

RESOLUTION NO. 08-256

**A RESOLUTION AS IT PERTAINS TO THE CITY OF
PORT ARTHUR SECTION 4A ECONOMIC DEVELOPMENT
CORPORATION AND RESTRICTIONS AS TO THE USE OF
UNDOCUMENTED WORKERS**

WHEREAS, Germer Gertz has issued the letter attached as Exhibit "A" as it pertains to restrictions on employment of undocumented workers; and

WHEREAS, the City Council approves the supplements in substantially the same form as attached hereto as Exhibit "B" to be signed by the Incentive recipients.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT ARTHUR:

Section 1. That the facts and opinions in the preamble are true and correct.

Section 2. That the supplements are herein approved in substantially the same form as Exhibit "B" as to address the requirements of Chapter 2264 of the Government Code.

Section 3. That a copy of the caption of this Resolution be spread upon the Minutes of the Corporation.

READ, ADOPTED AND APPROVED on this 17th day of JUNE, A.D., 2008, at a Meeting of the City Council of the City of Port Arthur, by the following vote: AYES:

Mayor Price;

Mayor Pro Tem Chatman;

Sellers, Albright, Flood, Beard,

Williamson and Wise.

NOES: None.

Telvin Price
Mayor

ATTEST:

TERRI HANKS
TERRI HANKS, ACTING CITY SECRETARY

APPROVED AS TO FORM:

Val [Signature]
CITY ATTORNEY (on behalf of)

APPROVED:

Hayd Bateste
CEO OF EDC

EXHIBIT "A"

June 5, 2008

Mr. Floyd Batiste
City of Port Arthur EDC
P.O. Box 3934
Port Arthur, Texas 77642

Re: City of Port Arthur Section 4A Economic Development Corporation (the "PAEDC") -
Condition on Receipt of Public Subsidies

Dear Floyd:

Please find attached recently enacted Chapter 2264 of the Texas Government Code entitled: **Chapter 2264. Restrictions on Use of Certain Public Subsidies**. The intent of this new chapter is to help address the issue of employment of "undocumented workers". As you will see from the attached, an economic development corporation shall require any business that submits an application to receive a public subsidy to include in the application a statement certifying that the business, or a branch, division or department of the business, does not and will not knowingly employ any undocumented worker. This also must include a statement that after receiving the subsidy, the business shall be subject to repaying the amount of the public subsidy with interest, at a rate otherwise specified within the 120th day after the date an economic development corporation notifies the business of a violation. The recipient and the PAEDC must place in their agreement a statement that the business will make the repayment if required to do so after discovery of a violation. This became effective September 1, 2007.

As you are aware, we came back involved with the PAEDC later in the fall; however, based upon my discussions with Brenda Vaughn of your office, it appears that the incentives that would be impacted by this would be Lamar State College-Port Arthur, Team Fabricators, LLC, Orbital Insulation Corp., Digital Workforce Academy, Camellia Plaza, L.P. and the pending project with ENGlobal.

I would propose that you ask the first four entities to execute a First Supplement to the Economic Incentive Contract and Loan Agreement between each of them and the PAEDC. I have included a draft for your consideration.

Yours very truly,

GERMER GERTZ, L.L.P.

By: 
Guy N. Goodson

GNG/mgm
Attachment

CHAPTER 2264. RESTRICTIONS ON USE OF CERTAIN PUBLIC SUBSIDIES

SUBCHAPTER A. GENERAL PROVISIONS		Section
Section 2264.001. Definitions.	[Sections 2264.002 to 2264.050 reserved for expansion]	2264.002. Condition on Receipt of Public Subsidies.
SUBCHAPTER B. RESTRICTIONS ON USE OF CERTAIN PUBLIC SUBSIDIES TO EMPLOY UNDOCUMENTED WORKERS		2264.003. Agreement Regarding Repayment of Interest.
2264.051. Statement Required in Application for Public Subsidies.		[Sections 2264.054 to 2264.100 reserved for expansion]
		SUBCHAPTER C. ENFORCEMENT
		2264.101. Recovery.

Chapter 2264, Restrictions on Use of Certain Public Subsidies, consisting of §§ 2264.001 to 2264.101, was added by Acts 2007, ch. 853, § 1.

For another Chapter 2264, Required Publication and Reporting by Governmental Entities, consisting of § 2264.001, added by Acts 2007, 80th Leg., ch. 888, § 2; and for Chapter 2264, Financial Accounting and Reporting, consisting of §§ 2264.001 to 2264.107, added by Acts 2007, 80th Leg., ch. 1884, § 2, see §§ 2264.001 et seq. post.

SUBCHAPTER A. GENERAL PROVISIONS

§ 2264.001. Definitions

In this chapter:

- (1) "Economic development corporation" means a development corporation organized under the Development Corporation Act of 1979 (Article 6190.6, Vernon's Texas Civil Statutes).
- (2) "Public agency" means the state or an agency, instrumentality, or political subdivision of this state, including a county, a municipality, a public school district, or a special-purpose district or authority.
- (3) "Public subsidy" means a public program or public benefit or assistance of any type that is designed to stimulate the economic development of a corporation, industry, or sector of the state's economy or to create or retain jobs in this state. The term includes grants, loans, loan guarantees, benefits relating to an enterprise or empowerment zone, fee waivers, land price subsidies, infrastructure development and improvements designed to principally benefit a single business or defined group of businesses, matching funds, tax refunds, tax rebates, or tax abatements.
- (4) "Undocumented worker" means an individual who, at the time of employment, is not:
 - (A) lawfully admitted for permanent residence to the United States; or
 - (B) authorized under law to be employed in that manner in the United States.

Added by Acts 2007, 80th Leg., ch. 853, § 1, eff. Sept. 1, 2007.

Historical and Statutory Notes

2007 Legislation
Section 2 of Acts 2007, 80th Leg., ch. 853 provides:
"The change in law made by this Act applies only to a public subsidy provided by an economic development corporation, a taxing jurisdiction, or a public agency in response to an application for the subsidy that is received on or after the effective date of this Act. A public subsidy provided in response to an application received before the effective date of this Act is governed by the law as it existed on the date the application was received, and the prior law is continued in effect for that purpose."

[Sections 2264.002 to 2264.050 reserved for expansion]

**SUBCHAPTER B. RESTRICTIONS ON USE OF CERTAIN PUBLIC
SUBSIDIES TO EMPLOY UNDOCUMENTED WORKERS**

§ 2264.051. Statement Required in Application for Public Subsidies

A public agency, state or local taxing jurisdiction, or economic development corporation shall require a business that submits an application to receive a public subsidy to include in the application a statement certifying that the business, or a branch, division, or department of the business, does not and will not knowingly employ an undocumented worker.
Added by Acts 2007, 80th Leg., ch. 853, § 1, eff. Sept. 1, 2007.

§ 2264.052. Condition on Receipt of Public Subsidies

The statement required by Section 2264.051 must state that if, after receiving a public subsidy, the business, or a branch, division, or department of the business, is convicted of a violation under 8 U.S.C. Section 1324a(c), the business shall repay the amount of the public subsidy with interest, at the rate and according to the other terms provided by an agreement under Section 2264.053, not later than the 120th day after the date the public agency, state or local taxing jurisdiction, or economic development corporation notifies the business of the violation.
Added by Acts 2007, 80th Leg., ch. 853, § 1, eff. Sept. 1, 2007.

§ 2264.053. Agreement Regarding Repayment of Interest

A public agency, state or local taxing jurisdiction, or economic development corporation, before awarding a public subsidy to a business, shall enter into a written agreement with the business specifying the rate and terms of the payment of interest if the business is required to repay the public subsidy.
Added by Acts 2007, 80th Leg., ch. 853, § 1, eff. Sept. 1, 2007.

[Sections 2264.054 to 2264.100 reserved for expansion]

SUBCHAPTER C. ENFORCEMENT

§ 2264.101. Recovery

(a) A public agency, local taxing jurisdiction, or economic development corporation, or the attorney general on behalf of the state or a state agency, may bring a civil action to recover any amounts owed to the public agency, state or local taxing jurisdiction, or economic development corporation under this chapter.
(b) The public agency, local taxing jurisdiction, economic development corporation, or attorney general, as applicable, shall recover court costs and reasonable attorney's fees incurred in an action brought under Subsection (a).
(c) A business is not liable for a violation of this chapter by a subsidiary, affiliate, or franchisee of the business, or by a person with whom the business contracts.
Added by Acts 2007, 80th Leg., ch. 853, § 1, eff. Sept. 1, 2007.

**CHAPTER 2264. REQUIRED PUBLICATION AND REPORTING
BY GOVERNMENTAL ENTITIES**

Section
2264.001. Recording and Reporting of Electricity,
Water, and Natural Gas Consumption.

*Chapter 2264, Required Publication and Reporting by Governmental Entities, consisting of § 2264.001, was added by Acts 2007, 80th Leg., ch. 853, § 2.
For another Chapter 2264, Restrictions on Use of Certain Public Subsidies, consisting of §§ 2264.001 to 2264.101, added by Acts 2007, 80th Leg., ch. 853, § 1, see*

EXHIBIT "B"

TO P. R. NO. 14775

**FIRST SUPPLEMENT TO
ECONOMIC INCENTIVE CONTRACT & LOAN AGREEMENT
BETWEEN
CITY OF PORT ARTHUR SECTION 4A ECONOMIC DEVELOPMENT CORPORATION
&
TEAM FABRICATORS, L.L.C.**

The Economic Incentive Contract & Loan Agreement (the "Original Agreement") between the City of Port Arthur Section 4A Economic Development Corporation ("PAEDC") and Team Fabricators, L.L.C. ("Incentive Recipient") dated _____, 2008 is hereby supplemented to include the provision Chapter 2264, Texas Government Code (the "First Supplement").

Incentive Recipient and any branch, division or department of Incentive Recipient certifies that they have not and will not knowingly employ an "undocumented worker" which means "an individual who, at the time of employment, is not lawfully admitted for permanent residence to the United States or authorized under law to be employed in that manner in the United States."

Incentive Recipient acknowledges that it has reviewed Chapter 2264, Texas Government Code, attached hereto as Exhibit "A" and made a part hereof for all purposes and hereby affirmatively agrees by execution of this First Supplement to repay the amount of any incentive with interest at the rate of ten (10%) percent per annum not later than the 120th day after the date PAEDC notifies Incentive Recipient of a violation.

Incentive Recipient acknowledges PAEDC may bring a civil action or cover any amounts owed under this Chapter and further acknowledges that PAEDC may recover court costs and reasonable attorneys' fees incurred in an action brought under §2264.101(a). The Incentive Recipient is not liable for a violation of this Chapter by a subsidiary, affiliate or franchisee of the Incentive Recipient or by a person with whom the Incentive Recipient contracts.

The Original Agreement is supplemented by this First Supplement, and except as specifically set forth herein and in any amendment to the Original Agreement, all terms, conditions, performance, obligations, covenants and agreements of Incentive Recipient or PAEDC as specified in the Original Agreement are ratified and affirmed, and each party covenants and represents there are no defaults in the Original Agreement.

ATTORNEY APPROVALS

APPROVED AS TO FORM:

Guy N. Goodson
General Counsel for PAEDC

VERIFIED AS CONSISTENT
WITH CITY COUNCIL RESOLUTION:

Resolution Number: _____

Mark T. Sokolow, City Attorney

SUPPLEMENT EXECUTION

**CITY OF PORT ARTHUR SECTION 4A
ECONOMIC DEVELOPMENT CORPORATION**

SIGNED AND AGREED TO on the ____ day of _____, 2008.

President

Secretary

Witness

Witness

TEAM FABRICATORS, L.L.C.

SIGNED AND AGREED TO on the ____ day of _____, 2008.

TEAM FABRICATORS, L.L.C.,
Wisconsin limited liability corporation and a
wholly owned subsidiary of Team Industries,
Inc., a Wisconsin corporation

By: _____

Title

Acknowledgment

CHAPTER 2264. RESTRICTIONS ON USE OF CERTAIN PUBLIC SUBSIDIES

SUBCHAPTER A. GENERAL PROVISIONS	
Section 2264.001. Definitions. [Sections 2264.002 to 2264.050 reserved for expansion]	Section 2264.052. Condition on Receipt of Public Subsidies. 2264.053. Agreement Regarding Repayment of Interest. [Sections 2264.054 to 2264.100 reserved for expansion]
SUBCHAPTER B. RESTRICTIONS ON USE OF CERTAIN PUBLIC SUBSIDIES TO EMPLOY UNDOCUMENTED WORKERS	
2264.051. Statement Required in Application for Public Subsidies.	SUBCHAPTER C. ENFORCEMENT 2264.101. Recovery.

Chapter 2264, Restrictions on Use of Certain Public Subsidies, consisting of §§ 2264.001 to 2264.101, was added by Acts 2007, ch. 853, § 1.

For another Chapter 2264, Required Publication and Reporting by Governmental Entities, consisting of § 2264.001, added by Acts 2007, 80th Leg., ch. 939, § 8; and for Chapter 2264, Financial Accounting and Reporting, consisting of §§ 2264.001 to 2264.107, added by Acts 2007, 80th Leg., ch. 1224, § 2, see §§ 2264.001 et seq. post.

SUBCHAPTER A. GENERAL PROVISIONS

§ 2264.001. Definitions

In this chapter:

- (1) "Economic development corporation" means a development corporation organized under the Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes).
- (2) "Public agency" means the state or an agency, instrumentality, or political subdivision of this state, including a county, a municipality, a public school district, or a special-purpose district or authority.
- (3) "Public subsidy" means a public program or public benefit or assistance of any type that is designed to stimulate the economic development of a corporation, industry, or sector of the state's economy or to create or retain jobs in this state. The term includes grants, loans, loan guarantees, benefits relating to an enterprise or empowerment zone, fee waivers, land price subsidies, infrastructure development and improvements designed to principally benefit a single business or defined group of businesses, matching funds, tax refunds, tax rebates, or tax abatements.
- (4) "Undocumented worker" means an individual who, at the time of employment, is not:
 - (A) lawfully admitted for permanent residence to the United States; or
 - (B) authorized under law to be employed in that manner in the United States.

Added by Acts 2007, 80th Leg., ch. 853, § 1, eff. Sept. 1, 2007.

Historical and Statutory Notes

2007 Legislation

Section 2 of Acts 2007, 80th Leg., ch. 853 provides:

"The change in law made by this Act applies only to a public subsidy provided by an economic development corporation, a taxing jurisdiction, or a public agency in response to an application for the

subsidy that is received on or after the effective date of this Act. A public subsidy provided in response to an application received before the effective date of this Act is governed by the law as it existed on the date the application was received, and the prior law is continued in effect for that purpose."

[Sections 2264.002 to 2264.050 reserved for expansion]

SUBCHAPTER B. RESTRICTIONS ON USE OF CERTAIN PUBLIC
SUBSIDIES TO EMPLOY UNDOCUMENTED WORKERS

§ 2264.051. Statement Required in Application for Public Subsidies

A public agency, state or local taxing jurisdiction, or economic development corporation shall require a business that submits an application to receive a public subsidy to include in the application a statement certifying that the business, or a branch, division, or department of the business, does not and will not knowingly employ an undocumented worker.

Added by Acts 2007, 80th Leg., ch. 853, § 1, eff. Sept. 1, 2007.

§ 2264.052. Condition on Receipt of Public Subsidies

The statement required by Section 2264.051 must state that if, after receiving a public subsidy, the business, or a branch, division, or department of the business, is convicted of a violation under 8 U.S.C. Section 1324a(f), the business shall repay the amount of the public subsidy with interest, at the rate and according to the other terms provided by an agreement under Section 2264.053, not later than the 120th day after the date the public agency, state or local taxing jurisdiction, or economic development corporation notifies the business of the violation.

Added by Acts 2007, 80th Leg., ch. 853, § 1, eff. Sept. 1, 2007.

§ 2264.053. Agreement Regarding Repayment of Interest

A public agency, state or local taxing jurisdiction, or economic development corporation, before awarding a public subsidy to a business, shall enter into a written agreement with the business specifying the rate and terms of the payment of interest if the business is required to repay the public subsidy.

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[Sections 2264.054 to 2264.100 reserved for expansion]

SUBCHAPTER C. ENFORCEMENT

§ 2264.101. Recovery

(a) A public agency, local taxing jurisdiction, or economic development corporation, or the attorney general on behalf of the state or a state agency, may bring a civil action to recover any amounts owed to the public agency, state or local taxing jurisdiction, or economic development corporation under this chapter.

(b) The public agency, local taxing jurisdiction, economic development corporation, or attorney general, as applicable, shall recover court costs and reasonable attorney's fees incurred in an action brought under Subsection (a).

(c) A business is not liable for a violation of this chapter by a subsidiary, affiliate, or franchisee of the business, or by a person with whom the business contracts.

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tion.

Chapter 2264, Required Publication and Reporting by Governmental Entities, consisting of § 2264.001, was added by Acts 2007, 80th Leg., ch. 939, § 8.

For another Chapter 2264, Restrictions on Use of Certain Public Subsidies, consisting of §§ 2264.001 to 2264.101, added by Acts 2007, 80th Leg., ch. 853, § 1, see