

RESOLUTION NO. 4483 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO OF A JOB RETENTION AND ECONOMIC DEVELOPMENT ACTIVITIES AGREEMENT WITH BECHTEL CORPORATION.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GLENDALE as follows:

SECTION 1. That it is deemed in the best interest of the City of Glendale and the citizens thereof that the Job Retention and Economic Development Activities Agreement with Bechtel Corporation be entered into, which Agreement is now on file in the office of the City Clerk of the City of Glendale.

SECTION 2. That the City Manager and the City Clerk are hereby authorized and directed to execute and deliver said Agreement on behalf of the City of Glendale.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this ____ day of _____, 2011.

MAYOR

ATTEST:

City Clerk (SEAL)

APPROVED AS TO FORM:

City Attorney

REVIEWED BY:

City Manager



CITY OF GLENDALE

Council Communication

Business-Voting Agenda

05/24/2011

TO: Honorable Mayor and City Council

FROM: Ed Beasley, City Manager

PRESENTED BY: Brian Friedman, Director, Economic Development Department

SUBJECT: **JOB RETENTION AND ECONOMIC DEVELOPMENT
ACTIVITIES AGREEMENT WITH BECHTEL
CORPORATION**

Purpose

This is a request for City Council to adopt a resolution authorizing the City Manager to enter into a Job Retention and Economic Development Activities Agreement with the Bechtel Corporation.

Council Strategic Goals or Key Objectives Addressed

This request supports the Council's goal of one community with quality economic development. Retaining this prestigious company in Glendale enhances the city's ability to attract similar advanced business services companies, which is one of the city's targeted industries.

Background

The Bechtel Corporation is an international engineering, construction and project management company and one of Glendale's largest employers, paying some of the highest wages, plus benefits of any employer in the city. The Glendale Economic Development Department recruited the Bechtel Corporation Business Services Division to Arizona in 2002 and the facility has been located in Talavi Corporate Center since that time. The Bechtel lease will expire at Talavi Corporate Center in April, 2012. Bechtel indicated it was evaluating options, including relocating its Glendale operation to Maryland, Tennessee or Texas. Options for remaining in Arizona included renewing the lease in Talavi Corporate Center or moving to the Glendale Corporate Center.

This agreement will retain the Bechtel Corporation Business Services Division in Glendale and relocate the facility to the Glendale Corporate Center, located at 5323 North 99th Avenue.

Previous Council/Staff Actions

On April 24, 2001, Council approved Development Agreement C-4269 with Bechtel Corporation when the company located to Glendale.

Community Benefit

Bechtel Corporation is the largest engineering company in the United States and is ranked by *Forbes Magazine* as the third largest private corporation in the country with over \$3 billion in annual revenue, and employs over 52,000 people worldwide. It is estimated the Business Services Division of Bechtel and its employees will generate approximately \$3 million in direct revenue to the City of Glendale over the next six years. Currently, average salaries of Bechtel employees in Glendale are \$73,000 annually.

Budget Impacts & Costs

The total maximum cost of the business retention initiative is \$1,026,000 which includes tenant improvements, job retention incentive, and a portion of the permit fees waived.

Funds will be budgeted in FY 2013 for \$288,000 in the Rebate and Incentives Account with additional funding in subsequent years.

Recommendation

Waive reading beyond the title and adopt a resolution authorizing the City Manager to enter into the Job Retention and Economic Development Activities Agreement with Bechtel Corporation.



Ed Beasley
City Manager



Attachment Memorandum

DATE: 05/24/2011

TO: Ed Beasley, City Manager

FROM: Brian Friedman, Director, Economic Development Department

SUBJECT: JOB RETENTION AND ECONOMIC DEVELOPMENT ACTIVITIES
AGREEMENT WITH BECHTEL CORPORATION

1. Resolution
2. Development Agreement

**JOB RETENTION AND ECONOMIC DEVELOPMENT ACTIVITIES
AGREEMENT WITH BECHTEL CORPORATION**

This Job Retention and Economic Development Activities Agreement With Bechtel Corporation (this "Agreement") is made and entered into this ___ day of _____ 2011, by and between the City of Glendale, an Arizona municipal corporation (the "City") and Bechtel Corporation, a Nevada corporation authorized to do business in Arizona (the "Company"). The Company and the City are sometimes referred to herein collectively as the "Parties" or individually as a "Party."

RECITALS

- A. WHEREAS, the Company is an international engineering, construction, and project management company. The Glendale, Arizona office operates Bechtel's Business Services divisions including accounting, finance, human resources, payroll, IT, and, management positions; and
- B. WHEREAS, the Company's existing facilities in Glendale are not sufficient for its long-term needs, and the Company has been researching potential sites that will accommodate its immediate and long-term needs; and
- C. WHEREAS, the Company identified various sites across the country that will accommodate its business needs, including a 72,494-square foot facility that is located at Glendale Corporate Center, 5323 North 99th Avenue, Glendale, Arizona (the "New Glendale Facility"); and
- D. WHEREAS, retention of the Company's operations in Glendale and relocation to the New Glendale Facility would involve investment of Five Million Four Hundred Thousand Dollars (\$5,400,000) in leasehold improvements, furniture, equipment, and other personal property to be located at the New Glendale Facility; and
- E. WHEREAS, City recognizes that the retention and on-going operations of the Company within the City with its resulting investment and retention of at least 320 jobs will provide significant public benefit to the City and its citizens; and
- F. WHEREAS, the Company anticipates that over the course of six (6) years, its operations will continue to provide at least 320 jobs representing an estimated annual payroll in excess of Twenty-three Million Dollars (\$23,000,000); and
- G. WHEREAS, the Parties recognize and agree that the Company's operations at the New Glendale Facility will have significant economic impact on the City, including but not limited to: the quantity and quality of the jobs that will remain in the City as a result of the Company's operations; tax revenues generated by the Company's operations, its employees, vendors, service providers; and

H. WHEREAS, Applied Economics, an economic consulting firm based in Phoenix, Arizona, provided an economic modeling tool to the City and verified the economic and fiscal impact analysis of the Company's operation and relocation to the New Glendale Facility; and

I. WHEREAS, the Applied Economics analysis estimates the direct economic benefit to the City over the next six (6) years from the retention and relocation of the Company's operations in Glendale, along with its employees, will be approximately Three Million Dollars (\$3,000,000); and

J. WHEREAS, the Applied Economics analysis estimates an additional Three Million Seven Hundred Thousand Dollars (\$3,700,000) in indirect revenues that would be generated by the Company through a recirculation of spending in the economy with other local businesses and employees; and

K. WHEREAS, a performance-based job retention and economic development activities program will assist in the generation of tax revenues, the retention of jobs, and will otherwise improve and enhance the economic welfare of the residents of Glendale by increasing the City's assessed property valuation as well as stimulating further economic development in the City. The job retention and economic development incentives agreed to by the City in this Agreement will serve legitimate economic development purposes as authorized by A.R.S. § 9-500.11 and is anticipated to raise more revenue than the amount of the incentive within the duration of the Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the following promises and mutual covenants and agreements, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, it is hereby agreed as follows:

1. Adoption of Recitals. The accuracy of the above Recitals as of the date of this Agreement is confirmed and all of the above-mentioned Recitals are incorporated herein and hereby made provisions of this Agreement with the same force and effect as if set forth in the agreement section of this Agreement.
2. Effective Date and Term. The effective date of this Agreement shall be the date this Agreement is approved by the Glendale City Council. This Agreement shall continue for six (6) years (seventy-two (72) months) (the "Term") from the issuance of a Temporary Certificate of Occupancy for the New Glendale Facility (the "Commencement Date").
3. Definition.
 - A. "Company" means Bechtel Corporation, its successors and/or approved assignees.

- B. "Eligible Retained Employee" means a person employed by the Company on a full-time basis who earns an annual salary of at least Fifty Thousand Dollars (\$50,000) and is offered comprehensive health insurance through the Company with the Company paying at least fifty percent (50%) of the premium.
- C. "Full-time" shall mean a minimum of thirty (30) hours per week.
- D. "Annual salary" shall include all taxable compensation and exclude any non-taxable benefits.
- E. "Business Personal Property" shall include furniture, fixtures, and other equipment not permanently affixed to the building.

4. Relocation to New Glendale Facility. The Company shall execute a lease by May 31, 2011 for at least 72,000 square feet at the New Glendale Facility, and within eighteen (18) months of the effective date of this Agreement, the Company shall cause a minimum investment to be made of Five Million Four Hundred Thousand Dollars (\$5,400,000) to improve and equip the New Glendale Facility. Evidence of the investment shall be documented using Exhibit A.

5. Business Operations. The Company acknowledges that in order to receive the full Tenant Improvement Allowance and Job Retention Incentive available to the Company under this Agreement it must cause the investment to be made as described in Paragraph 4 above, operate at the New Glendale Facility continuously for the Term (beginning on the Commencement Date), and must maintain a minimum of 320 full-time employees at the New Glendale Facility during each month of the Term of this Agreement (beginning on the Commencement Date).

6. Tenant Improvement Allowance. City agrees to provide Company an allowance for permanent, real property improvements at the New Glendale Facility at the rate of Eight Dollars (\$8.00) per square foot (the "Tenant Improvement Allowance"), so long as the Company causes the investment to be made as described in Paragraph 4, maintains operations at the New Glendale Facility during the Term (beginning on the Commencement Date) and maintains at least 320 full-time employees at the New Glendale Facility during each month of the first two (2) years of the Term of this Agreement (beginning on the Commencement Date). The Parties agree the maximum Tenant Improvement Allowance, regardless of the total amount the Company expends on improvements, is Five Hundred Seventy-Six Thousand Dollars (\$576,000). Payment shall be in the form of a check to the Company from the City.

- a. Eligible Improvements. Improvements subject to the Tenant Improvement Allowance must be permanent, real property improvements at the New Glendale Facility. The Tenant Improvement Allowance does not apply to improvements that are temporary, not permanently affixed to the real property, or Business Personal Property.
- b. Payment Schedule. The City agrees to remit the Tenant Improvement Allowance in two payments. The first 50% of the Tenant Improvement

Allowance shall be paid within ten (10) business days of the one (1) year anniversary of the Commencement Date. The second 50% of the Tenant Improvement Allowance shall be paid within ten (10) business days of the two (2) year anniversary of the Commencement Date.

- c. Reporting. At least ninety (90) days before payment is due under this section, the Company shall provide to the City documentation of expenditures subject to the Tenant Improvement Allowance, in a form acceptable to the City as shown in Exhibit A. The due date for the City's payment will be extended by one day for each day the Company's documentation of expenditures is late. Documentation regarding the number of full-time employees and number of Eligible Retained Employees is due annually, as provided elsewhere in this Agreement.
- d. Company Refund of Tenant Improvement Allowance. Should the Company not continuously operate at the New Glendale Facility for the entire six (6) year Term (beginning on the Commencement Date), the Company shall reimburse the City a proportionate amount of the Tenant Improvement Allowance based on the number of months the Company made its full rent payments as due for the New Glendale Facility compared to the 72-month Term. For example, if the Company vacates the New Glendale Facility after paying rent as due for sixty (60) months, the Company is entitled to retain 83% (or 60 of the 72 months term) of the Tenant Improvement Allowance and must reimburse the City 17% of the Tenant Improvement Allowance. Based on this example, the refund payment would be \$97,920 if the Company discontinues operations in the City after the end of the fifth year. The refund payment shall be received by the City within ten (10) days of the date the Company vacates the New Glendale Facility. Payment shall be in the form of a check from the Company to the City.

7. Job Retention Incentive. Subject to the terms and conditions set forth herein, the City agrees to pay the Company One Thousand Two Hundred Fifty Dollars (\$1,250) per each Eligible Retained Employee employed by the Company at the New Glendale Facility on the third anniversary of the Commencement Date (the "Job Retention Incentive"). The maximum Job Retention Incentive the Company is eligible to receive is Four Hundred Thousand Dollars (\$400,000). Payment shall be in the form of a check to the Company from the City.

- a. Eligibility. To earn the maximum Job Retention Incentive, the Company must have continuously employed at least 320 full-time employees at the New Glendale Facility during each month of the first three (3) years of the Term (beginning on the Commencement Date).
- b. Reporting. Each year, within thirty (30) days after the anniversary of the Commencement Date, the Company shall provide documentation, in a

form acceptable to the City as shown in Exhibit B, of the number of its full-time employees and the number of its Eligible Retained Employees during each month that are employed at the New Glendale Facility. In the event of a dispute between the City and Company regarding the number of total employees or Eligible Retained Employees, the City's Economic Development Director shall be provided with the relevant documentation and make a final determination, which is not subject to the arbitration provisions in Section 19 below.

- c. **Payment.** The City will pay the Job Retention Incentive, if any, pursuant to this Agreement within 60 days after the third anniversary of the Commencement Date.

- d. **Company Refund of Job Retention Incentive Payments.** If the Company continuously employs 320 full-time employees at the New Glendale Facility during each month of the six (6) year Term (beginning on the Commencement Date), the Company shall not be required to refund any portion of the Job Retention Incentive paid by the City. However, if the total number of full-time employees employed at the New Glendale Facility at the close of the sixth year of the Term is less than 320 and the number of Eligible Retained Employees employed by the Company at the close of the sixth year of the Term is less than the number of Eligible Retained Employees employed by the Company on the third anniversary of the Commencement Date, the Company will refund a proportion of the Job Retention Incentive paid by the City according to the following formula: As measured at the close of the sixth year of the Term of this Agreement, the difference between the number of Eligible Retained Employees on the third anniversary of the Commencement Date and the number at the close of the sixth year of the Term multiplied by \$1,250. For example, a refund payment would be calculated at \$38,750 if the Eligible Retained Employees is reduced from 231 on the third anniversary of the Commencement Date to 200 at the close of the sixth year. The maximum amount the Company will be required to refund to the City is the amount of the Job Retention Incentive the Company actually received. A refund payment pursuant to this subsection is due thirty (30) days following the last day of year six (6) of the Term.

8. **Expedited Plan Review Services.** The City agrees that its plan review staff will provide expedited plan review and ombudsman services for the Company's improvements to the New Glendale Facility in accordance with the City's P.A.S.S. program. Complete plan review shall be offered within ten (10) business days after submittal of all required documents and applications (if any).

9. **Reduced Fees.** City agrees to waive permit, plan review and any expedited plan review fees in connection with the Company's improvements to the New Glendale Facility up to a maximum of Fifty Thousand Dollars (\$50,000), based upon the City's

adopted fee schedule in effect when such fees would otherwise be owed. The Company is responsible to pay any permit, plan review and/or expedited plan review fees for improvements at the New Glendale Facility in excess of Fifty Thousand Dollars (\$50,000).

10. Use of City of Glendale Facilities. Subject to availability and adequate advance notice, the City will make available to the Company the City's suites at Jobing.Com Arena and Camelback Ranch at Glendale to use on a total of four (4) occasions, one (1) occasion at each facility each year during the first two (2) years of the Term.

11. Incorporation of Exhibits. All exhibits attached hereto and referred to in this Agreement are incorporated herein by this reference and made a part of this Agreement.

12. Amendment of the Agreement. This Agreement may be amended or cancelled, in whole or in part, only by a written agreement or amendment fully executed by the Parties.

13. No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the Parties. Nothing contained in this Agreement shall be construed to make any non-party to this Agreement a third party beneficiary of this Agreement.

14. Assignment. The Company may not assign its rights and/or obligations under this Agreement without the prior written consent of the City, which consent shall not unreasonably be withheld.

15. Notices. Any notices required or permitted to be given pursuant to this Agreement may be delivered in person or mailed, certified mail, return receipt requested, to the following addresses:

To City: City of Glendale
Attn: City Manager
5850 West Glendale Avenue
Glendale, Arizona 85301

with a copy to: City of Glendale
Attn: City Attorney
5850 West Glendale Avenue
Glendale, Arizona 85301

To Company: Bechtel Corporation
Attn: Judith Mertens
5651 W. Talavi Blvd, Suite 2C47
Glendale, Arizona 85306

After April 1, 2012

Bechtel Corporation
Attn: Judith Mertens
5323 N. 99th Avenue
Glendale, Arizona 85305

16. **Governing Law.** This Agreement shall be governed by the laws of the State of Arizona (without reference to conflict of law principles).
17. **Venue.** Any action arising from this Agreement, which includes by way of example, but not limitation, any action to enforce or interpret any provision of this Agreement, shall be commenced and maintained in a court of competent jurisdiction located within Maricopa County, Arizona, and the Parties hereby irrevocably waive any right to object to such venue.
18. **Conflicts.** Company acknowledges this Agreement is subject to A.R.S. § 38-511, which allows for cancellation of this Agreement in the event any person who is significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement on City's behalf is also an employee, agent, or consultant of any other Party to this Agreement.
19. **Arbitration.**
- a. If the parties are unable to resolve any dispute by negotiation within thirty (30) days from providing the other Party a written notice of the dispute notice, and unless otherwise informal discussions are extended by the mutual agreement, the parties may agree, in writing, that the dispute will be decided by binding arbitration in accordance with Commercial Rules of the AAA, as amended herein. Although the arbitration will be conducted in accordance with AAA Rules, it will not be administered by the AAA, but will be heard independently.
 - i. The Parties will exercise best efforts to select an arbitrator within five (5) business days after agreement for arbitration. If the Parties have not agreed upon an arbitrator within this period, the Parties will submit the selection of the arbitrator to one of the principals of the mediation firm of Scott & Skelly, LLC, who will then select the arbitrator. The Parties will equally share the fees and costs incurred in the selection of the arbitrator.
 - ii. The arbitrator selected must be an attorney with at least ten (10) years' experience, be independent, impartial, and not have engaged in any business for or adverse to either Party for at least ten (10) years.

- b. Discovery. The extent and the time set for discovery will be as determined by the arbitrator. Each Party must, however, within ten (10) days of selection of an arbitrator deliver to the other Party copies of all documents in the delivering party's possession that are relevant to the dispute.
- c. Hearing. The arbitration hearing will be held within ninety (90) days of the appointment of the arbitrator. The arbitration hearing, all proceedings, and all discovery will be conducted in Glendale, Arizona unless otherwise agreed by the Parties or required as a result of witness location. Telephonic hearings and other reasonable arrangements may be used to minimize costs.
- d. Award. At the arbitration hearing, each Party will submit its position to the arbitrator, evidence to support that position, and the exact award sought in this matter with specificity. The arbitrator must select the award sought by one of the Parties as the final judgment and may not independently alter or modify the awards sought by the Parties, fashion any remedy, or make any equitable order. The arbitrator has no authority to consider or award punitive damages.
- e. Final Decision. The Arbitrator's decision should be rendered within fifteen (15) days after the arbitration hearing is concluded. This decision will be final and binding on the Parties.
- f. Costs. The prevailing party may enter the arbitration in any court having jurisdiction in order to convert it to a judgment. The non-prevailing Party shall pay all of the prevailing party's out-of-pocket arbitration costs and expenses, including reasonable attorney's fees and costs.

20. Miscellaneous. This Agreement shall be interpreted, applied, and enforced according to the fair meaning of its terms and shall not be construed strictly in favor of or against either Party, as both Parties have been involved in the drafting of its provisions. This Agreement constitutes the entire agreement of the Parties concerning the matters contained herein and supersedes all prior negotiations, understandings, and agreements concerning such matters. No provision of this Agreement may be waived or modified except by an amendment signed by the Party against whom such modification or waiver is sought.

21. Severability. In the event that any phrase, clause, sentence paragraph, section, article or other portion of this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null, void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the fullest extent permissible by law.

22. Cooperation and Further Acts. The Parties shall act reasonably with respect to any and all matters which require either party to review, consent or approve any act or matter herein.

23. Counterparts. This Agreement may be executed in counterparts, and all counterparts will together comprise one instrument.

[Remainder of page left intentionally blank.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as follows:

CITY OF GLENDALE, ARIZONA,
an Arizona municipal corporation

Edward Beasley
City Manager

ATTEST:

Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:

Craig Tindall, City Attorney

BECHTEL CORPORATION, a Nevada
corporation

By: 

Name: Christopher P. Baker

Its: General Manager, BBS

Exhibit A

ECONOMIC DEVELOPMENT INCENTIVE

Name of Company: Bechtel Corporation

Address: 5323 North 99th Avenue, Glendale, Arizona

Please complete the attached form and attach supporting documents. This is a public document. If you prefer that we review the supporting documentation and return it to you for confidentiality. Please call 623-930-2983 to set an appointment for audit in our office by members of our staff.

I hereby certify, under penalty of perjury, that the information contained herein is true and accurate.

Signature _____

Name _____

Title: General Manager, Bechtel Business Services

Date: _____

Subscribed and sworn to (or affirmed) before me on this _____ day of _____, 20____ by _____, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature _____

Seal

Exhibit B

AFFIDAVIT OF COMPLIANCE

Pursuant to City of Glendale Development Agreement

I _____, make the following statement under oath and under penalty of perjury: That I am the _____ of Bechtel Corporation (“Bechtel”); that I make this affidavit pursuant to the terms of the development agreement entered into between Bechtel, and the City of Glendale, Arizona (“City”), under Job Retention and Economic Development Activities Agreement With Bechtel Corporation dated as of _____, 2011 (“Agreement”); that I understand the obligation to submit this affidavit is an ongoing annual obligation for the entire term of the Agreement as described in paragraph 7 of the Agreement; and finally, that Bechtel has for the past calendar year maintained the continued employment of at least _____ positions, each of which was a “full-time position” as defined under paragraph 3(C) of the Agreement and at least _____ positions, each of which was a “Eligible Retained Employee” as defined under paragraph 3(B) of the Agreement.

Signature _____

Date: _____

Subscribed and sworn to (or affirmed) before me on this _____ day of _____, 20____ by _____, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature _____

Seal