

## RESOLUTION R2019-09

**A RESOLUTION BY THE COUNCIL OF THE CITY OF BURNET, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT MADE PURSUANT TO TEXAS LOCAL GOVERNMENT CODE CHAPTER 380 WITH BURNET ECONOMIC DEVELOPMENT CORPORATION, REGARDING THE GRANT OF CERTAIN INCENTIVES RELATING TO THE REDEVELOPMENT OF THE EASTSIDE COMMERCIAL PARK; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Article III, Section 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code authorizes a local government to establish and provide for the administration of one or more programs, for making loans and grants and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality;

**WHEREAS**, under Chapter 380 of the Texas Local Government Code, City has adopted an economic development program to promote local economic development and stimulate business and commercial activity within the City limits;

**WHEREAS**, Burnet Economic Development Corporation's ("BEDC") was established by the City Council of the City of Burnet as a Type B Economic Development Corporation in part for creating new economic development opportunities in the community; and

**WHEREAS**, BEDC, in furtherance of such purpose purchased 21 acres known as Eastside Commercial Park (the "Property"); and

**WHEREAS**, BEDC desires to develop the Property in order to stimulate economic development; and

**WHEREAS**, City Council finds that the development of the Property, will contribute to the economic development of the City by the potential creation of new jobs and increased employment, generating, increased development, increased real property value and tax revenue for the City, increased related neighborhood services and shall have both a direct and indirect positive overall improvement/stimulus in the local and state economy;

**WHEREAS**, City desires to offer incentives to BEDC to enable BEDC to develop the Properties pursuant to the attached 380 Agreement (the "Agreement") in substantial conformity with the City's economic development plan; and

**WHEREAS**, City and BEDC are executing and entering into this Agreement to set forth certain terms and obligations of City and BEDC with respect to such matters, including any grant payment, rebate or other incentives made to BEDC of certain City funds for BEDC's investment, construction and use of the Properties;

**WHEREAS**, the Parties recognize that all agreements of the Parties hereto and all terms and provisions hereof are subject to the laws of the State of Texas and all rules, regulations and interpretations of any agency or subdivision thereof at any time governing the subject matters hereof;

**WHEREAS**, the Parties agree that all conditions precedent for this Agreement to become a binding agreement have occurred and been complied with, including all requirements pursuant to the Texas Open Meetings Act and all public notices and hearings; if any, have been conducted in accordance with Texas law;

**NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BURNET, TEXAS:**

**Section 1. Findings.** The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

**Section 2.** The City Manager is hereby authorized to execute, on behalf of the City, an Agreement, substantially similar to Exhibit "A" the Agreement, attached hereto, and such ancillary documents reasonably necessary to fulfill the purpose of this resolution.

**Section 3. Open Meetings.** It is hereby officially found and determined that the meeting at which this resolution was passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, *Chapt. 551, Tex. Gov't Code*.

**Section 4. Effective Date.** This Resolution shall take effect upon its adoption.

**PASSED AND APPROVED** on this the 28<sup>th</sup> day of May, 2019.

**CITY OF BURNET, TEXAS**

\_\_\_\_\_  
Crista Goble Bromley, Mayor

Attest:

\_\_\_\_\_  
Kelly Dix, City Secretary

## CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT

This **CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT** (hereinafter called "Agreement") is entered into to be effective as of the 21 day of May, 2019 (hereinafter called "Effective Date"), by and between the City of Burnet, Texas (hereinafter called "City"), a Texas municipal corporation located in Burnet County, Texas, and the Burnet Economic Development Corporation, formed under the Texas Development Corporation Act of 1979 (hereinafter called "BEDC"), otherwise known as the "Parties" to this Agreement.

### RECITALS

**WHEREAS**, Article III, Section 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code authorizes a local government to establish and provide for the administration of one or more programs, for making loans and grants and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality;

**WHEREAS**, under Chapter 380 of the Texas Local Government Code, City has adopted an economic development program to promote local economic development and stimulate business and commercial activity within the City limits;


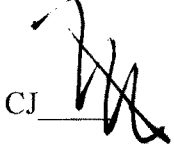
**WHEREAS**, BEDC was established by the City Council of the City of Burnet as a Type B Economic Development Corporation in part for creating new economic development opportunities in the community; and

**WHEREAS**, BEDC, in furtherance of such purpose acquired title to the Property, (also known herein as "Property" and more specifically shown in "Exhibit A" attached hereto); and

**WHEREAS**, BEDC desires to develop the Property in order to stimulate economic development of the Property; and

**WHEREAS**, BEDC and the City Council have previously approved sales contracts for Lots 7-B and 7-E of the Property that require certain infrastructure improvements be completed prior to December 6, 2019; and

**WHEREAS**, City Council finds that the development of the Property will contribute to the economic development of the City by the potential creation of new jobs and increased employment, generating, increased development, increased real property value and tax revenue for the City, increased related neighborhood services and shall have both a direct and indirect positive overall improvement/stimulus in the local and state economy; and

D.  CJ 

**WHEREAS**, City desires to offer incentives to BEDC to enable BEDC to develop the Property pursuant to this Agreement in substantial conformity with the City's economic development plan; and

**WHEREAS**, the Parties are executing and entering into this Agreement to set forth certain terms and obligations of City and BEDC with respect to such matters, including any grant payment, rebate or other incentives made to BEDC of certain City funds for BEDC's investment, construction and use of the Property; and

**WHEREAS**, the Parties recognize that all agreements of the Parties hereto and all terms and provisions hereof are subject to the laws of the State of Texas and all rules, regulations and interpretations of any agency or subdivision thereof at any time governing the subject matters hereof; and

**WHEREAS**, the Parties agree that all conditions precedent for this Agreement to become a binding agreement have occurred and been complied with, including all requirements pursuant to the Texas Open Meetings Act and all public notices and hearings; if any, have been conducted in accordance with Texas law; and



**WHEREAS**, on the Effective Date, the commitments contained in this Agreement shall become legally binding obligations of the Parties; and

**WHEREAS**, City's Council has, by separate Resolution, adopted these recitals and authorized the City Manager to execute this Agreement to make certain economic development grants and incentives to BEDC in recognition of the positive economic benefits which will accrue to City through BEDC's efforts to develop the Property.

**NOW, THEREFORE**, in consideration of the mutual covenants, benefits and agreements described and contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and further described herein, City and BEDC agree as follows:

**ARTICLE I**  
**AUTHORITY & BINDING REPRESENTATIONS**

City's execution of this Agreement is authorized by Chapter 380, Texas Local Government Code, and by the Resolution authorizing same and shall constitute a valid and binding obligation of City. The above Recitals (hereinafter called "Recitals") are incorporated by reference herein. BEDC's execution and performance of this Agreement constitutes a valid and binding obligation of BEDC obligating BEDC to proceed with the development of the Property as provided by this Agreement. City acknowledges that BEDC is acting in reliance upon City's performance of its obligations under this Agreement (including those presented in the Recitals) in making its decision to commit substantial resources to develop the Property and BEDC acknowledges that

DY  CJ 

City is acting in reliance upon BEDC's representations (including those presented in the Recitals) and its full and complete performance of its obligations under this Agreement in making its decision to commit substantial resources to the Property.

**ARTICLE II**  
**DEFINITIONS**

"Approved Plans" means those construction plans dated March 26, 2019 by KC Engineering and approved by the City of Burnet.

"Property" means the approximate 21.30 acre tract(s) of real property located on Hwy 29 East, Burnet County, Texas further described as Lots 7-B, 7D, 7-E, 7-F and Richard Sanders Parkway as more specifically shown on Exhibit "A".

**ARTICLE III**  
**PROJECT SCOPE**

**SECTION 3.1 Description of the proposed Project**


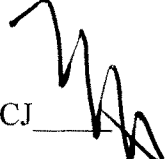
The Scope of the Project ("Project") is the development of the Property in accordance with the Approved Plans, including but not limited to the installation of streets, utilities and drainage infrastructure. Any modifications or deviations from the plans shall be as agreed upon by the City Manager and the President of the BEDC Board of Directors, and/or their designees

**SECTION 3.2 Compliance with Law**

BEDC and City shall comply with all federal, state and local laws in regards to development of the Property.

**ARTICLE IV**  
**BEDC'S OBLIGATIONS**

**SECTION 4.1 Project Expenses**

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BEDC shall pay for all expenses associated with the Project excluding City labor and City owned equipment.

**SECTION 4.2 - Indebtedness Incurred by *BEDC***

The payment of all indebtedness and obligations incurred by BEDC in connection with the Project shall be solely the obligations of BEDC. City shall not be obligated to pay any indebtedness or obligations of BEDC.

**ARTICLE V  
CITY'S OBLIGATION**

**SECTION 5.1 – Development Work.**

Using its own manpower, equipment and resources the City shall complete, or cause to be completed, the Project as provided for in ARTICLE III herein. In the event of any dispute between the BECD and City as to what constitutes completion of the Project, the decision of the City Manager shall be final.

**SECTION 5.2 - Fee Waiver.**

Pursuant to the terms of this Agreement, City agrees to waive all permit fees. For the purposes of this grant, however, the fees waived by this section shall not include any fee that is passed through the City by a consultant or third party public agency.


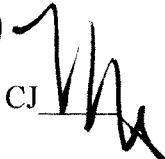
**SECTION 5.3 - Economic Development Funds.**

Amounts payable under this Agreement constitute economic development funds under Art. III, Sec. 52-a, Texas Constitution, are not secured by a pledge of ad valorem taxes or financed by the issuance of any bonds or other obligations payable from ad valorem taxes of City, and therefore are not considered to be a constitutional debt of City.

**ARTICLE VI  
TERM OF AGREEMENT**

The “Term” of this Agreement shall include, and extend until December 31, 2019.

**ARTICLE VII  
INDEMNIFICATION**

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**TO THE EXTENT AUTHORIZED BY LAW, BEDC AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY OF BURNET, ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY THE "CITY") HARMLESS FROM AND AGAINST ANY AND ALL REASONABLE LIABILITIES, DAMAGES, CLAIMS, LAWSUITS, JUDGMENTS, ATTORNEY FEES, COSTS, EXPENSES AND ANY CAUSE OF ACTION THAT DIRECTLY RELATES TO OR IS A RESULT OF ANY ACT OR OMISSION OR BREACH OR NON-PERFORMANCE BY BEDC UNDER THIS AGREEMENT. THE PROVISIONS OF THIS SECTION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.**

**ARTICLE VIII**  
**DAMAGE WAIVER**

BEDC shall not hold City responsible for any damage to the Property occurring as a result of work on the Project.

**ARTICLE IX**  
**PERSONAL LIABILITY OF PUBLIC OFFICIALS**

No employee of City, or any councilmember or agent of City, shall be personally responsible for any liability arising under or growing out of this Agreement. Under no circumstances shall City's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision.

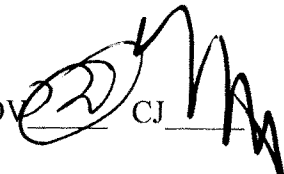
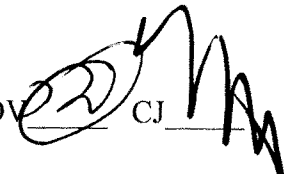
**ARTICLE X**  
**INFORMATION**

BEDC shall, at such times and in such form as City may require, furnish periodic information concerning the status of the performance of its obligations under this Agreement as may be requested in writing by City.

**ARTICLE XI**  
**MISCELLANEOUS**

**SECTION 11.1 – Entire Agreement.**

This Agreement, including exhibits hereto, contains the entire agreement between the Parties with respect to the transactions contemplated herein.

DV  CJ 

**SECTION 11.2--Amendment.**

This Agreement may only be amended, altered, or revoked by written instrument signed by all Parties. A section of this Agreement may be revised by addendum that includes only that section, signed by all Parties.

**SECTION 11.3 – Successors and Assigns.**

In this Agreement, unless a clear contrary intention appears, reference to any Party includes such Party's successors and assigns, and reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof. This Agreement is not assignable without the prior written permission of the other parties thereto. BEDC agrees that it will not dissolve or terminate its existence during the Term of this Agreement unless such obligations are assumed as provided herein.

**SECTION 11.4 – Waiver.**

No term or condition of this Agreement shall be deemed to have been waived, nor, shall there be any estoppel to enforce any provision of this Agreement, except by written instrument of the Party charged with such waiver or estoppel.

**SECTION 11.5 – Remedies.**

Upon breach of any of the covenants contained in the Agreement, in addition to any other remedies expressly set forth in this Agreement with respect to such breach, the aggrieved Party shall have such remedies as are available in law or equity for breach of contract.

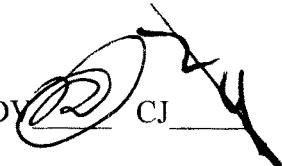
**SECTION 11.6 – Notices.** Any notice, statement and/or communication required and/or permitted to be delivered hereunder shall be in writing and shall be mailed by first-class mail, postage prepaid, or delivered by hand, by messenger, by facsimile, or by reputable overnight carrier, and shall be deemed delivered when received at the addresses of the Parties set forth below, or at such other address furnished in writing to the other Parties thereto:

**BEDC:**

Burnet Economic Development Corporation  
Attn: President  
P.O. Box 1369  
Burnet, TX 78611

**CITY:**

City of Burnet  
Attn: City Manager

DY  CJ



P.O. Box 1369  
Burnet, TX 78611

**SECTION 11.7 – Applicable Law.**

This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas, and venue shall lie in State courts located in Burnet County, Texas.

**SECTION 11.8 – Severability.**

In the event any provision of this Agreement is illegal, invalid, or unenforceable under the present or future laws, then, and in that event, it is the intention of the Parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the Parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable a provision be added to this Agreement which is legal, valid and enforceability and is a similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

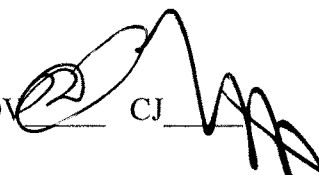
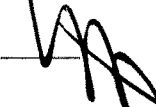
**SECTION 11.9 – No Joint Venture.**

Nothing contained in this Agreement is intended by the Parties to create a partnership or joint venture between the Parties and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either Party as an agent of the other for any purpose whatsoever. Except, as otherwise specifically provided herein, neither Party shall in any way assume any of the liability of the other for acts of the other or obligations of the other.

**SECTION 11.10 – Counterparts.**

This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which constitute one instrument.

[Signatures on next page.]

DV  CJ 

**CITY OF BURNET:**

By: *David Vaughn*  
David Vaughn, City Manager  
Date: 5/19/19

**ATTEST:**

By: \_\_\_\_\_  
Kelly Dix, City Secretary

**BE DC:**

*[Signature]*  
By: \_\_\_\_\_  
Cary Johnson, President  
Date: 5-21-19

**STATE OF TEXAS**

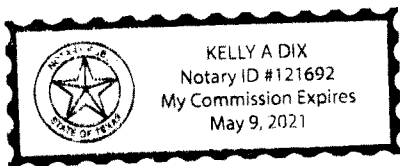
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**COUNTY OF BURNET**

(

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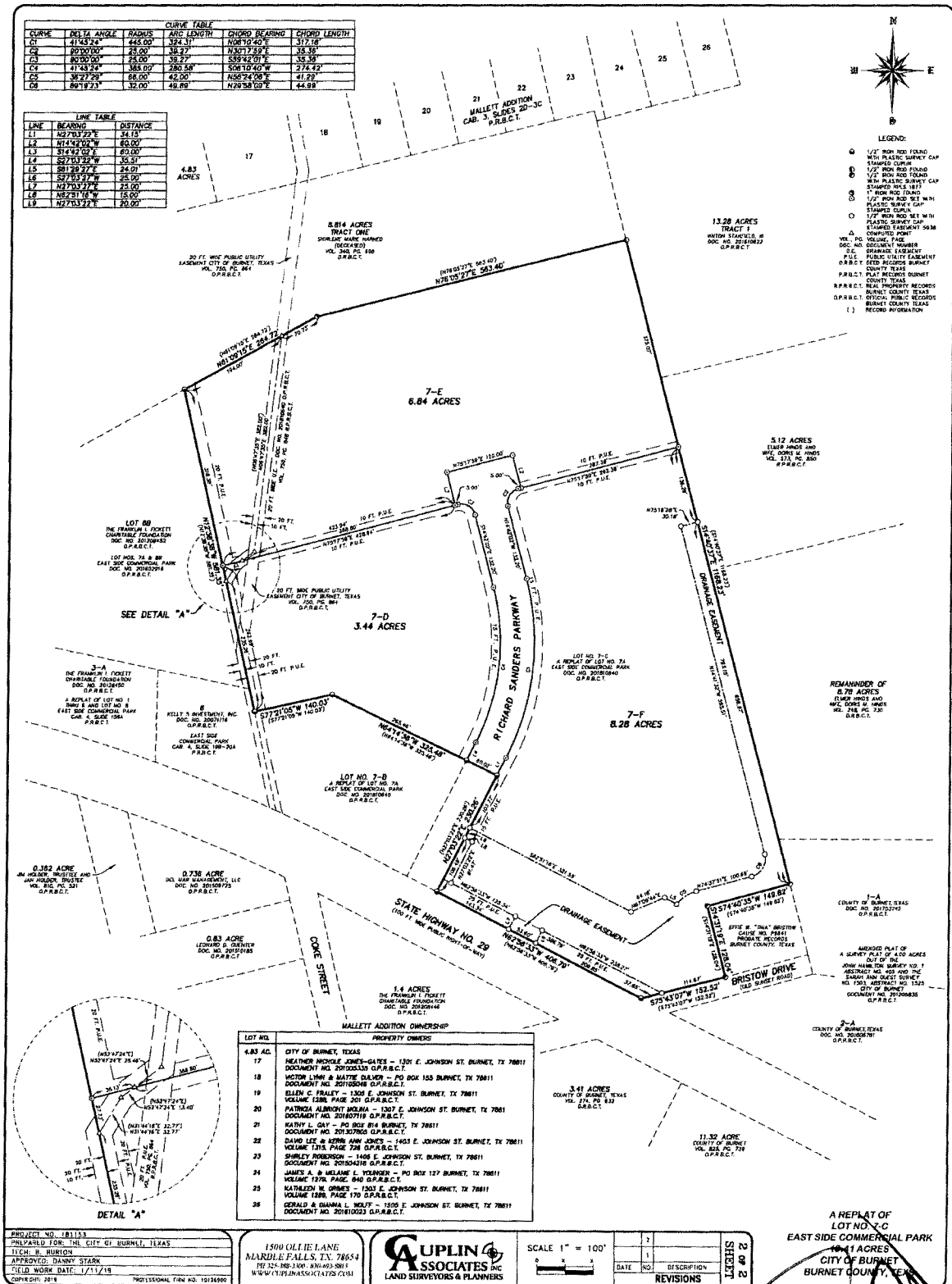
SUBSCRIBED AND SWORN TO before me on the 21 day of May, 2019, by Cary Johnson, President of and for and on behalf of the Burnet Economic Development Corporation.



*Kelly Dix*  
Notary Public, State of Texas

DV *[Signature]* CJ *[Signature]*

Exhibit "A"

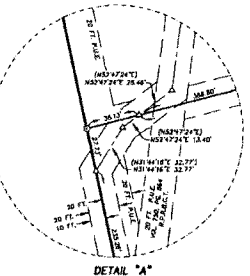


CURVE	DELTA ANGLE	RADIUS	ARC LENGTH	CHORD BEARING	CHORD LENGTH
C1	31.4324°	443.00'	324.31'	N08°10'40"E	317.16'
C2	20°10'00"	25.00'	15.27'	S85°17'59"E	35.15'
C3	80°50'00"	25.00'	38.27'	S89°42'07"E	35.35'
C4	41°43'24"	385.00'	280.58'	S06°10'40"W	276.42'
C5	38°17'28"	48.00'	42.00'	N82°24'08"E	41.29'
C6	80°18'23"	32.00'	46.89'	N26°58'02"E	44.88'

LINE	BEARING	DISTANCE
L1	N27°03'22"E	34.13'
L2	N14°42'02"W	83.00'
L3	S14°42'02"E	80.00'
L4	S27°03'22"W	35.51'
L5	S81°50'27"E	24.00'
L6	S27°03'22"E	26.00'
L7	N27°03'22"E	23.00'
L8	N52°21'14"W	15.00'
L9	N27°03'22"E	20.00'



- LEGEND:**
- 1/2" RICH ROD FOUND WITH PLASTIC SURVEY CAP STAMPED CURVE
  - 1/2" RICH ROD FOUND WITH PLASTIC SURVEY CAP STAMPED CURVE
  - 1/2" RICH ROD FOUND WITH PLASTIC SURVEY CAP STAMPED CURVE
  - 1/2" RICH ROD SET WITH PLASTIC SURVEY CAP STAMPED STATEMENT 5638 COMPOSITE POINT
  - VOL. NO. DOC. NO. DOCUMENT NUMBER
  - GRANADA EASEMENT
  - PUBLIC UTILITY EASEMENT
  - 100' RECLUSE BURNET COUNTY TEXAS
  - 100' RECLUSE BURNET COUNTY TEXAS
  - REAL PROPERTY RECORDS BURNET COUNTY TEXAS
  - OFFICIAL PUBLIC RECORDS BURNET COUNTY TEXAS
  - RECORD INFORMATION



LOT NO.	PROPERTY OWNERSHIP
4.83 AC.	CITY OF BURNET, TEXAS
17	WEATHER NICOLE JONES-GATES - 1301 E. JOHNSON ST. BURNET, TX 78611 DOCUMENT NO. 201000335 O.P.R.B.C.T.
18	VICTOR LYNN & MATTHEW DALVER - PO BOX 155 BURNET, TX 78611 DOCUMENT NO. 201000336 O.P.R.B.C.T.
19	EILEEN C. BRADY - 1305 E. JOHNSON ST. BURNET, TX 78611 VOLUME 1386, PAGE 301 O.P.R.B.C.T.
20	PATRICIA ALMIGHTY HOLMA - 1207 E. JOHNSON ST. BURNET, TX 78611 DOCUMENT NO. 201000337 O.P.R.B.C.T.
21	KARLY L. GAY - PO BOX 874 BURNET, TX 78611 DOCUMENT NO. 201000338 O.P.R.B.C.T.
22	DAVID LEE & KERRY ANN JONES - 1403 E. JOHNSON ST. BURNET, TX 78611 VOLUME 1385, PAGE 728 O.P.R.B.C.T.
23	SHARLEY ROBERTSON - 1408 E. JOHNSON ST. BURNET, TX 78611 DOCUMENT NO. 201000339 O.P.R.B.C.T.
24	JAMES A. & MELANIE E. YODERSON - PO BOX 127 BURNET, TX 78611 VOLUME 1378, PAGE 840 O.P.R.B.C.T.
25	KATHLEEN M. GRUBBS - 1301 E. JOHNSON ST. BURNET, TX 78611 VOLUME 1388, PAGE 170 O.P.R.B.C.T.
26	GERALD & DIANNA L. WOLFF - 1205 E. JOHNSON ST. BURNET, TX 78611 DOCUMENT NO. 201010033 O.P.R.B.C.T.

PROJECT NO. 181153  
 PREPARED FOR: THE CITY OF BURNET, TEXAS  
 TICHON BURTON  
 APPRENTICE DANNY STARK  
 FIELD WORK DATE: 1/11/18  
 COPY DATE: 2/18

1500 OLLIE LANE  
 MARDLE FALLS, TX 78654  
 P.O. BOX 2100 817-493-5811  
 WWW.OPLINASSOCIATES.COM



SCALE 1" = 100'  
 DATE NO. DESCRIPTION

NO.	DATE	NO.	DESCRIPTION
1			
2			
3			

A REPLAT OF LOT NO. 10-C EAST SIDE COMMERCIAL PARK 4.83 ACRES CITY OF BURNET BURNET COUNTY, TEXAS

*[Handwritten Signature]*