

Memorandum

To: Honorable Mayor Shetter and members of the Burleson City Council

From: Curtis Hawk, City Manager

Date: September 8, 2009

Subject: Ratify Burleson 4A Economic Development Corporation (4A Corporation)
Resolution 4A090809BOF.

City Council Action Requested:

The City Council is requested to ratify the 4A Corporation's Resolution 4A090809BOF.

Background Information:

A copy of the 4A Corporation's item page is attached for your information.

Staff recommends that Council ratify the 4A Corporation's donation to the Burleson Opportunity Fund (4A090809BOF).

Board/Citizen Input:

N/A

Financial Considerations:

Funding for the 4A Corporation's action is available in the 4A Sales Tax Fund.

Attachments:

4A Corporation Item Page
Resolution 4A090809BOF

Staff Contact:

Curtis Hawk, City Manager
Office (817) 426-9680
Email chawk@burlesontx.com

Memorandum

To: President Stephens and members of Burleson 4A Economic Development Corporation

From: Curtis Hawk, City Manager

Date: August 28, 2009

Subject: Resolution 4A090809BOF, Making a Donation to the Burleson Opportunity Fund

Board Action Requested:

Approve Resolution 4A090809BOF authorizing a contribution of \$60,000.00 to the Burleson Opportunity Fund.

Background Information:

The 4A Corporation adopted the Burleson Opportunity Fund (BOF) as a project of the corporation on September 6, 2007. The City Council ratified the corporation's action on September 13, 2007. Following that action by the Corporation and City Council, staff received inquiries regarding staff's interpretation of the Act—specifically whether or not the Burleson Opportunity Fund qualified as a “project” as defined by the statute. In order to prevent extended legal wrangling over interpretation of the Act, on January 24, 2008, staff recommended the City Council rescind ratification of the BOF as a 4A project and, alternatively, use revenues from natural gas wells to support the BOF. Council unanimously approved this action.

Since that action, staff and the City Attorney have further explored this issue. The BOF does not meet the definition of a “project” as defined by the Development Corporation Act (“DCA”). However, the DCA grants the 4A Corporation the rights, powers, privileges, authority, and functions given by the general laws of this state to nonprofit corporations incorporated under the Texas Non-Profit Corporation Act provided the general laws are not in conflict or inconsistent with this Act, as amended (VTCS, Title 83, Ch 10, Sec. 23. (a))

The Non-Profit Corporation Act grants each corporation the power to “make donations for the public welfare or for charitable, scientific, or educational purposes and in time of war to make donations in aid of war activities” (V.T.C.S., Title 32, Ch. 9, Article 1396-2.02 paragraph (13)).

Finally, the DCA finds that “the assistance provided by industrial development corporations in promoting higher education opportunities will encourage and foster the development and diversification of the economy of the state and the elimination of unemployment and underemployment in the state” (V.T.C.S, Title 83, Ch 10, Section 3, paragraph (a)(3)).

Staff and the City Attorney believe a charitable donation to the BOF is permissible because (1) the BOF was created for educational purposes; (2) as a non-profit corporation, the 4A Corporation has the power to make donations for educational purposes; and (3) such a donation is consistent with the findings and construction of the DCA because this contribution “promotes higher education opportunities that will encourage and foster the development and diversification of the economy and elimination of unemployment and underemployment” as required by the DCA.

Obligated by better information and fuller consideration, staff recommends the 4A Corporation approve this resolution.

Attachments:

Resolution 4A090809BOF

Staff Contact:

Curtis Hawk, City Manager

817-426-9680

chawk@burlesontx.com

Burleson 4A Economic Development Corporation 1600397-01

Resolution

4A090809BOF

WHEREAS, the Burleson 4A Economic Development Corporation, known as the “4A Corporation”, was incorporated and certified on October 5, 2000 under the authorization of the Development Corporation Act of 1979; and

WHEREAS, V.T.C.S., Title 83, Ch 10, Sec. 23. paragraph (a) grants the 4A corporation “all of the rights, powers, privileges, authority, and functions given by the general laws of this state to nonprofit corporations incorporated under the Texas Non-Profit Corporation Act, as amended”; and

WHEREAS, V.T.C.S. Title 32, Ch. 9, Article 1396-2.02 paragraph (13) grants the corporation the power to “make donations for the public welfare or for charitable, scientific, or educational purposes and in time of war to make donations in aid of war activities.”; and

WHEREAS, V.T.C.S. Title 83, Ch 10, Section 3, paragraph (a)(3) states “that the assistance provided by industrial development corporations in promoting higher education opportunities will encourage and foster the development and diversification of the economy of the state and the elimination of unemployment and underemployment in the state”; and

WHEREAS, the 4A Corporation finds that the Burleson Opportunity Fund is a non-profit corporation created for educational purposes to promote higher education opportunities that will encourage and foster the development and diversification of the economy of the state and the elimination of unemployment and underemployment in the state; and

WHEREAS, the 4A Corporation finds that a contribution to the Burleson Opportunity Fund is consistent with the purposes of the Development Corporation Act and the powers granted to the 4A Corporation by the Development Corporation Act and the Texas Non-Profit Corporation Act.

NOW, THEREFORE, BE IT RESOLVED THAT the 4A Corporation does hereby approve a contribution to the Burleson Opportunity Fund in the amount of \$60,000.00.

Approved this _____ day of _____, _____.

Signed

President, Chip Stephens

Attest:

Secretary, Amanda McCrory