

MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMISSION MEMORANDUM

TO: Honorable Mayor Dan Gelber and Members of the City Commission

FROM: Alina T. Hudak, City Manager 

DATE: October 27, 2021

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ACCEPTING THE RECOMMENDATION OF THE FINANCE AND ECONOMIC RESILIENCY COMMITTEE, AT ITS OCTOBER 22, 2021 MEETING, AND APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH WIX.COM, INC. FOR PARTICIPATION IN THE JOB CREATION INCENTIVE PROGRAM (THE "PROGRAM"), IN AN AMOUNT NOT TO EXCEED \$60,000 PER YEAR, FOR UP TO THREE (3) YEARS, SUBJECT TO FUNDING APPROPRIATION AND APPROVAL DURING THE CITY'S BUDGETARY PROCESS FOR EACH FISCAL YEAR DURING THE TERM OF THE AGREEMENT.**

Recommendation

The Administration recommends that the Mayor and City Commission adopt the attached Resolution, approving and authorizing the City Manager to execute an agreement with WIX.COM, INC. ("Wix") for participation in the Job Creation Incentive Program (the "Program") in an amount not to exceed \$60,000 per year, for up to three (3) years.

Background

The Mayor and City Commission identified the need for making Miami Beach more business and user-friendly as a key objective in the City's 2019 Strategic Plan. As one of Miami-Dade County's top economic drivers, the City of Miami Beach has traditionally offered a robust atmosphere for business, with particular emphasis on the thriving tourism and hospitality industries. In recent years, and in the wake of natural disasters and public health emergencies, the City Commission and Administration have prioritized diversification of the local economy to increase resiliency and position the city as a healthy business destination.

With an influx of financial services and technology companies flocking to the region, on March 17, 2021, the Mayor and City Commission adopted Resolution No. 2021-31618, establishing financial services and technology as targeted industries and directing the Administration to encourage and promote the attraction of these industries in order to diversify the economy and enhance resiliency.

The Mayor and City Commission recognize the benefits of a local approach to growing these industries in consideration of the competitive regional and national market. In an effort to capitalize on the regional momentum and diversify the city's industry clusters, the Mayor and City Commission took further action by adopting Resolution No. 2021-31619, to attract, retain and expand businesses in these targeted industries through the development of inducements and services, such as the Expedited Plan Review and Permitting Incentive Program.

Given median and average wages among the financial services and technology industries are substantially higher than median and average wages in Miami-Dade County, financial incentives related to the attraction, retention and expansion of businesses in these industries promote economic diversification, resiliency and an enhanced business climate.

On March 17, 2021, the Mayor and City Commission adopted Resolution 2021-31620, authorizing the Administration to create a Job Creation Incentive Program (the "JCIP" or "Program") for the purpose of attracting targeted industries to Miami Beach. The Program offers a performance-based financial incentive available to technology and financial services firms and headquarters relocating to or expanding in the City of Miami Beach.

The purpose of the Program is to diversify the economy by strategically increasing the number of quality, high-wage jobs in Miami Beach. Program participants must create or relocate a minimum of ten (10) new, fulltime equivalent jobs with average annual wages meeting or exceeding 125% of the State of Florida or Miami-Dade County average wage, whichever is higher, at the time of application. After each annual performance period, participants are eligible to receive an incentive based on number of new and relocated employees with additional incentives for participants locating in North Beach, and those hiring Miami Beach residents and employees with education or training received at local institutions.

New-to-market companies that are recipients of the incentive may be eligible for an award of up to \$60,000 per year for four (4) years. Expanding companies are eligible for an award of up to \$60,000 per year for three (3) years.

Inaugural JCIP recommendations for GMF Capital and Melvin Capital were recommended for City Commission approval by the Finance and Economic Resiliency Committee on September 24, 2021 and were subsequently approved by the City Commission on September 30, 2021.

ANALYSIS

The Economic Development Department markets and promotes the City Commission-approved targeted industry inducement and incentive programs to Chief Executive Officers, Chief Investment Officers, prospective and existing business owners, property owners, brokers, realtors, and business stakeholder groups.

After months of discussions, the City received a Program application from WIX.COM, INC. ("Wix"). Wix, is a software company providing cloud-based web development services. Headquartered in Tel Aviv, Israel, with national headquarters in San Francisco, Wix also has an existing regional office in Miami Beach and is the first existing expanding technology company to apply for the JCIP. In addition, Wix plans to participate in the Expedited Plan Review and Permitting Incentive Program to assist with building permits.

Wix is planning to invest \$3.8 million in capital improvements including construction, furniture, fixtures and equipment and intends to expand its existing regional office footprint in Miami Beach to grow from 33,458 sq ft to 48,527 sq ft. The company currently has 302 employees in their Miami Beach office and plans to significantly scale by hiring an additional 50 employees within the next twelve months and a total of 150 employees over the next three years with average annual wages of \$69,856.47. The Administration has been discussing incentives with the company since mid-August. The Administration is recommending this expanding company for the JCIP in order to support the growth of existing technology firms.

| Wix: Project Summary | |
|-----------------------------------|---|
| Industry and business services | Technology; software and web development services |
| Location | 1691 Michigan Avenue |
| Type of Office | Regional Office |
| Lease Term | 7.5-years with renewal options |
| Office Size | Increase from 33,458 to 48,527 sq ft |
| Capital Investment | \$3.8 million |
| New or Relocated Jobs | 50 (year 1); 150 (over 3 years) |
| Average Wages | \$69,856.47 |
| Estimated annual award amount | \$60,000 |
| Estimated final award amount | \$180,000 (over 3 years) |
| Economic Impact Analysis (IMPLAN) | See Exhibit A |

On October 22, 2021, the Finance and Economic Resiliency Committee recommended approval of Wix's application based on its qualifications as an existing expanding company within the targeted industries and other criteria including high-wage job creation.

SUPPORTING SURVEY DATA

Based on the 2019 Miami Beach Community Satisfaction Survey, 59.9% of businesses would recommend the City of Miami Beach to others as a place to run a business. It is anticipated that this percentage will increase over time as the economy diversifies and companies within the targeted industries relocate to Miami Beach and promote the City's incentive programs to industry peers.

FINANCIAL INFORMATION

The fiscal impact to the City is up to \$60,000 per year for three (3) years subject to funding appropriation and approval during the budgetary process for each fiscal year during the term of the agreement. Funding for the Program has been appropriated in the Fiscal Year 2021-2022 budget.

CONCLUSION

Given the City Commission's goal to market the city and attract, retain, and expand top-notch financial services and technology firms, the Administration is recommending Wix for Program approval. Their expansion within the city will have a positive impact on the business climate and will further economic diversification efforts. The Administration requests approval for the City Manager to execute an agreement with Wix, in the form attached as Exhibit B accompanying this Memorandum.

Applicable Area

Citywide

Is this a "Residents Right to Know" item pursuant to City Code Section 2-14?

No

Does this item utilize G.O. Bond Funds?

No

ATTACHMENTS:

Exhibit A WIX Economic Impact Summary
Exhibit B JCIP Draft Agreement
Resolution

Legislative Tracking

Economic Development

Economic Impact Summary - WIX.COM, INC.

APPLICANT: WIX.COM, INC.

CURRENT LOCATION: 1691 Michigan Ave. 6th Floor, Miami Beach, FL 33139

PROPOSED LOCATION: 1691 Michigan Ave. 4th and 6th Floor, Miami Beach, FL 33139

CAPITAL INVESTMENT: Approximately \$3,806,250 for renovations for expansion, architecture fees, capital improvements, and purchasing furniture, fixtures, and equipment.

JOB CREATION: 50 new fulltime employees in the first 12 months;
150 new fulltime employees over three years from 2021 to 2024
Average salary of new jobs: \$69,865.47

Economic Impact results using IMPLAN PRO Version 6.2 (reported in 2021 Dollars)

| | | |
|---|--|----------------------------------|
| Total Job Creation Output Impact | Direct, Indirect and Induced Jobs | 182.71 @ 3-years |
| Total Labor Income Impact | Direct Jobs Only | \$15.71 million @ 3-years |
| State & Local Tax Impact (Excluding ad valorem tax) | Direct Jobs Only | \$773,265.06 @ 3-years |
| Total Employment Impact | Direct Jobs | 172 |
| | Indirect Jobs | 10.21 |
| | Induced Jobs | 0.51 |
| | Total jobs resulting from this investment | 182.71 |

Cumulative Impact – WIX.COM, INC. and Construction

| Impact | Employment | Labor Income | Value Added | Output |
|--------------|---------------|------------------------|------------------------|------------------------|
| 1 - Direct | 172.00 | \$15,712,748.86 | \$28,341,105.38 | \$76,939,853.56 |
| 2 - Indirect | 10.21 | \$604,874.70 | \$991,786.95 | \$1,770,161.56 |
| 3 - Induced | 0.51 | \$21,479.68 | \$37,550.46 | \$62,386.65 |
| Total | 182.71 | \$16,339,103.25 | \$29,370,442.79 | \$78,772,401.77 |

Impact of WIX.COM, INC. Only

| Impact | Employment | Labor Income | Value Added | Output |
|--------------|---------------|------------------------|------------------------|------------------------|
| 1 - Direct | 150.00 | \$14,108,428.82 | \$26,455,062.23 | \$73,133,603.56 |
| 2 - Indirect | 10.12 | \$599,763.62 | \$982,799.81 | \$1,753,719.78 |
| 3 - Induced | 0.39 | \$16,340.64 | \$28,578.02 | \$47,473.42 |
| Total | 160.51 | \$14,724,533.08 | \$27,466,440.06 | \$74,934,796.76 |

Impact of Tax Revenue

| Impact | Sub County General | Sub County Special Districts | County | State | Federal | Total |
|--------------|---------------------|------------------------------|---------------------|---------------------|-----------------------|-----------------------|
| 1 - Direct | \$92,999.46 | \$122,522.57 | \$147,051.75 | \$410,691.28 | \$2,791,911.87 | \$3,565,176.93 |
| 2 - Indirect | \$6,760.52 | \$8,913.23 | \$10,691.36 | \$24,080.02 | \$111,625.38 | \$162,070.51 |
| 3 - Induced | \$469.36 | \$618.33 | \$742.14 | \$1,550.67 | \$3,910.32 | \$7,290.82 |
| Total | \$100,229.33 | \$132,054.14 | \$158,485.25 | \$436,321.97 | \$2,907,447.57 | \$3,734,538.26 |

Definitions

| | |
|-------------------|---|
| Direct Effect | Refers to the impact created directly by the business activity. All jobs created as a direct result of the business activity. |
| Indirect Effect | Refers to those effects created by the producers of intermediate goods and service. All goods and services purchased as a result of the business activity. |
| Induced Effect | Refers to the subsequent round of spending in the local economy made by the households Of the employees Of businesses that incur both direct and indirect expenditures. |
| Total Effect | Refers to the Direct, Indirect, and Induced impacts summed together. |
| Employment | Total annual average jobs. This includes self-employed and wage and salary employees, and all full-time, part-time and seasonal jobs, based on a count of full-time /part-time averages over twelve months. |
| Labor Income | Defines the total value paid to local workers within a region. Labor Income is the income source for Induced household spending estimations. Labor Income = Employee Compensation + Proprietor Income |
| Total Value Added | Comprised of Labor Income, Indirect Business Taxes, and Other Property Type Income. Value Added demonstrates an industry's value of production over the cost of its purchasing goods and services required to make its products. Value Added is often referred to as Gross Domestic Product (GDP). Value Added = Labor Income + Indirect Business Taxes + Other Property Type Income |
| Output | The total value of an industry's production comprised of the value of the Intermediate Inputs and Value Added. In IMPLAN this is typically viewed as the value of a change in sales or the value of increased production. However, annual production is not always equal to annual sales. If production levels are higher than sales, surpluses become inventory. Because inventory does not drive additional impact in the year it was produced, in IMPLAN Direct Industry sales = Direct Output. Output = Intermediate Inputs + Value Added |

MIAMI BEACH

City of Miami Beach Economic Development Department AGREEMENT JOB CREATION INCENTIVE PROGRAM

This Agreement ("Agreement") for the Job Creation Incentive Program ("Program") is entered into this ____ day of _____, 20____, by and between the City of Miami Beach, Florida, a municipal corporation organized and existing under the laws of the State of Florida, having its principal offices at 1700 Convention Center Drive, Miami Beach, Florida, 33139 (hereinafter the "City"), and _____, a _____ whose principal business address is _____ (hereinafter the "Applicant" or "Participant").

Article I / Program Summary

1. Applicant/Participant: _____
Applicant/Participant Contact: _____
Local Business Address: _____
City, State, Zip: _____
Phone, fax, e-mail: _____
Targeted Industry: _____
New to Market (Relocation)
or Existing Business (Expansion): _____
2. Incentive amount/Fiscal Impact: **Not to exceed Sixty Thousand Dollars (\$60,000 per year during the Performance Period ("Incentive"))**
3. Program Guidelines: See Exhibit 1, attached hereto
4. Project: See Exhibit 2, attached hereto
5. Incentive effective date: Upon execution of Agreement by the parties
6. Performance Period/Term: _____ ("Commencement Date") to _____
The first year of the Performance Period shall commence on the Commencement Date and continue for 365 days, with each consecutive year following thereafter.
7. Disbursement claim deadline: July 1, annually

Article II / General Conditions

1. BACKGROUND AND PROGRAM DESCRIPTION:

- A. The City seeks to further diversify the Miami Beach economy by attracting, retaining, and expanding businesses in the targeted industries (technology and financial services) through the development of inducements and services to promote growth. On March 17, 2021, the Mayor and City Commission adopted Resolution No. 2021-31618, directing the Administration to encourage and promote the attraction of these targeted industries. On March 17, 2021, the Mayor and City Commission also adopted Resolution 2021-31620, authorizing the Administration to create the Program for the purpose of attracting targeted industries to Miami Beach.

The Program is a performance-based financial incentive available to technology and financial services firms and headquarters relocating to or expanding in the City of Miami Beach. The purpose of the Program is to diversify the economy by strategically increasing the number of quality, high-wage jobs in Miami Beach. Participants of the Program must create or relocate a minimum of ten (10) new, fulltime equivalent jobs which average annual wages meeting or exceeding 125% of the State of Florida or Miami-Dade County average wage, whichever is higher, at the time of the application.

New to market companies that are relocating to Miami Beach may be eligible for an award of up to \$60,000 per fiscal year for four (4) years with total Incentive not to exceed \$240,000. Existing Miami Beach companies that are expanding may be eligible for an award of up to \$60,000 per fiscal year for three (3) years with total Incentive not to exceed \$180,000. Satisfactory job creation performance and Incentive amount will be evaluated and calculated by the City for each year of the Performance Period prior to annual disbursement of Incentive funds.

B. Program Requirements

- i. The parties to this Agreement are the Applicant/Participant listed in Article I and the City of Miami Beach (the "City"). The City has delegated the responsibility of administering this Agreement to the City Manager or the City Manager's authorized designee, who shall be the City's Economic Development Director.
- ii. The Program is being offered to Participant in connection with the approval of an application to participate in the Program, based upon the project described in Exhibit 2, attached hereto (the "Project"). Participant is required to comply with the Program Guidelines incorporated herein by reference and set forth in Exhibit "1", attached hereto; and all applicable Federal, State, County and City laws.

- iii. The employment goals and projected wages for the Project serve as the target for annual performance. The Participant may exceed employment and wage criteria throughout the course of the Performance Period. If the Participant does not meet the target for annual performance, the Participant must at least meet the minimum eligibility as outlined in the Program Guidelines.
- iv. The Incentive is awarded with the understanding that the Project will enhance, diversify, and develop the City's economic climate. To demonstrate that the Incentive is fulfilling, or has fulfilled, its purpose, the Participant must furnish the City with all personnel documents necessary to verify the Participant's compliance with the created or relocated job salary requirements. This documentation must be received by the Economic Development Department each year within the Performance Period. Economic Development Department staff may monitor and conduct an evaluation of the Project, which may include, without limitation, onsite visits to observe the Project and verify personnel related to created or relocated jobs as required by the Program Criteria.
- v. The total amount of the Incentive is determined annually, as specified in Exhibit 1, and payment of any portion thereof shall be subject to and contingent upon Participant's compliance with the terms and conditions set forth in this Agreement. To be eligible to claim an Incentive award during the Performance Period, Participant must apply annually by submitting a Disbursement Request form, attached hereto as Exhibit 3, to the City Manager's designee at the address contained in Section 8 of Article II.
- vi. In awarding this Incentive, the City assumes no obligation to provide financial support of any type whatsoever in excess of the total Incentive amount. Incentive funds will be awarded to the Participant annually provided that Participant has performed satisfactorily and is otherwise in compliance with the terms and conditions herein.

2. **ACCOUNTING AND FINANCIAL REVIEW:** Participant shall keep accurate and complete books and records of all payroll and financial documents relating to the Program in accordance with reasonable accounting standards, and shall retain such books and records for the later of at least four (4) years after completion of the Project, or at least two (2) years after the expiration of the Performance Period specified in article I-6. These books and records and documents pertaining to the Program shall be retained in Miami Beach, Florida in a secure place, in an orderly fashion. At the request of the City, Participant shall provide the City Manager or City Manager's designee reasonable access to its files, records and personnel, during regular business hours, for the purpose of making financial audits, evaluations or verifications related to the Program, as the City deems necessary. Furthermore, the City may, at its expense, audit or have audited, all personnel and financial records related to the Program.

3. INSPECTOR GENERAL AUDIT RIGHTS:

- A. Pursuant to Section 2-256 of the Code of the City of Miami Beach, the City has established the Office of the Inspector General which may, on a random basis, perform reviews, audits, inspections and investigations on all City contracts, throughout the duration of said contracts. This random audit is separate and distinct from any other audit performed by or on behalf of the City.
- B. The Office of the Inspector General is authorized to investigate City affairs and empowered to review past, present and proposed City programs, accounts, records, contracts and transactions. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of witnesses and monitor City projects and programs. Monitoring of an existing City project or program may include a report concerning whether the project is on time, within budget and in conformance with the contract documents and applicable law. The Inspector General shall have the power to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of Participant, its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption. Pursuant to Section 2-378 of the City Code, the City is allocating a percentage of its overall annual contract expenditures to fund the activities and operations of the Office of Inspector General.
- C. Upon ten (10) days written notice to Participant, Participant shall make all requested records and documents available to the Inspector General for inspection and copying. The Inspector General is empowered to retain the services of independent private sector auditors to audit, investigate, monitor, oversee, inspect and review operations activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of Participant, its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption.
- D. The Inspector General shall have the right to inspect and copy all documents and records in Participant's possession, custody or control which in the Inspector General's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements from and with successful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, (bid/proposal) and contract documents, back-change documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records and supporting documentation for the aforesaid documents and records.
- E. Participant shall make available at its office at all reasonable times the records, materials, and other evidence regarding the acquisition (bid preparation) and performance of this Agreement,

for examination, audit, or reproduction, until three (3) years after final payment under this Agreement or for any longer period required by statute or by other clauses of this contract. In addition:

- i. If this Agreement is completely or partially terminated, Participant shall make available records relating to the work terminated until three (3) years after any resulting final termination settlement; and
- ii. Participant shall make available records relating to appeals or to litigation or the settlement of claims arising under or relating to this Agreement until such appeals, litigation, or claims are finally resolved.

F. The provisions in this section shall apply to Participant, its officers, agents, employees, subcontractors and suppliers. Participant shall incorporate the provisions in this section in all subcontracts and all other agreements executed by Participant in connection with the performance of this Agreement.

G. Nothing in this section shall impair any independent right to the City to conduct audits or investigative activities. The provisions of this section are neither intended nor shall they be construed to impose any liability on the City by Participant or third parties.

4. **INDEMNIFICATION:** Participant agrees to indemnify, defend, save and hold harmless the City, its officers, employees or agents, from any and all claims, liability, lawsuits, damages and causes of action which may arise out of this Agreement, including Participant's participation in this Program.

5. **ASSIGNMENT:** Participant shall not be permitted to assign this Agreement, and any purported assignment will be void, and shall be treated as an event of default pursuant to this Agreement.

6. **DEFAULT/TERMINATION PROVISIONS:**

A. In the event Applicant shall fail to comply with any of the covenants, terms or provisions of this Agreement including, without limitation, Applicant's failure to: (i) comply with the Program Guidelines, as set forth in Exhibit 1, attached hereto; (ii) complete the Project, as expressly contemplated in the Project Description; (iii) timely submit any reports or documentation, when due, as required under this Agreement; or (iv) comply with any other term or condition of this Agreement, the City Manager or the City Manager's designee shall issue written notice to the Participant and provide Participant with thirty (30) days to cure the default. If, at the City Manager's sole discretion, the breach is cured within that period, continued participation in the Program may be allowed. If, however, the Participant fails to cure the breach, or again breaches this Agreement during the Performance Period, no further cure period shall be allowed and the City Manager may terminate this Agreement with written notice to the Participant, thereby relieving the City of any further obligation to Participant under this Agreement.

- B. Where a Participant is delinquent in paying its taxes, fines, or any other fees due to the City in its governmental capacity, or in connection with any other agreements between the City and Applicant, the City shall withhold Incentive funds until the Participant is current. Where a Participant is more than one (1) year delinquent, the Participant's Incentive award shall be canceled, and the Participant shall be disqualified from participating in the Program, and the City shall have no further obligation to the Applicant under this Agreement.
- C. Termination for Fraud or Material Misrepresentations: Additionally, if the default is of a nature that cannot be cured, such as fraud or a material misrepresentation in connection with Participant's performance under this Agreement, the termination shall be effective upon receipt of the termination notice and no cure period shall apply.
- D. Further, in the event that the City, in the City Manager's designee's sole discretion, finds that the Incentive funds were ineligible payments under the terms of the Agreement, whether as a result of fraud, misrepresentation, or negligence of Participant, Participant shall be required to repay to the City all or a portion of the Incentive payments received by Applicant, as of the date that the written demand is received ("Demand for Recapture"), within thirty (30) days from receipt of the Demand for Recapture.
- E. Applicant further acknowledges and agrees that any Default may, at the City's sole discretion, render Applicant ineligible for any future Incentive funds.
- F. These provisions shall not waive or preclude the City from pursuing any and all remedies at law and in equity.
- G. Notwithstanding any provision of this Agreement to the contrary, and without regard to whether City has exercised the Default provisions thereof, the City reserves the right, at its sole and absolute discretion, to discontinue funding of the Incentive if it is not satisfied with the progress of the Project.

7. FLORIDA PUBLIC RECORDS LAW:

- A. Participant shall comply with Florida Public Records law under Chapter 119, Florida Statutes, as may be amended from time to time.
- B. The term "public records" shall have the meaning set forth in Section 119.011(12), which means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business of the City.

C. Pursuant to Section 119.0701 of the Florida Statutes, if Participant meets the definition of "Contractor" as defined in Section 119.0701(1)(a), Participant shall:

- i. Keep and maintain public records required by the City to perform the service;
- ii. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law;
- iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the contract term and following completion of this Agreement if Participant does not transfer the records to the City;
- iv. Upon completion of this Agreement, transfer, at no cost to the City, all public records in possession of Participant or keep and maintain public records required by the City to perform the service. If Participant transfers all public records to the City upon completion of this Agreement, Participant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Participant keeps and maintains public records upon completion of this Agreement, Participant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

D. REQUEST FOR RECORDS; NONCOMPLIANCE

- i. A request to inspect or copy public records relating to the City's contract for services, must be made directly to the City. If the City does not possess the requested records, the City shall immediately notify Participant of the request, and Participant must provide the records to the City or allow the records to be inspected or copied within a reasonable time.
- ii. Participant's failure to comply with the City's request for records shall constitute a breach of this Agreement, and the City, at its sole discretion, may: (1) unilaterally terminate this Agreement; (2) avail itself of the remedies set forth under this Agreement; and/or (3) avail itself of any available remedies at law or in equity.
- iii. If Participant fails to provide the public records to the City within a reasonable time may be subject to penalties under s. 119.10.

E. CIVIL ACTION

- i. If a civil action is filed against Participant to compel production of public records relating to the City's contract for services, the court shall assess and award against Participant the reasonable costs of enforcement, including reasonable attorneys' fees, if:
 - a. The court determines that Participant unlawfully refused to comply with the public records request within a reasonable time; and
 - b. At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that Participant has not complied with the request, to the City and to Participant.
- ii. A notice complies with subparagraph (i)(b) if it is sent to the City's custodian of public records and to Participant at Participant's address listed on its agreement with the City or to Participant's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.
- iii. If Participant complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.

F. **IF PARTICIPANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO PARTICIPANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**CITY OF MIAMI BEACH
ATTENTION: RAFAEL E. GRANADO, CITY CLERK
1700 CONVENTION CENTER DRIVE
MIAMI BEACH, FLORIDA 33139
EMAIL: RAFAELGRANADO@MIAMIBEACHFL.GOV
PHONE: 305-673-7411**

8. **WRITTEN NOTICES:** Any notices required under this Agreement will be effective when delivered to the City in writing and addressed to the City Manager's designee:

Rickelle Williams
Economic Development Director
1700 Convention Center Drive
Miami Beach, FL 33139
Tel: 305-673-7000 ext. 26186
Email: rickellewilliams@miamibeachfl.gov

Any notices required under this Agreement to Participant shall be delivered in writing to Participant's contact.

Article III / Miscellaneous Provisions

9. NO DISCRIMINATION: Participant also accepts and agrees to comply with the following Special Conditions:

A. Participant hereby agrees that it will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) prohibiting discrimination on the basis of race, color, national origin, handicap, or sex.

B. Participant hereby agrees that it will comply with City's Human Rights Ordinance as codified in Chapter 62 of the City Code, as may be amended from time to time, prohibiting discrimination in employment, housing and public accommodations on account of actual or perceived race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, age, disability, ancestry, height, weight, domestic partner status, labor organization membership, familial situation, or political affiliation.

C. The City endorses, and Participant shall comply with, the clear mandate of the Americans with Disabilities Act of 1990 (ADA) to remove barriers, which prevents qualified individuals with disabilities from enjoying the same employment opportunities that are available to persons without disabilities.

D. The City also endorses the mandate of the Rehabilitation Act of 1973 and Section 504 and prohibits discrimination on the basis of disability and requires that Participant provides equal access and equal opportunity and services without discrimination on the basis of any disability.

10. GOVERNING LAW AND EXCLUSIVE VENUE AND ATTORNEY'S FEES: This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida, both substantive and remedial, without regard to principles of conflict of laws. The exclusive venue for any litigation arising out of this Agreement shall be Miami-Dade County, Florida, if in State court, and the U.S. District Court, Southern District of Florida, if in federal court. In connection with any litigation arising out of this Agreement, each party shall bear their own costs and attorney's fees. BY ENTERING INTO THIS AGREEMENT, THE CITY AND PARTICIPANT EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

FOR CITY:

CITY OF MIAMI BEACH, FLORIDA

ATTEST:

By: _____
Rafael E. Granado, City Clerk

Alina T. Hudak, City Manager

Date

FOR PARTICIPANT:

ATTEST:

By: _____

Authorized Signature

Print Name and Title

Print Name and Title

Date

Exhibit 1

JOB CREATION INCENTIVE PROGRAM GUIDELINES

1. Background and Purpose

The City of Miami Beach is invested in economic resiliency through economic diversification. New or existing businesses in the City of Miami Beach may be eligible for a performance-based incentive known as the Job Creation Incentive Program (Program). The purpose of the Program is to strategically attract companies and expand existing businesses within the City of Miami Beach while increasing the number of quality, high-wage jobs in the community. The applicant must create or relocate a minimum of ten (10) new, fulltime equivalent jobs which average annual wages meeting or exceeding 125% of Miami-Dade County or State of Florida average wage at the time of the application.

2. Eligibility

The Program will be available to New-to-Market businesses or Existing Businesses within the City that are expanding their operations, and that will either hire or relocate, a minimum of ten (10) new employees to the City of Miami Beach within a four (4) year period for New-to-Market businesses or three (3) year period for Existing business expansions ("Expansions" or "Expanding businesses").

The Program is available to the following industries:

- a. Financial/Professional Services
- b. Technology
- c. Headquarters including regional headquarters

The City Commission, at its discretion, may waive the eligible industry requirement at the request and recommendation of the City Manager.

- a. Companies applying for the Program must be "New-to-Market" relocations or an "Expanding" business already operating within the City of Miami Beach. New-to-Market businesses may relocate from anywhere outside of the City of Miami Beach.
- b. Requirements for Expanding businesses at the time of application:
 - An Expanding business must either own its office space property or have an executed multi-year lease (3-year minimum) for the office location within the City of Miami Beach.
 - An Expanding business must have a valid Miami Beach business tax receipt (BTR) and may not have any pending City fees or fines, or be involved in any litigation with the City of Miami Beach.
 - An Expanding business must be properly licensed and approved by the State and County as applicable.
- c. All awarded Expanding businesses and New-to-Market businesses must meet the requirements above when the Incentive will be claimed and disbursed for each eligible fiscal year.
- d. Businesses that do not report employees' wages are not eligible for assistance under the Program

The Program is contingent on annual funding availability, City Commission approval, and the execution and continued compliance with the requirements of the Agreement is not to be construed as an entitlement or right of the Participant to receive Incentive funds.

3. Requirements

- a. New Job Category: A New Job must be a fulltime equivalent position (minimum of 2,080 hours annually) and shall:
- be created in the City of Miami Beach and add to the City's total job base;
 - add incrementally to the Applicant's payroll;
 - result in a net increase in the number of employees of the Applicant; and
 - involve only a new employee working on-site (at least partially) at the Applicant's facility located in the City of Miami Beach.

A New Job excludes an existing employee on current payroll of the business at the time of the application.

- b. Relocated Job Category: A Relocated Job includes fulltime equivalent positions (minimum of 2,080 hours annually) existing on the Applicant's payroll at the time of application.
- Only New-to-Market companies (moving to Miami Beach) can utilize relocated jobs as part of the Incentive application.
 - Existing Miami Beach companies seeking to expand operations in Miami Beach may not utilize relocated jobs as part of the job creation requirement.
- c. Job Creation Timeline: Approval of the Program application and agreement by the City Commission must occur before the jobs are added or relocated. A business that enters into an Agreement with the City of Miami Beach and is located in or relocating to existing office space that does not require significant tenant improvements must add the minimum number of jobs (10) within an agreed to number of months after the effective date of the Incentive award. The Applicant and the City of Miami Beach negotiate a job creation/relocation timeframe for the Project.
- d. Living Wage Requirement: The Program will not be available to companies that pay any of their employees less than the Living Wage Rate as defined by Section 2-8.9 of the Code of Miami-Dade County, as adjusted annually by the Department of Small Business Development or its successor department, or as defined by Section 2-408 of the Code of the City of Miami Beach and by choosing the higher rate of both. During the Performance Period, Participant shall be required to continue paying all of its employees no less than the Living Wage Rate to remain eligible for the Program.
- e. Wages of New Jobs Created or Relocated: New Jobs or Relocated Jobs must pay an estimated Average Annual Wage at least equal to 125% the average of wages in Miami-Dade County or the State of Florida (across all industries or occupations) as determined by Miami-Dade County or the State of Florida using the most currently available data as determined by the City of Miami Beach and by choosing the higher rate.
- f. Job Creation: Participating businesses must create at least ten (10) New Jobs within four (4) years for New-to-Market businesses or within three (3) years for Expanding businesses. The time begins to toll once the business begins operation in the City of Miami Beach (designated by issuance of a BTR) or once the Agreement is executed, whichever is later.
- g. New or Relocated Jobs must be maintained for a minimum of one (1) additional year. City of Miami Beach staff will verify compliance with New Job creation and wage requirements as specified in the City Commission approved Program application/agreement prior to any disbursement of any Incentive payments. The Applicant shall furnish all personnel and financial records related to the Program that is requested by City of Miami Beach staff to verify the Applicant's compliance with the New Job or Relocated Job salary requirements pursuant to the Agreement. As such, the City may request personnel and financial records including, without limitation, payroll records; Paystubs;; Form 941; and worker's compensation reporting forms.

- h. Taxes, Fines or other Fees: Where Applicant is delinquent in paying its taxes, fine, or any other fees due to the City of Miami Beach, the City of Miami Beach shall withhold Incentive payments until Applicant is current. Where Applicant is more than one (1) year delinquent, Applicant's Incentive award shall be canceled; future Incentive payments shall be cancelled; and Applicant shall be disqualified from participating in the Program.
- i. Media Announcement: Participant must (a) mention the City of Miami Beach by name within its initial press release announcing the new office location, (b) at least forty-eight (48) hours in advance, provide the exact date and time of when the press release will be published, and (c) at least forty-eight (48) hours in advance, provide a copy of the press release. The City's Marketing and Communications Department will also issue a press release and media coverage.
- j. Media Appearances: Applicant must provide an employee representative, of at a minimum a senior level executive position, for a minimum of four (4) engagements in year 1, two (2) engagements year 2, two (2) engagements in year 3, and if applicable, two (2) engagements in year 4, to assist with recruitment efforts of the City of Miami Beach to attract additional companies to the City. Required engagements will consist of a presentation, panel discussion, interview, quote for media story, or comparable engagement.

4. Incentive Award

The amount of the Incentive award is determined based on the information provided and verified in the application process and requires approval by the City Commission. The actual amount of the Incentive will be determined after the Applicant has begun operations, and at the end of each City of Miami Beach fiscal year, upon the verification of New Jobs or Relocated Jobs, as specified in the Agreement, and all other obligations set forth in the Agreement.

The maximum Incentive amount for Relocated Jobs is based on the number of employees brought or relocated to the City of Miami Beach during the initial move, and any subsequent new hires. For Expanding businesses already located in the City, the maximum award is based on the New Jobs created. The Incentives over the four (4) year or three (3) year period, as applicable, after the applicant's start of operations or the execution of this Agreement, whichever is later, may not exceed:

- a. \$600 per employee for the first 50 jobs (minimum of 10)
- b. \$400 per employee for each job added between 51 – 100
- c. \$250 per employee for each job added above 100

Applicant may be eligible for the following bonuses for new hires only:

- a. An additional \$125 per employee if a business is located within the North Beach area, as defined by the City of Miami Beach
- b. An additional \$125 per employee if new hire received a degree from a public university, private university, or technical school located within Miami-Dade County and graduated within three (3) years of the hire date
- c. An additional \$125 per employee if previously unemployed or employed below the Living Wage Rate immediately preceding employment with Applicant
- d. An additional \$150 per employee if their primary residence is within the City of Miami Beach

Applicant may not receive more than \$60,000 in Incentive awards in any single fiscal year, even if all the New Jobs are created or relocated in one (1) year. Applicant may not receive more than \$240,000 in Incentive payments over the four (4) year period for New-to-Market businesses or \$180,000 in Incentive payments over the three (3) year period for Expansions.

The City Commission, at its discretion, may waive the applicable \$180,000 or \$240,000 total award cap at the request and recommendation of the City Manager.

5. Application Process

- An Applicant wishing to participate in the Program will apply to the City of Miami Beach. Upon request, an Applicant's confidentiality will be protected, in accordance with Section 288.075, Florida Statutes, to the best of the city's ability, for any information regarding a project's location and/or expansion evaluation of any Miami Beach site.
- The application will be evaluated by City of Miami Beach staff and approved by the City Commission.
- An application must be signed by an executive officer or owner of the applying business.
- Any New-to-Market business that commits the Applicant to a location within the City of Miami Beach prior to City Commission approval of the Application/Agreement will render an Applicant ineligible to participate in the Program. The City Manager may waive this prior decision rule and forward the Applicant's Application to the City Commission for consideration upon the written request by the Applicant to preserve the Incentive for a limited time. However, the City Commission retains the sole and absolute discretion to approve or deny the Applicant's Application. This prior business decision rule waiver shall not be available to an Applicant that has already publicly disclosed the intent to locate or expand its operations in the City of Miami Beach.
- Within thirty (30) days of application receipt and initial review, City of Miami Beach Administration shall schedule an application presentation at the following available Finance and Economic Resiliency Committee (FERC) meeting (applicable public notice and agenda deadlines apply). Staff will notify the Applicant when the application is scheduled for consideration at any public meeting.
- Upon receipt of a favorable recommendation from the FERC, City of Miami Beach Administration shall prepare its recommendation on the Application to the City Commission, including an economic impact analysis.
- Upon approval by the City Commission of an application, the City of Miami Beach and Applicant may execute an agreement, authorizing Applicant's participation in the Program, which agreement shall include all Application requirements outlined in this Section and, at a minimum, specify:
 - a. The total number of New Jobs to be created or relocated and that will be dedicated to the project;
 - b. The Average Annual Wage of those jobs, any capital investment, and a time schedule or plan for when such jobs will be in place and active;
 - c. The fiscal impact to the City of Miami Beach;
 - d. The maximum amount of Incentive awards which the Applicant is eligible to receive over the three (3) or four (4) year term and the maximum amount of Incentive awards that the Applicant is eligible to receive annually;
 - e. That the City of Miami Beach may review and verify the financial and personnel records of the Applicant and/or perform onsite visits to verify employment relating to the New or Relocated Jobs, wages paid, and determine whether the Applicant is in compliance with the terms of the Application/Agreement;
 - f. The date by which, in each fiscal year, the Applicant must file a claim to be considered to receive an Incentive award for the following fiscal year (October 1 – September 30);
 - g. That compliance with the terms and conditions of the approved Application/Agreement is a conditional requirement for the receipt of any Incentive award in a fiscal year and that the Applicant's failure to comply with the terms and conditions of the approved Application/Agreement results in the loss of eligibility for receipt of Program awards and the revocation by the City Commission of the certification of the Applicant as a City of Miami Beach eligible business;

- h. That payment of Incentives is conditioned on and subject to specific annual appropriations by the City of Miami Beach sufficient to pay amounts under the approved Application/Agreement; and
- i. That the amount of the Incentives received will be based on the Incentive levels specified.

6. Award Disbursement

- a. Annual disbursements will be contingent on the verification of the new jobs created and retained.
- b. Disbursement will begin in the City of Miami Beach fiscal year following the Project's start of operations. The City of Miami Beach's fiscal year runs from October 1 through September 30 of the following calendar year.
- c. Companies will be monitored annually to ensure compliance with the projected number of new jobs and the wages associated with the new jobs. Disbursements to the Applicant will only be made after it has met all commitments as set forth in the City of Miami Beach application/agreement.
- d. Disbursement amounts are set forth and limited in each year of the disbursement schedule approved in the Agreement.
- e. To be eligible to claim any Incentive award under the Program, an Applicant that has entered into an approved application/agreement must annually apply to the City of Miami Beach by submitting a Disbursement Request from to the City Manager's designee by July 1st. An appropriation, if made by the City Commission, will be paid in the City of Miami Beach fiscal year that begins on October 1 following the claims-submission date.
- f. The City of Miami Beach shall designate staff, or a third party, to administer the Program and determine Applicant compliance. Any awards determined to be due to Applicant and processed by said designated staff shall require written approval and authorization by the City Manager or City Manager's designee.

Exhibit 2

PROJECT

| | Number of Projected New Full-Time Hires or Relocation Jobs | Average Wages (Not including benefits) | Projected Annual Maximum Incentive Award |
|--------|---|--|--|
| Year 1 | <hr/> <hr/> <hr/> <hr/> | <hr/> <hr/> <hr/> <hr/> | <hr/> <hr/> <hr/> <hr/> |
| Year 2 | <hr/> <hr/> <hr/> <hr/> | <hr/> <hr/> <hr/> <hr/> | <hr/> <hr/> <hr/> <hr/> |
| Year 3 | <hr/> <hr/> <hr/> <hr/> | <hr/> <hr/> <hr/> <hr/> | <hr/> <hr/> <hr/> <hr/> |
| Year 4 | <hr/> <hr/> <hr/> <hr/> | <hr/> <hr/> <hr/> <hr/> | <hr/> <hr/> <hr/> <hr/> |

Exhibit 3

REIMBURSEMENT FORM

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ACCEPTING THE RECOMMENDATION OF THE FINANCE AND ECONOMIC RESILIENCY COMMITTEE, AT ITS OCTOBER 22, 2021 MEETING, AND APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH WIX.COM, INC. FOR PARTICIPATION IN THE JOB CREATION INCENTIVE PROGRAM (THE "PROGRAM"), IN AN AMOUNT NOT TO EXCEED \$60,000 PER YEAR, FOR UP TO THREE (3) YEARS, SUBJECT TO FUNDING APPROPRIATION AND APPROVAL DURING THE CITY'S BUDGETARY PROCESS FOR EACH FISCAL YEAR DURING THE TERM OF THE AGREEMENT.

WHEREAS, the Mayor and City Commission have identified the need for making Miami Beach more business and user-friendly as a key objective in the City's 2019 Strategic Plan; and

WHEREAS, in recent years, the City of Miami Beach has become more economically diverse with the establishment of headquarters and offices among the technology and financial services industries with the potential for a hub to develop; and

WHEREAS, in recent months and in correlation with the COVID-19 pandemic, Miami-Dade County has seen an uptick in relocations of technology and financial services firms from the Northeast, Silicon Valley and other regions; and

WHEREAS, median and average wages among the technology and financial services industries are substantially higher than median and average wages in Miami-Dade County; and

WHEREAS, on February 19, 2021, the Finance and Economic Resiliency Committee unanimously recommended that the City Commission prioritize the attraction of technology and financial services firms to the city in order to diversify the economy and promote resiliency; and

WHEREAS, the Mayor and City Commission recognize the benefits of a local approach to growing these industries in the City of Miami Beach in consideration of the competitive regional and national market; and

WHEREAS, the Mayor and City Commission seek to further diversify the Miami Beach economy by attracting, retaining and expanding businesses in these targeted industries through the development of inducements and services to promote growth; and

WHEREAS, financial incentives related to the attraction, retention or expansion of businesses in the technology and financial services industries promote economic diversification, resiliency and an enhanced business climate; and

WHEREAS, on March 17, 2021, the Mayor and City Commission adopted Resolution No. 2021-31618, directing the Administration to encourage and promote the attraction of these targeted industries; and

WHEREAS, on March 17, 2021, the Mayor and City Commission also adopted Resolution 2021-31620, authorizing the Administration to create a Job Creation Incentive Program ("JCIP" or "Program") for the purpose of attracting targeted industries to Miami Beach; and

WHEREAS, the JCIP is a performance-based financial incentive available to technology and financial services firms and headquarters relocating to or expanding in the City of Miami Beach; and

WHEREAS, the purpose of the JCIP is to diversify the economy by strategically increasing the number of quality, high-wage jobs in Miami Beach; and

WHEREAS, recipients of the JCIP must create or relocate a minimum of ten (10) new, fulltime equivalent jobs with average annual wages meeting or exceeding 125% of the State of Florida or Miami-Dade County average wage, whichever is higher, at the time of application to the Program; and

WHEREAS, Existing Expanding companies that are recipients of the JCIP may be eligible for an award of up to \$60,000 per year for a total of three (3) years, subject to the appropriation and approval of the Incentive payment during the City's budgetary process for each fiscal year; and

WHEREAS, WIX.COM, INC. ("WIX"), a Delaware corporation, is a software company headquartered in Tel Aviv, Israel, with national headquarters in San Francisco and an existing regional office in Miami Beach, that applied for the JCIP and intends to expand in Miami Beach and create more than (10) high wage jobs; and

WHEREAS, on October 22, 2021, the Finance and Economic Resiliency Committee recommended approval of WIX's JCIP application based on its qualifications as an Existing Expanding company within the targeted industries and other criteria including high-wage job creation; and

WHEREAS, the City Manager recommends accepting the recommendation of the Finance and Economic Resiliency Committee and executing an Agreement with WIX, based upon the agreement template attached to the City Commission Memorandum accompanying this Resolution, for participation in the Program.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby accept the recommendation of the Finance and Economic Resiliency Committee, at its October 22, 2021 meeting, and approve and authorize the City Manager to execute an Agreement with WIX.COM, INC. for participation in the Job Creation Incentive Program (the "Program"), in an amount not to exceed \$60,000 per year, for up to three (3) years, subject to funding appropriation and approval during the City's budgetary process for each fiscal year during the term of the Agreement.

PASSED and ADOPTED this ____ day of _____ 2021.

ATTEST:

Rafael E. Granado, City Clerk

Dan Gelber, Mayor

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney

10-18-21

Date