobs. In short, the project was given a robust and thorough review and ultimately, the measure passed the House and Senate.

You have asked specifically about Representative Kevin Ambler and his role. He was first introduced to Digital Domain and Mr. Textor in March 2009 by officials at Florida State University, as the project had received approval from EFI but at a level Digital Domain considered inadequate for its needs. Given his background in entertainment law and involvement in the film festival in the Tampa Bay area, Rep. Ambler was a natural supporter and thoughtful advocate of increasing the film and entertainment industry in Florida. Mr. Ambler, along with others in the legislature, at FSU, and in the governor's office, sought to find a way to ensure that Digital Domain would receive the funding it needed to start its planned business in Florida. He drafted a budget proviso that authorized allocating a \$20 million portion of unspent funds from the prior year to Project Bumblebee in exchange for a commitment to create 500 jobs. This proposed proviso that specifically mentioned allocation of funds to the Digital Domain project was discussed in publicly noticed, televised committee meetings that were attended by numerous legislators, spectators and the press. The final version of the proviso was drafted by Dr. Dale Brill of OTTED, provided to the legislature, and passed into the budget. It removed Rep. Ambler's specific references to Project Bumblebee, expanded the scale of the appropriation and granted authority to OTTED and the Governor to use the funds "for the purpose of creating high-wage jobs and business recruitment to Florida". The proviso allowed OTTED and the Governor to fund considerable more money than was proposed by Rep. Ambler to a larger number of companies.

The project did not just involve the decision makers at the state level. There were a number of local communities that sought to recruit the opportunity to add Digital Domain into their local job market. Like their state counterparts, each community sought to provide the best economic package available to recruit Digital Domain. There were a number of counties interested in the opportunity and those packages had to be coordinated with the state offer so that the opportunity for success could be maximized. There were a number of attractive communities interested, and their leaders worked to develop packages to attract Digital Domain.

While each county had different things to offer in terms of incentive, location, and community opportunities, the ultimate decision was to establish the company's Florida studio in Port St. Lucie, FL.

Subsequent to the completion of the appropriations process through which Digital Domain contracted for state grants, there was a member of the Florida House of Representatives who was a vocal critic of the project. While aware of the project during legislative session, he raised no objections to it during open committee meetings and he raised no objections to the relevant budget line item while voting in favor of the budget itself. His criticism began during a summer 2009 meeting of the Economic Development Policy Committee. Current Lt. Governor Carroll, then a member of the Florida House of Representatives and Chair of the House Economic Development Policy Committee, conducted an inquiry into the questions raised. At the conclusion of her inquiry, in a letter dated November 12, 2009 to Governor Crist, then Representative Carroll stated that she had received ample information that there was no impropriety in the award of state funds to Digital Domain and that her investigation was being closed.

Based on documentary evidence, a written statement received on January 15, 2013, from Stanley Wakshlag, of Kenny Nachwalter, P.A., attorney for Representative Ambler stated the following:

Representative Ambler believes that the legislative process involving economic development grants extended by the State of Florida to Wyndcrest DD Florida, Inc. [Digital Domain] in June 2009 worked properly. The project, which committed to 500 high wage jobs and contemplated at least 1000 such jobs, received thorough review from both the legislative and executive branches. In addition, a comprehensive and independent economic impact study of the project's viability and value was performed prior to the project approval. At no time during this process was Representative Ambler promised any personal benefit as a result of any of his actions in the Legislature, and the opportunity to serve as Director of Digital Domain Media Group, Inc. was first presented to him long after his tenure in the Legislature ended in November, 2010. Representative Ambler properly supported this project on its merits which was ultimately approved by the Governor.

Legislative privilege precludes further elaboration into the details of the appropriation process.

Based on testimony provided to CIG reviewers, Ken Pruitt,²⁹ Senator and former Vice Chair of the LBC at that time stated that it is the Legislature's authority and prerogative to fund anything it deems appropriate and the Governor has his or her opportunity to veto, but the Legislature could overturn that veto. He said that he did not think there were any controls that could be put into place that could have stopped this.

Attempts were made to obtain testimony from Keisha Rice,³⁰ former Deputy Director, OTTED, but after a few calls, this did not materialize. During this review, CIG left a voice mail for Governor Crist, but no response was received.³¹ CIG attempted to contact former Representative David Rivera,³² former Chair of the LBC. However, none of the phone numbers were accurate.

CIG Conclusion

The process designed to award economic development incentive funding under the QACF statute did not result in a recommendation by EFI to OTTED. Concurrent to that statutory process, Digital Domain sought alternative means to obtain funding. In 2009, the funds for QACF that were unexpended in FY 2008-2009, were reverted by the Legislature, appropriated within the same fiscal year to OTTED, and were awarded to recipients, including Digital Domain, without the requirement to follow the statutory process for awarding QACF awards.

Although a statutorily prescribed process in place for determining Digital Domain's eligibility for a QACF award did not result in a recommendation to fund Digital Domain, an award of \$20 million to Digital Domain still occurred. However, we found no apparent violations of law, rule, or regulation in the award of \$20 million economic development incentive funds to Digital Domain in 2009.

While this award does not appear unlawful, gaps in available written documentation combined with limited or conflicting recall, unavailability of key witnesses, and assertion of legislative privilege by a key witness precluded our ability to make a complete determination of all factors considered in the decision to award funds to Digital Domain.

²⁹ Senator Ken Pruitt served the District 28 from November 8, 2000 to August 4, 2009 and was the former Vice Chair of the LBC during the 2009 Legislative Session.

³⁰ We attempted to coordinate an interview with Ms. Rice, but after a few calls, this did not materialize.

³¹ During this review, CIG left a voice mail for Governor Crist, but no response was received. On February 26, 2013, we contacted Governor Crist's office and e-mailed him the draft report for comment, but no comment was received.

³² Representative David Rivera was a member of the Florida House of Representative elected to serve District 112 from November 6, 2002 to November 2, 2010, and, during the time of these events, was the Chair of the LBC. During this review, we attempted to contact former Representative Rivera by phone, but were unable to obtain an accurate phone number. On March 7, 2013, we contacted Mr. Rivera and e-mailed him the draft report for comment, but no comment was received.

Could an Award like Digital Domain Media Group, Inc. Happen Today?

Since the Digital Domain award in 2009, there have been various amendments to the laws governing economic development incentives. In October 2011, the Department of Economic Opportunity (DEO) was created³³ and as part of the creation of DEO, the roles and responsibilities of OTTED in the review of economic development incentives were transferred from the EOG to the Division of Strategic Business Development (SBD) within DEO. Now, SBD provides support for attracting out-of-state businesses to Florida, promoting the creation and expansion of Florida businesses and facilitating the state's economic development partnerships.

Based on statutory changes, SBD and EFI work together to promote and manage Florida's economic development incentives to help businesses commit to create jobs in Florida by locating, expanding or remaining in the state. EFI markets Florida as the best place to do business and is the primary point of contact for businesses with location, expansion or retention opportunities. SBD evaluates incentives applications, monitors contract performance, facilitates incentive payments, and recommends policy. SBD is responsible for economic development incentives tracking, accountability and confidentiality.

Discussions with both EFI and SBD's staff indicated that they meet³⁴ to collaboratively review incentive projects. Staff stated that they meet periodically to discuss certain economic development incentive awards before the project is recommended for approval.

In 2009 and 2011, the Legislature formalized the economic development incentive application process.³⁵ The changes provided for an incentive application process to be standardized across all incentive programs and specifies that upon receiving a submitted economic development incentive application, the SBD of DEO and designated staff of EFI review the application to ensure that the application is complete, whether and what type of state and local permits may be necessary for the applicant's project, whether it is possible to waive such permits, and what state incentives and amounts of such incentives may be available to the applicant.

DEO is required to recommend to the Executive Director approval or disapproval of an application. Under the new law, the Executive Director of DEO approves or disapproves a complete application. However, if review of the application demonstrates that the application is incomplete, the Executive Director shall notify the applicant within the first 5 business days after receiving the application.

³³ Section 20.60, F.S., created DEO in October 2011.

³⁴ Attendees at these meetings may include designated staff from EFI, SBD, Workforce Florida including the SBD Director, the President and CEO of EFI, and Executive Director of DEO.

³⁵ Section 288.061, F.S., is entitled "Economic development incentive application process."

The new economic development incentive law also states that within ten (10) business days after DEO receives the submitted application, the Executive Director shall approve or disapprove the application and issue a letter of certification to the applicant which includes a justification of the decision, unless the business requests an extension of that time.

Additionally, the new law requires a contract or agreement with an applicant specify the total amount of the award, the performance conditions that must be met to obtain the award, the schedule for payment, and sanctions that would apply for failure to meet performance conditions. DEO enters into one agreement or contract covering all of the state incentives that are being provided to the applicant. The contract must provide that release of funds is contingent upon sufficient appropriation of funds by the Legislature.

The law specifically states that the release of funds for incentives awarded to the applicant depends upon the statutory requirements of the particular incentive program and DEO shall validate contractor performance.

Additionally, between 2008 and 2011, the Legislature enacted changes to Section 288.1088, F.S., governing QACF incentives.³⁶ For QACF, the amended law states that the Executive Director recommends approval or disapproval to the Governor within seven (7) days after evaluating a project.

Additionally, the new QACF statute outlines the authority to waive specific eligibility requirements as follows:

- For awards less than \$5 million, SBD may grant a waiver;
- For awards valued greater than \$5 million and less than \$10 million, the Governor with Legislative concurrence may grant a waiver; and,
- For awards greater than \$10 million, no waivers are authorized.

The amendments also established limits to the Governor's authority to grant QACF incentive awards. The new statutory parameters for QACF outline the Governor's authority to grant incentive awards as follows:

- For awards less than \$2 million, the Governor is authorized to approve the award;
- For awards valued \$2 million to \$5 million, the Governor must submit a written evaluation to the LBC ten (10) days before approval can be granted; and,
- For awards greater than \$5 million, LBC approval is required.

Additionally, SBD staff stated to CIG reviewers that unlike the process in 2009 when EFI had primary responsibility for evaluating the proposals and making recommendations, SBD now has responsibility to review the proposals with EFI. However, SBD now

³⁶ See Appendix C for the FY 2011-2012 QACF process flowchart.

recommends approval for the projects to DEO's Executive Director. EFI and SBD staff further stated that recommendations about projects are jointly decided based on a complete application.

As of 2010, Section 288.106, F.S., now requires the Office of Economic and Demographic Research (EDR)³⁷ to evaluate the methodology and model used to calculate the return on investment [specific for economic development incentive projects under the Qualified Target Industry] and report its findings by September 1 of every third year beginning September 1, 2010 to the President of the Senate and the Speaker of the House of Representatives. A new model was created on July 1, 2011 that now applies to all economic development incentive projects.

For QACF, Section 288.1088 (3)(e), F.S., states that EFI will validate contractor performance and report within 6 months after completion of the contract to the Governor, President of the Senate and the Speaker of the House of Representatives. This requirement is in addition to the standard incentive requirement that DEO (per Section 288.061(3), F.S.), validate contractor performance and report on performance in the annual incentive report.

Based on testimony provided to CIG reviewers, Dr. Brill, when asked if an award like Digital Domain could happen again, said "yes, it could happen again." He said if the Executive Branch and the House and Senate want to appropriate funding, that is what they will do.

Based on testimony provided to CIG reviewers, Ms. Fannon stated that there is no way to prevent what happened with Digital Domain from happening again.

Based on testimony provided to CIG reviewers, Senator Pruitt stated that it is the Legislature's authority and prerogative to fund anything it deems appropriate and the Governor has his or her opportunity to veto, but the Legislature could overturn that veto. He said that he did not think there were any controls that could be put into place that could have stopped this.

CIG Conclusion

Testimony supported that although improvements have been made to statutes and processes since 2009, an award similar to the one to Digital Domain could happen again today if the Legislature appropriates funds and gives the Executive Branch the discretion to expend those funds.

Current law prescribes a process for economic development incentives including an application process and a method for validating the model used to analyze economic development incentive projects. The process seeks to expedite the award of economic

³⁷ EDR is a research arm of the Florida Legislature principally concerned with forecasting economic and social trends that affect policy making, revenues, and appropriations.

development incentive funding to eligible businesses and provides specific time frames for evaluation of economic development incentive applications. However, certain new requirements, such as giving DEO ten (10) days to evaluate economic development incentive applications, including QACF, may not be sufficient time for a robust due diligence process.

Therefore, we recommend that DEO conduct a formal evaluation of the current statutory provisions to ensure the incentive authority, waiver authority, and time frames for evaluation and decision making adequately protect the state's interests and determine if recommendations for enhancements should be made to the Legislature.

We also recommend that DEO and EFI conduct a review of the economic development incentive processes so that recommendations for improvement may be considered such as documentation and codification of the complete decision making process.

Finally, we recommend that DEO and EFI define and codify the process to be followed when SBD and EFI staff disagree on whether to fund a project. At a minimum, this process should include full disclosure in writing to ensure transparency of the rationale for the final decision.

Responses Received

In a response to a request for comment to the findings contained herein, the following provided written responses. These responses are included in Appendix D of this report.

- Jesse Panuccio, Executive Director, Florida Department of Economic Opportunity;
- Gray Swoope, President and Chief Executive Officer, Enterprise Florida, Inc.;
- Dale A. Brill, Ph.D, former Director, Office of Tourism, Trade, and Economic Development;
- Stanley H. Wakshlag, of Kenny Nachwalter, P.A., attorney for Kevin Ambler; and,
- William N. Shepherd, Holland & Knight, LLP, attorney for John Textor.

Acknowledgements

The Office of the Chief Inspector General would like to extend our appreciation to management and staff of the Florida Department of Economic Opportunity and Enterprise Florida, Inc. and others offering their testimony or comments for their assistance and cooperation during this review.

Appendix A – Documentary Evidence and Relevant Testimony

Based on testimony provided to CIG reviewers, **Dr. Dale Brill, former Director, OTTED**, said that he first heard of Mr. John Textor and Digital Domain in June 2008 when Mr. Textor contacted him by phone. He said that Mr. Textor introduced himself as a filmmaker or producer from California, but also as a Martin County, Florida native with a desire to bring jobs and opportunities back to his home county. Dr. Brill said that he directed Mr. Textor to EFI.

An email dated **June 19, 2008**, from Dr. Brill to Mr. Textor, showed that OTTED was contacted by Mr. Textor and given contact information for EFI so he could directly provide EFI information for an economic development incentive project.

Based on testimony provided to CIG reviewers, **Marty Wilson, Vice President of Competitive Programs and Policies, EFI**, confirmed that the 2009 process for economic development incentives was that EFI handled the initial project review, conducted financial analysis, and prepared a recommendation to OTTED. She said that OTTED staff would conduct an independent review of EFI's recommendation prior to sending it to the Governor for approval.

Ms. Wilson said that whenever EFI staff received an application for an incentive, both a project manager and incentive manager were assigned to the project to shepherd the business through the application process. She said that the project manager was responsible for the application paperwork and for evaluating the company and its request. She added that once all the documentation was received, the incentive manager reviewed and approved the project prior to making a recommendation to OTTED. According to Ms. Wilson, most incentives are performance-based and the companies have to create jobs and meet the average wage requirements agreed upon before receiving any funds.

Based on testimony provided to CIG reviewers, **Dr. Brill** confirmed that EFI would assign a project manager for a new project and a project application called a General Project Overview (GPO) would be created. He said that once a GPO was completed, a project would be sent to OTTED for an independent review. According to Dr. Brill, EFI negotiated with Digital Domain to develop their GPO. Dr. Brill stated that Mr. Textor originally told him that an incentive package of \$100 million would be needed. Dr. Brill stated that he thought this figure was too much. He said that he gave the Digital Domain project the code name "Project Bumblebee."

Based on documentary evidence, Mr. Textor submitted a GPO dated **January 22, 2009**. On this form under the section entitled "Capital Investment Overview" describing the capital investment in real and personal property, it shows "\$25 million in construction of a new facility; and \$15 million to purchase new computer and display equipment and \$4 million to purchase R&D equipment." Also included with the GPO was a form entitled "Attachment to the General Project Overview" for QACF. This form indicated the type and amount of financial or other support to be provided by the local community for this

project was "\$85 million in the form of land, building construction and county-level incentive funding."

Based on testimony provided to CIG reviewers, according to **Ms. Wilson**, Digital Domain provided EFI a company overview so that they could review it with the request for incentives. She said EFI had trepidation about the amount of funding Digital Domain was requesting, which she said was originally \$100 million. She said that EFI conducted an economic and fiscal impact analysis which looked at the jobs created, the average wage, the capital investment Digital Domain was committing to make, and the industry as a whole. She said EFI could not substantiate an award amount anywhere near the amount Digital Domain was requesting.

Ms. Wilson said that early in the process, Digital Domain evaluated multiple counties for location of the digital production studio which was not that uncommon. However, as time progressed, she said that companies applying for incentives normally narrow the location to one and begin discussions with the local communities in order to obtain the required local support.

A **January 30, 2009**, e-mail from John Adams, President and CEO of EFI, to Governor Crist's Chief of Staff, Eric Eikenberg, described the Digital Domain project. Mr. Adams further advised Mr. Eikenberg that EFI met with the company and requested further information to evaluate the project and, pending receipt of the additional information, placed the Digital Domain project on hold.

A **February 6, 2009**, e-mail from Mr. Adams to Mr. Eikenberg indicated that EFI had received unaudited spreadsheets from Digital Domain and conflicting information concerning location of choice. Mr. Adams further stated that EFI had been in consultation with OTTED on the issues.

On **February 12, 2009**, Digital Domain revised their GPO indicating a proposed location of Hobe Sound, Martin County, Florida. This revised GPO projected 300 jobs created as a part of the project with an annualized average wage of \$64,233. On this form under the section entitled "Capital Investment Overview" describing the capital investment in real and personal property, it shows "\$35 million in construction of a new facility; and \$17.38 million to purchase new computer equipment, furniture and other capital assets." Also included with the GOP was a form entitled "Attachment to the General Project Overview" for QACF. This form indicated the type and amount of financial or other support to be provided by the local community for this project was "\$46.862 million in the form of land, building construction and county-level incentive financing."

Based on testimony provided to CIG reviewers, **Ms. Wilson** stated that EFI ran the Digital Domain financials through a model originally obtained from U.S. Department of Commerce to obtain the anticipated award based on a 5 to 1 payback ratio which was required by statute for QACF funding. Ms. Wilson said that EFI was only able to justify an award of about \$6 million, but Digital Domain was dissatisfied with this amount.

Based on documentary evidence, after Digital Domain's revised GPO was submitted, EFI entered financial data for Digital Domain into an impact analysis model to calculate the anticipated award based on the 5 to 1 payback ratio required by the QACF statute. EFI was only able to justify an award of about \$6 million which was not acceptable to Digital Domain and the pay back ratio estimated at that time was 3.51 to 1 for a proposed Martin County location.

Based on testimony provided to CIG reviewers, **Mr. Adams** recalled that the EFI review showed the financials for the company were "extremely weak." Mr. Adams stated that the process used in Florida by EFI is as robust a model as he is aware of in the country. Mr. Adams indicated that EFI worked on this project for six to seven months and had performed proper due diligence with several iterations of information received from Digital Domain. Mr. Adams noted that with each iteration, the return on investment "seemed to get worse."

A **February 20, 2009**, e-mail from Mr. Adams to Mr. Eikenberg indicated that Digital Domain did not accept the EFI proposed economic development incentives package with a QACF award of \$6.1 million. Mr. Adams stated:

Project Bumblebee (Wyndcrest DD Florida, Inc.): EFI received a proposal from Broward County and revised GPO and Quick Action Closing fund applications from the company for Broward and Martin Counties. **EFI presented the company with a State incentive package of \$9.61 M, including a \$6.1 M Closing fund [QACF], along with the local component from Broward County and the City of Hollywood totaled of \$7.9M, for a state and local incentive package of \$17.5 M. The company responded that they expected more closing fund based on a copy of a contract they had received on a previous CF [QACF] project. EFI communicated this to OTTED. This week EFI received a proposal from Martin County. EFI is evaluating the submissions. The company must select one location before the project moves forward.. [sic] The company ha [sic] suggested legislative appropriation for the funding of the project.**

A **February 27, 2009**, e-mail from Brenda Workman, EFI, to Mr. Textor requested that the principals of Digital Domain accept the proposed QACF amount of \$6.1 million in writing.

A **March 4, 2009**, e-mail from Mr. Textor to Dr. Brill indicated the amount of the EFI proposal was not acceptable to him.

A **March 10, 2009**, email from Mr. Textor to Governor Crist's Executive Assistant, showed that Mr. Textor attempted to contact Mr. Eikenberg to discuss other funding sources for Digital Domain and included an email to Mr. Eikenberg that stated the following in pertinent part:

We consistently receive calls from other parties within the state that offer to help, some as a result of the meetings you set up for us with educators. We even heard from a confident state rep [Representative] that believed he was in a position to 'push through' a direct line item allocation for us in the budget if he knew he had the support of the Governor's office....it sounded too good to be true, but nonetheless very interesting.

With so much interest coming from so many different directions, we have tried our best to wait for instructions from OTTED so as not to confuse matters with too many involved parties. It seems possible that he is hearing from too many parties regarding our project and this may be frustrating as well. It does at times seem that based on these other conversations that other sources or ideas might be beneficial, but thus far we have only focused on EFI and the QACF. Given where we stand, we have been anxious to discuss other funding sources or structures that would enable us to come to Florida.

In any case, we are not hearing anything...and we are really not sure where the discussion stands. Are there any other ideas at play, or are we truly being asked to make a decision based only on what EFI has proposed?

Please accept my apologies for having to push up to you every time we hit a roadblock, but it seems that things only move when you are made aware that they have stopped.

A **March 18, 2009**, e-mail from Ms. Workman to Mr. Teafor, Mr. Textor, and Mr. McNicholas stated in pertinent part: "Enterprise Florida will present to OTTED information relative to a one time award of \$6,100,000 from the Quick Action Closing Fund. The following Payment Criteria and Performance Conditions are also recommended..."

In separate e-mails dated **March 18, 2009**, to Ms. Workman from Mr. Textor and Mr. Teafor, respectively, both indicated their agreement with the terms.

A **March 27, 2009**, e-mail from Mr. Adams to Mr. Eikenberg stated:

Project Bumblebee (Wyndcrest DD Florida, Inc.): EFI received a proposal from Broward County and revised GPO and Quick Action Closing [QACF] fund applications from the company for Broward and Martin Counties. EFI presented the company with a State incentive package of \$9.61 M, including a \$6.1 M Closing fund [QACF], along with the local component from Broward County and the City of Hollywood totaled of \$7.9M, for a state and local incentive package of \$17.5 M. The company responded that they expected more closing fund [QACF] based on a copy of a contract they had received on a previous CF [QACF] project. EFI

communicated this to OTTED. Last week EFI received a proposal from Martin County. The company agreed to locate in Martin County based on a State and local incentive package totaling \$11,398,740. The offer includes \$6.1 M Closing Fund [QACF], along with road fund, QTI and QRT for a total State incentive package of \$9.61 M. Martin County's offer includes QTI Match, Impact Fee Relief, Temporary Facility Space, Workforce Solution Funding, and Expedited Permitting for local package totaling \$1,788,740. **Final presentation to OTTED is being developed. EFI is in discussions with OTTED. Company met with the Lt. Governor [Kottkamp] requesting additional state funding after agreeing to the state and local incentives offer to locate in Martin County. The project is on hold.**

On **April 2, 2009**, Dr. Brill sent a letter to Mr. Textor as a follow-up to a meeting stating in pertinent part:

... discuss the status of Project Bumble Bee [sic] with the united objective of identifying any additional information that may be needed to allow Enterprise Florida, Inc. (EFI) to complete and forward its review to the Office of Tourism, Trade, and Economic Development (OTTED) per section [sic] 288.1088, Florida Statute.

On **April 13, 2009**, Digital Domain submitted two GPOs for EFI's consideration. One GPO was for a Broward County location and the other GPO was for a Martin County location. Both projected 500 jobs would be created as a part of the project with an annualized average wage of \$65,000 and \$64,233 respectively. Under the section entitled "Capital Investment Overview" describing the capital investment in real and personal property, it shows "\$29.725 million in construction of a new facility and \$30 million to purchase new computer equipment and furniture and other capital assets" for a Broward County location. Also included was a form entitled "Attachment to the General Project Overview" for QACF. This form indicated the type and amount of financial or other support to be provided by the local community for this project was "\$56.8 million in the form of land, building construction and county-level incentive financing" for a Martin County location.

Based on testimony provided to CIG reviewers, **Ms. Wilson** said that EFI was becoming concerned that Digital Domain was not getting to the point of identifying a single location. Ms. Wilson said that there was never a doubt in her mind that the local communities Digital Domain was considering were supportive of the project, but, for her, it was the question of how supportive the communities were going to be financially such as providing local commitments for facilities, real estate, tax breaks, and more. She said until the local commitment was fully known, EFI could not complete a financial review of Digital Domain that it needed for a final recommendation.

Based on testimony provided to CIG reviewers, **Dr. Brill** explained that it was not uncommon for companies to be unsure of where they want to locate a project. He

further explained that the easiest way to drive up the incentive amount you get from local governments is to play one against the other. He advised that when this happens, "we [the State] don't win." He said it is difficult in the incentives game when two communities begin competing for the project because it drives up the incentive.

Dr. Brill said that EFI determined that an incentive of \$6 million was all that could be justified for Digital Domain although no recommendation for that amount was proposed by EFI to OTTED. Dr. Brill stated that since EFI had made no recommendation, OTTED could never really attest whether or not Mr. Textor's proposed project met the requirements under the QACF statute.

Based on testimony provided to CIG reviewers, Tim Proctor, former Chief Analyst for Incentives, OTTED, recalled that Digital Domain applied for incentives in 2009. According to Mr. Proctor, Digital Domain had failed to select a single site location and was seeking local incentives from several counties. He indicated that EFI's calculated return on investment and payback ratio analysis could only justify an amount of about \$6 million for Digital Domain but that EFI did not forward an incentive recommendation to OTTED. He said that Digital Domain was not an ideal project for Florida even at \$6 million and that he shared his concerns about the offer. He said that since OTTED could not approve an incentive without EFI's recommendation, no incentive was approved for Digital Domain.

On **April 16, 2009**, EFI prepared a "Closing Fund Review" of Digital Domain's project. The review provides company background, summary of the project, proposed incentives and the financial analysis. The project review section states:

This review has been completed based on the information provided by Bumblebee [Digital Domain] as of this date. Bumblebee [Digital Domain] has stated that \$20M is required from the State to locate the company in Florida. In the first year of operation, the State of Florida is requested to provide 95% [sic] of operating costs as compared to 15% [sic] by the company.... This is a project review as Enterprise Florida is not in a position to recommend Project Bumblebee [Digital Domain] to OTTED.

Note: The "Closing Fund Review" cited concerns about the following areas: profitability, income, equity and debt financing, revenue projections, cash position, executive compensation, and recent litigation.

Based on testimony provided to CIG reviewers, **Dr. Brill** said that when Mr. Textor learned that a \$6 million incentive was what EFI suggested, Mr. Textor attempted to show that the "Closing Fund Review" developed by EFI was flawed and contained calculation errors. Dr. Brill said that although he did not review the paperwork himself, he sent the materials to Mr. Proctor for verification and Mr. Proctor confirmed there were some basic percentage calculations that were incorrect.

On **April 20, 2009**, Dr. Brill sent an e-mail to Mr. Adams stating that he and representatives of Digital Domain had concerns regarding several discrepancies and errors in the EFI analysis of Digital Domain and there was a "deal stopper" because OTTED "could not forward the Closing Fund [QACF] project [to the Governor] in the absence of EFI's recommendation." This e-mail indicated that the Governor's Deputy Chief Counsel³⁸ had reviewed Section 288.1088(3)(a), F.S., and confirmed the requirement that OTTED could not forward the project without EFI's recommendation. Specifically, in this e-mail, Dr. Brill states:

During the attempts to verify information in the project summaries, further disputed information was identified. The Client sent a frantic e-mail asking how it could serve to clarify the representation of the project prior to the Governor's briefing. The extraordinary action of involving the Client so directly on fact checking is acknowledged as likely unprecedented. Emphasis should be heeded that the contents shared were only excerpts. This effort also sought to end the criticism of EFI's handling of the project review lodged by Representative Ambler and the Lieutenant Governor [Kottkamp]. With only hours to clean up, or at least verify, the EFI documents prior to briefing the Governor, there was no apparent alternative.

Based on testimony provided to CIG reviewers, **Dr. Brill** confirmed that he sent an email to Mr. Adams on April 20, 2009, advising him about the meeting in Representative Ambler's office, and that there was concern that EFI had not given Mr. Textor fair treatment. Dr. Brill said his purpose for sending the email was to ensure that the Governor was provided with accurate information on which to base a decision for incentives for Digital Domain. He said that in response, EFI provided OTTED with a "Closing Fund Review" that confirmed that EFI was not in a position to recommend the project to the Governor.

Dr. Brill stated that during the 2009 Regular Legislative Session, he was called into Representative Ambler's office to discuss that EFI would not recommend incentives for Digital Domain. He said that when he arrived at the meeting, he found that Mr. Textor, Mr. Teaford and a lobbyist named Cynthia Henderson³⁹ were also present. During the meeting, the discussion focused on how to legally get around the QACF statute that mandated an EFI recommendation in order to receive an incentive.

Following his April 20, 2009, email to Mr. Adams, **Dr. Brill** said that OTTED finally received notice that EFI was not in a position to recommend Digital Domain for an incentive. He advised that they neither recommended nor rejected the project. Dr. Brill

³⁸ The Governor's Deputy Chief Legal Counsel at that time, Jerry Curington, did not recall any details about this.

³⁹ According to Ms. Henderson, she was not a lobbyist for Digital Domain, but was hired as a consultant to negotiate the contract at the end of the process.

said this frustrated him, and to his knowledge, this was the first time EFI had ever withheld a final determination and kept the project "in nowhere land."

Based on testimony provided to CIG reviewers, **Dr. Brill** stated that Representative Ambler initiated discussions about reverting all of the QACF money so they were no longer considered closing funds and could be designated to be spent any way the Legislature chose. Dr. Brill said that is eventually what the Legislature did. When asked if anyone other than himself and Representative Ambler were going back and forth on ways to circumvent the statute, Dr. Brill replied, "no."

Based on documentary and testimonial evidence, concurrently, Digital Domain sought support and other alternatives to acquire funding for their project by meeting with Governor Crist,⁴⁰ Lt. Governor Kottkamp,⁴¹ Governor Crist's Chief of Staff⁴² and members of the Legislature.⁴³

Simultaneous to these events, OTTED did not expend all \$46.46 million dollars of QACF appropriated for the annual period beginning July 1, 2008, and ending June 30, 2009. The remaining unexpended balance from the QACF was appropriated in the same FY 2008-2009 to OTTED, for the purpose of creating high-wage jobs and business recruitment to Florida and the Legislature passed Chapter 2009-81 (Senate Bill No. 2600), the 2009-2010 General Appropriations Act (GAA), to appropriate moneys for the annual period beginning July 1, 2009, and ending June 30, 2010. Section-68 of the GAA addresses the funds which were reverted and reappropriated from the prior fiscal year.

SECTION 68. The unexpended balance of funds and the remaining funds released for projects appropriated in Specific Appropriation 2635 and Section 74 of Chapter 2008-152, Laws of Florida, shall revert immediately and is appropriated in the 2008-2009 fiscal year to the Executive Office of the Governor, Office of Tourism, Trade and Economic Development for the purpose of creating high-wage jobs and business recruitment to Florida. This section shall take effect upon becoming a law.

Based on testimony provided to CIG reviewers, **Dr. Brill** said, after the Legislature reappropriated the funds, the funds were no longer considered QACF. He said that the Governor [Crist] wanted to ensure that the approval for incentive funds followed the QACF statutory requirements as closely as possible and as if the funds were still QACF. Dr. Brill recalled that the Governor was adamant and told him, he wanted this done exactly the way it would be done if it were a normal process. Dr. Brill further recalled that the Governor wanted to make sure everyone was informed and the incentive deal was in the public eye. Additionally, Dr. Brill said that he received instructions from the

⁴⁰ Charlie Crist served as Florida's 44th Governor from January 2, 2007 to January 4, 2011.

⁴¹ Jeff Kottkamp served as Florida's Lieutenant Governor from January 2, 2007 to January 4, 2011.

⁴² Erik Eikenberg was the Governor's Chief of Staff from January 1, 2008 to November 3, 2009.

⁴³ See the response provided by Textor's attorney on pages 38-41.

Governor to make calls to the members of the LBC to brief them on these projects. When asked if the law that had been passed could have been vetoed, Dr. Brill said that he believed it was an item in the back of the budget so he did not believe the Governor could have vetoed it.

A **May 12, 2009**, email from Dr. Brill to Mr. Textor indicated that he expected to receive specific information from the Governor by May 22, 2009, and indicated that the deadline for the agreement would be no later than June 30, 2009.

On **May 22, 2009**, Governor Crist sent a letter to the Honorable Jeff Atwater, President of the Florida Senate, regarding "Quick Action Closing Fund Projects." This letter indicated "There are six projects on which I wish to consult with both you and Speaker Cretul and receive your concurrence."⁴⁴ This letter included the following information in pertinent part:

Wyndcrest DD Florida, Inc. [Digital Domain] (Project Bumble Bee [*sic*]), an affiliate of Digital Domain, is currently evaluating two separate Florida locations, Martin County and Broward County. There is also a third location under consideration for which economic development incentive information is not currently available for a financial evaluation. Wyndcrest DD Florida, Inc. is planning a digital production studio to create digital imagery for animated feature films, live action films, and television commercials and to create video games. According to an Enterprise Florida initial review of the project, the company is anticipating creating 500 new jobs at an average annual wage of \$64,233 and a capital investment of \$51.5 million *if the Broward County site is selected* [emphasis added], or \$72.38 million *if the Martin County site is selected* [emphasis added]. The 10 year *payback ratio of 2.37 to 1 in Broward County* [emphasis added] and *1.66 to 1 in Martin County* [emphasis added] with an anticipated Quick Action Closing Fund payment of \$20 million. Additional local incentives are anticipated depending on the company's *final location decision* [emphasis added].

...The total anticipated Quick Action Closing Fund payments are \$21,520,000 if all of the projects listed above move forward in the process. This will create 1,314 jobs, retain 295 jobs, and result in a total anticipated capital investment of \$126,175,000.

Note: This letter includes the other five projects recommended to receive economic development incentives funding as follows:

- Intellon Corporation with an anticipated Quick Action Closing fund payment in the amount of \$200,000, Qualified Target Industry tax refund of \$60,000, and local incentives totaling \$472,250;

⁴⁴ OTTED staff confirmed that Governor Crist sent a letter to Speaker Cretul.

- Digital Risk, LLC with an anticipated Quick Action Closing Fund payment of \$345,000, Qualified Target Industry tax refund of \$580,000, and local economic development incentives totaling \$142,200;
- TBC Corporation with an anticipated Quick Action Closing Fund payment of \$400,000, Qualified Target Industry tax refund of \$160,000, Quick Response Training of \$50,000, Incumbent Worker Training of \$40,000, and local economic development incentives totaling \$472,250;
- InEnTec Chemical with an anticipated Quick Action Closing Fund payment of \$75,000, Qualified Target Industry tax refund of \$48,000, and local economic development incentives totaling \$37,000; and,
- Bayview Asset Management with an anticipated Quick Action Closing Fund payment of \$500,000, Qualified Target Industry tax refund of \$1.6 million, and local economic development incentives totaling \$400,000.

Based on testimony provided to CIG reviewers, **Dr. Brill** indicated that he did not know how the incentives package to Digital Domain rose to \$20 million and opined it likely would have come from a request from Mr. Textor based on what he thought he needed to make the project work. Dr. Brill said he briefed Governor Crist, and was again asked why EFI would not recommend the project. Dr. Brill said that he informed Governor Crist that EFI had concerns over the financial ability of the project to be sustainable. According to Dr. Brill, Governor Crist made an effort to do research on his own to better understand the project.⁴⁵ Dr. Brill said the Governor told him, he had confidence that they [Digital Domain] would be able to meet their financial obligation and to move forward. When asked if he was told by someone to prepare the letter, Dr. Brill said “no.” Dr. Brill said he inferred that the object of the legislative intent was to make the project happen. Dr. Brill further stated that this was the only time that he recalled using a letter to communicate with both the Speaker of the House and Senate President for getting project approvals.

Based on testimony provided to CIG reviewers, **Tracey Fannon, Planning and Administration Coordinator, Office of Policy & Budget, EOG**, stated after the budget was presented to Governor Crist, the Office of Policy and Budget battled back and forth about recommending a veto to the Governor concerning the Section 68. She explained that the money would have been lost for the other projects that were already in the works if this had been vetoed. She said that the determination was made that the money for the other five projects was more important.

⁴⁵ During this review, CIG left a voice mail for Governor Crist, but no response was received. On February 26, 2013, we contacted Governor Crist’s office and e-mailed him the draft report for comment, but no comment was received.

The GAA became law upon the approval of Governor Crist on **May 27, 2009**. As a result, OTTED had 35 days to expend the appropriated funds prior to the June 30, 2009, fiscal year end.

Based on testimony provided to CIG reviewers, **Michelle Dennard, Director, SBD**, who at the time was OTTED's legal counsel, stated that she and Tim Proctor prepared briefing information because Governor Crist wanted to follow the statutory process as much as possible.

Based on testimony provided to CIG reviewers, **Jorge Nunez, Government Operations Consultant III, SBD**, said that once the appropriation language was passed by the Legislature, the project was no longer required to follow the QACF statute. According to Mr. Nunez, the "character" of the money changed with the appropriation language so that it was at the Governor's discretion to use to develop business or whatever cause he thought would stimulate business and create jobs. Mr. Nunez stated that for the incentives approved that year, Digital Domain was the only project that did not have an EFI recommendation. Mr. Nunez said that although the incentives no longer had to be treated as QACF money, the Governor wanted the process for the incentives to mimic the process used for QACF incentives. He said that OTTED had to treat them as QACF incentives because there was no other manner in which the funds could be tracked in OTTED's tracking system or procedures, so they were handled as QACF incentives.

Based on testimony provided to CIG reviewers, in reference to the May 22, 2009, letter from Governor Crist to the Speaker of the House and the Senate President listing six projects, **Mr. Nunez**, indicated his belief that they were trying to do everything they could in the absence of a process and, "in an abundance of caution," Governor Crist notified the Speaker of the House and the Senate President.

In a **June 1, 2009**, memorandum from Dr. Brill to Governor Crist, OTTED provided a funding recommendation for Digital Domain. This funding recommendation, signed by Dr. Brill on **June 17, 2009**, in pertinent part indicated:

The Office of Tourism, Trade, and Economic Development (OTTED) requests that you approve Wyndcrest DD Florida, Inc. for a funding award in the amount of \$20,000,000 to locate the digital studio operation of Wyndcrest DD Florida, Inc. in Florida by establishing a new digital production campus.

...The Company is looking to occupy a 175,000 square foot facility...committing to create 500 new jobs...**These commitments may vary based on final site selection, which has not yet occurred.** [emphasis added]

...Wyndcrest [Digital Domain] will start land acquisition and construction of a new building. The capital investment...is expected to be \$52.375 million

for the development of a new facility in two phases. **This estimate may vary based on final site selection, which has not yet occurred.** [emphasis added]

In the first year of operation, the State of Florida is requested to provide 95% [sic] of operating costs as compared to 15% [sic] by the company [a calculation that does not compute to 100%]. Based on creation of 500 new jobs total capital investments of \$52.375 (excluding the value of the land), a \$1.6M QTI (state portion), and a \$20 million funding award, *the 10 year payback ratio is 1.66 to 1* [emphasis added].


Based on testimony provided to CIG reviewers, when asked if he agreed with his own recommendation, **Dr. Brill** said "no." He said he was not comfortable with the recommendation. He acknowledges that he never "threw himself on the sword" and disagreed with granting the incentive. Dr. Brill said that, it was clear that if he had done that, he would have been looking for other work, at least in his view. When asked if he expressed his specific objection, Dr. Brill stated "no".

Based on testimony provided to CIG reviewers, **Dr. Brill** described the process leading up to the LBC as a laborious process that required OTTED to offer each member of the LBC a personal briefing on the project. Dr. Brill indicated that members could decline the personal briefing. Dr. Brill said that the idea of placing it on the LBC agenda was "initially resisted," and so it was placed for informational purposes only. He said that he recalled that during his presentation to the LBC, a member of the LBC (Dr. Brill could not recall who) pointed out that the briefing was a courtesy and not required. Dr. Brill again stated that this was done at Governor Crist's insistence that this be done in the public, and that the legislators be fully informed on Digital Domain and the other projects receiving incentives.

On **June 17, 2009**, Dr. Brill presented Digital Domain and the other five projects to the LBC. According to the June 17, 2009, LBC Action Packet, this agenda item was presented as other business and was not affirmatively approved. There was no further information on this matter in the LBC Meeting Package.

II. Other Business

Presentation by Dale Brill- Director, Office of Tourism, Trade & Economic Development, Executive Office of the Governor regarding implementation of section 68 of the Conference Report on SB 2600.



On **June 24, 2009**, Governor Crist marked "Concur and approve this Quick Action Closing application at: \$20,000,000" and signed the funding recommendation prepared by OTTED.

On **June 29, 2009**, EFI submitted a review of Digital Domain which concluded in pertinent part:

This review has been completed based on the information provided by Bumblebee [Digital Domain] as of this date. Bumblebee [Digital Domain] has stated that \$20M is required from the State to locate the company in Florida. In the first year of operation, the State of Florida is requested to provide 95% [sic] of operating costs as compared to 15% [sic] by the company [a calculation that does not compute to 100%]. This is a project review as Enterprise Florida is not in a position to recommend Bumblebee [Digital Domain] to OTTED.

Note: This review cited concerns in the following areas: profitability, income, equity and debt financing, revenue projections, cash position, executive compensation, and recent litigation.

On **June 30, 2009**, State of Florida, EOG, Grant Fund Agreement #0T09-152 was executed between OTTED⁴⁶ and Digital Domain that outlined that Digital Domain would receive the \$20 million economic development incentive. A revised GPO for Project Bumblebee [Digital Domain] was included as Appendix A of the Agreement. Section 4 of the GPO indicated June 26, 2009, as the date for the final location decision. According to this agreement, the incentive was designed to create 500 jobs at an average wage of at least \$64,233 excluding benefits, and the company was required to invest a total Qualified Investment⁴⁷ of at least \$50,000,000 in the new facility by December 31, 2014, and *this project will include the location of the Grant Fund Awardee's digital production studio in the Tradition Development, Port Saint Lucie, Saint Lucie County of Florida* [emphasis added], in order to fulfill provisions of the Contract.

According to OTTED files, on **July 20, 2009**, the City Council of the City of Port St. Lucie, St. Lucie County, Florida, passed and approved Resolution 09-R101 providing for commitment of local financial support and assistance necessary to locate Digital Domain to the City and County and funding be made available to the company in return for the providing of jobs promised by the company.

According to OTTED files, on **July 22, 2009**, the City of Port St. Lucie, St. Lucie County, Florida, entered into a Site Agreement with Digital Domain and agreed to provide 15 acres of land contingent upon Digital Domain meeting certain prescribed requirements.

Between **September 2009 and April 2011**, Digital Domain received four (4) payments totaling \$20 million based upon OTTED's evaluation that Digital Domain had complied

⁴⁶ Keisha Rice, former Deputy Director, OTTED, signed the agreement on behalf of OTTED. We attempted to coordinate an interview with Ms. Rice, but after a few calls, this did not materialize.

⁴⁷ A Qualified Investment shall include the cumulative sum of the following investments: hard and soft costs incurred in construction to real property, furniture, fixtures, and equipment that is purchased, and appraised value of real and personal property that is acquired.

with contract provisions. The contract requirements, payment amounts, and payment dates are listed below:

Summary of Payments

Contract Requirement	Payment Amount	Required Completion Date	Payment Date
Payment 1 <ul style="list-style-type: none"> Local resolution from City Site agreement, lease or similar documentation Demonstration of recruitment for hiring executive management Public announcement of intention to locate in the City of Port St. Lucie 	\$7,000,000	September 30, 2009	September 1, 2009
Payment 2 <ul style="list-style-type: none"> Closure on Site agreement Commencement on construction and Capital Investment of \$5 million Continue recruitment and hiring activities Establish executive management team 	\$5,000,000	February 28, 2010 However, may be extended to no later than April 30, 2010 ⁴⁸	June 29, 2010
Payment 3 <ul style="list-style-type: none"> Creation of 100 net new full-time equivalent jobs Average annual wage of project jobs will be at least \$64,233, excluding benefits Qualified Investment of at least \$15 million Occupancy of facility 	\$4,000,000	December 31, 2012	December 23, 2010

⁴⁸ Digital Domain requested the extension to April 30, 2010 and all required documentation was received prior to that date.

Payment 4 <ul style="list-style-type: none"> • Creation of 200 net new full-time equivalent jobs • Average annual wage of project jobs will be at least \$64,233, excluding benefits • Qualified Investment of at least \$25 million 	\$4,000,000	December 31, 2013	April 11, 2011
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On **October 13, 2009**, Representative Jennifer Carroll⁴⁹, sent a letter to Governor Crist, requesting an immediate investigation and questions concerning the \$20 million appropriation to Digital Domain.

On **October 14, 2009**, Representative Carl J. Domino,⁵⁰ sent a letter to Dr. Brill, asking questions concerning the \$20 million appropriation to Digital Domain and requesting that OTTED "suspend any further funding...until the Legislature is satisfied that this is a viable investment."

On **October 22, 2009**, Representative Domino sent a letter to Dr. Brill thanking him for taking time to discuss the Digital Domain project. However, Representative Domino still called for the freeze of further funding and a full accounting of the first \$7 million and return of any unspent funds.

On **October 16, 2009**, Dr. Brill responded to former Representative Carroll's October 14, 2009, letter with the answers to the questions in her letter.

On **November 12, 2009**, former Representative Carroll responded to Governor Crist, stating that "response letter I received from Dr. Dale Brill...gave ample information to satisfy my concerns that no impropriety in awarding Mr. Textor and his business... occurred."

Based on testimony provided to CIG reviewers, when asked if he believed the economic development incentive award and approval process was sidestepped, **Dr. Brill** answered, "Absolutely." He said that "great energy was put into play to deliberately and intentionally sidestep the process." However, when asked, Dr. Brill stated that he "did not believe anything unethical occurred or that any laws were broken." Dr. Brill stated that this was not the first time the Legislature granted funds to organizations through a direct proviso appropriation [such as member projects or turkeys] so there was precedent for bypassing the EFI approval process.

⁴⁹ Jennifer Carroll was a member of Florida House of Representatives elected to serve District 13 from May 14, 2003 to November 2, 2010, and, during the time of these events, was the Chair of the Economic Development Policy Committee. She is also the former Lieutenant Governor for the State of Florida.

⁵⁰ Carl Domino was a member of the Florida House of Representatives elected to serve District 83 from November 6, 2002 to November 2, 2010, and, during the time of these events, was a member of the Economic Development Policy Committee.

Based on testimony provided to CIG reviewers, **Mr. Adams** stated the incentives awarded to Digital Domain were the result of a "back-of-the-bill" legislative process that he said "totally skirted the statutory process for QACF." Mr. Adams asserted that EFI was not involved in that process and was concerned that the "back-of-the-bill" legislative process would set precedent for other economic development incentives being similarly approved.

Mr. Adams stated that this incentive was approved as a slight of hand and that they routinely rolled forward unexpended amounts without need for such a measure. Additionally, Mr. Adams wondered if other projects were postponed to create the unexpended amount which was appropriated for this economic development incentive. Mr. Adams also stated that had they been consulted after April, he would have called their hand on the project. He said he had already reviewed it and determined that it was not a good project.

Based on testimony provided to CIG reviewers, **Mr. Eikenberg** stated that his recollection of the project for Digital Domain was that the Crist Administration had a number of questions about the overall deal with Digital Domain. He said that Digital Domain also had a number of concerns that the deal was not moving in the direction they would like. Mr. Eikenberg recalled multiple meetings to work through the issues. He stated that OTTED was involved in the details.

Mr. Eikenberg said that the Crist Administration had difficulty justifying the project, but, at some point, the Legislature stepped in. However, he said that he did not have any specifics about this. Mr. Eikenberg recalled that there was some sort of generic proviso language that placed the funding for economic development incentives into the budget.

Mr. Eikenberg said that, ultimately, the Legislature gave the Governor the authority to allocate the resources yet he recalled Governor Crist sending a letter to Senate President Jeff Atwater and Speaker of the House Larry Cretul seeking legislative approval. He said that the proviso language gave the Governor the authority not to go to the LBC for approval, but that Governor Crist objected to that process. He recalled Governor Crist making calls to the presiding officers over the LBC and recalled that Governor Crist insisted that the awards of the incentive projects go before the LBC. He said that Governor Crist was not going to act without the Legislature on this because the Governor wanted the process to be fully transparent.

Mr. Eikenberg said that he recalled Mr. Textor and Digital Domain being very aggressive when they first came to Florida with all the movies they were involved in. He recalled that the CEO had a presence in Tallahassee. He recalled that OTTED coordinated the details of the Digital Domain project.

Mr. Eikenberg said that he recalled that Mr. Textor presented the plan to the Governor's office including the various site locations they were considering. Mr. Eikenberg said that he recalled that Digital Domain wanted to move a production facility

to Florida that would bring jobs to the state. He said that the company wanted a link to higher education as well.

Mr. Eikenberg said that he recalled Representative Ambler being very involved in discussions about this project. Mr. Eikenberg said that the Legislature acted in its authority to appropriate state resources and that's what they did. He did not recall if Digital Domain had lobbyist representation during the process.

A written statement received on **January 15, 2013**, from Stanley H. Wakshlag, of Kenny Nachwalter, P.A., attorney for **Representative Ambler** stated the following:

Representative Ambler believes that the legislative process involving economic development grants extended by the State of Florida to Wyndcrest DD Florida, Inc. in June 2009 worked properly. The project, which committed to 500 high wage jobs and contemplated at least 1000 such jobs, received thorough review from both the legislative and executive branches. In addition, a comprehensive and independent economic impact study of the project's viability and value was performed prior to the project approval. At no time during this process was Representative Ambler promised any personal benefit as a result of any of his actions in the Legislature, and the opportunity to serve as Director of Digital Domain Media Group, Inc. was first presented to him long after his tenure in the Legislature ended in November, 2010. Representative Ambler properly supported this project on its merits which was ultimately approved by the Governor.

Legislative privilege precludes further elaboration into the details of the appropriation process.

A letter dated **February 5, 2013**, from William N. Shepherd, Holland & Knight, LLP, attorney for **Mr. Textor**, stated in pertinent part:

...You have asked for our input in specific areas that range from the initial discussions with the state, to the interactions with the Legislature, the Legislative Budget Commission, various local governments, and then ultimately through the business cycle.

First and foremost, John Textor sought to develop a state of the art facility that would create hundreds of jobs in the expanding field of visual effects and computer animation. His previous success in leadership at Digital Domain Productions, responsible for the visual effects of many leading films such as *The Curious Case of Benjamin Button* and *Tron: Legacy*, showed that his company and people could produce, and had produced, a product at a high level of expertise that would provide marvelous content to the motion picture industry. The revolutionary creation of a holographic Tupac Shakur in the spring of 2012 showed that Digital Domain was able

to execute on the technology and continue to create innovative products that were not only significant locally, but in fact made national and international news in his field. Given Florida's continuing efforts to provide jobs in technology and the entertainment and film industry, it made for a natural partnership for consideration by the State of Florida.

Unlike many seeking the support of state partnership, Mr. Textor took a personal, hands-on approach and spent time and effort individually explaining his proposals to those interested in Florida's economic development. Rather than an outstate CEO with a host of Tallahassee lobbyists who could touch the levers of government, Mr. Textor felt that the story of his company was best told by its CEO through his perspective as a native Floridian.

As an initial matter, Mr. Textor reached out to Enterprise Florida, the agency tasked with recruiting new businesses and expanding existing Florida businesses. As you know, Enterprise Florida has a number of incentive packages that are available to companies. Mr. Textor discussed his project with members of the Enterprise Florida staff and completed the materials that were necessary for the vetting of his proposal. He also worked regularly with staff from the Office of Film and Entertainment given the natural interest and expertise that those members have in this area. At each step he cooperated with requests. This was a back and forth process that is documented in your materials. As you know, but which has not been regularly mentioned in the public discourse, Enterprise Florida did approve Project Bumblebee in March 2009, offering \$11.4 million in exchange for a commitment to create 300 jobs. That approval, which represented the completion of a thorough vetting process, was a significant endorsement of the project even though it was at a level below what Digital Domain believed was feasible to support the scope of its plans for operations in Florida. Thereafter, Mr. Textor and Digital Domain continued to cooperate with Enterprise Florida staff as they prepared a comprehensive report regarding the project.

Not only was staff and senior staff of Enterprise Florida, the Office of Tourism Trade & Economic Development [*sic*], and the Office of Film and Entertainment involved in the process, there were also discussions with Governor Crist himself and members of his executive staff. This was all done with an effort to create the best opportunity for success.

As the Governor's process continued, there was likewise a process in the Florida Legislature as a diverse group of legislators sought to proportionately increase the appropriation offered to Digital Domain in exchange for a larger jobs commitment and a requirement to develop programs with Florida State University. As a result of this process, there was quite a bit of committee debate about the Digital Domain project

during budget conference sessions. In fact, out of more than a dozen companies vetted through Enterprise Florida and OTTED, the Digital Domain project was the only project funded in 2009 that was discussed in open televised committee hearings. While the role of the legislature in this project may be beyond the scope of your review, it is helpful to know that Mr. Textor attended legislative meetings and committee meetings personally and had discussions with over 30 legislators in an attempt to answer questions and inform them about Digital Domain's plans. The Conference Committee on Transportation and Economic Development Appropriations also held several televised and noticed public meetings regarding this proposal. There was a review by the Legislative Budget Commission, including individual reviews by each of its 14 members. There was a robust and full due diligence process by OTTED. At the same time, the project was the subject of a Regional Economic Modeling Study prepared by Florida State University's Center for Economic Forecasting and Analysis. That study projected that the project would result in more than \$480 million of gross regional product across the state and ultimately lead to the creation of 6,100 jobs. In short, the project was given a robust and thorough review and ultimately, the measure passed the House and Senate.

You have asked specifically about Representative Kevin Ambler and his role. He was first introduced to Digital Domain and Mr. Textor in March 2009 by officials at Florida State University, as the project had received approval from EFI but at a level Digital Domain considered inadequate for its needs. Given his background in entertainment law and involvement in the film festival in the Tampa Bay area, Rep. Ambler was a natural supporter and thoughtful advocate of increasing the film and entertainment industry in Florida. Mr. Ambler, along with others in the legislature, at FSU, and in the governor's office, sought to find a way to ensure that Digital Domain would receive the funding it needed to start its planned business in Florida. He drafted a budget proviso that authorized allocating a \$20 million portion of unspent funds from the prior year to Project Bumblebee in exchange for a commitment to create 500 jobs. This proposed proviso that specifically mentioned allocation of funds to the Digital Domain project was discussed in publicly noticed, televised meetings committee meetings that were attended by numerous legislators, spectators and the press. The final version of the proviso was drafted by Dr. Dale Brill of OTTED, provided to the legislature, and passed into the budget. It removed Rep. Ambler's specific references to Project Bumblebee, expanded the scale of the appropriation and granted authority to OTTED and the Governor to use the funds "for the purpose of creating high-wage jobs and business recruitment to Florida". The proviso allowed OTTED and the Governor to fund considerable more money than was proposed by Rep. Ambler to a larger number of companies.

The project did not just involve the decision makers at the state level. There were a number of local communities that sought to recruit the opportunity to add Digital Domain into their local job market. Like their state counterparts, each community sought to provide the best economic package available to recruit Digital Domain. There were a number of counties interested in the opportunity and those packages had to be coordinated with the state offer so that the opportunity for success could be maximized. There were a number of attractive communities interested, and their leaders worked to develop packages to attract Digital Domain. While each county had different things to offer in terms of incentive, location, and community opportunities, the ultimate decision was to establish the company's Florida studio in Port St. Lucie, FL.

Subsequent to the completion of the appropriations process through which Digital Domain contracted for state grants, there was a member of the Florida House of Representatives who was a vocal critic of the project. While aware of the project during legislative session, he raised no objections to it during open committee meetings and he raised no objections to the relevant budget line item while voting in favor of the budget itself. His criticism began during a summer 2009 meeting of the Economic Development Policy Committee. Current Lt. Governor Carroll, then a member of the Florida House of Representatives and Chair of the House Economic Development Policy Committee, conducted an inquiry into the questions raised. At the conclusion of her inquiry, in a letter dated November 12, 2009 to Governor Crist, then Representative Carroll stated that she had received ample information that there was no impropriety in the award of state funds to Digital Domain and that her investigation was being closed.

Based on testimony provided to CIG reviewers, Ken Pruitt,⁵¹ Senator and former Vice Chair of the LBC at that time stated that it is the Legislature's authority and prerogative to fund anything it deemed appropriate and Governor Crist has his opportunity to veto, but the Legislature could overturn that veto. He said that he did not think there were any controls that could be put into place that could have stopped this.

Attempts were made to obtain testimony from Keisha Rice,⁵² former Deputy Director, OTTED and Governor Crist.⁵³ However, these attempts were not successful. We

⁵¹ Senator Ken Pruitt served the District 28 from November 8, 2000 to August 4, 2009 as was the former Vice Chair of the LBC during the 2009 Legislative Session.

⁵² We attempted to coordinate an interview with Ms. Rice, but after a few calls, this did not materialize.

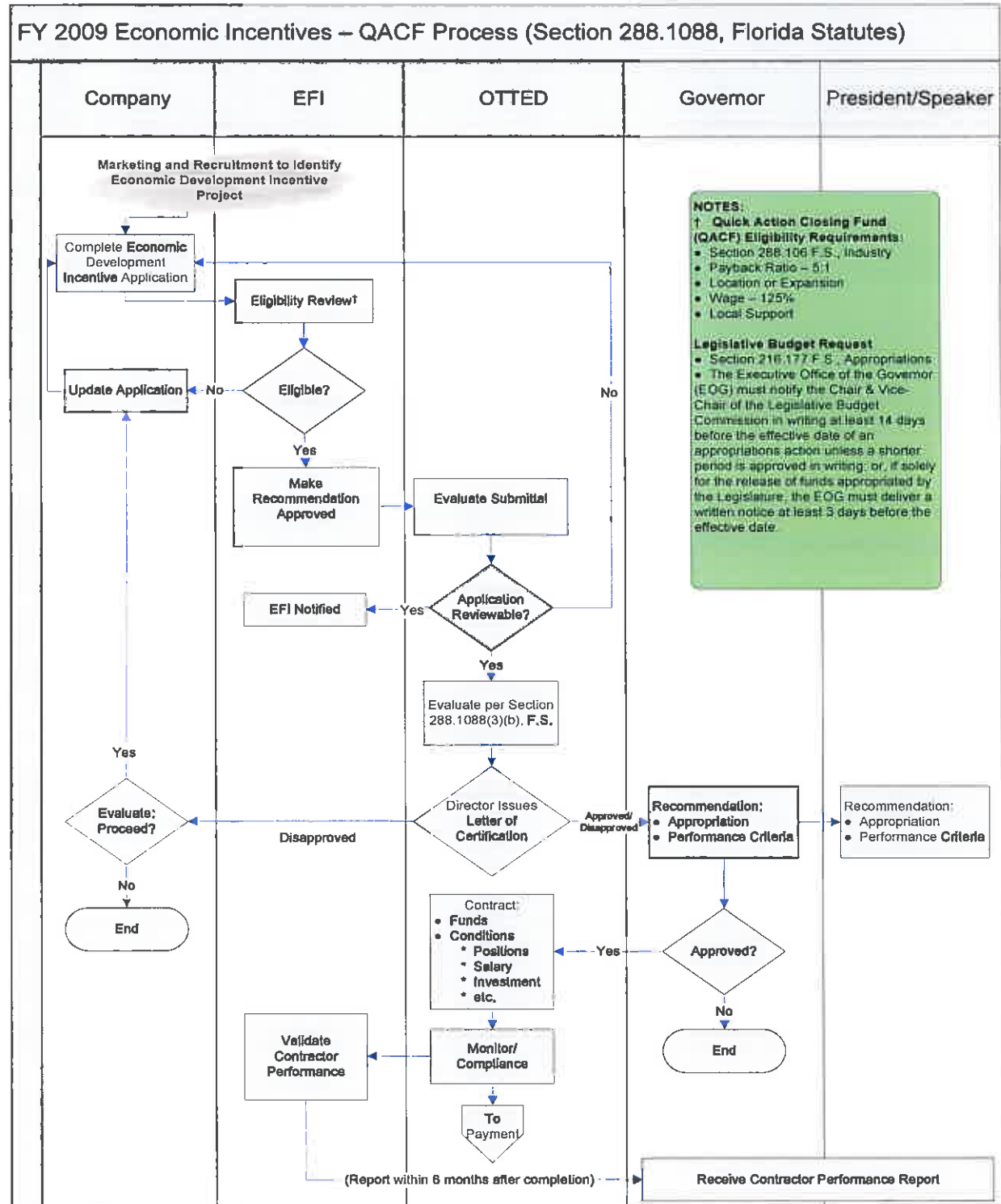
⁵³ During this review, CIG left a voice mail for Governor Crist, but no response was received. On February 26, 2013, we contacted Governor Crist's office and e-mailed him the draft report for comment, but no comment was received.

attempted to contact Representative David Rivera,⁵⁴ former Chair of the LBC, but we were unable to contact him.

⁵⁴ David Rivera was a member of the Florida House of Representative elected to serve District 112 from November 6, 2002 to November 2, 2010, and, during the time of these events, was the Chair of the LBC. During this review, we attempted to contact former Representative Rivera by phone, but were unable to obtain an accurate phone number. On March 7, 2013, we contacted Mr. Rivera and e-mailed him the draft report for comment, but no comment was received.

Appendix B – FY 2008-2009 QACF Processes

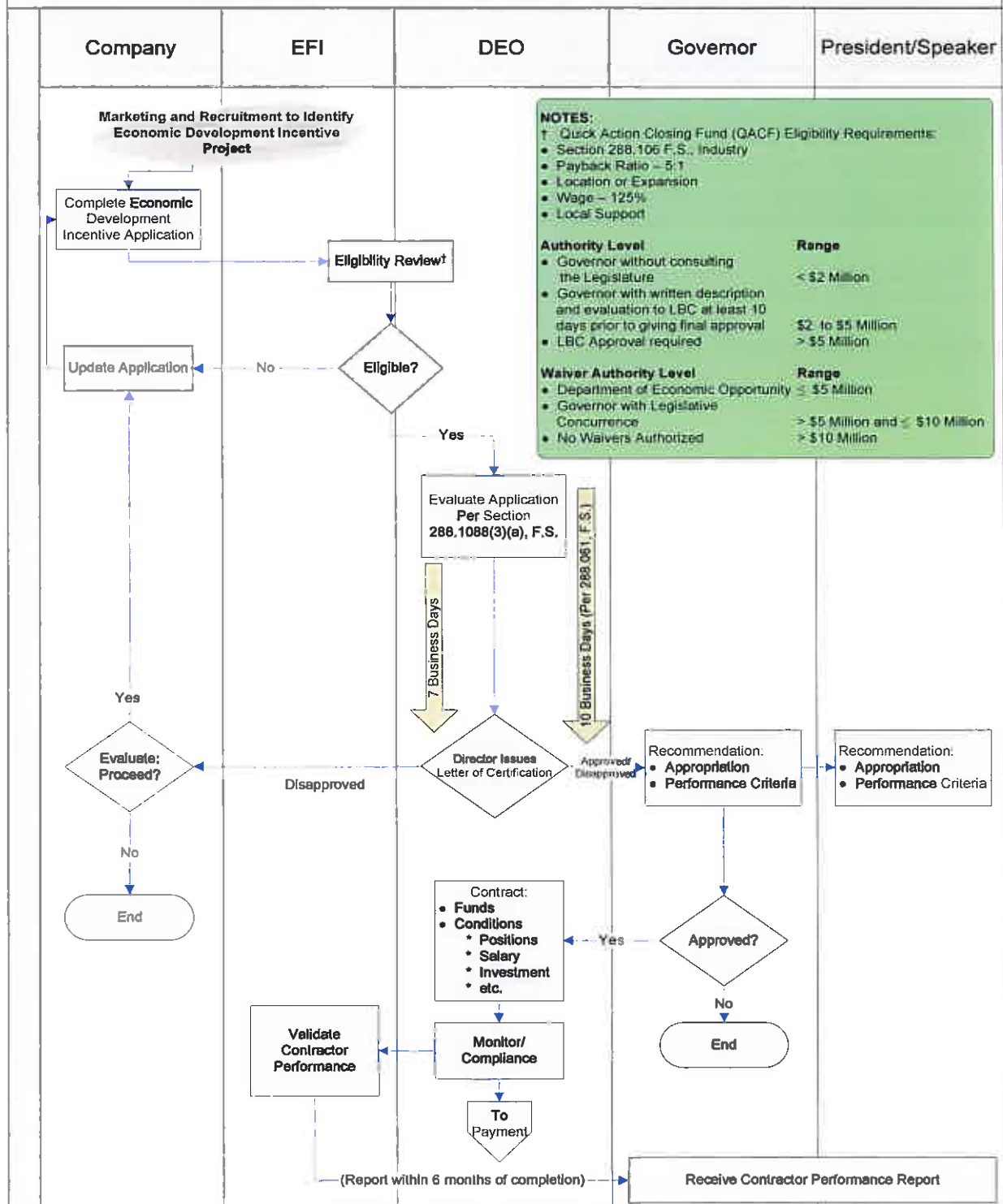
The QACF process in FY 2008-2009 is depicted in the flowchart below:



Appendix C – FY 2011-2012 QACF Processes

The QACF process in FY 2011-2012 is depicted in the flowchart below:

FY 2012 Economic Incentives – QACF Process (Section 288.1088, Florida Statutes)



Appendix D – Responses Received

Rick Scott
GOVERNOR



Jesse Panuccio
EXECUTIVE DIRECTOR

**FLORIDA DEPARTMENT of
ECONOMIC OPPORTUNITY**

March 20, 2013

Ms. Melinda Miguel
Chief Inspector General
Executive Office of the Governor
Suite 2103
The Capitol
Tallahassee, FL 32399

Re: RESPONSE TO PRELIMINARY FINDINGS AND RECOMMENDATIONS
REGARDING THE DIGITAL DOMAIN ECONOMIC INCENTIVE AWARD

Dear Chief Inspector General Miguel:

The Department of Economic Opportunity (DEO) appreciates the work of the Office of the Chief Inspector General (OCIG) in investigating the 2009 grant of economic incentives to Digital Domain. The Department respectfully responds to OCIG's preliminary findings and recommendations as follows, and requests that this response be included in the final report.

1) The atypical circumstances of the Digital Domain deal are troubling, and this unfortunate situation underscores why the granting of economic incentives should follow the detailed process currently prescribed by statute. DEO and Enterprise Florida, Inc. (EFI) strive to ensure that economic incentives are awarded and administered in an economically sound, transparent manner. The two organizations engage in due diligence to minimize risk to the taxpayer and to ensure that limited resources are expended on worthwhile projects that will bring a positive return on investment.

The OCIG Report demonstrates that such a careful, transparent process was not followed with the Digital Domain deal. While it is true that such a scenario could happen again—the Legislature has the sole discretion to appropriate tax dollars and can always create a budget line item for a specific project—the critical point is that under DEO and EFI's normal procedures and statutory obligations, *the Digital Domain deal would not have happened*. Digital Domain simply was not a good investment for the State and it did not meet even the minimum thresholds that DEO and EFI, under the current Administration, consider sufficient.

2) DEO is committed to recovering from Digital Domain, and any other legally responsible entity or individual, as much taxpayer money as possible. Accordingly, DEO will

Florida Department of Economic Opportunity
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www.FloridaJobs.org | www.twitter.com/FLDEO | www.facebook.com/FLDEO

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continue to represent the State's interest in the Digital Domain bankruptcy action. Furthermore, while the inquiry addressed in the OCIG Report is limited to process, DEO will continue to monitor whether any other actions need to be taken in response the development of new facts, such as those which may come to light in legal actions brought against Digital Domain and/or its principals. For example, if any representative of Digital Domain made false or misleading statements when inducing the State to grant incentives, or during the course of the administration of the incentives contract, further legal action may be warranted.

3) Several facts contained within the OCIG Report suggest that additional details of the Digital Domain deal have not yet come to light. This is especially so because of "gaps in available written documentation combined with limited or conflicting recall, unavailability of key witnesses, and assertion of legislative privilege by a key witness." (OCIG Report at ii).

- a) The Digital Domain proposal was squarely rejected by EFI pursuant to its normal process—standard due diligence and consideration of statutory requirements for economic incentives. EFI found "the financials for the company were 'extremely weak'" and specifically noted concerns over "profitability, income, equity and debt financing, revenue projections, cash position, executive compensation, and recent litigation." EFI found that none of Digital Domain's various and ever-changing proposals could meet the statutorily required five-to-one payback ratio. Accordingly, EFI was "not in a position to recommend the project." (OCIG Report at 6-7).
- b) Despite EFI's express concerns and ultimate rejection, Digital Domain successfully lobbied Governor Crist and the Legislature for a special budget appropriation. (OCIG Report at 7, 13). Discussion during these lobbying sessions "focused on how to legally get around the QACF statute." (OCIG Report at 7). A draft proviso authorized funding specifically for Digital Domain. The final proviso language, however, granted Governor Crist the discretion over whether to grant Digital Domain incentive money. (OCIG Report at 14, 28). The proviso did not require that Governor Crist adhere to the normal statutory requirements designed to protect taxpayer investments. (OCIG Report at 8).
- c) Dr. Brill testified that Governor Crist instructed OTTED, in considering whether to fund Digital Domain, to "follow[] the QACF statutory requirements as closely as possible as if the funds were still QACF." Dr. Brill further testified that Governor Crist stated that "I want this done exactly the way it would be done if it were a normal process." (OCIG Report at 8). Yet, in its official recommendation, OTTED found that the payback ratio was only 1.66 to 1, which is far less than the "QACF statutory requirements." (OCIG Report at 9). Governor Crist, after "research on his own" nonetheless "approved the award for Digital Domain," and expressed

“confidence that Digital Domain would be able to meet their financial obligation.” (OCIG Report at 9-10).

- d) Dr. Brill testified that he did not “agree[] with his own recommendation” but that “it was clear that if he had [disagreed with granting the incentive] he would have been looking for other work.” (OCIG Report at 9).

The question thus remains: if OTTED was instructed to follow the normal statutory requirements, and if its analysis revealed those requirements could not be met (consistent with the prior EFI analysis), why was the deal ultimately approved?

4) The Department appreciates and will consider the recommendations in the OCIG Report. As an initial matter, DEO notes the following in response to OCIG’s three recommendations:

a. *Recommendation that DEO evaluate whether the current statutory provisions and timeframes permit DEO to adequately protect the State’s interests:* DEO’s Division of Strategic Business Development (DSBD) works collaboratively with EFI to ensure that DEO has adequate information about a project well before the statutory timeframes begin to run. In other words, EFI typically begins to inform DEO DSBD about potential deals prior to the finalization of an application. This collaborative process permits DEO to conduct due diligence while also ensuring that deals move quickly enough to attract business partners. DEO continues to investigate ways to work with EFI to protect taxpayer funds while investing in worthwhile projects.

b. *Recommendation that DEO and EFI review the economic incentive process and make recommendations for improvement such as documentation and codification of the complete decision making process:* While further study may be helpful, DEO’s current decisionmaking process is fully transparent and rigorously documented. Every incentive application is investigated by DSBD, which then prepares a memorandum detailing the due diligence, satisfaction of statutory requirements, and recommendation of the assigned DSBD analyst and the Director of DSBD. That memorandum is transmitted to the DEO Executive Director, who then either documents concurrence with DSBD’s conclusions or reasons for disagreement and denial of the application. Once any applicable confidentiality timeframes expire, these documents are available as public records. In addition, as of March 4, 2013, DEO publishes on its website the details and performance of every non-confidential incentive contract.

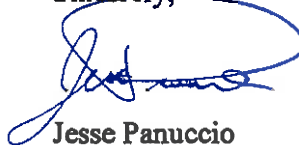
c. *Recommendation that DEO and EFI define and codify the process to be followed when DEO’s Strategic Business Development and EFI staff disagree on whether to fund a project:* DEO and EFI work collaboratively to evaluate potential incentives projects and we

Chief Insepector General Miguel
March 14, 2013
Page 4 of 4

continue to seek ways to enhance our collaboration. Nonetheless, if EFI does not believe a project should be funded, DEO does not receive an application and the project is not funded. If EFI believes a project should be funded but DEO disagrees, then the project is not funded. In other words, both EFI and DEO must concur before a project will be funded.

DEO very much appreciates the thorough work of the OCIG on this matter and the thoughtful recommendations OCIG has provided. DEO is committed to ensuring that our economic development programs are transparent, accountable, and provide a positive return on investment. Your recommendations will help us advance these goals.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jesse Panuccio", with a large, stylized loop at the end.

Jesse Panuccio
Executive Director



February 25, 2013

Ms. Melinda Miguel
Chief Inspector General
Executive Office of the Governor
The Capitol
Tallahassee, Florida 32399-0001

Dear Ms. Miguel,

Recruiting competitive projects to create new jobs for Floridians and capital investment in our communities is critical to bolstering our economy. However, our economic development efforts must be done with strictest level of fiduciary responsibility to the taxpayers. It is because of our commitment to the taxpayers, that Enterprise Florida (EFI), along with its partners at the Department of Economic Opportunity (DEO), maintains a strict process of vetting each and every project for the use of incentives.

Thank you for the opportunity read and respond to your report regarding Digital Domain. We appreciate your perspective on what took place and your recommendations for further improvement.

Unfortunately, when the process is circumvented, there is little that can be done to protect Florida's financial investment. As you noted, EFI did not recommend funding for the Digital Domain project. The proposal did not meet statutory requirements and did not demonstrate that it would generate an adequate return on the state's investment. Despite the rejection of the project, a decision was made by the leadership at the time to approve and award funding to the company.

To be accountable to Florida's taxpayers and maintain the integrity of the economic development process, Enterprise Florida must be able to carry out its role in scrutinizing companies and their proposals for job creation and investment in our state.

In 2009 when the Digital Domain funding was awarded, there already were processes in place to ensure a thorough review of a company's proposal for job creation and if incentives were recommended, what would be the return on the state's investment. However, under the leadership of Governor Scott, a more rigorous review process for the use of incentive funds has been implemented with the development of the Incentive Review Committee. EFI performs due diligence on every company it recommends for funding. Today, these recommendations all contain specific clawbacks and sanctions in the event of failure. Additionally

Governor Rick Scott, Chairman • Brett Couch, Vice Chairman • Gray Swoope, President & CEO



important to note in the last two years all of Florida's incentive contracts have some level of pay for performance, greatly reducing the risk to the state. Collaboration between Enterprise Florida, DEO and Workforce Florida Inc. is essential in this process.

Enterprise Florida remains steadfast in its commitment to Florida's taxpayers and is continuing to find ways to strengthen our processes and accountability measures. We will review your recommendations with our partners at both DEO and Workforce Florida to determine the best course of implementation.

Thank you again for your review.

Sincerely,

A handwritten signature in black ink, appearing to read "Gray Swoope". The signature is fluid and cursive, with a large initial "G" and a long, sweeping underline.

Gray Swoope
Secretary of Commerce
President & CEO, Enterprise Florida Inc.

March 19, 2013

Ms. Melinda Miguel
Chief Inspector General
Executive Office of the Governor
Suite 2103, The Capitol
Tallahassee, FL 32301

RE: Response to Review of the Economic Incentive Award to Digital Domain

Dear Inspector General Miguel:

I am grateful for the opportunity to respond to a draft of your report examining the 2009 award of \$20 million in economic development incentives to Digital Domain. My continued desire to voluntarily participate in your investigation remains anchored in the belief that the state can benefit from a comprehensive analysis of larger issues highlighted by this project's failure. Nothing in this response is intended to deny or deflect my central role in the process leading to the Digital Domain funding award while I served as Director of the Governor's Office of Tourism, Trade & Economic Development. Having benefited from countless hours of research and reflection since 2009, I offer my commentary below with the intent of expanding the conversation to include much broader issues inherent in the Digital Domain award. My hope is that this dialogue fosters meaningful deliberations at the municipal, county and state levels.

Before addressing the larger and far more important issues, I would like to refute claims by both Representative Ambler and Mr. Textor that I crafted the final proviso language that appeared in the budget bill. I suspect their concurrence snuffs out any hope I have of correcting this assertion. So, I turn instead to the more critical issues deserving of our attention.

The draft of the report shared for my comment concludes that "although improvements have been made to statutes and processes since 2009, an award similar to the one to Digital Domain could happen again today if the Legislature appropriates funds and gives the Executive Branch the discretion to expend those funds." Not only do I concur with this conclusion, I will argue that not only could it happen again—it certainly will.

My assertion is based on the observation that the Legislature has the Constitutional authority to appropriate funds with the Governor able to exercise limited veto power on budget line items. One particularly common mechanism for the Legislature to

appropriate funds directly to projects is known as "proviso." In doing so, funds are awarded without any evaluation of standardized economic benefits by Enterprise Florida (EFI) or the Department of Economic Opportunity (DEO). The media and Florida Tax Watch report many, but not all, of these projects each year as "turkeys." Such direct funding appropriations or tax incentives awarded to special projects, unlike Digital Domain, also go forward without thorough treatment by EFI and DEO for contracted performance expectations or financial clawbacks for non-performance.

It is only to be expected that the public will be given assurances that procedural reforms have been put in place since 2009 to prevent an award by the Legislature to a corporation in the absence of EFI and DEO evaluating, agreeing and approving the project's merits. Any comfort to be taken from these assurances evaporates with the further recognition that the Governor and the Legislature retain the authority and mechanisms to lawfully override an agency's bureaucratic processes to pursue objectives they deem as state priorities. Despite the undesirable outcome realized in the case of Digital Domain, the subordination of agency heads to elected officials is consistent with our democratic principles that elected officials, who are at least accountable through the ballot box, should have greater authority than bureaucrats.

It is necessary at this point to raise the politically charged issue, avoided by the Chief Inspector General's report, of Legislative restraint. I believe that in the absence of a Legislative champion, necessary to facilitate conversations with the Governor's Office and usher the project through the Legislature's budgeting process, the financial loss realized in the Digital Domain project would have been avoided completely or reduced. From my perspective as a contributor to the process leading to the funding of Digital Domain, the project would have died in the absence of the proactive and persistent efforts expended by Representative Ambler. My conclusion that an alternative outcome realized in the absence of such Legislative vigor might have been a more limited loss is based on the fact that Digital Domain was offered \$9.61 million by EFI following its initial vetting process (see e-mail excerpt from EFI CEO, John Adams, to the Governor's Chief of Staff; and reference to communication between EFI project manager, Brenda Workman, and Digital Domain's CEO, John Textor, page 23). Had Mr. Textor accepted this offer from EFI and ceased his extensive lobbying efforts, the failed project clearly would still be making headlines and the public outrage no less justified; but our focus would be more specific to the appropriateness of risk taking with tax payer dollars, which I'll address next.

Economic development incentives exist to attract, retain and grow businesses in the pursuit of economic growth and the diversification of our economy. Even to the most casual observer, business activities can be seen to involve considerable risk. State incentives are a form of investment in the prospect of success for a company relocating or seeking to grow in Florida. Therefore, no involvement of tax dollars tied to business investment is without risk (although the currently proposed Senate Bills 0446 and 0572 go a long way to reduce the state's exposure). The presence of unavoidable uncertainty begs perhaps the most important question of all, "What is the state's tolerance for risk?" In other words, we must address the degree of failure we are willing to sustain, if any at all.

On the one hand, if the expectation is for Enterprise Florida and the Department of Economic Opportunity to attract, retain and grow businesses through various investment tools without experiencing any degree of failure, then we set a standard of performance unknown anywhere in the public or private sector. On the other hand, if we are to continue putting state revenues at risk and acknowledge the inevitability of some loss from imperfect knowledge and judgment applied in the crucible of business and political uncertainty, is there not an obligation to articulate that range of tolerance?

Again, this response is not intended to defend or deny my participation in identifying an alternative path to funding Digital Domain in 2009. The report, with one exception as noted, accurately reflects those aspects of the process of which I have knowledge. I was never put in a position to influence an outcome that I knew to be of specific benefit to any particular party, including myself, the Governor or any member of the Legislature or their staff. The counsel of three different staff lawyers ensured that the paths pursued were within the law.

The report's determination that Florida may indeed experience another Digital Domain is grounded in the realities of the budgeting process. We need only to look for forthcoming appropriations proposed in the name of job creation or bolstering the economy to find evaluations by EFI or DEO missing. We can expect future companies, having benefited from the investment by the state of Florida in its plans for business growth, to fail. These failures will include missing job creation goals and bankruptcy. Worse yet, direct appropriations made in the name of economic development but with no performance measures may fail and the taxpayers will never know it regardless of the degree of transparency revealing the funding award process. We also can abandon

hope that human judgment will be sufficient at every possible turn to prevent these types of failures. Were such acumen to exist, there are more rewarding vocations to pursue and apply this prowess than state agency bureaucracy.

Acknowledging the above, I maintain that the far more productive and needed deliberations going forward will be those that bring the full spectrum of issues surrounding economic development incentives into full public discussion. To be sure, like most issues we face today, diving into economic policy is daunting work. Nonetheless, we have an opportunity in the wake of Digital Domain to improve public policy development and oversight. Committees and agency heads should hear from bona fide economists to fully understand the assumptions, including those applied in economic modeling, used to justify the benefits of funding business activities. Staff serving both Legislative Chambers, as well as Executive Office personnel and agency heads, should be intimately familiar with the rationale for concepts guiding current economic development practice, such as industrial clustering. Expanded efforts must seek to understand entrepreneurship and its significant, though relatively ignored, role as the driving force for economic progress. This work can reap significant rewards. Florida could be the first state to connect its complex processes and initiatives to clearly articulated and realistic expectations for performance. If nothing else, doing so would provide the guidance and direction that gives the current pursuit of transparency and accountability real meaning.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'D. Brill', with a stylized flourish at the end.

Dale A. Brill, Ph.D.



RICK SCOTT
GOVERNOR

STATE OF FLORIDA

Office of the Governor

THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0001

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March 26, 2013

VIA EMAIL

Stanley H. Wakshlag
1100 Miami Center
201 South Biscayne Boulevard
Miami, FL 33131-4327
shw@knpa.com

Re: Office of the Chief Inspector General's Report Number 2013-11

Dear Mr. Wakshlag:

I write to follow up on your March 25, 2013, letter in response to the draft report regarding your client Kevin Ambler's involvement with Digital Domain Media Group, Inc. [hereafter referred to as Digital Domain].

Firstly, I received a letter dated January 15, 2013, from you on behalf of Mr. Ambler that recited the following:

Representative Ambler believes that the legislative process involving economic development grants extended by the State of Florida to Wyndcrest DD Florida, Inc. [Digital Domain] in June 2009 worked properly. The project, which committed to 500 high wage jobs and contemplated at least 1000 such jobs, received thorough review from both the legislative and executive branches. In addition, a comprehensive and independent economic impact study of the project's viability and value was performed prior to the project approval. At no time during this process was Representative Ambler promised any personal benefit as a result of any of his actions in the Legislature, and the opportunity to serve as Director of Digital Domain Media Group, Inc. was first presented to him long after his tenure in the Legislature ended in November, 2010. Representative Ambler properly supported this project on its merits which was ultimately approved by the Governor [Crist].

Legislative privilege precludes further elaboration into the details of the appropriation process.

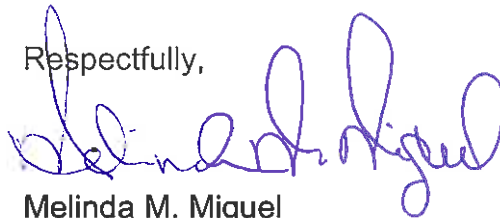
I also acknowledge receipt of your letter dated March 25, 2013, in which you offer non-testimonial information to supplement the letter of January 15, 2013.

Although, your letter is appreciated, upon review, your response does not contain any testimony by Mr. Ambler or provide documentary support for the assertions contained therein. The response also discusses matters outside the scope of my review. Therefore, I cannot singularly consider the information you supplied as direct evidence to support or refute assertions you make on your client's behalf. However, I can include a copy of your response in my final report, as requested, along with a copy of this letter. Additionally, based on my review of your letter, no additional investigative activity is warranted to meet the objectives of my review and my report stands unamended.

Finally, my report states "While this award [to Digital Domain] does not appear unlawful, gaps in available written documentation combined with limited or conflicting recall, unavailability of key witnesses, and assertion of legislative privilege by a key witness precluded our ability to make a complete determination of all factors considered in the decision to award funds to Digital Domain." Even with your letter, this remains accurate.

Thank you for taking the time to respond.

Respectfully,

A handwritten signature in blue ink, appearing to read "Melinda M. Miguel", is written over the typed name.

Melinda M. Miguel
Chief Inspector General



**KENNY
NACHWALTER**

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March 25, 2013

VIA EMAIL

Melinda M. Miguel, Chief Inspector General
The Capitol – Room 2103
Tallahassee, FL 32399-00001
melinda.miguel@eog.myflorida.com

Re: Officer of the Chief Inspector General's Report Number 2013-11

Dear Chief Inspector General Miguel:

I write to follow up on my client Mr. Kevin Ambler's statement of January 15, 2013 in response to your inquiry about Digital Domain Media Group, Inc. ("DDMG"). We thank you for the opportunity to respond following your provision of your draft report on March 15, 2013.

Upon reviewing the draft report (Report Number 2013-11), we discovered that are a number of material facts that are either omitted, incomplete, or that are presented inaccurately. Therefore, I provide the following additional information to supplement Mr. Ambler's statement of January 15, 2013. I would ask that the following be included in your report to help clarify the facts as to those areas where Mr. Ambler had direct involvement or first-hand knowledge of the events at the time.

1. Florida State University requested legislative guidance and assistance from Mr. Ambler.

a. In March 2009, Mr. Ambler was asked by Florida State University ("FSU") for his legislative guidance and assistance with their efforts in connection with a then-pending Enterprise Florida Inc. ("EFI") economic development project, code named "Project Bumble Bee," that had been submitted for consideration by Wyndcrest DD Florida, Inc.¹ Mr. Ambler had no prior relationship with DDMG, or with any of its officers or directors. Mr. Ambler first met DDMG's principals, John Textor and John Teaford, in March 2009, during the 2009

¹ The name of the company was later changed to Digital Domain Holdings Corp., and then to Digital Domain Media Group, Inc., and is referred to herein as "DDMG."

Legislative Session. That meeting, which was arranged by FSU, was held in Mr. Ambler's Capitol office.

b. FSU asked Mr. Ambler to become involved as it was their hope that the scale of Project Bumble Bee, as then proposed, could be expanded in terms of the number of jobs to be created (i.e. up to 500) and that it would also include a material collaboration and joint venture with FSU. Accordingly, there would need to be a corresponding increase in the amount of the grant award to account for the expansion of the project and the unique feature of the educational partnership with FSU.

c. As a sitting member of the Legislative Budget Commission ("LBC") which was responsible for reviewing and approving all EFI project grant recommendations, Mr. Ambler was able to confirm that DDMG had been in the economic development vetting process with EFI since 2008 and that the project appeared to have considerable support with members of the leadership in the Florida Senate and the Executive Office of the Governor.

2. Enterprise Florida had vetted and approved Project Bumble Bee.

a. At his first meeting in March 2009, Mr. Ambler was made aware that DDMG had applied for an economic development award through EFI in 2008, and that an offer from EFI was in final draft form in late February 2009. By mid-March, Mr. Ambler had learned that DDMG had completed the application and vetting process and was approved by EFI for an award of \$11.4 million based on a 300-jobs commitment by the company.

b. As a legislator, Mr. Ambler relied on the approval letter from EFI as an indication that all aspects of the project were thoroughly vetted, including the proposed business plan, the company and its principals.

c. In response to the FSU request for assistance, it became necessary to evaluate the project as a hybrid project that was as much an educational initiative as it was an economic development initiative. This meant that other non-EFI sources of funding, such as the education-focused PECO Fund and the Cortellis Fund, could and would be considered.

d. EFI was not involved, by statute or by practice, with educational funding sources, and did not have a process or the experience to evaluate an educational project or hybrid project like the one being proposed at that time for Project Bumble Bee. Further, the legislators involved (including the Chairs of the Transportation and Economic Development Appropriations Committee and the House Economic Development Appropriations Council) believed that it would establish a bad precedent to involve EFI in an educational project in what was, in effect, a request for funding support for the project from a state university.

e. Since the project had already been vetted and approved for \$11.4 million from EFI for DDMG to create 300 jobs, and given that the Florida Legislature is designated as the appropriating branch of government under the Florida Constitution, the Legislature possessed full authority to consider the expansion of the scope of Project Bumble Bee as described above,

and to appropriate funds to the project as part of the budget process during the 2009 Legislative Session.

3. Additional vetting was done regarding the expanded scope of Project Bumble Bee.

a. DDMG agreed to a higher jobs commitment (increasing from 300 to 500 jobs), and agreed to enter into a public-private partnership agreement with FSU, in exchange for a proportionate increase in the amount of the appropriation to the project. Accordingly, the EFI offer of \$11.4 million for 300 jobs was increased by the legislative initiative to \$20 million for 500 jobs and the commitment to the partnership with FSU.

b. The professional staff in both the House and Senate Budget Committees for Transportation and Economic Development (“TED”) were asked to thoroughly evaluate the EFI application materials for Project Bumble Bee, including all materials submitted by the company, and all financial and background information, as necessary to separately confirm the vetting conducted by EFI was sound and to determine whether the enhanced appropriation was appropriate and justifiable. The professional staff met with the principals of DDMG and requested additional documentation and substantiation which the company promptly provided.

c. During the course of the 2009 legislative session, Mr. Ambler also requested an independent economic development modeling analysis, known as a “REMI study,” be commissioned on an expedited basis. This study was prepared by the Center for Economic Forecasting and Analysis housed on the campus of FSU,² and was and to be used by the Legislature’s professional staff as part of their due diligence for evaluating the project. The report concluded in relevant part:

The results of the economic impact analysis show that Project Bumble Bee will have a substantial positive economic impact for the State of Florida for years 2009-2025. The economic benefits extend to job creation, GRP and personal income for Floridians. In terms of GRP, \$483 million is projected to be generated over 27 years of the project. Personal income is projected to be \$263 million. Overall, Project Bumble Bee is projected to support almost 6,200 jobs, with the state investment of \$20 million.

It is important to note that the REMI study confirmed a more than 20-to-1 return on investment if the state appropriation was finalized at \$20 million for a hybrid economic development and educational project, far more than the return ratio projected by EFI for the original scope of the project.

4. Enterprise Florida interfered with the appropriation process.

a. The legislative initiative for the project, which included a new partnership with FSU, was prepared to increase the appropriation request from \$11.4 million to \$20 million and,

² “The FSU Center for Economic Forecasting and Analysis (CEFA) specializes in conducting economic research and performing economic analyses to examine public policy issues across a spectrum of research areas.” Center for Economic Forecasting and Analysis, *available at* <http://www.cefa.fsu.edu/>.

further, had determined that it was unnecessary to request funds from either the PECO or Cortellis Funds. The professional staff for the House TED Appropriations Committee had informed the TED Appropriations Committee Chairman and Mr. Ambler that there were considerable excess monies available to the Office of Tourism, Trade, and Economic Development ("OTTED") from prior economic development awards that remained unspent for the 2008 fiscal year and that were subject to reversion. The amount of unspent FY 2008 economic development grant funds totaled approximately \$50 million.

b. A meeting was then held in mid-March 2009 with Dr. Dale Brill (then-Director of OTTED), members of his staff, representatives of FSU, Lieutenant Governor Jeff Kottkamp, his Chief of Staff and Mr. Ambler in the office of the Lieutenant Governor. At this meeting, Dr. Brill was informed that the Legislature had been made aware of the excess monies available to OTTED in their budget from the FY 2008 unspent EFI economic development grant funds, and it was the intent of the Legislature to increase the OTTED allocation to Project Bumble Bee from \$11.4 million to \$20 million so that the project could be expanded to a 500-job commitment and could provide for a public-private partnership with FSU.

c. Mr. Ambler was later informed that Dr. Brill was not happy with the Legislature's desired action on the project which he had learned about at the meeting in the Lieutenant Governor's office. Rather than obtaining the completed recommendation for Project Bumble Bee from EFI, Dr. Brill instead contacted EFI and instructed them to discontinue all work on Project Bumble Bee and to refrain from forwarding their work product and recommendation.

5. Enterprise Florida failed to act.

a. Project Bumble Bee had been vetted and approved by EFI as a qualified economic development project by March 2009.

b. Although EFI had previously confirmed in writing to DDMG that it would recommend an award, following the meeting with Dr. Brill in the Lieutenant Governor's office, EFI did not proceed with forwarding its recommendation for Project Bumble Bee to OTTED. This was effectively an attempt to place the project in a suspended state so as to hinder Project Bumble Bee from continuing its course of review through the Legislature and the LBC.

c. This behavior by EFI caused the legislators involved to look more closely at the practices and procedures of EFI that had evolved to become, in the legislators' belief, a repeated and continuing subversion of the intent and spirit of the statute. EFI was required to complete its due diligence and provide recommendations for both approval and disapproval for review by the LBC and the Governor. By developing a practice of only forwarding recommendations of approval, EFI had become the only party involved in the economic development process that could approve an economic development grant award. This practice therefore deprived the Governor and the Legislature of an important opportunity to review, for the sake of accountability, all of the analysis and recommendations of EFI as to each applicant for QACF funds. Ultimately, it is the constitutional right of the Governor and the Legislature to determine which projects should be approved or disapproved. EFI, or any similar quasi-public agency, is not empowered with such a constitutional right to appropriate.

d. During the latter part of March and early April 2009, it became increasingly clear to the legislators who were involved in the budget discussions about Project Bumble Bee, which was an already-approved EFI project, that the project was getting delayed for reasons that had little to do with the project and more to do with a debate on process and authority between the Legislature, the director of OTTED, and the director of EFI.

e. At the time of the 2009 legislative session, statute 288.1088 did not require EFI to complete its work within a set timetable and forward all recommendations to the Office of the Governor, routing them through OTTED. Because of this, it became problematic for the Legislature to obtain the Project Bumble Bee recommendation from EFI because there was no required timetable for EFI to complete and forward the recommendation. This flaw with the EFI procedures became the topic of a legislative amendment which was passed in the 2009 legislative session. The amended statute imposed new time standards and requirements for EFI to forward to OTTED recommendations for all applicant packages to remedy the problem.

6. The Legislature decided to fund Project Bumble Bee with a direct appropriation.

a. In reliance on the original vetting and approval of Project Bumble Bee by EFI, the independent vetting by the Legislature's professional staff, and the projected significant positive economic impact of the enhanced project reflected in the REMI study, the Legislature determined that it was appropriate to fund Project Bumble Bee through a direct appropriation in the 2009 budget.

b. Proviso language was submitted to the TED Appropriations Committee Chairman in the House that was specifically drafted by Mr. Ambler, in consultation with the professional staff, for Project Bumble Bee, with primary terms and conditions, in as transparent a fashion as is possible for a confidential 288.075 project. With a heading of "Project Bumble Bee Re-Appropriation," the initial proviso language drafted read as follows:

Re-appropriation of \$20 million in unreleased and unexpended Quick Action Closing Fund dollars in the current year (2008-09) for Project Bumble Bee with the company being required to create 500 new jobs with a minimum of \$60,000 average annual salary, and a capital investment and company contributions of \$100 million, and the requirement to collaborate with public and private universities within the state.

7. Drafting of the final budget proviso language and ultimate approval.

a. The original House proviso language proposed for the budget was initially accepted in the first round of public meetings of the Joint Budget Conference for TED appropriations. However, at the request of Dr. Brill, in meetings with the Senate budget staff for TED, the Senate suggested an approach to handle the unexpended 2008 grant monies in the second meeting of the Joint Budget Conference that removed the reference to any specific project and re-allocated all unexpended funds (totaling approximately \$50 million) to OTTED for the purpose of creating high-wage jobs and business recruitment to Florida.

b. The final language approved in the 2009 Legislative Budget for the re-appropriation of QACF funds was drafted by Dr. Brill and sent in an email to Mr. Ambler for his review, and ultimately approved with some modifications by the House and Senate TED Appropriations Committee Chairs in the joint budget conferencing process. The revised proviso language for inclusion in the budget was as follows:

The unexpended balance of funds and the remaining funds released for projects appropriated in Specific Appropriation 2635 and Section 74 of Chapter 2008-152, Laws of Florida shall revert immediately to the Executive Office of the Governor, Office of Tourism, Trade and Economic Development and is appropriated in the 2008-09 fiscal year for the purpose of creating high-wage jobs and business recruitment to Florida

c. The final adopted proviso language, which was included as part of the 2009 Legislative Budget adopted by the Florida Legislature, removed any requirement that the expenditure of the re-allocated 2008 funds from the QACF was subject to EFI review or that a project receiving an allocation from such funds receive a recommendation from EFI. The Governor did not veto the proviso language adopted in the 2009 budget regarding the re-allocation of the 2008 QACF funds. As Mr. Ambler's role in this process was focused on supporting an FSU-sponsored project, the removal of a direct reference to Project Bumble Bee represented a step backward for the project and it was not the preferred path for supporters of the project. The revised language placed an amount of funds, much larger than the proposed \$20 million, exclusively in the hands of the director of OTTED. Had the original language that Mr. Ambler proposed been approved, the funds in excess of \$20 million would have reverted back to their original purpose at Enterprise Florida in the Quick Action Closing Fund until June 30, 2012, and then the funds would have been transferred into unobligated general revenue.

d. In any case, contrary to what has been widely reported, it was Dr. Brill and other legislators, and not Mr. Ambler, who authored the final adopted proviso language that was inserted in the 2009 Fiscal Year Budget for the State of Florida, and which included the authority for the Director of OTTED to exclusively recommend to the Governor which economic development projects to fund with the unspent 2008 fiscal year funds.

March 25, 2013

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e. Ultimately, the Governor did approve the award of a \$20 million grant allocation to Project Bumble Bee in June 2009. That award was then processed by OTTED based on the same type of contractual terms used by OTTED for all EFI-approved projects, including requirements: (i) that the awardee meet milestones for capital expenditures, for the number of jobs, and for the average salaries of those jobs; (ii) that all monies be released in tranches based on the awardee meeting its required milestones; and (ii) that appropriate claw-backs be included for recapture of the distributed funds if milestones are not meet. DDMG met or exceeded all required milestones in its OTTED grant contract from July 2009 up until the company's filing under Chapter 11 of the United States Bankruptcy Code in September 2012.

Sincerely,

/s/ Stanley H. Wakshlag

Stanley H. Wakshlag

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March 20, 2013

BY E-MAIL

Melinda M. Miguel, Chief Inspector General
The Capitol - Room 2103
Tallahassee, FL 32399-00001

RECEIVED

MAR 21 2013

Governor's Office
Chief Inspector General

Re: Office of the Chief Inspector General's Report Number 2013-11

Dear Chief Inspector General Miguel:

We write to follow up on our letter dated February 5, 2013 regarding your inquiry about Digital Domain Media Group, Inc. ("DDMG") and our client, former Chairman and CEO of DDMG, Mr. John Textor. We thank you for the opportunity to be involved in the process.

Upon reviewing your draft report, we discovered that you were not able to gain access to certain key witnesses and documents. We also came to realize that some of the witnesses who have chosen to cooperate with your investigation are attempting to distance themselves from Project Bumblebee (as DDMG's application for economic incentives was called) or, in some cases, are attempting to revise their positions. The record is clear, however, that Project Bumblebee was approved by Enterprise Florida, Inc. ("EFI"), endorsed by the Office of Tourism, Trade, and Economic Development ("OTTED"), supported by numerous legislators, and approved by Governor Crist, all after a robust application and due diligence process. To the extent your draft report relies on the hindsight recollections of witnesses who now express disapproval of Project Bumblebee, that testimony warrants an appropriate level of skepticism. To ensure that you have a complete understanding of the facts, we would like to make several points for your consideration.

1. DDMG Was a Florida Company Started by Some of Digital Domain's Principals.

We are concerned that throughout the draft report and certain witnesses' testimony, DDMG is conflated with Digital Domain, a California company founded in 1993. As correctly stated in the draft report, DDMG was incorporated in Florida on January 7, 2009 under the name Wyndcrest DD Florida, Inc., which subsequently changed its name to Digital Domain Holdings, Corp., and then to Digital Domain Media Group, Inc. (DDMG). The original appointed principals of DDMG were Mr. Textor, Michael Bay and Jonathan Teaford (but not Carl Stork, as the draft report states at pp. i n.3 and 1 n.3).

It was DDMG (not Digital Domain) that applied for economic incentives in Florida. See Wyndcrest Confidential Company Overview at p. 2 (attached) (explaining that Wyndcrest DD Florida, Inc. was a “special purpose Florida corporation, to explore the possibility of building a visual effects, animation and video game development studio in the State of Florida with the assistance of State and local government incentive support.”).¹ The plan for DDMG was to develop a digital production company focused on children’s animation feature films, video games, visual effects, and military simulation. Digital Domain, by comparison, was a visual effects shop, but was not involved as a producer of animated feature films or video games.

In order to give EFI and various legislators background information that would allow them to conduct due diligence on the principals that were going to be involved with DDMG, Mr. Textor provided some financial information and corporate history for Digital Domain, but DDMG itself had no prior history. We noticed that there are several instances in the draft report where DDMG is erroneously referred to as having “extremely weak” financials (report at pp. 6, 23), debt (report at pp. 7, 26, 33) or as being involved in litigation (*id.*). However, these must have been references to Digital Domain because DDMG was a new company which had no financial past, no existing debt, and no prior litigation.

2. EFI Made a Formal Offer to DDMG for \$11.4 Million.

The draft report indicates that EFI offered \$6.1 million for Project Bumblebee (*see* report at pp. 6, 23, 24) but, in fact, the total proposed incentive package was for \$11.4 million. While it is correct that the money that was to be allotted from the Quick Action Closing Fund would be in the form of a one-time payment of \$6.1 million, there were other state and local incentives, grants and tax refunds that brought the total offer to \$11.4 million. This was first described in Brenda Workman’s February 25, 2009 letter to DDMG and then later memorialized in her March 18, 2009 email, in consideration of DDMG creating 300 jobs in Florida and selecting a site in Martin County. After additional site locations were considered, a site in St. Lucie County was chosen and the project increased to a proposal for 500 jobs. At the same time, Florida State University (“FSU”) was pursuing a joint venture with DDMG to bring an animation film school to South Florida. Based on those changes to the scope of the project, Representative Kevin Ambler, among others, determined that a proportional increase in the size of the grant was needed to match the increase from 300 to 500 jobs and the addition of the FSU project. Consequently, the funding proposal was increased from \$11.4 million to \$20 million. We want to make clear that the \$20 million that the State of Florida eventually granted DDMG was not a randomly chosen amount; rather it was carefully calculated based on factoring in an additional two hundred jobs and the potential tie-in with FSU for a film school.

We are also concerned that certain language in the draft report may give the public the mistaken impression that EFI disapproved Project Bumblebee. *See* report at p. ii (“Although a statutorily prescribed process in place for determining Digital Domain’s eligibility for a QACF award did not result in a recommendation to fund Digital Domain, an award of \$20 million to

¹ To avoid confusion, the headers in the Company Overview clearly distinguished between DDMG (then known as Wyndcrest DD Florida, Inc.) and Digital Domain.

Digital Domain still occurred.”); *see also* report at pp. 10, 25-26. The record is clear that, following its evaluation of Project Bumblebee, EFI decided to recommend to OTTED that it approve the project for \$11.4 million in economic incentives. The record is also clear that on March 18, 2009 EFI informed DDMG's principals of EFI's decision to recommend Project Bumblebee to OTTED for funding. *See* March 18, 2009 email from Brenda Workman to Mr. Textor presenting EFI's offer (previously provided). DDMG immediately accepted EFI's recommendation and informed EFI in writing that it was eager for EFI to forward its recommendation to OTTED (*see* March 18 and 24, 2009 emails from Mr. Textor to Ms. Workman) (previously provided).²

The confusion in the draft report over this approval/disapproval point was likely caused by the fact that EFI never forwarded its recommendation to OTTED, as it was supposed to do under the statute. *See* Fla. Stat. Ann. § 288.1088(3)(a) (West 2008) (“Enterprise Florida, Inc., shall evaluate individual proposals for high-impact business facilities and forward recommendations regarding the use of moneys in the [Quick Action Closing] fund for such facilities to the director of the Office of Tourism, Trade, and Economic Development.”). DDMG's principals found this unexpected development incredibly frustrating. When Mr. Textor called Brenda Workman to find out what was causing the delay, he was informed that Dale Brill, the former Director of OTTED, had instructed EFI to “put their pencils” down because Project Bumblebee was “dead,” and that EFI should not send the recommendation package to OTTED. On March 25, 2009, Mr. Textor sent Mr. Brill an email in which he wrote: “[W]e were informed by EFI that they were told by you to put their pencils down, to stop working on Project Bumblebee, and to not send the Bumblebee package onto OTTED.” *See* March 25, 2009 email from Mr. Textor to Mr. Brill and March 29, 2009 email from Mr. Textor to Ms. Workman (attached). Mr. Textor does not recall receiving a direct response from Mr. Brill.

By instructing EFI to not send the recommendation package, Mr. Brill short-circuited the statutory process and overstepped his authority. At the time, the “Quick Action Closing Fund” statute provided that EFI was to forward recommendations to OTTED's director. *See* Fla. Stat. Ann. § 288.1088(3)(a). Upon receiving the recommendation package, the director of OTTED was required to recommend approval or disapproval to the Governor. *See* Fla. Stat. Ann. § 288.1088(3)(b) (“Upon receipt of the evaluation and recommendation from Enterprise Florida, Inc., the director shall recommend approval or disapproval of a project for receipt of funds from the Quick Action Closing Fund to the Governor.”). This process was not followed for Project Bumblebee. As such, it is curious that Mr. Brill would now suggest it was DDMG that attempted to “sidestep” the process (*see* report at p. 11).

The draft report notes that Mr. Brill was called into Mr. Ambler's office and told there was concern that EFI had not given DDMG “fair treatment.” (*See* report at p. 7). That is correct because Mr. Textor was understandably frustrated that EFI refused to forward its

² From Mr. Textor's perspective, up until this point in the timeline, the process followed a normal and predictable path. The process—beginning with the initial discussions with Mr. Brill in June of 2008 and ending with EFI's offer in March 2009—lasted nearly a year and consisted of applications, due diligence, and a recommendation.

recommendation to OTTED.³ Tom McNicholas, who was helping DDMG with its application, shared this frustration. See April 2, 2009 email from Mr. McNicholas to Ms. Rice and Mr. Brill ("The principals of Wyndcrest DD Florida committed to and completed what they were asked to do in regards to communication issues with legislators. Yet, we still stand waiting, willing, ready and able to provide more answers to the questions that were presented to us verbally on Monday.") (attached). Throughout the process and especially after March 18, 2009, Mr. Textor and other DDMG principals often requested meetings with EFI and made themselves available to answer questions or address any concerns EFI may have had. They were repeatedly surprised and frustrated at how infrequently they received responses from EFI. Any email correspondence after the March 18th EFI recommendation should be viewed in the context of a project that was approved, but ultimately short-circuited. It became more difficult to reconfirm the EFI recommendation than it was to originally obtain the EFI recommendation.

It appears Mr. Brill's motivation for instructing EFI to shelve its \$11.4 million recommendation was unrelated to the merits of Project Bumblebee. Around the same time that EFI approved Project Bumblebee for \$11.4 million in incentives, Representative Ambler, Lieutenant Governor Jeff Kottkamp, and Mr. Brill met in the Lieutenant Governor's office. The meeting took place without the knowledge or attendance of DDMG's principals. Mr. Ambler discussed with Mr. Brill the increased size of Project Bumblebee from 300 to 500 jobs and FSU's interest in pursuing a joint venture with DDMG, which would require additional funds. Mr. Ambler also remarked that there were millions of dollars in unspent economic incentive funds that had been previously approved for projects that ultimately had not qualified or come to fruition. It seems that this meeting, and the presumed challenge to Mr. Brill's authority, is what prompted Mr. Brill to instruct EFI not to forward its recommendation to OTTED.

To be fair, DDMG's principals had plans at the time to seek additional funding for Project Bumblebee, but they intended to do so in addition to the incentives that had been approved by EFI. In their view, there was nothing unusual or improper about seeking additional funds because the FSU joint venture was a new aspect of the project and it was the principals' understanding that EFI did not have jurisdiction over educational grants.⁴ Moreover, additional funds were needed to support the increased size of the project from an anticipated 300 to 500 jobs.

³ See, e.g., March 28, 2009 email from Mr. Textor to Bob Rohrlack ("I have tried to communicate with Dr. Brill with little success. At this point, I am just hoping for answers. Are there concerns about our project that we are not aware of? If there are 'negatives', or pieces of information that could be construed as negative, we would obviously like the chance to address concerns directly. We just do not understand how we have dropped out of a process at EFI while still being so consistently recruited by a long list of legislators.") (attached); April 13, 2009 email from Mr. Textor to Mr. Brill and Ms. Rice ("We are all familiar with the confusion surrounding our prior recommendation from EFI. We believed we were already vetted in connection with the Martin County site and we received an offer from EFI based on that location. We accepted that offer and expected to progress with OTTED and be presented to the Legislative Budget Committee. In any event, we are not currently on the recommended list and we are hoping to be re-established as a priority project.") (attached).

⁴ FSU brought specific educational funds and grants, such as Public Education Capital Outlay ("PECO") and Cortellis grants, to the attention of DDMG's principals.

3. The Report Should Not Perpetuate EFI's Fundamental Math Error.

During the application process, DDMG came to learn that EFI had made a fundamental math error that impacted the anticipated payback ratio (or Return on Investment). EFI incorrectly thought DDMG was asking Florida to fund 95% of the company's operating costs during the first year of operations, which was not the case. After this mistake was brought to EFI's attention, Tim Proctor acknowledged "some basic percentage calculations" were incorrect (*see* report at p. 26) and Mr. Brill expressed reservations about the accuracy of the math (*see* report at p. 27). Unfortunately, the draft report effectively perpetuates this math error by repeating the wrong 95% figure several times. (*See* report at pp. 7, 9, 26, 31, 32). We respectfully request that references to the 95% be removed from the final report or at least explained as being an error by EFI.

Unfortunately the math error adversely impacted EFI's calculation of the payback ratio, which was one of the eligibility requirements under the Quick Action Closing Fund.⁵ In March 2009, FSU's Center for Economic Forecasting and Analysis performed its own analysis based on the same financial information that DDMG had provided to EFI. In preparing its study, FSU used the well-respected Regional Economic Model, Inc. ("REMI") model, an economic modeling software program tailored for specific geographic regions by using employment, demographic and industry data unique to each specific region. As the study explained:

REMI is used extensively to measure proposed legislative and other program and policy economic impacts across the private and public sectors of the state by the Florida Joint Legislative Management Committee, Division of Economic & Demographic Research, The Florida Department of Labor and other state and local government agencies. In addition, it is the chosen tool to measure these impacts by a number of other leading universities and private research groups that evaluate economic impacts across the state and nation.

See REMI Study at p. 9, attached.

The first REMI study, based on an assumed investment from Florida of \$16.625 million, concluded that the economic impact would be \$464.7 million, which is a payback ratio of approximately 28:1. *See id.* at p. 11, attached. A later REMI study, based on an assumed Florida investment of \$30 million, showed an economic impact of \$483 million, or a payback ratio of over 16:1, still far in excess of EFI's flawed calculations. *See* REMI Study version 2 at p. 10, attached. Thus, the REMI study, using the correct math and the same financial information and assumptions that had been provided to EFI, projected a "substantial positive economic impact for the State of Florida for years 2009-2025." *See id.*

⁵ The statute states that projects seeking QACF funds must "[h]ave a positive payback ratio of at least 5 to 1." Fla. Stat. Ann. § 288.1088(2)(b).

4. Mr. Brill Recommended Project Bumblebee to Governor Crist.

On June 1, 2009, Mr. Brill recommended to Governor Crist in writing that the State of Florida give \$20 million in funding to Project Bumblebee. This correspondence is documented in your draft report, but your draft report also notes that Mr. Brill now claims that even though he wrote and signed the June 1st recommendation to the Governor, he supposedly harbored reservations about Project Bumblebee and was not comfortable with the recommendation.

Whatever internal feelings Mr. Brill may have had or may currently have about Project Bumblebee, the fact remains that: (a) he did not hesitate in 2009 to champion Project Bumblebee to the Governor and various legislators; and (b) he did not express any reservations he may have had. Indeed, in an October 27, 2009 letter from Mr. Brill to Representative Carl Domino, Mr. Brill stated that it was his “overriding conclusion” that DDMG was “in a position to be successful with Mr. Textor” In the letter, Mr. Brill went on to support the funding of DDMG. Similarly, in a letter dated October 15, 2009, Mr. Brill made essentially the same assurances to Representative Ron Saunders and spoke of the “promise” of DDMG and the legitimacy of the budget appropriations process that secured funding for DDMG.⁶ (As for the budget appropriations process, it is worth noting that in fiscal year 2008-09, it was not just Project Bumblebee, but five other projects that were funded in the same way). Any hindsight regrets that Mr. Brill now has about his role in securing funding for DDMG do not change the fact that at the time he expressed nothing short of his full support.⁷

5. The LBC Did Not Object to Project Bumblebee.

As the draft report states, Mr. Brill presented Project Bumblebee to the Legislative Budget Commission (“LBC”) on June 17, 2009. Prior to this, several members of the LBC had been introduced to Project Bumblebee. The members of the LBC had ample time to evaluate the project, ask questions or raise concerns and yet none of them objected to the funding of Project Bumblebee or the five other projects that also received funding. Indeed, several members of the

⁶ Project Bumblebee is hardly the only company to receive funding from the State of Florida outside of the EFI process. For example, in October 2003, under then Governor Jeb Bush, the Legislature appropriated \$310 million from the General Revenue Fund for Scripps to come to Florida. See Office of Program Policy Analysis & Government Accountability Report No. 09-36 dated Oct. 2009, at p. 2 (available at: <http://www.opaga.state.fl.us/MonitorDocs/Reports/pdf/0936rpt.pdf>).

⁷ Similarly, the former President and Chief Executive Officer of EFI, John Adams, while he was not intricately involved in the selection process, now claims in the draft report to have had reservations about Project Bumblebee. For example, Mr. Adams claims that with each iteration of DDMG’s application to EFI for funding, the return on investment seemed to get worse (see report at pp. 6-7, 23, 24, 26) and the financials were “extremely weak” (*id.*). It is undisputed, however, that EFI approved DDMG’s application and made an offer in writing. Mr. Adams never shared with anyone at DDMG any concerns over Project Bumblebee’s financials. While Mr. Adams, like Mr. Brill, now chooses to disparage Project Bumblebee, at the time he kept any reservations he may have had to himself all the while approving the project as the head of EFI. Moreover, any representations Mr. Adams makes in the report suggesting that the funding process for DDMG was somehow nefarious or that it “skirted” legislative protocols (see report at pp. 35-36) is inaccurate. As our letter and your draft report make clear, DDMG received funding through a robust review and consideration process involving elected Florida officials that was in full compliance with Florida law.

LBC actively supported Project Bumblebee.

6. The Budget Language Was Drafted and Approved through a Robust and Open Process.

We take serious issue with Mr. Brill's and Mr. Adams' mischaracterization of the process that was used to craft the budgetary language in the proviso that ultimately led to Project Bumblebee's funding. The original language, as drafted by Representative Ambler, stated:

Reappropriation of \$20 million in unreleased and unexpended Quick Action Closing Fund dollars in the current year (2008-09) for Project Bumblebee. The language will include requirements that the company create 500 new jobs with a minimum of \$60,000 average annual salary, have capital investment and company contributions of \$100 million, and collaborate with public and private universities within the state.⁸

This original draft specifically allocated funds for Project Bumblebee. On a later date, however, Mr. Textor was in the same room with Mr. Brill when Mr. Brill drafted revised language in response to concerns raised by some legislators that the original language was too specifically tailored for DDMG. Mr. Brill's proposed revisions removed any reference to Project Bumblebee and stated much more generally:

The unexpended balance of funds appropriated in Specific Appropriation 2635 and Section 74 of Chapter 2008-152, Laws of Florida shall revert immediately and is appropriated for 2009-2010 fiscal year for the original purpose.⁹

Then, several legislators, including Representative Richard Glorioso, became concerned that the "original purpose" language would revert the funds to EFI (which had already stalled Project Bumblebee) and the Quick Action Closing Fund. In order to prevent this, they revised the proviso yet again to revert the unspent funds to OTTED. This draft, which eventually became Section 68 of the budget for fiscal year 2008-09, stated:

The unexpended balance of funds and the remaining funds released for projects appropriated in Specific Appropriation 2635 and Section 74 of Chapter 2008-152, Laws of Florida shall revert immediately to the Executive Office of Governor, Office of Tourism, Trade and Economic Development and is appropriated in the 2008-09 fiscal year for the purpose of creating high-wage jobs and business recruitment to Florida. This section shall take effect upon becoming a law.¹⁰

⁸ (Available at http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=&Session=2009&DocumentType=Budget%20Conference%20Documents&FileName=TED_Approps_House%20Offer%201.pdf).

⁹ (Available at http://www.flsenate.gov/data/session/2009/Senate/appbills/offers/TA///Offer_04302009_1215.pdf).

¹⁰ (Available at <http://www.flsenate.gov/data/session/2009/Senate/bills/amendments/pdf/sb2600e1899894.pdf>).

Notably, the final language was less helpful to Project Bumblebee because it (unlike the original language) did not earmark any funds for DDMG. Indeed, the final language gave OTTED the authority to give no funds to Project Bumblebee. Therefore, Mr. Brill's comment (*see* report at p. 28) about the Governor not being able to veto that line item in the budget is non-sensical. Governor Crist had no reason to veto that line item because it placed no restrictions or obligations on how OTTED could spend the funds. In fact, the language in the budget did not even require OTTED to spend any of the reverted funds, in which case the funds would have carried over to the following year's general revenue fund.¹¹

7. DDMG Satisfied the Required Project Milestones to Receive the Approved Funding.

We would like to draw attention to the fact that after DDMG was awarded the \$20 million incentive package by the state of Florida, in order to actually receive the funding, the company was required to meet several specific project milestones, known as award conditions, before the funds could be disbursed. *See* report at p. 34. We believe the final report should make it clear that DDMG met each and every one of the award conditions and consequently received the \$20 million in funding.

8. The Revised Statutes Expressly Require EFI to Forward Recommendations to OTTED.

The draft report notes that during 2009, EFI forwarded to OTTED only projects that it approved. While this may have been EFI's practice, the laws were changed. Section 288.1088(3)(a) stated, at the time of Project Bumblebee's approval in March 2009, that EFI should "evaluate individual proposals for high-impact business facilities and forward recommendations regarding the use of moneys in the fund for such facilities to the director of the Office of Tourism, Trade, and Economic Development." EFI's practice of only forwarding approved recommendations violated the spirit, and possibly the letter, of the statute. Any ambiguity in the statute was eliminated in 2009 when the legislature passed, and the Governor signed, a bill that added a new section entitled "Economic Development Incentives Application Process." *See* Fla. Stat. Ann. § 288.061. That statute states in pertinent part:

Within 10 business days after the application is deemed complete, Enterprise Florida, Inc., shall evaluate the application and recommend **approval or disapproval** of the application to the director of the Office of Tourism, Trade, and Economic Development (emphasis added).

The bill creating this section was signed by the Governor on May 21, 2009 and went into effect on July 1, 2009. Given this timing, it is fair to infer that its passage was influenced, at least in part, by the events surrounding Project Bumblebee and EFI's refusal to forward even an approval recommendation to OTTED. As mandated by the new statute, OTTED (now known as

¹¹ For this same reason, Tracey Fannon's comment (*see* report at p. 30) makes no sense. She said there was a battle over whether to veto the line item and she suggests the Governor ultimately did not veto it because there was a decision that the five other projects under consideration were more important. Again, OTTED could have allocated the funds as it wished, and it could have excluded DDMG from receiving any money.

March 20, 2013

Page 9

the Division of Strategic Business Development) should have an opportunity to review every project that EFI considers, not just those it approves, so that OTTED can make an independent determination of which projects it will recommend to the Governor and, if deemed appropriate, to veto EFI's recommendation to disapprove a project for funding. This process will benefit Florida by allowing all projects to go through more than one level of scrutiny so that the best projects with the highest chance of success make it through the process and are not eliminated by EFI before OTTED is even made aware of them.

We believe that the pertinent inquiry is not whether business opportunities like Project Bumblebee could be prevented from happening again but rather what Florida can do to ensure that when companies like DDMG embrace Florida and try to make something great happen here, they are encouraged and helped along the way by those in Florida's government committed to the success of its economic future.

Again, we appreciate the opportunity you have given us to participate in your review of this project.

Sincerely yours,

HOLLAND & KNIGHT LLP



William N. Shepherd

Attachments (by overnight courier)

#12617571_v5

Wyndcrest DD Florida, Inc.

COMPANY OVERVIEW

Confidential

February 2009

Wyndcrest DD Florida, Inc.**Confidential Company Overview**

Wyndcrest DD Holdings, Inc. was created as a Florida corporation in 2006, by the principals of Wyndcrest Holdings, LLC, for the purpose of acquiring Digital Domain, Inc., a leading visual effects and animation company in Venice, California. Wyndcrest DD Holdings, Inc. has since been renamed Digital Domain and is now a Delaware corporation, the parent company of the California-based Digital Domain Productions. Wyndcrest Holdings has now created Wyndcrest DD Florida, Inc., a special purpose Florida corporation, to explore the possibility of building a visual effects, animation and video game development studio in the State of Florida with the assistance of State and local government incentive support. This prospective studio would be a 175,000 square foot facility employing up to 500 digital artists, software programmers, information technology specialists, finance, human resources and management employees in the visual effects work-for-hire portion of this facility. We hope to grow this facility to include up to 900 people in the animated feature film and video game content creation/development portion of this facility.

This project is designed to create jobs in Florida for Floridians. While some of the most well respected digital arts university courses (including some of the most well respected universities that focus exclusively on digital arts) are located in Florida, the State lacks the infrastructure of employers to hire these students after their graduation. This has led to large numbers of graduates leaving Florida to pursue jobs in California, Louisiana, New York, New England and other places. While our students can get world-class educations in Florida, many must relocate and set down new family roots out of our state. Our project is designed to build an infrastructure to both train Florida students and to employ those students after graduation. We expect that this infrastructure will be beneficial to our company as well as to other companies in our industry that will be attracted by the resulting business climate. Businesses in our industry tend to 'cluster' near each other as employees often move from company to company depending on either personal interests or the needs of specific companies or related film and game projects. We believe our leadership can be instrumental in the creation of a next-generation industry concentration in the state of Florida, centered around digital content creation, that can result in tens of thousands of high-paying, clean jobs for Floridians that come on-line during the coming economic cycles.

Educational Partnership

An important component of our plan is to partner with several state and private universities and community colleges to build a substantial digital arts university campus at or adjacent to our facility. At a minimum, and in the near term, we can establish or improve programs within existing educational facilities to accelerate programs that are beneficial to both our project and the Florida workforce. We plan to implement active research and development, software tools training, content creation curriculum and internship programs in partnership with these facilities. This cooperative program will serve two symbiotic goals:

- (i) Our interest in creating a well trained hire-ready workforce and in lowering our operating costs, and
- (ii) The Florida school system's goal of producing graduates that are highly sought after by employers in high-paying, growth industries.

We envision that students that have worked at our facility will graduate with resumes that include having contributed to (and in some cases being included in film credits of) some of the most visually stunning and respected films in the market. Films that we have worked on in each of the last several years have been nominated for Academy Awards, which could lend even more credibility to these students' resumes. For any student looking for work in the digital media world, having a portfolio that includes participation in a market significant or award winning film would position that student among the most sought-after graduate candidates in the industry.

Our employees constitute mathematicians, graphic artists, software programmers, writers, physicists, and, preferably, some combination of the aforementioned. We believe that this partnership will drive exemplary career training for students and will provide us with a steady and reliable source of post-graduation employees. We have entered into discussions with several universities regarding such a partnership and are working quickly to identify the right counterparty or counterparties.

Workforce Development

Our efforts in Florida are designed to create a substantial digital arts infrastructure that will support both our company's and other firms' human resource needs. Our industry drives ingenuity at the highest level of a number of fields including creative arts, software programming, engineering, mathematics, and film production, among others. We believe that our educational partnership will drive exemplary career training for students and will provide us with a steady and reliable source of post-graduation employees. Employees at our facilities outside Florida currently receive a substantial amount of on-the-job training. We continually refresh the skill sets of our employees so that they are trained on the most advanced technology and software packages available. We perform the most cutting-edge special effects for some of the largest films in the market, which requires that our employees be very highly trained and skilled. Furthermore, each film that we produce can require a different skill set, knowledge base or a different technique. These skills are taught to our employees prior to and during each new film that runs through our facility. Our Florida employees would develop new skills through frequent training and will build new skills with each of the various projects to which they contribute.

National Example of Domestic Job Creation Model

We also believe the project will serve as a strong national example of a private-public workforce development partnership that creates jobs in the United States that otherwise would have certainly been sent to either India, Canada, Australia or England. Leading companies in the industries of film, animation and video games are aggressively looking to reduce costs by expanding or relocating out of California, or the United States generally, often to foreign locations that provide average quality talent that comes at dramatically reduced labor pricing. Certain of these countries are also offering significant incentives that further reduce costs.

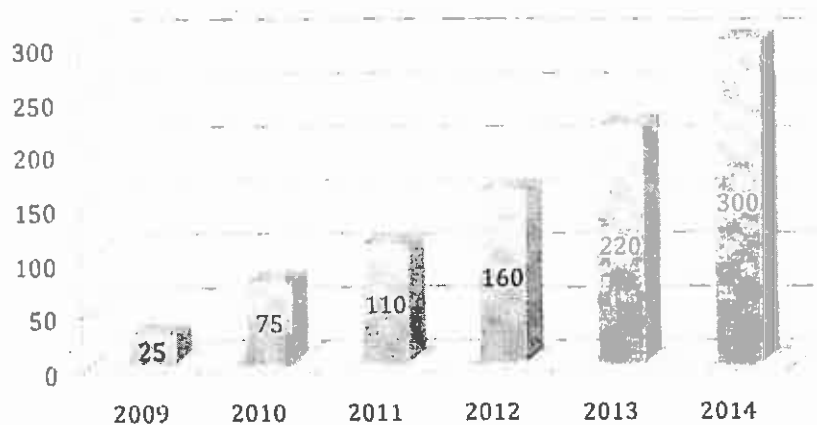
Without a creative solution offered domestically, the United States is at risk of losing a significant amount of jobs and job growth from within the entertainment industry, a globally significant industry in which America has long been dominant. Wyndcrest's proposed partnership with Florida's state secondary schools, community colleges and universities can develop large numbers of qualified

workers in a high-growth, exciting industry while dramatically reducing the cost of doing business in the United States...thereby relieving the pressure to relocate a true American industry to foreign countries.

Job Creation

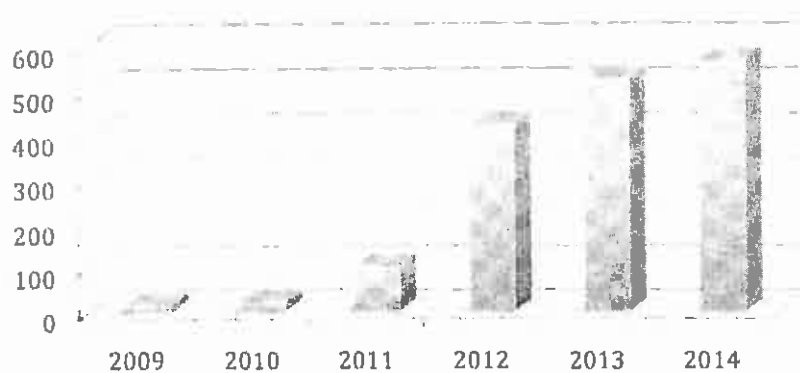
Should we be successful in obtaining public funding support, we intend to build a fully functioning Visual Effect facility in Florida that will physically support between 500 and 900 people. Our initial minimum goal is to hire at least 300 people prior to the end of 2014. We expect that the number of jobs will at least grow as follows:

Employees - VFX Work-For-Hire



In addition to the above, it is our goal for this facility to become a content generation facility capable of producing animated feature films and video games. Below are the number of jobs that would be employed in this expanded facility:

Employees - Film/Game Production Studio



Wyndcrest DD Florida, Inc is designed to create jobs in Florida for Floridians. It is our belief that a substantial portion of the graduating class of most digital media-related associate, bachelor or masters level educational programs in Florida are qualified to earn a \$45,000 to \$70,000 starting salary at our company. It is also our belief that some portion of the graduating class of digital media-related high-schools are qualified to earn a \$40,000 - \$45,000 starting salary at our company. We fully expect that a substantial amount of our workforce will be Floridians. Ringling College of Art and Design, Full Sail University, Florida State University, University of Florida and other area schools offer exemplary digital media and digital entertainment degrees at the Bachelor and/or Masters levels. Indian River State College, Miami Dade College, Manatee Community College, Seminole Community College and other area colleges schools also offer digital media and digital entertainment degrees at the Associates and Bachelor levels. Numerous Florida high schools offer film and digital media coursework, and several focus intently on these areas through magnet or charter programs. Furthermore, Florida has taken the exemplary step of developing a Banner Center for Digital Media to aggregate best practices in digital media educational curriculum and to share them amongst Florida's schools.

While Florida has had great success in developing an educational infrastructure that is becoming more visible around the country, Florida has not yet attracted a critical mass of companies to employ these graduates. Several years ago, most of the graduates of these digital media programs left Florida (which often means leaving their families) and moved to Los Angeles or New York to begin their careers. In recent years, graduates of digital media programs have been leaving Florida to move to Louisiana, Connecticut and New Mexico in increasing numbers as those states have made great strides in attracting companies like us. Florida has a tremendous base of talented graduates. Adding a base of employers to hire them will help keep Floridians in Florida.

Permanence

Many live action-related entertainment companies chase film production incentives as they move around the country and around the world. Film projects will locate in a state or country for only as long as it takes them to film actors and scenery and then leave, often having built no permanent industry. Florida's past film incentives have been admirably structured as they only rewarded productions based on Floridians that were hired to work on a given project. Florida's past incentive programs correctly did not reward companies for flying in camera operators, directors and set builders from California only to have them leave upon the completion of production.

Visual Effects, animated film and video game production differs distinctly from live action film production. Visual Effects, animation and video game production studios build physical plants, and fill those buildings with state of the art technology. More importantly, these types of companies spend enormous amounts of money and other resources fitting this technology together with a trained workforce to produce production pipelines that turn out finished digital product. Moving a facility like this is very difficult in terms of time and expense. There is a significant degree of permanence to a substantial digital media production facility such as the facility that we would build in Florida.

We intend to invest \$30 million in capital expenditures (not including the expense of building a facility) over 5 years.

While we support the restoration of healthy film production incentives, we believe that an appropriate film production incentive that rewards companies for building a permanent base of employees and infrastructure in Florida can do even more to drive a lasting and valuable industry.

Technology Development

Our affiliate, Digital Domain, develops very sophisticated software technologies as a part of its internal production pipeline. Digital Domain has been very successful in productizing certain of these software products and licensing them to customers around the world. We have over 10,000 licensees of our technology products and are the market leader in both digital compositing software (having recently supplanted an Apple product), in the plug-in market for digital video effects and in editing software for 3D-Stereoscopic films. We expect that technologies developed at our Florida facility could also be productized and licensed to third parties.

Clustering

A subset of employees at our facility in California will typically work for our company for six to eighteen months at a time as they complete a particular film project. Approximately half of our California workforce works for us full time, moving from one project to the next. The other half of our workforce enjoys moving from company to company as they seek out projects or films that interest them. Working on a large, tent-pole film is often more attractive to an employee than working on a smaller budget, less technically sophisticated film. Furthermore, some employees have personal interests in the subject matter of certain films, or particular skill sets that are better suited to some films than to others, and move from employer to employer as those interests or skills dictate. Many employers cluster in Los Angeles to take advantage of this fluid and vibrant employee base. We believe that our competitors will want to take advantage of the skilled and trained workforce in Florida that is created by our facility and our educational partnership. We share employees with visual effects companies, film production companies, television production companies, television advertising agencies, animation companies, video game developers, software developers, web development and graphics design firms. We believe that firms such as these will follow us to Florida. We will furthermore help recruit companies like this to Florida as it helps us balance our workload across projects.

Kernisky, Allison B (MIA - X22175)

From: John C. Textor [jtextor@wyndcrest.com]
nt: Wednesday, March 25, 2009 12:22 PM
o: Brill, Dale
Subject: Re: Project Bumblebee

Dale:

I understand that you are not able to negotiate independently from EFI.

From our perspective, we were informed by EFI that they were told by you to put their pencils down, to stop working on Project Bumblebee, and to not send the Bumblebee package onto OTTED.

I understand from Bob Rohrlack that he may be attempting to clarify these instructions with you.

So at this point, EFI is not negotiating with us at all.

The miscommunication that I am trying to have cleared up is entirely between OTTED and EFI.

If EFI believes they were asked to stop working on Project Bumblebee, there is nothing I can do to solve this without your direct support.

As always, if there is something about this process that I do not understand, please provide me with the appropriate guidance.

Thanks,
John

This is serious
John C. Textor
Co-Chairman
Digital Domain, Inc
www.DigitalDomain.com

FL: (772) 545-9062
CA: (310) 314-2827
jtextor@d2.com

On Mar 25, 2009, at 10:50 AM, Brill, Dale wrote:

It appears by report from my assistant that I'm booked solid tomorrow afternoon with similar business execs in town

Again, as OTTED does not negotiate independently from EFI, I suggest that you all have that meeting with EFI to clear any misunderstandings.

From: John C. Textor <jtextor@wyndcrest.com>
Subject: TIME SENSITIVE - Project Bumblebee - 288.075 - Letter to EFI
Date: March 29, 2009 6:27:16 PM EDT
To: Brenda Workman <bworkman@efflorida.com>, Bob Rohrlack <brohrlack@efflorida.com>
Cc: Dale Brill <Dale.Brill@sog.myflorida.com>, Teaford Jonathan <jteaford@wyndcrest.com>, Tom McNicholas <Tom@McNicholas.biz>
Bcc: "Kevin Ambler C." <KCAPA2@aol.com>



Ms Workman / Mr Rohrlack:

{Please see compiled thread below}

I understand that we are due to meet telephonically on Monday afternoon in an effort to clear up any misunderstandings related to our project. I appreciate this opportunity, though I remain extremely concerned about the timing of that meeting relative to the submission of your recommendations to OTTED and the Governor. I was advised last week that a list of your QACF recommendations was due to be submitted on Monday morning and, further, that Project Bumblebee was not expected to be included within the group of your recommended projects. You may be aware that I have tried to contact you by both phone and email since learning this unfortunate news. Having not heard back from you, it would seem important to clarify certain facts from our perspective before we are excluded from the list of projects submitted to OTTED. It also seems important that the parties involved are all looking at the same set of facts as we sit down on Monday to discuss the status of our project.

As the compiled thread of emails suggests, we understood that Project Bumblebee was already included within your 'recommended' list. We believe that we have supported your evaluation process appropriately and that you had concluded such a process with an offer to us of a state and local incentive funding package. In your email of March 18, you stated that you "will present to OTTED information relative to a one time award of \$6,100,000 from the Quick Action Closing Fund", subject to our acceptance of the outlined terms and our communication of our final site selection to a list of other counties. In response, and with a goal to have our package immediately forwarded to OTTED, we confirmed by separate emails on March 18 our acceptance of your offer. In reliance on your offer, including your agreement to forward your recommendation package to OTTED, we proactively terminated a number of productive discussions with other counties that had previously made offers to support our project. On March 24, I confirmed to you by email that I had complied with your final condition and that all such counties had been notified of our decision.

In short, EFI made an offer to recommend funding for Project Bumblebee. We accepted your offer and complied with your conditions. We, therefore, do not understand why Project Bumblebee has been excluded from the list that is planned to be submitted to OTTED and the Governor. In light of the apparent timing of the submission of your recommendations, can you please explain why your recommendation appears to have been withheld?

For the sake of progress, it may be helpful for you to understand certain details related to the issue that Ms. Workman raised with our Mr. Teaford when we first learned there might be a problem. She referred to a problem that stems from our acceptance of the QACF offer that occurred contemporaneously with 'our' meeting with the Lieutenant Governor and Dr. Brill wherein we were thought to have made a request for additional funds. It is important to note that no representative of Project Bumblebee was present at that meeting, nor were we aware of specific requests made at that meeting related to our business. To be clear, we have accepted the EFI offer based on a detailed project scope that relates to a commitment to the creation of 300 jobs. Beyond the scope of this project, we have also executed a non-binding letter of intent with Florida State University that may give rise to an additional project and a potential increase in the amount of jobs that we are likely to create. We remain open-minded to a proposal by Rep. Ambler related to this additional project that could potentially involve additional funding requirements for both our company and FSU. It is extremely important to recognize, however, that our open-mindedness to such a proposal should have no impact on our existing project as defined. We have made application to EFI related to a 300-jobs project. We have been evaluated on the basis of that specific project scope. EFI has made an offer to us on that basis and we have accepted such an offer. Further, we have relied on that offer and acted in such a manner that limits our business prospects as we sought to comply with the conditions of the offer. Any confusion related to a meeting that occurred independently of the principals of Project Bumblebee should not modify the agreement of EFI to forward its funding recommendation onto OTTED for review by Dr. Brill's staff and the Governor's office.

If the meeting referenced above is not the reason for our apparent exclusion, we have no way of knowing what else might be the issue. If there is a specific problem with our project, we obviously believe that we should have been given an opportunity to address the issue. We have not recently been approached by EFI with any reservations or questions about our project. We have not recently been asked to explain information about our project that could be construed as negative. We have not recently been approached with any questions or comments about our principals or our activities in connection with this project. If there is a problem that has developed with our project, we certainly have not been given any chance to address concerns or clear up misunderstandings in advance of the completion of the list of projects that we understand will be recommended.

As you are aware, we cannot move forward with plans to locate our expanding business to the state of Florida without your making the details of our project known to OTTED. We worked very hard to provide you with such details specifically for your review and OTTED's review. We are not aware of any reason that our package should be withheld from consideration in Tallahassee and we believe that we have complied with all of your requests. Please notify us immediately if there remains any reason, technical or otherwise, that is preventing you from following through with your prior agreement to present your recommendation to OTTED.

I can be reached by email or via telephone (772-485-0220) at any time. Again, I am very happy to speak about all of these issues during our meeting on Monday. I apologize for trying to remedy problems prematurely by way of this email. I hope you understand that the timing of this email is necessitated entirely by our understanding that your recommendations might be submitted to OTTED prior to our meeting. As it seems clear that Project Bumblebee was a 'recommended project' only a week ago, it is certainly our hope that we will not be excluded from any list that would allow our project full consideration by OTTED and the Governor's office.

Best regards,
John Textor

From: "John C. Textor" <jtextor@wyndcrest.com>
Date: March 28, 2009 1:42:19 PM EDT
To: Bob Rohrlack <brohrlack@eflorida.com>
Subject: Project Bumblebee - 288.075 - (and Congratulations!)

Bob:

Congratulations on your appointment in Tampa. My In-laws tell me it's the only part of Florida that matters. They live in Westchase.

Are you still active with EFI for an additional period of time? As you know, we are still bouncing around the process without a real understanding of why our project was excluded from the recommendations being sent up to the Governor this week.

I have tried to communicate with Dr. Brill with little success. At this point, I am just hoping for answers. Are there concerns about our project that we are not aware of? If there are 'negatives', or pieces of information that could be construed as negative, we would obviously like the chance to address concerns directly. We just do not understand how we have dropped out of a process at EFI while still being so consistently recruited by a long list of legislators. I understand EFI has a very different process than the sometimes free-wheeling approach of certain legislators, but it just seems odd that we are not from either OTTED or EFI why we are not on the recommended list.

Bob, we have a lot of people that have been working very hard to keep Florida in the mix for our company. I would really appreciate a personal call to learn what happened.

Thanks,
John
Cell - 772-485-0220

John C. Textor
Co-Chairman
Digital Domain, Inc.
www.DigitalDomain.com

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CA: (310) 314-2827
jtextor@d2.com

-----Original Message-----

From: John C. Textor [mailto:jtextor@wyndcrest.com]
Sent: Monday, April 13, 2009 07:26 PM Eastern Standard Time
To: Dale Brill; Keisha Rice
Cc: Stephanie Gibbons; Brenda Workman; Bob Rohrlack; Teaford Jonathan; Tom McNicholas; Timothy Proctor
Subject: Project Bumblebee - 288.075 - Call Request for 10:00am Tomorrow

Dear Dr. Brill and Ms. Rice:

This correspondence is intended both to summarize where we think we are in the process and to propose a specific solution to a problem that EFI seems to have with our Martin County site selection (or at least with the documentation between us and our Martin county partner).

Status

- We are all familiar with the confusion surrounding our prior recommendation from EFI. We believed we were already vetted in connection with the Martin County site and we received an offer from EFI based on that location. We accepted that offer and expected to progress with OTTED and be presented to the Legislative Budget Committee. In any event, we are not currently on the recommended list and we are hoping to be re-established as a priority project. We remain extremely concerned about timing and are not sure, as a company, that we can postpone our 'Florida vs. Vancouver' decision. We have very little time before needing to make a decision regarding the acquisition of a 100-person VFX studio in Vancouver. This decision could materially alter our view of a Florida studio. That said, we are certainly disappointed to hear about the low probability of consideration at this week's LBC meeting. We had long looked at this week as the week when we would achieve 'certainty'. We remain hopeful that we can still be presented to the LBC in the near term and avoid being pushed deeper into 'uncertainty'.

- We met as a group on March 30th, after we learned that we were excluded from EFI's list of recommended projects. This meeting focused on a list of issues that EFI wanted addressed before deciding again to recommend our project for funding. The issues raised at the meeting were all addressed both that day in person and in our correspondence dated April 3rd.

- We ended that meeting with an understanding that EFI would formalize this list of outstanding issues and that we would provide answers as quickly as possible to get back on track. Following our conference call on April 8th during which we provided a number of responses to your questions, we were asked to provide the following:

- 1) An updated EFI Application and General Project Overview
 - 2) An updated business model
 - 3) Revised documentation related to our commitment from a Real Estate partner
- On April 9th we provided Items 1 and 2 above, the updated EFI

Application and General Project Overview and the updated business model.

Predicament

- We believe that we have satisfactorily responded to all of your outstanding questions with the exception of the form of the commitment from our Real Estate partner but we have not received an affirmative acknowledgement from you that this is the case.
- With regard to the form of our agreement with our Martin county Real Estate partner, we don't know that there will be an answer that is acceptable to EFI within the time frame necessary for us to make our Florida decision. While we understand the question, we do not agree with EFI's concerns about our financial partner and its commitment to our project. Rockwood Capital is a multi-billion dollar financial partner that is well known in the financial and real estate industries. They are also extremely well known to Florida State University and, for 30 years, to FSU's Chairman Jim Smith. FSU has separately entered into a significant LOI with Groves / Rockwood on the same site for an approximately 100-acre project. The principal concern of EFI seems to be that their commitment is not yet binding. The predicament is that a non-binding LOI is perfectly appropriate to the circumstances, given that we do not have a state commitment to recruit us to Florida and that the structure of our build-to-suit financing requires that commitment along with many other state/local development approvals.
- We may not see our existing agreement with Groves/Rockwood evolve into a form of commitment that is satisfactory to EFI/OTTED in the time frame necessary to make a decision to come to Florida. We have discussed this issue with Groves / Rockwood. They are extremely willing to help provide comfort to EFI, though we don't have confidence that EFI will ever get comfortable with necessary non-binding elements of our arrangement with Groves / Rockwood. We believe the standard of 'commitment' imposed by EFI may not be appropriate as it relates to a real estate deal with a long list of future approvals required. In turn, it seems that an out-of-state company has to be careful not to choose an early stage development property as its preferred site when also requesting incentive funding from EFI / OTTED.
- In short, we have selected a site and a multi-billion dollar financial partner that gives our company a high degree of confidence that we will complete and properly fund our project. EFI may not feel as comfortable with this conclusion and it may prevent us from being re-established as a recommended project.
- Other than this central issue, we know of no other issues that are preventing Project Bumblebee from returning to the recommended list.

Solutions

- A. Martin County Solution - The easiest solution would of course be to get confirmation from EFI that our Martin relationship is acceptable and that any remaining concerns regarding the non-binding elements are addressed by requiring such elements to become binding as a pre-

condition to the execution of a contract with OTTED. Such indication of acceptance would need to occur immediately to keep Bumblebee on a workable timeline that preemptively mitigates the time pressures of our non-Florida alternatives. We unfortunately cannot wait for an unspecified LBC calendar.

B. Broward County Solution – While we do still find the Martin County solution attractive, we do believe that the uncertainty at EFI created by the development issues is jeopardizing our path to Florida. This process has simply taken much longer than expected and our business can no longer wait. As we think about the alternatives, we do believe Broward County Florida to represent a superior choice to Vancouver. If the selection of Broward allows EFI and OTTED to submit their recommendation to the LBC in the current timeline, then we believe this project can remain planned for the state of Florida.

In support of this, we have asked Ram Development, our financial partner in Broward (who is also an original shareholder of Digital Domain), to strengthen its documentation into a commitment letter that conforms to your requirements. We have recently received such a commitment for the full capital required for our project as is evidenced by the attached material. Please remember that Broward was actually the first package to reach completion and that EFI completed its analysis related to that site prior to doing the same for Martin County. In fact, the ROI for the state was higher for the Broward site than the Martin site. Also relevant is that our financial partner (and fellow shareholder) has already provided financial information and a description of his fund to demonstrate the financial capability to draw down funds necessary for the project. The following summarizes information on hand at EFI (or attached) related to the Broward site:

General Project Overview as previously submitted to EFI on February 13, 2009 and attached hereto (if appropriate, we can quickly amend this from a 300 job commitment to a 500 job commitment)
Complete package prepared by Broward County containing site details, local political support and local government financial support (submitted in February and attached hereto). This package was first received by EFI on or about February 10, 2009, resulting in the original offer from EFI of approximately \$6 million of QACF proceeds.
Financials from Ram Development and their related fund, including complete biographies and references (submitted in February)
Project Investment Analysis showing break-down of company / stakeholder investment and expected state and local commitment (submitted in February and attached hereto)
(NEW) Broward Financial Partner Commitment Documentation including Commitment Letter executed by Ram Development including Landlord Work Letter and Commercial Property Lease Agreement (collectively attached hereto). This collection of documents demonstrates a fully committed agreement that is subject only to WDDF's execution of the Lease (We assume OTTED would not ask us to sign a lease in advance of LBC approval), execution of an agreement between WDDF and OTTED, and any final building permits. This agreement provides a direct investment capital commitment of \$9 million (which can be used to fund operations) and a capital expenditures commitment to build a 175,000 square foot facility at a cost of \$34.1 million.

The Broward project, also known as Sheridan Station, is a shovel ready project that we understand is important to the Governor's office as a transit oriented development project that includes both bus and Tri-Rail stations on site. It is also a steward of environmental

leadership as it is one of six projects across Florida to be selected for the US Green Building Council's new Leadership In Energy and Environmental Design - Neighborhood Development (LEED ND) certification program. While we have honored our agreement with EFI and have not had any recent contact with Broward county representatives, Ram Development has regular contact with Broward county as an ordinary part of their business dealings and reports that Broward continues to be excited to support our project and their original proposal to us and to EFI.

Accordingly, we suggest that, to satisfy EFI and OTTED's requirements for the form of agreement between Project Bumblebee and its Real Estate partner, we replace our Martin county site selection with a Broward county selection. We presume that you would require an updated EFI Application and Project Overview. Prior to submitting this information, we would like to confirm that such a switch can be accomplished quickly in the EFI / OTTED process. Our goal is to have a recommendation from EFI to OTTED re-established by the end of the day on Wednesday. Further, we hope this facilitates a recommendation from OTTED that we be added to the approved project list (for the 2008-2009 fiscal year) and that a budget amendment request be prepared and submitted to the LBC with a request that the LBC be convened to hear the amendment at the earliest possible date. Please keep in mind that, while we continue to see Florida as a preferred alternative, we do not intend to postpone completion of discussions with our Vancouver merger partner regarding our studio expansion plans in Canada beyond the end of April. Please advise us as to the likelihood of the LBC meeting to approve an OTTED amendment for our project prior to the end of legislative session.

In support of this timeline, we respectfully request a conference call to discuss the possible switch from Martin County to Broward County, or the possibility of receiving an EFI recommendation for Martin with Broward as a suitable back-up. We would like, if possible, to schedule such a call for tomorrow morning at 10:00 a.m. Eastern time to confirm that such a switch can be made expeditiously. Please let us know if you can make yourselves available at this time for such a call.

Best regards,
John Textor
Wyndcrest DD Florida, Inc.

John C. Textor
Co-Chairman
Digital Domain, Inc.
www.DigitalDomain.com

FL: (772) 545-9062
CA: (310) 314-2827
itextor@d2.com

<EFL-email.gif>

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From: Tom McNicholas <tommcniphone@gmail.com>
Date: April 2, 2009 11:03:10 AM EDT
To: "keisha.rice@eog.myflorida.com" <keisha.rice@eog.myflorida.com>, Dale Brill <dale.brill@myflorida.com>
Cc: Brenda Workman <bworkman@eflorida.com>, Bob Rohrlack <brohrlack@eflorida.com>, "John C. Textor" <jtextor@wyndcrest.com>, John Teaforde <jteaforde@wyndcrest.com>
Subject: Project Bumble Bee 288.075 (Confidential)

Dear Keisha and Dale,

The principals of Wyndcrest DD Florida committed to and completed what they were asked to do in regards to communication issues with legislators.

Yet, we still stand waiting, willing, ready and able to provide more answers to the questions that were presented to us verbally on Monday.

When will a written list be coming to us? Or in fact is a list of questions no longer needed to move "Project Bumble Bee" forward as a recommended project in Martin County as it was offered to us by EFI weeks ago and as we relied upon that offer and recommendation?

You suggested that an expeditious process was necessary and we have been waiting to do just that. Please let us know what we can do.

Thank you very much for your work.

Tom McNicholas



***Project
Bumble Bee
Digital Media
Economic
Impact Study***

March 2009

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Project Bumble Bee Digital Media Economic Impact Study

1. Introduction – by Company Bumble Bee

Wyndcrest DD Holdings Inc., was created as a Florida corporation in 2006, by the principals of Wyndcrest Holdings, LLC, for the purpose of acquiring Digital Domain, Inc., a leading visual effects and animation company in Venice, California. Wyndcrest DD has since been renamed Digital Domain and is now a Delaware corporation, the parent company of the California-based Digital Domain Productions. Wyndcrest Holdings has now created Wyndcrest DD Florida, Inc., a special purpose Florida corporation, to explore the possibility of building a visual effects, animation and video game development studio in the State of Florida with the assistance of State and local government incentive support. This prospective studio would be a 175,000 square foot facility employing up to 500 digital artists, software programmers, information technology specialists, finance, human resources and management employees in the visual effects work-for-hire portion of this facility. We hope to grow this facility to include up to 900 people in the animated feature film and video game content creation/development portion of this facility. This project is designed to create jobs in Florida for Floridians. While some of the most well respected digital arts university courses (including some of the most well respected universities that focus exclusively on digital arts) are located in Florida, the State lacks the infrastructure of employers to hire these students after their graduation. This has led to large numbers of graduates leaving Florida to pursue jobs in California, Louisiana, New York, New England and other places. While our students can get world-class educations in Florida, many must relocate and set down new family roots out of our state. Our project is designed to build an infrastructure to both train Florida students and to employ those students after graduation. We expect that this infrastructure will be beneficial to our company as well as to other companies in our industry that will be attracted by the resulting business climate. Businesses in our industry tend to cluster near each other as employees often move from company to company depending on either personal interests or the needs of specific companies or related film and game projects. We believe our leadership can be instrumental in the creation of a next-generation industry concentration in the state of Florida, centered around digital content creation, that can result in tens of thousands of high-paying, clean jobs for Floridians that come on-line during the coming economic cycles.

Educational Partnership

An important component of our plan is to partner with several state and private universities and community colleges to build a substantial digital arts university campus at or adjacent to our facility. At a minimum, and in the near term, we can establish or improve programs within existing educational

facilities to accelerate programs that are beneficial to both our project and the Florida workforce. We plan to implement active research and development, software tools training, content creation curriculum and internship programs in partnership with these facilities. This cooperative program will serve two symbiotic goals:

- (i) Our Interest in creating a well trained hire-ready workforce and in lowering our operating costs, and;
- (ii) The Florida school system's goal of producing graduates that are highly sought after by employers in high-paying, growth industries.

We envision that students that have worked at our facility will graduate with resumes that include having contributed to (and in some cases being included in film credits of) some of the most visually stunning and respected films in the market. Films that we have worked on in each of the last several years have been nominated for Academy Awards, which could lend even more credibility to these students resumes. For any student looking for work in the digital media world, having a portfolio that includes participation in a graduate candidates in the industry. Our employees constitute mathematicians, graphic artists, software programmers, writers, physicists, and, preferably, some combination of the aforementioned. We believe that this partnership will drive exemplary career training for students and will provide us with a steady and reliable source of postgraduation employees. We have entered into discussions with several universities regarding such a partnership and are working quickly to identify the right counterparty or counterparties.

Workforce Development

Our efforts in Florida are designed to create a substantial digital arts infrastructure that will support both our company's and other firms' human resource needs. Our industry drives ingenuity at the highest level of a number of fields including creative arts, software programming, engineering, mathematics, and film production, among others. We believe that our educational partnership will drive exemplary career training for students and will provide us with a steady and reliable source of post-graduation employees. Employees at our facilities outside Florida currently receive a substantial amount of on-the-job training. We continually refresh the skill sets of our employees so that they are trained on the most advanced technology and software packages available. We perform the most cutting-edge special effects for some of the largest films in the market, which requires that our employees be very highly trained and skilled. Furthermore, each film that we produce can require a different skill set, knowledge base or a different technique. These skills are taught to our employees prior to and during each new film that runs through our facility. Our Florida employees would develop new skills through frequent training and will build new skills with each of the various projects to which they contribute.

National Example of Domestic Job Creation Model

We also believe the project will serve as a strong national example of a private-public workforce development partnership that creates jobs in the United States that otherwise would have certainly been sent to either India, Canada, Australia or England. Leading companies in the industries of film, animation and video games are aggressively looking to reduce costs by expanding or relocating out of California, or the United States generally, often to foreign locations that provide average quality talent that comes at dramatically reduced labor pricing. Certain of these countries are also offering significant incentives that further reduce costs. Without a creative solution offered domestically, the United States is at risk of losing a significant amount of jobs and job growth from within the entertainment industry, a globally significant industry in which America has long been dominant. Wyndcrest's proposed partnership with Florida's state secondary schools, community colleges and universities can develop large numbers of qualified workers in a high-growth, exciting industry while dramatically reducing the cost of doing business in the United States thereby relieving the pressure to relocate a true American industry to foreign countries.

Job Creation

Should we be successful in obtaining public funding support, we intend to build a fully functioning Visual Effect facility in Florida that will physically support between 500 and 900 people. Our initial minimum goal is to hire at least 300 people prior to the end of 2014. We expect that the number of jobs will at least grow as follows:

Figure One. Employees – VFX Work-For-Hire

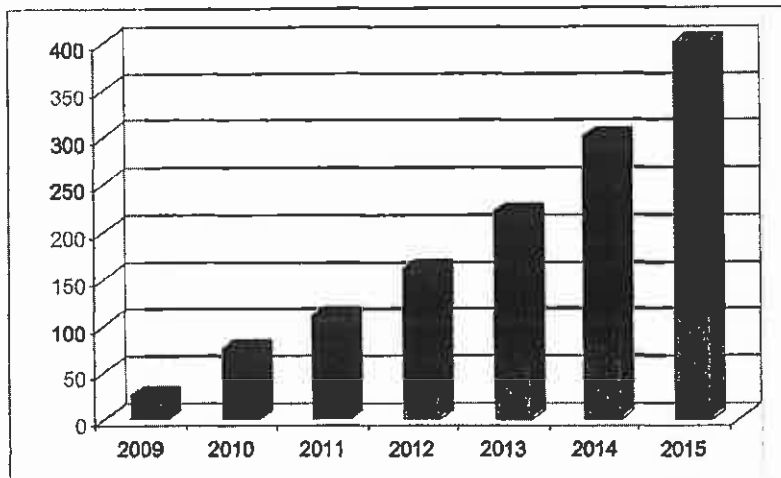
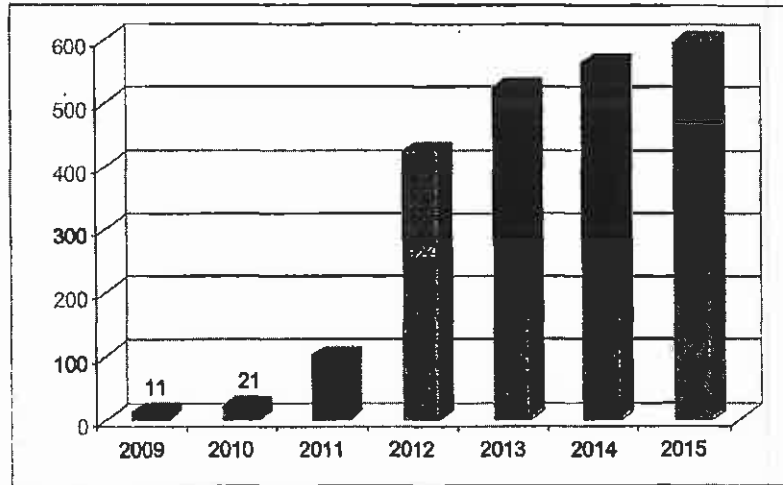


Figure Two. Employees – Film/Game Production Studio



In addition to the above, it is our goal for this facility to become a content generation facility capable of producing animated feature films and video games. Below are the number of jobs that would be employed in this expanded facility: Project Bumble Bee Florida, Inc is designed to create jobs in Florida for Floridians. It is our belief that a substantial portion of the graduating class of most digital media-related associate, bachelor or masters level educational programs in Florida are qualified to earn a \$45,000 to \$70,000 starting salary at our company. It is also our belief that some portion of the graduating class of digital media-related high-schools are amount of our workforce will be Floridians. Ringling College of Art and Design, Full Sail University, Florida State University, University of Florida and other area schools offer exemplary digital media and digital entertainment degrees at the Bachelor and/ or Masters levels. Indian River State College, Miami Dade College, Manatee Community College, Seminole Community College and other area colleges schools also offer digital media and digital entertainment degrees at the Associates and Bachelor levels. Numerous Florida high schools offer film and digital media coursework, and several focus intently on these areas through magnet or charter programs. Furthermore, Florida has taken the exemplary step of developing a Banner Center for Digital Media to aggregate best practices in digital media educational curriculum and to share them amongst Florida's schools. While Florida has had great success in developing an educational infrastructure that is becoming more visible around the country, Florida has not yet attracted a critical mass of companies to employ these graduates. Several years ago, most of the graduates of these digital media programs left Florida (which often means leaving their families) and moved to Los Angeles or New York to begin their careers. In recent years, graduates of digital media programs

have been leaving Florida to move to Louisiana, Connecticut and New Mexico in increasing numbers as those states have made great strides in attracting companies like us. Florida has a tremendous base of talented graduates. Adding a base of employers to hire them will help keep Floridians in Florida.

Permanence

Many live action-related entertainment companies chase film production incentives as they move around the country and around the world. Film projects will locate in a state or country for only as long as it takes them to film actors and scenery and then leave, often having built no permanent industry. Florida's past film incentives have been admirably structured as they only rewarded productions based on Floridians that were hired to work on a given project. Florida's past incentive programs correctly did not reward companies for flying in camera operators, directors and set builders from California only to have them leave upon the completion of production.

Visual Effects, animated film and video game production differs distinctly from live action film production. Visual Effects, animation and video game production studios build physical plants, and fill those buildings with state of the art technology. More importantly, these types of companies spend enormous amounts of money and other resources fitting this technology together with a trained workforce to produce production pipelines that turn out finished digital product. Moving a facility like this is very difficult in terms of time and expense. There is a significant degree of permanence to a substantial digital media production facility such as the facility that we would build in Florida. We intend to invest \$30 million in capital expenditures (not including the expense of building a facility) over 5 years. While we support the restoration of healthy film production incentives, we believe that an appropriate film production incentive that rewards companies for building a permanent base of employees and infrastructure in Florida can do even more to drive a lasting and valuable industry.

Technology Development

Our affiliate, Digital Domain, develops very sophisticated software technologies as a part of its internal production pipeline. Digital Domain has been very successful in productizing certain of these software products and licensing them to customers around the world. We have over 10,000 licensees of our technology products and are the market leader in both digital compositing software (having recently supplanted an Apple product), in the plug-in market for digital video effects and in editing software for 3D Stereoscopic films. We expect that technologies developed at our Florida facility could also be productized and licensed to third parties.

Clustering

A subset of employees at our facility in California will typically work for our company for six to eighteen months at a time as they complete a particular

film project. Approximately half of our California workforce works for us full time, moving from one project to the next. The other half of our workforce enjoys moving from company to company as they seek out projects or films that interest them. Working on a large, tent-pole film is often more attractive to an employee than working on a smaller budget, less technically sophisticated film. Furthermore, some employees have personal interests in the subject matter of certain films, or particular skill sets that are better suited to some films than to others, and move from employer to employer as those interests or skills dictate. Many employers cluster in Los Angeles to take advantage of this fluid and vibrant employee base. We believe that our competitors will want to take advantage of the skilled and trained workforce in Florida that is created by our facility and our educational partnership. We share employees with visual effects companies, film production companies, television production companies, television advertising agencies, animation companies, video game developers, software developers, web development and graphics design firms. We believe that firms such as these will follow us to Florida. We will furthermore help recruit companies like this to Florida as it helps us balance our workload across projects.

2. Data

Data for the economic analysis was provided to Florida State University Center for Economic Forecasting and Analysis (FSU CEFA) by Wyndcrest DD Holdings Inc. It is surmised that most (if not all) of the investment and additional expenditures/costs have been provided to FSU CEFA prior to the economic analysis being performed.

2.1 Employment

Table 1: Project Bumble Projected Employment

Employees by Years	2009	2010	2011	2012	2013	2014	2015
VFX Work-for-Hire	25	75	110	160	220	300	400
Film/Game Production	11	21	100	424	525	565	598
Total	36	96	210	584	745	865	998

2.2 Capital Investment Schedule

Table Two: Capital Investment Schedule for Phase 1 and 2¹

Phase 1	COMPANY X Contribution	State Funds	Total Project
Land	\$ 20,000,000	\$ -	\$ 2,500,000
Soft Costs	\$ 1,000,000	\$ -	\$ 1,200,000
Site work (Onsite & Offsite)	\$ 5,000,000	\$ -	\$ 3,250,000
Building and Parking	\$ 14,000,000	\$ -	\$ 16,525,000
Furnishings, Fixtures and Equipment	\$ 8,000,000	\$ -	\$ 8,000,000
State Contribution	\$ (3,500,000)	\$ 3,500,000	\$ -
Phase 1 Total	\$ 44,500,000	\$ 3,500,000	\$ 31,475,000
Phase 2			
Land	\$ -	\$ -	\$ 1,875,000
Soft Costs	\$ 1,500,000	\$ -	\$ 900,000
Building and Parking	\$ 13,500,000	\$ -	\$ 7,850,000
Furnishings, Fixtures and Equipment	\$ 4,875,000	\$ -	\$ 4,875,000
State Contribution	\$ (4,875,000)	\$ 4,875,000	\$ -
Phase 2 Total	\$ 16,000,000	\$ 4,875,000	\$ 15,500,000
Total Phase 1 & 2	\$ 59,500,000	\$ 8,375,000	\$ 46,975,000
Additional Amounts			
Additional Capital Expenditures: FF&E:	\$ 17,125,000	\$ -	\$ 17,125,000
Additional Capital Expenditures: Capitalized R&D	\$ 7,000,000	\$ -	\$ 7,000,000
Software Contributed:	\$ 2,500,000	\$ -	\$ 2,500,000
Training/Job Creation	\$ 16,625,000		
State Contribution	\$ (16,625,000)	\$ 16,625,000	\$ 16,625,000
Total Project	\$ 86,125,000	\$ 25,000,000	\$ 90,225,000

3. The REMI Model

Staff used the Regional Economic Model, Inc. (REMI Policy Insight v9.5.26, 2007), a widely accepted and used dynamic integrated input-output and econometric model for this study. REMI is used extensively to measure proposed legislative and other program and policy economic impacts across the private and public sectors of the state by the Florida Joint Legislative Management Committee, Division of Economic & Demographic Research, The Florida Department of Labor and other state and local government agencies. In addition, it is the chosen tool to measure these impacts by a number of other leading universities and private research groups that evaluate economic impacts across the state and nation.

There are several advantages to using REMI: 1) It is calibrated to local conditions using a relatively large amount of local data. 2) It is based on a strong theoretical foundation. 3) It combines several different kinds of analytical tools (including economic base, input-output, and econometric models). 4) It allows the user to generate forecasts for any combination of

¹ Data on Investment Schedule provided by Jonathan Teaford, of Wyndcrest DD Holdings, Inc., March, 2009.

future years, allowing the user special flexibility in analyzing the timing of economic impacts. The REMI model used for this analysis was specifically developed for the state of Florida, and includes 169 sectors. REMI's principal advantage is that it may be used to forecast direct, indirect and induced economic effects over multiple-year time frames. Other input-output models primarily model for a single year time horizon.

3.1 The Model Design

To measure the impact of Project Bumble Bee, the number of projected employees (see Table One) and the expenditures from the investment schedule (see Table Two) were entered into the REMI model, which includes cross linkages between every sector of the Florida economy. Conceptually, the model consists of five basic blocks: (1) output, (2) labor and capital demands, (3) population and labor supply, (4) wages, prices, and profits, and (5) market shares. All of these blocks have been calibrated to the Florida economy using state specific data. The policy variables, for the Project Bumble Bee spending categories (number of firm employees, capital, and direct expenses), were chosen within the five basic blocks as policy variables, for the years 2009 - 2015. This study did not quantify the intangible benefits generated by the presence of Project Bumble Bee to the local economy, such as enhancement of productivity, earning capacity of graduating students, quality of life enhancements, intellectual stimulation (through publications, presentations, public service), and creation of spin-off companies, among others.

3.2 The Assumptions

Regarding the investment cost schedule (Table Two), it was assumed that the Phase One costs (total: \$31,475,000) were evenly split between years one and two and that the Phase Two costs (total: \$15,500,000) were evenly split between years three and four. The "additional amounts" section of Table Two includes the project's non-committed spending amounts. However, since the likelihood is great that those spending amounts will be allocated towards Project Bumble Bee, it was also included in the economic impact analysis. The costs for the "additional amounts" section is projected to be: \$26,625,000. These costs were distributed evenly over years three, four, five and six.

Two scenarios were examined for the economic impact analysis. The first scenario included the aforementioned assumptions; without a government contribution. The second scenario included a state contribution of \$16,625,000 in the REMI model. Both scenarios were run in REMI and their associated impacts are outlined below.

4. REMI Model Results and Conclusions

The tables show the net present value of economic impacts² from years 2009 – 2025, for both scenarios (1 and 2) on gross regional product, employment and real disposable income. Gross Regional Product (GRP) is the dollar value of final goods and services produced across the Florida economy. Increases in real personal disposable income (personal income minus taxes) translate into more economic activities and local and state tax revenues. The employment results are expressed in terms of jobs³.

Table 2. Economic Impact(s) of Project Bumble Bee for Two Scenarios⁴ (2009-2025).

Economic Impact of Project Bumble Bee for Florida for March 2009			
	Output ⁵	Employment	Income ⁶
Scenario One Project Bumble Bee	\$435,357,562	5,503	\$225,678,406
Scenario Two Project Bumble Bee	\$464,700,991	5,948	\$247,642,956

* in Feb. 2009 \$

According to a recent study, "The Film and Entertainment Industry in Florida – Statewide Economic and Fiscal Impact" conducted by the Haas Center, in September 2008, the authors found that the Florida Film and Entertainment Industry is forecasted to grow faster than other targeted industry clusters with Florida.⁵ With a projected employment growth rate of 20 percent (from 101,263 to 121,598 for years 2008 to 2018, respectively), it is expected to grow faster than the Biomedical/Biotechnical cluster (19%) and the Defense and Security cluster (18%). In addition, in 2007, the economic impact of the film and entertainment industry in Florida was \$29.2 billion, directly employing greater than 100,000 Floridians.⁶ The economic benefits expand to numerous other industries in Florida, including restaurants, lodging, retail, construction, and tourism, which resulted in an additional estimated 105,000 related jobs in 2007.

Overall, motion picture industry continues to grow globally; in 2007 box office sales increased 5% from the previous year, and accounted for \$9.6

² Economic Impacts include: direct, indirect and induced impacts. Direct impacts measure the immediate effects caused by Project Bumble Bee; i.e., in employment and income. Indirect impacts are those that include changes to production, employment, income, etc., that occur as a result of the direct effects. Induced impacts are those further impacts of spending derived from direct and indirect activities – i.e., household purchases of consumer goods and services.

³ Note: Full time and part-time jobs are not distinguished in REMI, i.e., they are viewed as one job.

⁴ Scenario One corresponds to current capital investment schedule without state contribution of \$16,625,000. Scenario Two includes the economic impacts including the state contribution.

⁵ Source:

<http://filmflorida.com/docs/pdf/Analysis%20of%20the%20Florida%20Film%20and%20Entertainment%20Industry.pdf>

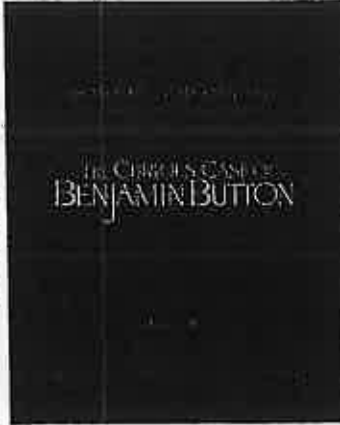
⁶ Source: The Governor's Office on Film and Entertainment. <http://filmflorida.com/ifi/ea.asp>

billion in domestic sales and \$17.1 billion international sales, totaling \$26.7 billion.⁷

The results of the economic impact analysis show that Project Bumble Bee will have a substantial positive economic impact for the State of Florida for years 2009-2025. The economic benefits extend to job creation, GRP and personal income for Floridians. In terms of GRP, \$435 million is projected to be generated over 27 years of the project, and \$465 million (with a state contribution of \$16.625 million).⁸ Personal income is projected to be \$226 million, and \$248 million, without state investment and with state investment, respectively. Overall, Project Bumble Bee is projected to support 5,500 jobs without the state investment, and almost 6,000 jobs, with the state investment of \$16.625 million.

⁷ Source: MPAA. <http://www.mpa.org/researchStatistics.asp>

⁸ It should be noted that this economic impact analysis does not include projected revenues generated from movie and other product sales.



***Project Bumblebee
Digital Media Economic Impact
Study***

March 24, 2009

V.2

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Project Bumble Bee Digital Media Economic Impact Study

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We envision that students that have worked at our facility will graduate with resumes that include having contributed to (and in some cases being included in film credits of) some of the most visually stunning and respected films in the market. Films that we have worked on in each of the last several years have been nominated for Academy Awards, which could lend even more credibility to these students resumes. For any student looking for work in the digital media world, having a portfolio that includes participation in a graduate candidate in the industry. Our employees constitute mathematicians, graphic artists, software programmers, writers, physicists, and, preferably, some combination of the aforementioned. We believe that this partnership will drive exemplary career training for students and will provide us with a steady and reliable source of postgraduation employees. We have entered into discussions with several universities regarding such a partnership and are working quickly to identify the right counterparty or counterparties.

Workforce Development

Our efforts in Florida are designed to create a substantial digital arts infrastructure that will support both our company's and other firms' human resource needs. Our industry drives ingenuity at the highest level of a number of fields including creative arts, software programming, engineering, mathematics, and film production, among others. We believe that our educational partnership will drive exemplary career training for students and will provide us with a steady and reliable source of post-graduation employees. Employees at our facilities outside Florida currently receive a substantial amount of on-the-job training. We continually refresh the skill sets of our employees so that they are trained on the most advanced technology and software packages available. We perform the most cutting-edge special effects for some of the largest films in the market, which requires that our employees be very highly trained and skilled. Furthermore, each film that we produce can require a different skill set, knowledge base or a different technique. These skills are taught to our employees prior to and during each new film that runs through our facility. Our Florida employees would develop new skills through frequent training and will build new skills with each of the various projects to which they contribute.

National Example of Domestic Job Creation Model

We also believe the project will serve as a strong national example of a private-public workforce development partnership that creates jobs in the United States that otherwise would have certainly been sent to either India, Canada, Australia or England. Leading companies in the industries of film, animation and video games are aggressively looking to reduce costs by expanding or relocating out of California, or the United States generally, often to foreign locations that provide average quality talent that comes at dramatically reduced labor pricing. Certain of these countries are also offering significant incentives that further reduce costs. Without a creative solution offered domestically, the United States is at risk of losing a significant amount of jobs and job growth from within the entertainment industry, a globally significant industry in which America has long been dominant. Wyndcrest's proposed partnership with Florida's state secondary schools, community colleges and universities can develop large numbers of qualified workers in a high-growth, exciting industry while dramatically reducing the cost of doing business in the United States thereby relieving the pressure to relocate a true American industry to foreign countries.

Job Creation

Should we be successful in obtaining public funding support, we intend to build a fully functioning Visual Effects facility in Florida that will physically support between 500 and 900 people. Our initial minimum goal is to hire at least 300 people prior to the end of 2014. We expect that the number of jobs will at least grow as follows:

Figure One. Employees – VFX Work-For-Hire

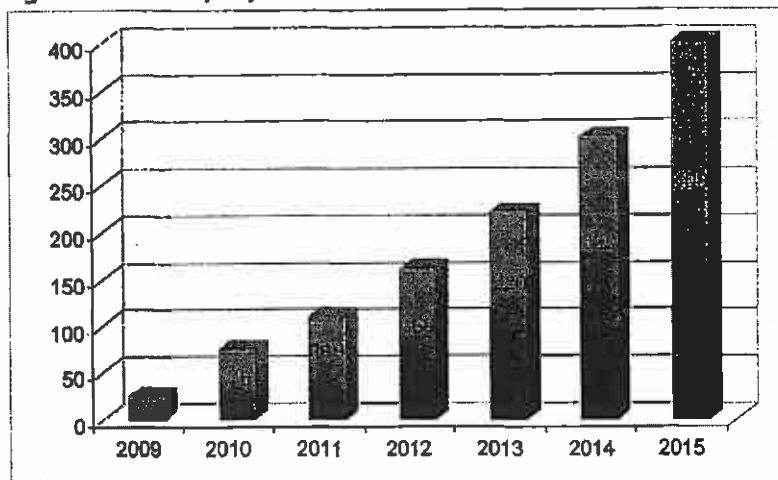
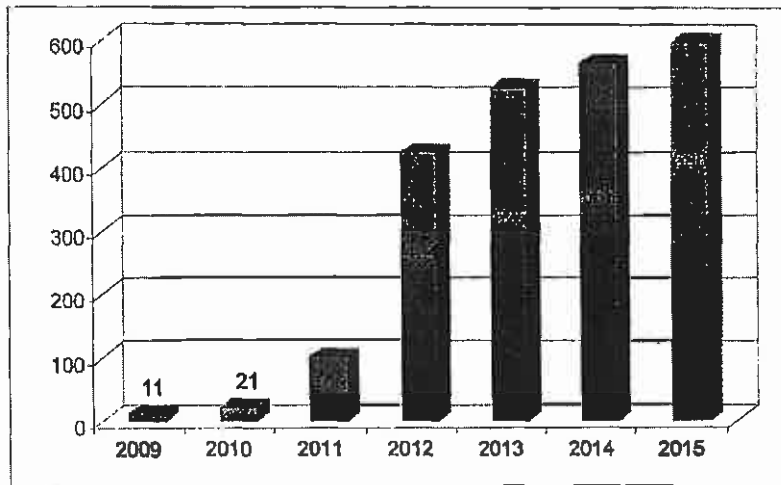


Figure Two. Employees ~ Film/Game Production Studio



In addition to the above, It is our goal for this facility to become a content generation facility capable of producing animated feature films and video games. Below are the number of jobs that would be employed in this expanded facility: Project Bumble Bee Florida, Inc Is designed to create jobs in Florida for Floridians. It is our belief that a substantial portion of the graduating class of most digital media-related associate, bachelor or masters level educational programs in Florida are qualified to earn a \$45,000 to \$70,000 starting salary at our company. It is also our belief that some portion of the graduating class of digital media-related high-schools are amount of our workforce will be Floridians. Ringling College of Art and Design, Full Sail University, Florida State University, University of Florida and other area schools offer exemplary digital media and digital entertainment degrees at the Bachelor and/ or Masters levels. Indian River State College, Miami Dade College, Manatee Community College, Seminole Community College and other area colleges schools also offer digital media and digital entertainment degrees at the Associates and Bachelor levels. Numerous Florida high schools offer film and digital media coursework, and several focus intently on these areas through magnet or charter programs. Furthermore, Florida has taken the exemplary step of developing a Banner Center for Digital Media to aggregate best practices in digital media educational curriculum and to share them amongst Florida s schools. While Florida has had great success in developing an educational infrastructure that is becoming more visible around the country, Florida has not yet attracted a critical mass of companies to employ these graduates. Several years ago, most of the graduates of these digital media programs left Florida (which often means leaving their families) and moved to Los Angeles or New York to begin their careers. In recent years, graduates of digital media programs

have been leaving Florida to move to Louisiana, Connecticut and New Mexico in increasing numbers as those states have made great strides in attracting companies like us. Florida has a tremendous base of talented graduates. Adding a base of employers to hire them will help keep Floridians in Florida.

Permanence

Many live action-related entertainment companies chase film production incentives as they move around the country and around the world. Film projects will locate in a state or country for only as long as it takes them to film actors and scenery and then leave, often having built no permanent industry. Florida's past film incentives have been admirably structured as they only rewarded productions based on Floridians that were hired to work on a given project. Florida's past incentive programs correctly did not reward companies for flying in camera operators, directors and set builders from California only to have them leave upon the completion of production.

Visual Effects, animated film and video game production differs distinctly from live action film production. Visual Effects, animation and video game production studios build physical plants, and fill those buildings with state of the art technology. More importantly, these types of companies spend enormous amounts of money and other resources fitting this technology together with a trained workforce to produce production pipelines that turn out finished digital product. Moving a facility like this is very difficult in terms of time and expense. There is a significant degree of permanence to a substantial digital media production facility such as the facility that we would build in Florida. We intend to invest \$30 million in capital expenditures (not including the expense of building a facility) over 5 years. While we support the restoration of healthy film production incentives, we believe that an appropriate film production incentive that rewards companies for building a permanent base of employees and infrastructure in Florida can do even more to drive a lasting and valuable industry.

Technology Development

Our affiliate, Digital Domain, develops very sophisticated software technologies as a part of its internal production pipeline. Digital Domain has been very successful in productizing certain of these software products and licensing them to customers around the world. We have over 10,000 licensees of our technology products and are the market leader in both digital compositing software (having recently supplanted an Apple product), in the plug-in market for digital video effects and in editing software for 3D Stereoscopic films. We expect that technologies developed at our Florida facility could also be productized and licensed to third parties.

Clustering

A subset of employees at our facility in California will typically work for our company for six to eighteen months at a time as they complete a particular

film project. Approximately half of our California workforce works for us full time, moving from one project to the next. The other half of our workforce enjoys moving from company to company as they seek out projects or films that interest them. Working on a large, tent-pole film is often more attractive to an employee than working on a smaller budget, less technically sophisticated film. Furthermore, some employees have personal interests in the subject matter of certain films, or particular skill sets that are better suited to some films than to others, and move from employer to employer as those interests or skills dictate. Many employers cluster in Los Angeles to take advantage of this fluid and vibrant employee base. We believe that our competitors will want to take advantage of the skilled and trained workforce in Florida that is created by our facility and our educational partnership. We share employees with visual effects companies, film production companies, television production companies, television advertising agencies, animation companies, video game developers, software developers, web development and graphics design firms. We believe that firms such as these will follow us to Florida. We will furthermore help recruit companies like this to Florida as it helps us balance our workload across projects.

2. Data

Data for the economic analysis was provided to Florida State University Center for Economic Forecasting and Analysis (FSU CEFA) by Wyndcrest DD Holdings Inc. (See Tables 1 and 2). It is surmised that most (if not all) of the investment and additional expenditures/costs have been provided to FSU CEFA prior to the economic analysis being performed. In addition, there is anticipated to be a state contribution of \$30 million (for capital outlay) and \$25 million from FSU for construction of a Film School educational facility.

2.1 Employment

Table 1: Project Bumble Bee Projected Employment*

Employees by Years	2009	2010	2011	2012	2013	2014	2015
VFX Work-for-Hire	25	75	110	160	220	300	400
Film/Game Production	11	21	100	424	525	565	598
Total	36	96	210	584	745	865	998

*** FSU Film School Educational Facility: 5 Faculty and 2 Admin positions will be added in years 2011-2012.**

2.2 Capital Investment Schedule

Table Two. Capital Investment Schedule for Phase 1 and 2¹

Phase 1	COMPANY X Contribution	State Funds	Total Project
Land	\$ 20,000,000	\$ -	\$ 2,500,000
Soft Costs	\$ 1,000,000	\$ -	\$ 1,200,000
Site work (Onsite & Offsite)	\$ 5,000,000	\$ -	\$ 3,250,000
Building and Parking	\$ 14,000,000	\$ -	\$ 16,525,000
Furnishings, Fixtures and Equipment	\$ 8,000,000	\$ -	\$ 8,000,000
State Contribution	\$ (6,000,000)	\$ 6,000,000	\$ -
Phase 1 Total	\$ 42,000,000	\$ 6,000,000	\$ 31,475,000
Phase 2			
Land	\$ -	\$ -	\$ 1,875,000
Soft Costs	\$ 1,500,000	\$ -	\$ 900,000
Building and Parking	\$ 13,500,000	\$ -	\$ 7,850,000
Furnishings, Fixtures and Equipment	\$ 4,875,000	\$ -	\$ 4,875,000
State Contribution	\$ (7,375,000)	\$ 7,375,000	\$ -
Phase 2 Total	\$ 12,500,000	\$ 7,375,000	\$ 15,500,000
Total Phase 1 & 2	\$ 54,500,000	\$ 13,375,000	\$ 46,975,000
Additional Amounts			
Additional Capital Expenditures: FF&E:	\$ 17,125,000	\$ -	\$ 17,125,000
Additional Capital Expenditures: Capitalized R	\$ 7,000,000	\$ -	\$ 7,000,000
Software Contributed:	\$ 2,500,000	\$ -	\$ 2,500,000
Training/Job Creation	\$ 16,625,000		
State Contribution	\$ (16,625,000)	\$ 16,625,000	\$ 16,625,000
Total Project	\$ 81,125,000	\$ 30,000,000	\$ 90,225,000

3. The REMI Model

Staff used the Regional Economic Model, Inc. (REMI Policy Insight v9.5.26, 2007), a widely accepted and used dynamic Integrated Input-output and econometric model for this study. REMI is used extensively to measure proposed legislative and other program and policy economic impacts across the private and public sectors of the state by the Florida Joint Legislative Management Committee, Division of Economic & Demographic Research, The Florida Department of Labor and other state and local government agencies. In addition, it is the chosen tool to measure these impacts by a number of other leading universities and private research groups that evaluate economic impacts across the state and nation.

¹ Data on Investment Schedule provided by Jonathan Teaford, of Wyndcrest DD Holdings, Inc., March, 2009.

There are several advantages to using REMI: 1) It is calibrated to local conditions using a relatively large amount of local data. 2) It is based on a strong theoretical foundation. 3) It combines several different kinds of analytical tools (including economic base, input-output, and econometric models). 4) It allows the user to generate forecasts for any combination of future years, allowing the user special flexibility in analyzing the timing of economic impacts. The REMI model used for this analysis was specifically developed for the state of Florida, and includes 169 sectors. REMI's principal advantage is that it may be used to forecast direct, indirect and induced economic effects over multiple-year time frames. Other input-output models primarily model for a single year time horizon.

3.1 The Model Design

To measure the impact of Project Bumble Bee, the number of projected employees (see Table One) and the expenditures from the investment schedule (see Table Two) were entered into the REMI model, which includes cross linkages between every sector of the Florida economy. Conceptually, the model consists of five basic blocks: (1) output, (2) labor and capital demands, (3) population and labor supply, (4) wages, prices, and profits, and (5) market shares. All of these blocks have been calibrated to the Florida economy using state specific data. The policy variables, for the Project Bumble Bee spending categories (number of firm employees, capital, and direct expenses), were chosen within the five basic blocks as policy variables, for the years 2009 - 2015. This study did not quantify the intangible benefits generated by the presence of Project Bumble Bee to the local economy, such as enhancement of productivity, earning capacity of graduating students, quality of life enhancements, intellectual stimulation (through publications, presentations, public service), and creation of spin-off companies, among others.

3.2 The Assumptions

Regarding the investment cost schedule (Table Two), it was assumed that the Phase One costs (total: \$31,475,000) were evenly split between years one and two and that the Phase Two costs (total: \$15,500,000) were evenly split between years three and four. The "additional amounts" section of Table Two includes the project's non-committed spending amounts. However, since the likelihood is great that those spending amounts will be allocated towards Project Bumble Bee, it was also included in the economic impact analysis. The costs for the "additional amounts" section is projected to be: \$26,625,000. These costs were distributed evenly over years three, four, five and six.

In addition to the capital investment schedule, the economic model framework included the state contribution of \$30 million, and the FSU allocation of \$25 million for a Film School educational facility. The economic model was run in REMI and their associated impacts are outlined below.

4. REMI Model Results and Conclusions

The tables show the net present value of economic impacts² from years 2009 – 2025, on gross regional product, employment and real disposable income. Gross Regional Product (GRP) is the dollar value of final goods and services produced across the Florida economy. Increases in real personal disposable income (personal income minus taxes) translate into more economic activities and local and state tax revenues. The employment results are expressed in terms of jobs³.

Table 2. Economic Impact(s) of Project Bumble Bee for Years (2009-2025).

Economic Impact of Project Bumble Bee for Florida for March 2009			
	Output ^a	Employment	Income ^a
Project Bumble Bee	\$483,004,998	6,191	\$263,097,670

* In Feb. 2009 \$

According to a recent study, "The Film and Entertainment Industry in Florida – Statewide Economic and Fiscal Impact" conducted by the Haas Center, in September 2008, the authors found that the Florida Film and Entertainment Industry is forecasted to grow faster than other targeted industry clusters with Florida.⁴ With a projected employment growth rate of 20 percent (from 101,263 to 121,598 for years 2008 to 2018, respectively), it is expected to grow faster than the Biomedical/Biotechnical cluster (19%) and the Defense and Security cluster (18%). In addition, in 2007, the economic impact of the film and entertainment industry in Florida was \$29.2 billion, directly employing greater than 100,000 Floridians.⁵ The economic benefits expand to numerous other industries in Florida, including restaurants, lodging, retail, construction, and tourism, which resulted in an additional estimated 105,000 related jobs in 2007.

Overall, motion picture industry continues to grow globally; in 2007 box office sales increased 5% from the previous year, and accounted for \$9.6

² Economic Impacts include: direct, indirect and induced impacts. Direct impacts measure the immediate effects caused by Project Bumble Bee; i.e., in employment and income. Indirect impacts are those that include changes to production, employment, income, etc., that occur as a result of the direct effects. Induced impacts are those further impacts of spending derived from direct and indirect activities – i.e., household purchases of consumer goods and services.

³ Note: Full time and part-time jobs are not distinguished in REMI, i.e., they are viewed as one job.

⁴ Source:

<http://filminflorida.com/docs/pdf/Analysis%20of%20the%20Florida%20Film%20and%20Entertainment%20Industry.pdf>

⁵ Source: The Governor's Office on Film and Entertainment. <http://filminflorida.com/fif/ea.asp>

billion in domestic sales and \$17.1 billion international sales, totaling \$26.7 billion.⁶

The results of the economic impact analysis show that Project Bumble Bee will have a substantial positive economic impact for the State of Florida for years 2009-2025. The economic benefits extend to job creation, GRP and personal income for Floridians. In terms of GRP, \$483 million is projected to be generated over 27 years of the project.⁷ Personal income is projected to be \$263 million. Overall, Project Bumble Bee is projected to support almost 6,200 jobs, with the state investment of \$30 million.

⁶ Source: MPAA. <http://www.mpa.org/researchStatistics.asp>

⁷ It should be noted that this economic impact analysis does not include projected revenues generated from movie and other product sales.



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