



**CITY OF WHARTON
FINANCE COMMITTEE MEETING**

**Monday, March 23, 2020
5:30 PM**


CITY HALL

**NOTICE OF
CITY OF WHARTON
FINANCE COMMITTEE MEETING**

Notice is hereby given that a Finance Committee Meeting will be held on Monday, March 23, 2020 at 5:30 PM at the Wharton City Hall, 120 East Caney Street, Wharton, Texas, at which time the following subjects will be discussed to-wit:

SEE ATTACHED AGENDA

Dated this 19th day of March 2020.


By: 
Andres Garza, Jr., City Manager

I, the undersigned authority, do hereby certify that the above Notice of Meeting of the Finance Committee Meeting is a true and correct copy of said Notice and that I posted a true and correct copy of said Notice on the bulletin board, at City Hall of said City or Town in Wharton, Texas, a place convenient and readily accessible to the general public at all times, and said Notice was posted on March 19, 2020, at 4:30 p.m. and remained so posted continuously for at least 72 hours preceding the scheduled time of said Meeting.

The Wharton City Hall is wheelchair accessible. Access to the building and special parking is available at the primary entrance. Persons with disabilities, who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, or large print, are requested to contact the City Secretary's Office at (979) 532-4811 Ext. 225 or by FAX (979) 532-0181 at least two (2) days prior to the meeting date. BRAILLE IS NOT AVAILABLE.

Dated this 19th day of March 2020.

CITY OF WHARTON

By: 
Paula Favors
City Secretary



A G E N D A
CITY OF WHARTON
Finance Committee Meeting
Monday, March 23, 2020
City Hall - 5:30 PM

Call to Order.

Roll Call.

Public Comments.


Review & Consider:

1. Resolution: A resolution of the Wharton City Council rescinding Resolution 2005-34 and establishing a new Residential Development Incentive Policy for the City of Wharton, Texas.
2. Amendment to City of Wharton Developer-Customer Utilities, Storm Drainage, And Street Construction Services Agreement with BSR Properties V, LLC.
3. Resolution: A resolution of the Wharton City Council approving a moratorium on the issuance of all permits for industrial and agriculture development; expansion of existing industrial and agriculture development will be reviewed prior developing within the Wharton City Limits until an ordinance pertaining to such has been approved.
4. Resolution: A resolution of the Wharton City Council approving the purchase through the Texas Department of Information Resources (DIR) for Information Technology upgrades through CISCO Systems, Inc. for cyber security upgrades and installation of said upgrades through Mark Risinger.

Adjournment.

City of Wharton
120 E. Caney Street
Wharton, TX 77488

FINANCE COMMITTEE

Meeting Date:	3/23/2020	Agenda Item:	Resolution: A resolution of the Wharton City Council rescinding Resolution 2005-34 and establishing a new Residential Development Incentive Policy for the City of Wharton, Texas.
<p>The City Staff has been reviewing and working on the Developer Incentive Program adopted in 2004 by the City Council. The program was adopted on April 12, 2004 by Resolution 2004-28 and modified by Resolution 2005-34 on June 27, 2005.</p> <p>Community Development Director will be present to answer any questions.</p>			
City Manager: Andres Garza, Jr.		Date: Thursday, March 19, 2020	
Approval: 			
Mayor: Tim Barker			



City of Wharton

120 E. Caney • Wharton, TX 77488
Phone (979) 532-2491 • Fax (979) 532-0181

MEMORANDUM

DATE: March 17, 2020

FROM: Gwyneth Teves, Community Development Director

TO: Andres Garza, Jr., City Manager

SUBJECT: Recommendation to update the Development Incentive Program Resolution

City staff has been reviewing and working on the Developer Incentive Program adopted in 2004 by the City Council. The program was adopted on April 12, 2004 by Resolution 2004-28 and modified by Resolution 2005-34 on June 27, 2005. I am requesting the program be updated at this time.

Attached is the draft resolution with marked changes to the program.

If you should have any questions, please contact me at 979-532-2491 ext. 238. Thank You.

**CITY OF WHARTON
RESOLUTION NO. ~~2005-34~~2020-XX**

A RESOLUTION OF THE WHARTON CITY COUNCIL RESCINDING RESOLUTION NO. ~~2004-28~~2005-34 AND ESTABLISHING A NEW RESIDENTIAL DEVELOPMENT INCENTIVE POLICY FOR THE CITY OF WHARTON, TEXAS.

WHEREAS, it was determined a need existed for residential development in the City of Wharton; and

WHEREAS, the Wharton City Council wishes to Rescind Resolution No. ~~2004-28~~2005-34; and

WHEREAS, on ~~June 23, 2005~~March 23, 2020, the City Council Finance Committee reviewed and recommended a Residential Development Incentive Policy be established by the Wharton City Council as follows:

RESIDENTIAL DEVELOPMENT INCENTIVE POLICY

In order to promote and encourage new residential development, the following Residential Development Incentive Policy is hereby approved and authorized by the Wharton City Council:

1. In order to be eligible for this program, the proposed residential development must meet the following criteria:
 - a) Said development must be located entirely within the corporate limits of the City of Wharton or the developer must submit a petition for voluntary annexation into the City prior to making application for this program;
 - b) Said development must consist of a minimum of twelve single family residences on lots of the minimum size as defined in the City of Wharton Subdivision Ordinance.
 - c) To be determined eligible, the proposed development and application for eligibility for the Incentive Program must be approved by a majority of the City Council, ~~at the time of consideration of the preliminary plat; and~~
 - d) In order to receive the incentive funds, the developer shall submit to the City "as built" plans for all infrastructure improvements and an itemized accounting of actual costs of construction. These costs shall be certified by the project engineer agency. If approved by a majority of the City Council, rebate shall be made to the developer in an amount and manner as defined below.

2. Any person who has successfully constructed a residential subdivision on undeveloped land, under the guidelines defined above, shall be eligible for a rebate from the City to offset the cost of infrastructure improvements to service the subdivision. These improvements shall include water main construction, sewer main construction, water and sewer service leads to the property line of the lot(s), street construction and storm sewer construction, where permissible. Costs not eligible under this program shall include engineering fees, survey fees, finance fees including interest to be paid for loans associated with construction, legal fees or any other administrative or professional fees associated with this development. Eligible expenses shall be limited to the actual material and labor costs for infrastructure construction and/or extension as defined herein.

3. If approved by the City Council, an agreement shall be entered into between the City and the Developer, which will allow for a rebate for a percentage of the cost of improvements made by the developer. The term of this agreement shall be for a period ~~of five (5) years from the date of final plat approval~~ not to exceed 10 years from the date of City Council approval, after which time undeveloped lots will ~~not~~ longer be eligible for this rebate.

4. The City will agree to reimburse the Developer ~~the lesser of \$50.00 per linear front foot or the maximum 5% of the value of the developed property~~ reimbursement as calculated below as appraised by the Wharton Central Appraisal District, not to exceed \$510,000 per lot. ~~The linear foot is based on the measurement of the front lot line as indicated on the final plat.~~ The Developer may apply for reimbursement at a the rate heretofore defined, only after the construction of the residential dwelling, when all final inspections have been completed, and the house is approved for occupancy

~~Maximum Reimbursement =~~

~~CAD Assessed Value / \$100 X Current Tax Rate X 5 Years~~

~~Example # 1~~

~~\$100,000 home with a front line of 75 feet.~~

~~\$50.00 X 75 feet = \$3,750.00~~

~~\$100,000 / \$100 X .58551 X 5 years = \$2,927.55~~

~~The Developer is reimbursed \$2,927.55.~~

~~Example #2~~

~~\$180,000 home with a front line of 90 feet.~~

~~\$50.00 X 90 feet = \$4,500.00~~

~~\$180,000 / \$100 X .58551 X 5 years = \$5,269.59~~

~~The Developer is reimbursed \$4,500.00.~~

~~Example # 3~~

~~\$180,000 home with a front line of 120 feet.~~

~~\$50.00 X 120 feet = \$6,000.00~~

~~\$180,000 / \$100 X .58551 X 5 years = \$5,269.59~~

~~The Developer's reimbursement is limited to \$5,000.00.~~

- 5. This agreement shall only provide a rebate for the actual costs at the time of construction and will not provide for the accrual of interest or penalty for funds in questions. In addition, participation in this program prohibits the use of other incentive programs either in place or to be developed in the future.
- 6. This program only applies to the actual cost of infrastructure within the platted subdivision. Expenses incurred for the extension of services to development and/or the over sizing of utilities, drainage facilities or streets shall be subject to separate negotiations with the City.

This agreement shall be between the City and the Developer for the stipulated period ~~of five (5)~~ not to exceed ten (10) years from the date of approval ~~of the final plat by City Council~~ and any or all reimbursements shall be made only to the Developer of record during this period. This agreement is exclusive to the Developer of record and shall become null and void at the end of the stipulated time period, or in the event of bankruptcy, foreclosure or abandonment of said development. The Developer may assign this agreement only with the express written consent of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE WHARTON CITY COUNCIL, that:

Section I. The Wharton City Council hereby establishes the afore_-mentioned Residential Development Incentive Policy.

Section II. That this resolution shall become effective immediately upon its passage.

Passed, Approved, and Adopted this the ~~27th~~23rd -day of ~~June~~March 200520.

CITY OF WHARTON

By: _____

BRYCE D. KOCIANTIM

Mayor

BARKER

ATTEST:

LISA STAVENAPPAULA FAVORS

City Secretary

City of Wharton
120 E. Caney Street
Wharton, TX 77488

FINANCE COMMITTEE


Meeting Date:	3/23/2020	Agenda Item:	Amendment to City of Wharton Developer-Customer Utilities, Storm Drainage, And Street Construction Services Agreement with BSR Properties V, LLC.
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Mr. Brett Rowley of BSR Properties V, LLC and the City of Wharton signed a Developer-Customer Utilities, Storm Drainage, And Street Construction Services Agreement on March 12, 2019.

Mr. Rowley has come back to the City and has met with staff and is requesting an amendment to the current agreement to include a reimbursement agreement with the City of Wharton.

Attached is the draft agreement.

Community Development Director Gwyn Teves will be present to answer any questions.

City Manager: Andres Garza, Jr.	Date: Thursday, March 19, 2020
Approval: 	
Mayor: Tim Barker	



City of Wharton

120 E. Caney • Wharton, TX 77488
Phone (979) 532-2491 • Fax (979) 532-0181

MEMORANDUM

DATE: March 17, 2020

FROM: Gwyneth Teves, Community Development Director

TO: Honorable Mayor and City Council

SUBJECT: Amendment to City of Wharton Developer-Customer Utilities, Storm Drainage, And Street Construction Services Agreement with BSR Properties V, LLC

Mr. Brett Rowley of BSR Properties V, LLC and the City of Wharton signed a Developer-Customer Utilities, Storm Drainage, And Street Construction Services Agreement on March 12, 2019.

Mr. Rowley has come back to the City and has met with staff and is requesting an amendment to the current agreement to include a reimbursement agreement with the City of Wharton.

Attached is a draft amended agreement.

If you should have any questions, please contact me at 979-532-2491 ext. 238. Thank You.

**CITY OF WHARTON
DEVELOPER-CUSTOMER UTILITIES, STORM DRAINAGE, AND STREET
CONSTRUCTION SERVICES AGREEMENT**

STATE OF TEXAS §

COUNTY OF WHARTON §

THIS AGREEMENT is entered into by and between the **CITY OF WHARTON**, a Municipal Corporation, acting by and through its Mayor (“City”) and **BSR PROPERTIES V, LLC.**, a limited liability company, (“Developer” or “Developer-Customer”), acting by and through **BRETT ROWLEY**, its owner.

WITNESSETH:

Developer has requested that it be allowed to extend public water and sewer facilities, storm drainage and public streets (the “Facilities”) as part of its residential development of an 8.198-acre tract included in the proposed La Delle Ridge Subdivision situated in the City of Wharton at La Delle Street & Hodges Lane, Randal Jones ½ League, Abstract 36 and depicted in the attached plat as **EXHIBIT “A”**.

Developer has requested that a reimbursement agreement be initiated as adopted in City of Wharton Resolution 2020-XX on March 23, 2020. For a period of ten (10) years from the date of this agreement, the City of Wharton will reimburse developer for each house built on each lot and a certificate of occupancy has been issued by the City’s Code Enforcement Department in an amount not to exceed \$10,000.00.

The proposed Developer-initiated construction of the Facilities is intended to provide: integrated public streets; municipal water and sanitary sewer service utilities; and storm drainage to Developer’s property. The City of Wharton has agreed to conditionally accept the privately constructed Facilities for long term ownership, operation, and maintenance of public streets, storm drainage, municipal water, and domestic sanitary sewer collection subject to the conditions outlined in this Agreement. Developer recognizes and agrees that extension of existing City public streets, water and sanitary sewer facilities, and storm drainage in accordance with this Agreement will be required to provide the long term utility and transportation services to the property owned by Developer in furtherance of the City’s protection of the health, safety, and general welfare of the area citizens.

I. Design and Construction Procedures and provisions that Developer Agrees to Incorporate Into Developer-Customer’s Construction Contract

A. Design

1. The Developer’s construction plans, specifications, and Construction Contract Documents for the Facilities will be prepared, designed and sealed by a registered professional engineer currently licensed in the State of Texas. Developer’s engineer shall carry not less than one million dollars of professional liability errors and omissions liability insurance on a “claims made basis”.
2. Developer’s engineer shall prepare an Engineering Report describing all public street improvements, storm drainage water, sewer system to be constructed to serve the tract,

including adequate provisions and/or dedications of any private right-of-way, to ultimately connect the Facilities to the off-site pre-existing City streets, storm drainage channels, water mains, and sewer mains which will upon completion and City acceptance, become a part of the City's public streets, drainage, water, and sewer systems.

3. The City's Public Works Director shall review such Engineering Report from Developer's engineer and the Construction Documents and make reasonable determinations as to their general adequacy and suitability based upon City standards and industry standards. City approval in all respects as to the proposed Facilities' locations, sizes, grades and invert elevations, and projected construction cost and Construction Documents are conditions precedent to any further obligation of the City; provided, however, that such approval shall not be unreasonably withheld, conditioned or delayed.
4. The Developer, at its sole expense, shall reimburse the City of Wharton for the reasonable costs associated with the City Public Works Director's administrative and technical review of any and all engineering drawings, plans and specifications, prepared by the Developer's engineer for the construction of the Facilities.

B. Construction

1. Developer shall pay the reasonable costs associated with the development of the Facilities. Costs shall include, but not be limited to the following:
 - i. engineering and design of the Facilities;
 - ii. permit fees paid to any third parties for crossing of railroads, gas pipelines, creeks, roadways, etc.;
 - iii. construction of the Facilities;
 - iv. inspection; and
 - v. testing (including purchasing of water to fill/flush water and sewer lines), sampling and other necessary costs relating to obtaining governmental or regulatory approvals required to lawfully provide safe utility services to the public
2. The construction of the Facilities by Developer's private contractor shall be, as a minimum, in accordance with applicable regulatory requirements and procedures pertaining to such respective systems set forth by: the City of Wharton; Texas Commission on Environmental Quality ("TCEQ"); County of Wharton ("County"); State of Texas (including Texas Department of Transportation ("TXDOT") regarding use of any State rights-of-way); and any federal agency or departments having regulatory authority, such as but not limited to the U.S. Environmental Protection Agency and the Occupational Safety and Health Administration ("OSHA"). Additionally, all facilities shall be constructed under the periodic field observation of the Developer's engineer and the City of Wharton; and until written notice of the approval of the construction by the City Manager, no public use of streets; storm water discharge; water and sewer flows therein shall be accepted or provided by the City of Wharton for transportation and treatment; provided, however, that such approval shall not be unreasonably withheld, conditioned or delayed. Such periodic observation of construction by the City does not relieve Developer of its primary oversight and quality control responsibility of Facilities construction contractor.

3. The construction of the Facilities in accordance with plans and specifications approved by the City Public Work's Director or his engineering consultant representative, shall be performed by a reputable and experienced utility contractor chosen pursuant to a publicly advertised and privately conducted competitive sealed bidding process pursuant to (Texas Local Government Code "TLGC") TLGC Sects: 212.071 – 212.074; (Texas Government Code "TGC") TGC 2269.001 - 2269.003; TGC 2269.051 – 2269.059; and TGC 2269.101 – 2269.106.
4. In effect, the Developer and its Engineer will be privately conducting a competitive sealed bidding process as if the Developer were the City of Wharton. The reason for this approach is to ensure to the citizens of Wharton that no collusion or fraud is part of the construction contract award and in respect to the fact that the City of Wharton will in perpetuity own and operate the Facilities upon final construction completion, public dedication, and acceptance of the Facilities by the City.
5. All such construction work shall be subject to observation by qualified representatives of the Developer's engineers and City. No portion of any main installed in any excavation shall be backfilled unless and until the construction of such portion shall have been observed by a designated representative of the Developer's engineer.
6. The Developer shall, at its sole expense, reimburse the City of Wharton for its reasonable expenses in connection with its periodic construction observer to represent the City of Wharton, for the full amount of time the City observer is present while Developer's contractor is constructing the Facilities extensions. Developer's contractor shall pay its employees not less than the most current minimum hourly wages at the time of contract award as derived from the federal D.O.L. Dallas heavy-highway, utility prevailing wage rates for Wharton County, Texas. All subcontractors of any tier shall be required to follow the same wage and hour provisions.
7. City shall have the right to inspect all phases of the construction of the Facilities and to potentially require additional inspection to be performed by a consulting construction inspection services company reasonably approved by City. Developer will bear the reasonable cost of such additional inspection should the additional inspection find material design deficiencies, construction deficiency, or defects in the construction, material, equipment or similar items requiring corrective action. Developer must give written notice to City of the date on which construction is scheduled to begin so that City may assign an observer.
8. The Developer, through its engineer, will design the plans and specifications in accordance with the City of Wharton's standards for the Facilities. The design plans and specifications will be approved by the City of Wharton and Developer's engineering consultant, prior to Developer's commencement of the construction procurement process to select a responsible, reputable and experienced utility and streets contractor submitting the lowest responsive bid; provided, however, that such approval shall not be unreasonably withheld, conditioned or delayed. After Project completion, Developer's engineer shall submit reproducible plans of record in both paper and electronic format to the City, reflecting "as built" construction configurations of Facilities improvements and final costs.

9. Developer's engineer will obtain all required City/County/TCEQ/TXDoT permits for work to be conducted within what will become the City's public right of way upon Developer's dedication and City's acceptance of the Facilities.
10. Upon completion of the Facilities, the Developer shall provide to City of Wharton a complete set of mylar reproducible construction plans and an additional set in electronic format for the Facilities, certified "as built" by the engineer responsible for providing engineering services during the construction phase. The Developer's engineer will deliver to City a signed and sealed certificate stating that the Facilities were constructed in accordance with the plans and specifications approved by the City Engineer.
11. Developer will be responsible for making good or paying the cost of all repairs to or other corrective action or damages resulting from design deficiencies, construction deficiency, or defects in the construction, material, equipment, observation or testing, except to the extent that City receives payment for such costs from Developer's engineer or Developer's contractor or from any proceeds from the bonds or insurance. Developer's construction contract will provide that Developer shall hold no less than 10% retainage, subject to final completion of the Facilities, including resolution of all punch list items.
12. City may choose, in its sole discretion, not to reject the dedication and/or conveyance of the Facilities or to refuse to accept ownership to any of the Facilities or any particular improvement if the Facilities, or any portion of the Facilities, or particular improvement are subject to design or construction related deficiencies. If the Developer accepts title to the Facilities from the contractor, either before or after City is aware of the design or construction related deficiencies, City may, in its sole discretion, either choose to correct a design or construction related deficiency in the Facilities and obtain reimbursement from the Developer's engineer or contractor, or not correct the design or construction related deficiencies. Developer will reimburse City for the amount due City under this section within ten (10) business days after written demand by City. To the extent that the Developer, by action or inaction, reduces or impairs any City rights to pursue any claims against the design engineer and/or contractor(s), or their respective insurance carriers or sureties, the Developer will be responsible to City.

C. Deposit for City's Expenses

The Developer, prior to work beginning, will deposit with the City \$1,000.00 which shall be used to periodically pay the City's professional and administrative expenses for inspection, observation, and review of this project, as outlined in Sections "A" and "B" of this Agreement. This deposit payment represents an estimate of the City's expenses, and should the expenses exceed this amount, Developer will be responsible for any additional amounts. These additional expenses shall be paid by Developer within ten (10) business days of notification. Any remaining funds on deposit at the City after City's final project acceptance for public dedication, will be refunded to Developer.

D. City as Tax Exempt Organization

Under this Agreement and construction contract format, the Developer's private contractor in effect becomes a "seller" to the City of pipe, bedding, concrete, asphalt, etc. materials that are to be physically incorporated into the project's public realty. The City of Wharton will ultimately own and operate the publicly dedicated Facilities extensions as part of its public works system.

As a “seller”, the Developer’s contractor will issue a “Texas Certificate of Resale” to any suppliers, in lieu of paying the sales tax on materials at the time of purchase. The contractor will also issue a “Certificate of Exemption” to the supplier, demonstrating that the personal property (pipe, etc.) is being purchased for resale and that the resale is ultimately to the public works department of the City of Wharton, Texas, which is a sales tax exempt public entity. Contractors should be careful to consult the most recent guidelines of the State Comptroller of Public Accounts regarding the sales tax status of any various supplies and equipment that are used and consumed during project work, but that are not physically incorporated into the project realty. Contractors that have questions about the implementation of this policy are asked to inquire with the State Comptroller of Public Accounts, Tax Administration Division, State of Texas, Austin, Texas 78774 (tel. 512-463-4934). Contractors will not include any federal taxes in construction prices submitted to the Developer since the City, as ultimate beneficiary and owner of the publicly dedicated Facilities improvements, is exempt from payment of such taxes. “Texas Certificates of Exemption”, “Texas Certificates of Resale” and “Texas Sales Tax Permits” are forms available to the contractor through the regional offices of the State Comptroller of Public Accounts and the City’s Finance Director can provide the City’s tax-exempt identification number.

E. Contractor's Care of Work

1. Developer’s contractor shall be responsible for all damages and injury to persons or property that occur as a result of his fault or negligence in connection with the prosecution of the private construction work of the Facilities and shall be responsible for the proper care and protection of all materials delivered and work performed until completion and final acceptance by the City for public dedication, ownership, and long term operations and maintenance.
2. Developer’s contractor shall determine the reasonable need for sufficient competent watchmen, both day and night, to possibly include Saturdays, Sundays, and holidays, to protect the work within public right-of-way, materials, Developer and City, from the time the Facilities work is commenced until final completion and City’s acceptance for public dedication.
3. In an emergency affecting the safety of life, limb or property, including adjoining private property, Developer’s contractor, without special instructions or authorization from the City or Developer, is authorized to act at his discretion to prevent or mitigate such threatened loss or injury, and he shall so act. He shall likewise act if instructed to do so by the City or Developer’s engineer.
4. Developer’s contractor shall avoid damage and disruption of operation or use, as a result of his operations, to existing sidewalks, streets, curbs, pavements, utilities (except those which may be intentionally replaced or removed), adjoining property, etc., and he shall at his own expense completely support same and pay for any repair or damage thereto caused by his operations.
5. Developer’s contractor shall shore up, brace, underpin, secure, and protect as may be necessary, all foundations and other parts of existing structures adjacent to, adjoining, and in the vicinity of the Facilities construction sites, which may be in any way affected by the excavations or other operations connected with the construction of the Facilities, as incidental and integrated portions of the Facilities construction anticipated in this

Agreement. The contractor shall be responsible for giving any and all required notices to any adjoining or adjacent property owner or other party before the commencement of any work. **THE DEVELOPER SHALL CONTRACTUALLY SECURE FROM DEVELOPER'S CONTRACTOR, THAT DEVELOPER'S CONTRACTOR SHALL INDEMNIFY AND SAVE HARMLESS BOTH THE DEVELOPER AND CITY OF WHARTON FROM ANY DAMAGES ON ACCOUNT OF EARTH SETTLEMENTS OR THE LOSS OF LATERAL SUPPORT OF ADJOINING PROPERTY AND FROM ALL LOSS OR EXPENSE AND ALL DAMAGES FOR WHICH THE DEVELOPER AND/OR CITY MAY BECOME LIABLE IN CONSEQUENCE OF SUCH INJURY OR DAMAGE TO ADJOINING AND ADJACENT STRUCTURES AND THEIR PREMISES, CAUSED BY DEVELOPER'S CONTRACTOR ACTIVITY.**

6. If the construction of the Facilities, or any portion of the Facilities does not meet the standards set forth in the plans and specifications approved by City's engineer or Developer is in violation of any of City codes, or other applicable law or regulation, or Developer is in default of this Agreement with City, or claims or litigation are pending regarding the Facilities, City may elect to reject the public dedication and/or conveyance and not accept the construction for ownership or maintenance of the Facilities, or the portion of the Facilities, and City may choose to disconnect the Facilities from City systems or refuse to connect the Facilities to the City's systems, as the case may be. The measure of damages for breach of this policy by the Developer is the reasonable cost of completing the Facilities in conformance with the plans and specifications approved by City's engineer to comply with applicable City codes, requirements, procedures, and specifications. Notwithstanding anything herein to the contrary, Developer shall be in default only if Developer fails to comply with any term, provision or covenant of this Agreement within thirty (30) days after written notice from City that Developer has failed to comply with such term, provision or covenant, unless such event is of a nature which cannot be cured within such time period and Developer commences the cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion.

F. Developer Contractor's Accident Prevention

1. No laborer or mechanic employed in the performance of the construction contract shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his/her health or safety as determined under construction safety and health standards, including trench safety, promulgated by the State of Texas, the Secretary of Labor and OSHA.
2. Developer's contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the Facilities work sites, which occur as a result of his prosecution of the work.
3. Developer's contractor shall maintain an accurate record of all cases of death, occupational disease, or injury requiring medical attention or causing loss of time from work, arising out of and in the course of employment on Facilities work under the private construction contract with Developer. The contractor shall promptly furnish Developer and City with written reports concerning these matters.

4. DEVELOPER ASSURES CITY THAT CONTRACTUALLY, DEVELOPER'S CONTRACTOR SHALL AGREE TO INDEMNIFY AND HOLD HARMLESS THE DEVELOPER, CITY OF WHARTON, THEIR RESPECTIVE COUNCIL PERSONS, OFFICERS, AGENTS AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF EVERY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY, ARISING OUT OF OR IN CONNECTION WITH THE NEGLIGENT PERFORMANCE OF THE FACILITIES WORK, PROVIDED THAT SUCH CLAIM, DAMAGE, LOSS, LIABILITY OR EXPENSE IS:

- (a) ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY, INCLUDING THE LOSS OF USE RESULTING THEREFROM; AND
- (b) CAUSED IN WHOLE OR IN PART BY ANY CONDITION OF THE FACILITIES WORK OR MATERIALS, OR BY ANY NEGLIGENT ACT OR OMISSION OF DEVELOPER'S CONTRACTOR, ANY SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY DEVELOPER'S CONTRACTOR OR ANY SUBCONTRACTOR OR ANYONE FOR WHOSE ACTS DEVELOPER'S CONTRACTOR OR ANY SUBCONTRACTOR MAY BE LIABLE UNDER THE CONSTRUCTION CONTRACT WITH DEVELOPER.

SUCH INDEMNITY SHALL APPLY WHERE THE CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS OR LIABILITY ARISE IN PART FROM ANY CONTRIBUTORY NEGLIGENCE OF THE DEVELOPER AND/OR CITY OF WHARTON.

IT IS THE EXPRESSED INTENTION OF THE PARTIES HERETO, BOTH THE DEVELOPER AND THE CITY OF WHARTON, THAT THE INDEMNITY TO BE PROVIDED BY DEVELOPER'S CONTRACTOR IS INDEMNITY BY DEVELOPER'S CONSTRUCTION CONTRACTOR, TO INDEMNIFY AND PROTECT THE CITY AND DEVELOPER FROM THE CONSEQUENCES OF CITY'S AND/OR DEVELOPER'S OWN NEGLIGENCE, IF ANY, WHERE THAT NEGLIGENCE IS A CONCURRING CAUSE OF THE INJURY, DEATH OR DAMAGE. FURTHERMORE, HOWEVER, THE INDEMNITY TO BE PROVIDED BY DEVELOPER'S CONTRACTOR SHALL HAVE NO APPLICATION TO ANY CLAIM, LOSS, DAMAGE, CAUSE OF ACTION, SUIT, AND LIABILITY WHERE THE INJURY, DEATH OR DAMAGE RESULTS FROM THE SOLE NEGLIGENCE OF THE CITY OR DEVELOPER, INDEPENDENT OF THE FAULT OF ANY OTHER PERSON OR ENTITY.

5. Developer's construction contractor shall provide appropriate trench safety protection for all trenches of any depth in the manner specified by current State or Federal law, and the design specifications contained in the private construction contract.

G. Contractor's Potable Water and Sanitary Facilities

The Developer's contractor shall furnish, install, pay for and maintain ample temporary sanitary facilities for his workers. As the needs arise, a sufficient number of enclosed temporary restroom facilities shall be conveniently placed as required. Drinking water shall be provided from an approved source, so transported as to keep it safe and fresh, and served from single service containers. All such facilities and services shall be furnished in strict accordance with existing and governing local and State health regulations.

H. Contractor's Use of Premises

1. The Developer's contractor shall confine his equipment, storage of materials, and construction operations to the Contract Facilities Work Limits as shown on the Engineering Drawings to be provided by Developer's engineer and as reviewed by the City's Public Works Director, or within privately, separately and legally procured license or lease property obtained by Developer's contractor through temporary private easement, license or lease, and as prescribed by any applicable ordinances or permits, and shall not unreasonably or unsafely encumber the Facilities construction sites or public rights of way with his materials and construction equipment.
2. The Developer's contractor shall comply with applicable existing State and local regulations regarding signs, advertising, traffic, fires, explosives, danger signals, and barricades.

I. Contractor's Removal of Debris, Cleaning, Etc.

The Developer's contractor shall, at all times during the progress of the Facilities work, remove and legally dispose of all surplus excavated material and debris, and keep the Project Area and public rights of way clear. Upon completion of the various Facilities work, the contractor shall remove all temporary construction facilities, debris and unused materials provided for the Facilities work, and put the whole site of the Project and public rights of way in a neat and clean condition.

J. Work Review by City

1. The City and its authorized representatives and agents pursuant to TLCG Sect. 212.074(b), shall have access to and be permitted to observe and review all construction estimates, work, materials, equipment, weekly payrolls, personnel records, employment conditions, material invoices, and other relevant data and records pertaining to the private construction contract. All instructions and final approval and acceptance for public dedication with respect to the Facilities work, will be given to the Developer, Developer's engineer and Developer's construction contractor, only by the City through its authorized representatives or agents; provided, however, that such approval shall not be unreasonably withheld, conditioned or delayed.
2. Developer shall be required to secure from its contractor both prompt payment and performance bonds, naming the Developer and the City of Wharton as Joint Obligees, to assure that all of the Facilities improvements are properly paid for, constructed and completed within the City's public right-of-way. These bonds shall each be in the full amount of the contractor's Facilities construction contract with Developer. A separate letter of credit or site improvement performance bond provided by Developer to City to

demonstrate Developer's financial strength to pay Developer's contractor will be released by the City upon satisfactory completion and City's acceptance of public dedication of the Facilities improvements, along with satisfactory proof of payment by Developer to contractor, for work completed and accepted and not in dispute.

K. Final Inspection of Contractor's Work

When the Facilities improvements anticipated in this Agreement are substantially completed as determined by the Developer's engineer, the Developer's contractor shall notify the City in writing that the Facilities work will be ready for final City inspection on a definite date which shall be stated in the notice. The City will make the arrangements necessary to have final inspection commenced on the date stated in the notice, or as soon thereafter as is practicable. Any resulting Facilities punch list corrective work will be completed by Developer's contractor prior to any City acceptance of the Facilities for public ownership.

L. Contractor's Insurance

The Developer's contractor shall not commence Facilities work under the construction contract until he has obtained all the insurance required under this paragraph, and procured payment and performance bonds required under section M. below, and such insurance and bonds have been approved by the City of Wharton.

1. Worker's Compensation Insurance: The Developer's contractor shall procure and shall maintain during the life of the construction contract, Worker's Compensation Insurance as required by the State of Texas for all of his employees to be engaged in the initial private utility construction at the Facilities site and, in case of any such work sublet, the Developer's contractor shall require the subcontractor to similarly provide Worker's Compensation Insurance for all of the latter's employees to be engaged in such Facilities work, unless such subtier employees are covered by the protection afforded by the prime contractor's Worker's Compensation Insurance. Since the Facilities are being developed for long term ownership, operation, and maintenance by the City, no self-insurance for Workers Compensation is allowed.

2. Contractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance: The Developer's contractor shall procure and shall maintain during the life of the construction contract envisioned by this Agreement, contractor's Commercial General Liability Insurance, Contractor's Property Damage Insurance and Comprehensive Business Vehicle Liability Insurance in at least the following amounts:

(a) The following types of insurance in the following minimum amounts shall be furnished by Developer's contractor for the duration of the Facilities project and two (2) original certificates of such insurance evidencing the provisions of this insurance shall be furnished to the Developer and City within ten (10) calendar days from the time the Developer's contractor receives the contract for execution and before a work order is issued by Developer:

(1) Worker's Compensation Insurance: Texas Statutory Requirements.

Employer's Liability Insurance \$500,000.00 per accident, \$500,000.00 for disease; \$500,000.00 for each employee.

- (2) Comprehensive Business Automobile Liability Insurance with Limits of Personal Injury: \$500,000.00, each person; \$1,000,000.00 each accident; Property Damage: \$500,000.00, each accident.
- (3) Commercial General Liability endorsed to include blanket contractual coverage; Bodily Injury: \$500,000.00 each person; \$500,000.00 each accident; \$1,000,000.00 aggregate.
- (4) Underground Insurance Coverage: \$500,000.00.
- (5) Commercial General Liability insurance is to be issued on an occurrence basis; endorsed to include blanket contractual coverage.
- (6) Excess Umbrella Liability Coverage: \$1,000,000.00.
- (b) In the submission of the certificates of insurance, the insurance company in every case must agree to provide the following statement; "The insurance covered by this certificate will not be cancelled or materially altered, except after thirty (30) days written notice has been received by the Developer and City of Wharton."
- (c) Developer's contractor shall purchase and maintain the above insurance as will protect and name as Additional Named Insureds (except Worker's compensation) the Developer and the City of Wharton, their respective officers, agents and employees, against claims which may arise from operations under the Developer's Facilities construction contract documents with Developer's contractor, and shall furnish the Developer and City of Wharton original certificates evidencing this "additional insured" insurance coverage.
3. **Proof of Insurance:** The Developer's contractor shall furnish the Developer and City with certificates showing the type, amount, class of operations covered, effective dates and date of expiration of all insurance policies.

M. Contractor's Warranty of Title and Bonds

No material, supplies, or equipment to be installed or furnished under the construction contract shall be purchased subject to any chattel mortgage or under a conditional sale, lease-purchase or other agreement by which an interest therein or in any part thereof is retained by the seller or supplier. The Developer's construction contractor shall warrant good and free title to all materials, supplies, and equipment installed or incorporated in the Facilities work and upon completion of all work, shall deliver the same together with all improvements and appurtenances constructed or placed thereon by him to the Developer and City of Wharton, free from any claims, attempted liens, or charges. There are no liens able to be filed against the City's public right-of-way. Neither the Developer's contractor nor any person, firm, or corporation furnishing any material or labor for any work covered by the Facilities construction contract shall have any right to a mechanic's or materialman's lien upon any improvement or appurtenance thereon because the improvements being constructed in public right-of-way will ultimately be dedicated and owned in perpetuity by the City. The provisions of this section shall be inserted in the Developer's construction contract and any subcontracts and material supply contracts and notice of its provisions shall be given by Developer's contractor to all

persons furnishing materials for the Facilities work to Developer's construction contractor. Developer will require Developer's contractor to obtain Payment and Performance Bonds from a reputable surety licensed to bond construction work in Texas, naming the City of Wharton, Texas as a Joint Oblige in each type Bond, in the full value of the Facilities construction contract to assure Developer's payment to laborers and suppliers filing timely and valid claims against the Payment Bond, and to ensure timely and proper Project Facilities completion.

N. Warranty of Workmanship and Materials

Neither the Developer's final certificate of payment, nor any provision in the Developer's construction contract, nor partial or entire use of the improvements embraced in this Agreement by the City or the public, shall constitute an acceptance of the Facilities work not done in accordance with the Developer's design, construction contract and City requirements, or relieve the Developer and/or Developer's contractor of liability to the City in respect to any express warranties and guarantees, that will run to the benefit of both Developer-Customer and the City of Wharton, or responsibility for presence of faulty materials or defective workmanship. The Developer's contractor shall promptly remedy any defects in the Facilities work and pay for any damage to other work resulting therefrom, which shall appear within the post-construction acceptance period of twelve (12) months from the date of final acceptance of the dedicated public Facilities work by the City of Wharton. Contractor's performance bond shall remain in effect through the twelve (12) month post-construction workmanship guarantee period, to the benefit of both the Developer-Customer and the City of Wharton.

O. Contractor's Job Offices

1. The Developer's construction contractor and his subcontractors may maintain such office and storage facilities on the Facilities work sites as are necessary for the proper conduct of the work. These shall be located so as to cause no interference to any other public work to be performed in the project area. The City shall be consulted with regard to work locations and contractor's duration of presence.
2. Upon completion of the Facilities improvements, the Developer's construction contractor shall remove all such temporary structures and facilities from the project site, same to become contractor's property, and leave the site of the Facilities work in the condition required by the Developer's construction contract and as deemed satisfactory by the City of Wharton.

P. Developer Contractor's Contract Performance Period

1. The Developer Contractor's Facilities work to be performed for Developer pursuant to this Agreement shall commence within the time agreed to by the City of Wharton in the Developer's Notice to Proceed, and shall be fully completed within a time to be determined once Notice to Proceed has been issued.
2. If Developer, through management of its construction contractor, fails to perform its Developer duties under this Agreement, including but not limited to satisfaction of the construction start and completion dates of the Facilities within the dates described in section P(1), then unless mutually extended in writing or due to delay caused by the City, then the City may terminate this Agreement without liability to Developer.

II. Capacity Rights

A. Ownership and Operation

Developer shall dedicate, grant and convey all right, title and interest of the Developer to the City in both the real estate and personalty associated with the completed Facilities, without encumbrances, upon the Facilities' completion and final acceptance by the City for public dedication, ownership, and operation. City shall thereafter own, operate, and maintain said public Facilities systems in perpetuity.

B. City Recognition of Vested Rights

Developer shall acquire a vested right from the City of Wharton to the constructed municipal domestic sanitary sewer capacity to serve Developer's development only in the off-site sanitary sewer lines collection systems servicing the identified Project tract, in the capacity amounts established in the finally approved Developer Engineering Report.

C. Capacity

The City shall have the right to reasonably and prudently connect streets, storm water drainage, potable water, and sanitary sewer flows from other area developments to the off-site Facilities streets, storm water drainage, water and, sanitary sewer systems regardless of whether any such individual system is oversized to accommodate such additional flows.

III. Assignment

No assignment of this Agreement in whole or in part shall be made by the Developer without prior written approval by the Wharton City Council; provided, however, that such approval shall not be unreasonably withheld, conditioned or delayed. Notwithstanding anything contained herein to the contrary, Developer may, without Wharton City Council's prior consent, assign this Agreement to an entity into which Developer is merged or consolidated or to an entity to which substantially all of Developer's assets are transferred or to an entity controlled by or is commonly controlled with Developer. In such an event, Developer will provide City sixty (60) days written notice of the assignment and provide City assignee's name, address, phone number, and such reasonable information as City may require to verify that assignee is controlled by Developer.

The term "controlled by" or "commonly controlled with" shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such controlled person or entity; the ownership, directly or indirectly, of at least fifty-one percent (51%) of the voting securities of, or possession of the right to vote, in the ordinary direction of its affairs, at least fifty-one percent (51%) of the voting interest in, any person or entity shall be presumed to constitute such control.

IV. City's Obligation of Performance Conditioned

The obligations of the City of Wharton herein to render long term services for the collection, transportation and treatment of domestic sanitary wastewater from the Developer's project tract is conditioned upon present rules, regulations, and statutes of the United States of America and the State of Texas and any court orders that directly affect either the City's sewer transportation and treatment system, or the project's sanitary sewer collection system. Developer recognizes and

acknowledges that if the rules, regulations, and statutes of the United States of America and/or State of Texas that are in effect upon the execution date of the Agreement are ever revised or amended to such an extent that the City may be incapable of, or prevented from, transporting and/or treating the Project's wastewater, **THEN NO LIABILITY OF ANY NATURE IS TO BE IMPOSED UPON THE CITY OF WHARTON RESULTING FROM A CITY COMPLIANCE WITH SUCH LEGAL OR REGULATORY MANDATES RESULTING IN THE CITY'S INABILITY, REFUSAL OR FAILURE TO PROVIDE TRANSPORTATION AND/OR TREATMENT OF THE WASTEWATER GENERATED BY THE PROJECT DUE TO THE ABOVE DESCRIBED FINAL ACTIONS, WHICH ARE BEYOND THE CITY'S CONTROL.** The City agrees that it will use its best efforts to mitigate or prevent the enactment or adoption of such provisions or amendments, or the imposition of such Court Order. Nothing herein contained is intended to, or shall create a right in any such State or federal court or agency to enact, adopt, or impose such requirements upon the City to the disadvantage of the Developer. Further, in the event that an administrative or judicial proceeding is commenced either by or against the City concerning the right of the City to perform its obligations hereunder, the City shall move for the joinder of the Developer as an affected party in interest thereto.

IX. Severability

If for any reason, any one or more sections of this Agreement are held legally invalid, such judgment shall not prejudice, affect, impair or invalidate the remaining sections of the Agreement or the Agreement as a whole, but shall be confined to the specific sections, sentences, or clauses of this Agreement that are held legally invalid.

X. Notices

Any notice, request, demand, report, certificate or other instrument which may be required or permitted to be furnished to or served upon the parties hereto shall be deemed sufficiently given or furnished or served if in writing and hand delivered with properly documented receipt or deposited in the United States Mail, registered or certified, return receipt requested, or sent by overnight courier by receipted delivery addressed to such party at the address set forth below:

If to the City:

CITY OF WHARTON
Attn: City Manager
120 East Caney Street
Wharton, Texas 77488

If to the Developer:

BSR PROPERTIES V, LLC.
c/o Brett Rowley
1908 Avenue D, Ste A100
Katy, Tx 77493

or such other address or addresses of which either party may later notify the other party about in writing.

XI. Incorporation of Documents and Attachments

All documents and other materials that are either attached hereto, or referenced herein, are incorporated into this Agreement by this reference as an inseparable part hereof, by such reference thereto, and this Agreement shall be construed to include all of any such attached or referenced documents and other materials, unless the contrary shall have been specifically provided herein.

****REMAINDER OF PAGE LEFT INTENTIONALLY BLANK****
SIGNATURE AND ACKNOWLEDGMENTS ON NEXT PAGE

DRAFT

EXECUTED on the date(s) indicated below and EFFECTIVE on the _____ day of _____, 2019.

CITY OF WHARTON, a Texas municipal corporation

BY: _____
TIM BARKER, MAYOR

ATTEST:

PAULA FAVORS, CITY SECRETARY

ACKNOWLEDGMENT

STATE OF TEXAS §

COUNTY OF WHARTON §

BEFORE ME, the undersigned, a Notary Public in and for said County and State on this day personally appeared TIM BARKER., MAYOR, of the City of Wharton, Texas, known to me to be the person and municipal official whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of said CITY OF WHARTON, TEXAS, a municipal corporation, and that the Mayor has executed same pursuant to his legally authorized ability to act on behalf of such municipal corporation for the purposes, considerations and obligations therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____ 2019.

Seal

Notary Public
My Commission Expires:_____

DEVELOPER:

BSR PROPERTIES V, LLC.

BY: _____
BRETT ROWLEY, OWNER

ATTEST:

KELLY TURNER, BROKER

ACKNOWLEDGEMENT

STATE OF _____ §

COUNTY OF _____ §

BEFORE ME, a Notary Public on this day personally appeared _____, _____, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that _____ executed same for the purposes, considerations, and obligations therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____ 2019.

Seal

Notary Public
My Commission Expires: _____

EXHIBIT "A"
LA DELLE RIDGE SUBDIVISION PLAT

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DRAFT

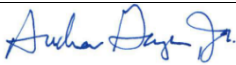
City of Wharton
120 E. Caney Street
Wharton, TX 77488

FINANCE COMMITTEE

Meeting Date:	3/23/2020	Agenda Item:	Resolution: A resolution of the Wharton City Council approving a moratorium on the issuance of all permits for industrial and agriculture development; expansion of existing industrial and agriculture development will be reviewed prior developing within the Wharton City Limits until an ordinance pertaining to such has been approved.
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Attached you will find a memorandum from Building Official Ronnie Bollom regarding a moratorium for industrial and agriculture development within the City Limits pending the adoption of a new ordinance.

Mr. Bollom will be present to answer any questions.

City Manager: Andres Garza, Jr.	Date: Thursday, March 19, 2020
Approval: 	
Mayor: Tim Barker	



City of Wharton

120 E. Caney • Wharton, TX 77488
Phone (979) 532-2491 • Fax (979) 532-0181

MEMORANDUM

DATE: March 16, 2020

FROM: Ronnie Bollom, Building Official

TO: Andres Garza, Jr., City Manager
City of Wharton Council Members

SUBJECT: Moratorium Industrial and Agriculture Development

With the City Council's approval, the Code Enforcement Department is requesting that a moratorium be placed on the issuance of all permits for industrial and agriculture development within the city limits of Wharton, pending the adoption of a new ordinance.

If you should have any questions, please contact me at City Hall at 979-532-2491. Thank You.

**CITY OF WHARTON
RESOLUTION NO. 2020-XX**

A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING A MORATORIUM ON THE ISSUANCE OF PERMITS FOR NEW INDUSTRIAL AND AGRICULTURE DEVELOPMENT; EXPANISION OF EXISTING INDUSTRIAL AND AGRICULTURE DEVELOPMENT WILL BE REVIEWED PRIOR DEVELOPING WITHIN THE WHARTON CITY LIMITS UNTIL AN ORDINANCE PERTAINING TO SUCH HAS BEEN APPROVED.

WHEREAS, the Wharton City Council has been informed by the City Staff that City Ordinance concerning new industrial and agriculture development shall not be considered until ordinance(s) pertaining to such have been approved by City Council; and,

WHEREAS, the Wharton City Council will consider existing industrial and agriculture development expansions within existing property; and,

WHEREAS, The Wharton City Council wishes to approve moratorium on the issuance of new commercial permits for industrial and agriculture development within the city limits pending adoption of new ordinance.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WHARTON, TEXAS as follows:

Section I. That the Wharton City Council hereby approves a moratorium on the issuance of new commercial permits for industrial and agriculture development within the city limits pending adoption of new ordinance.

Section II. That the Wharton City Council hereby will consider existing industrial and agriculture development expansions within existing property.

Section III. That this resolution shall become effective immediately upon its passage.

Passed, Approved, and Adopted this 23rd day of March 2020.

CITY OF WHARTON, TEXAS


By: _____
TIM BARKER
Mayor

ATTEST:

PAULA FAVORS
City Secretary

City of Wharton
 120 E. Caney Street
 Wharton, TX 77488

FINANCE COMMITTEE

Meeting Date:	3/23/2020	Agenda Item:	Resolution: A resolution of the Wharton City Council approving the purchase through the Texas Department of Information Resources (DIR) for Information Technology upgrades through CISCO Systems, Inc. for cyber security upgrades and installation of said upgrades through Mark Risinger.
<p>The City of Wharton technology footprint has grown significantly in the past fifteen years. Starting from a single server at City Hall and the Police Department, each location now hosts multiple servers and mission critical services. All City locations are now connected via fiber optic cables, and wireless networks have been added at the Civic Center, City Hall, and the Police Department. At this stage, additional measures should be implemented to protect the stability and monetary investment the City continues to make in technology.</p> <p>The attached a copy of the 2020 Information Technology Recommendations provided by Mark Risinger, the City of Wharton’s contract IT guru. The document describes the current environment and offers recommendations, activities, and enhancements to the City’s technology platform that will further enhance reliability and security. The goal of the following recommendations is to improve the City of Wharton’s technology stance by implementing IT and security standard practices. These practices focus on preventing issues to the extent possible, detecting events when they do occur, and alerting the appropriate staff. Additionally, these measures speak to current and future State of Texas cyber security requirements. Each recommendation includes budgetary estimates on Capital and Operating expenditures and implementation timelines. Finally, it is important to note that implementing security and reliability is a journey, not a destination, and the City’s overall plan must continue to adapt to developments as they arise.</p> <p>Cost Estimate Summary</p> <ul style="list-style-type: none"> • Total Capital Cost: \$21,500 • Operational Cost: \$2,650 • Labor: 89.5 Hours 			
City Manager: Andres Garza, Jr.		Date: Thursday, March 19, 2020	
Approval: 			
Mayor: Tim Barker			

City of Wharton

2020 Information Technology Recommendations



Prepared By: Mark Risinger

February 26, 2020

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Executive Summary: The City of Wharton technology footprint has grown significantly in the past fifteen years. Starting from a single server at City Hall and the Police Department, each location now hosts multiple servers and mission-critical services. All City locations are now connected via fiber optic cables, and wireless networks have been added at the Civic Center, City Hall, and the Police Department.

At this stage, additional measures should be implemented to protect the stability and monetary investment the City continues to make in technology. The following document describes the current environment and offers recommendations, activities, and enhancements to the City's technology platform that will further enhance reliability and security.

The goal of the following recommendations is to improve the City of Wharton's technology stance by implementing IT and security standard practices. These practices focus on preventing issues to the extent possible, detecting events when they do occur, and alerting the appropriate staff. Additionally, these measures speak to current and future State of Texas cyber security requirements. Each recommendation includes budgetary estimates on Capital and Operating expenditures and implementation timelines. Finally, it is important to note that implementing security and reliability is a journey, not a destination, and the City's overall plan must continue to adapt to developments as they arise.

Approach:

- Add cyber security controls and tools in key areas
- Implement automated monitoring and logging for key IT systems
- Configure automated messaging to alert City IT staff of critical events
- Retire and/or replace hardware and software that is no longer supported by the original manufacturer

Cost Estimate Summary

- **City Hall**
 - Capital Cost: \$16,400
 - Operational Cost: \$1,400
 - Labor: 31 Hours
- **Police Department**
 - Capital Cost: \$5,100
 - Operational Cost: \$1,100
 - Labor: 36 Hours
- **EMS/Civic Center**
 - Capital Cost: \$2,500
 - Operational Cost: \$150
 - Labor: 17.5 Hours
- **Fire Department**
 - Labor: 2.5 Hours
- **Public Works**
 - Labor: 2.5 Hours
- **Total**
 - Capital Cost: \$21,500
 - Operational Cost: \$2,650
 - Labor: 89.5 Hours

City Hall

- **Recommendation: Upgrade “ch-server” Windows Operating System**
 - Justification: Microsoft no longer provides security and stability updates for the Windows Server 2008 operating system. However, the server hardware likely has several more years of useful life and the City should maximize that investment.
 - Capital Cost: Windows Server 2019 license (\$1,500)
 - Operational Cost: Same as current yearly server support renewal
 - Time Required: Approximately 6 hours
- **Recommendation: Replace Cisco ASA 5505 firewall**
 - Justification: This firewall platform has reached end of life and Cisco is no longer releasing security updates.
 - Capital Cost: Purchase Palo Alto PA-220 - \$2,500
 - Operational Cost: \$1,000 yearly renewal of support and security subscriptions
 - Time Required: 8 hours
- **Recommendation: Add additional Cisco network switch to stack**
 - Justification: The current switch is completely full, and no more devices can be connected.
 - Capital Cost: \$5,000
 - Operational Cost: \$400
 - Time Required: 1 hour
- **Recommendation: Add network attached storage for data backup replication**
 - Justification: Data backed up at the Police Department should be replicated off-site to improve the chances of protecting data in the event a single building is damaged.
 - Capital Cost: \$6,000
 - Operational Cost: \$0
 - Time Required: 3 hours
- **Recommendation: Retire “city-srv” server**
 - Justification: This server is well over 15 years old and is running Windows Server 2003. It has served its purpose and its useful life is at an end.
 - This activity should not incur capital or operational costs.
 - Time Required: 1 hour
- **Recommendation: Antivirus status review**
 - Justification: City Hall laptop and desktop computers should be checked regularly to ensure that they have updated antivirus software, as this is a primary vector for malicious software intrusion. Administrators should receive email alerts for malware detections or failed clients.
 - This activity should not incur capital or operational costs.
 - Time Required: 12 hours

- **Recommendation: If not present, create Acceptable Use and Bring Your Own Device (BYOD) policies governing the use of all City technology resources.**
 - Justification: These documents are required by many audit and compliance frameworks. Additionally, user activity is the #1 method of introducing malicious software into environments, oftentimes unbeknownst to the users.

- **Recommendation: Network Switches should be updated to the current firmware in order to apply all available security updates**
 - Justification: This is a standard procedure that should be done on a yearly basis
 - Time required: 1 hour

Police Department

- **Recommendation: Reconfigure City to PD routing to traverse PD firewall**
 - Justification: This will enhance the existing security rules protecting the Police Department and City Hall networks.
 - Capital Cost: \$0
 - Operational Cost: \$0
 - Time Required: 4 hours
- **Recommendation: Upgrade wpd-srv Windows Operating System to create Virtual Machine Host**
 - Justification: Microsoft no longer provides security and stability updates for the Windows Server 2008 operating system. However, the server hardware likely has several more years of useful life and the City should maximize that investment. Utilizing virtual machine technology will allow the City to run two copies of Windows on the same hardware.
 - Capital Cost: Windows Server 2019 license (\$1,500)
 - Operational Cost: Same as current yearly server support renewal
 - Time Required: Approximately 6 hours
- **Recommendation: Add network Intrusion Prevention System to detect and block network attacks**
 - Justification: As cyber threats increase in complexity and frequency; new security controls must be added to provide additional protections.
 - Capital Cost: Purchase Palo Alto PA-220 - \$2,500
 - Operational Cost: \$1,000 yearly renewal of support and security subscriptions
 - Time Required: 8 hours
- **Recommendation: Configure external DNS failover**
 - Justification: Currently, when the primary Internet circuit goes down, officers must manually use the standby IP address or request the eforce1.cityofwharton.com DNS record be updated. This change will provide automatic failover between Internet connections.
 - Capital Cost: \$0
 - Operational Cost: \$100
 - Time Required: 2 hours
- **Recommendation: Build a network monitoring server for City IT Infrastructure**
 - Justification: This tool automatically monitors firewalls, network switches, and servers for availability and performance. When systems become unavailable, it sends email and/or text alerts to City staff to alert them to the issue.
 - Capital Cost: \$0 (I recommend starting with an Open Source Solution)
 - Operational Cost: \$0
 - Time Required: 8 hours
- **Recommendation: Build a network logging server for City IT Infrastructure**

- Justification: This is a requirement in most compliance audit frameworks and enables City IT staff to monitor the environment over time.
- Capital Cost: \$0 (I recommend starting with an Open Source Solution)
- Operational Cost: \$0
- Time Required: 8 hours
- **Recommendation: Antivirus status review**
 - Justification: PD laptop and desktop computers should be checked regularly to ensure that they have updated antivirus software, as this is a primary vector for malicious software intrusion. Administrators should receive email alerts for malware detections or failed clients.
 - This activity should not incur capital or operational costs.
 - Time Required: 12 hours

EMS

- **Recommendation: Antivirus status review**
 - Justification: EMS laptop and desktop computers should be checked regularly to ensure that they have updated antivirus software, as this is a primary vector for malicious software intrusion. Administrators should receive email alerts for malware detections or failed clients.
 - This activity should not incur capital or operational costs.
 - Time Required: 12 hours
- **Recommendation: Review Access Control Lists between EMS and City Hall to ensure they are up to date and functioning as intended.**
 - Justification: This is a standard procedure that should be done on a yearly basis
 - Time required for ACL: 30 minutes
- **Recommendation: Network Switches should be updated to the current firmware in order to apply all available security updates**
 - Justification: This is a standard procedure that should be done on a yearly basis
 - Time required: 1 hour
- **Recommendation: Replace Ruckus Zone Director 1100 Wireless Controller**
 - Justification: The wireless controller that serves the Civic Center, EMS, and City Hall is end of life and no longer receives vendor software updates. Replacing the unit with a new Ruckus unit should allow the City to continue using the existing access points (subject to vendor confirmation).
 - Capital Cost: Purchase Ruckus Zone Director 1200 - \$2,500
 - Operational Cost: \$150 per year support renewal
 - Time required: 4 hours

Fire Department

- **Recommendation: Antivirus status review**
 - Justification: FD laptop and desktop computers should be checked regularly to ensure that they have updated antivirus software, as this is a primary vector for malicious software intrusion. Administrators should receive email alerts for malware detections or failed clients.
 - This activity should not incur capital or operational costs.
 - Time Required: 1 hour
- **Recommendation: Review Access Control Lists between EMS and City Hall to ensure they are up to date and functioning as intended.**
 - Justification: This is a standard procedure that should be done on a yearly basis
 - Time required for ACL: 30 minutes
- **Recommendation: Network Switches should be updated to the current firmware in order to apply all available security updates**
 - Justification: This is a standard procedure that should be done on a yearly basis
 - Time required: 1 hour

Public Works

- **Recommendation: Antivirus status review**
 - Justification: Public Works laptop and desktop computers should be checked regularly to ensure that they have updated antivirus software, as this is a primary vector for malicious software intrusion. Administrators should receive email alerts for malware detections or failed clients.
 - This activity should not incur capital or operational costs.
 - Time Required: 1 hour
- **Recommendation: Review Access Control Lists between EMS and City Hall to ensure they are up to date and functioning as intended.**
 - Justification: This is a standard procedure that should be done on a yearly basis
 - Time required for ACL: 30 minutes
- **Recommendation: Network Switches should be updated to the current firmware in order to apply all available security updates**
 - Justification: This is a standard procedure that should be done on a yearly basis
 - Time required: 1 hour

Appendix A:

City of Wharton Current Technology Infrastructure

- **City Hall**
 - 7 Dell Production Servers
 - 1 Cisco Network Switch (City Network Core)
 - 1 Avaya IP Office
 - 1 Cisco ASA Firewall
 - 2 Ruckus Wireless Access Points

- **Police Department**
 - 7 Dell Production Servers
 - 2 Cisco Network Switches
 - 1 Avaya IP Office
 - 1 Cisco ASA Firewall
 - Watchguard Video Recording Server
 - 2 Cisco Wireless Access Points
 - Legacy AS/400
 - TLETS Interface

- **EMS/Civic Center**
 - 1 Dell Production Server
 - 3 Cisco Network Switches
 - 1 Avaya IP Office
 - 1 Cisco ASA Firewall
 - 4 Ruckus Wireless Access Points
 - 1 Ruckus Wireless Access Point Controller

- **Fire Department**
 - 1 Cisco Network Switch

- **Public Works**
 - 1 Cisco Network Switch

**CITY OF WHARTON
RESOLUTION NO. 2020-XX**

A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING THE PURCHASE THROUGH THE TEXAS DEPARTMENT OF INFORMATION RESOURCES (DIR) FOR INFORMATION TECHNOLOGY UPGRADES THROUGH CISCO SYSTEMS, INC. FOR CYBER SECURITY UPGRADES AND INSTALLATION OF SAID UPGRADE THROUGH MARK RISINGER.

WHEREAS, The City of Wharton technology footprint has grown significantly in the past fifteen years and a need for Cyber Security upgrades has increased and,

WHEREAS, The need for additional measures has been identified and there is a need for upgrades to be implemented to protect the stability and monetary investment the City of Wharton has made in technology; and,

WHEREAS, The Wharton City Council wishes to purchase the needed Information Technology (IT) upgrades through the Texas Department of Information Resources (DIR) and Cisco Systems, Inc. in the amount of \$21,500.00, annual operational license fees of \$2,650.00 and installation through Mark Risinger at approximately a cost of \$13,425.00.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WHARTON, TEXAS as follows:

Section I. The City of Wharton recognizes the need for upgrades to the Cyber Security system for the Information Technology (IT) system.

Section II. The Wharton City Council hereby authorizes the purchase of the needed Information Technology (IT) upgrades through the Texas Department of Information Resources (DIR) and Cisco Systems, Inc. in the amount of \$21,500.00, annual operational license fees of \$2,650.00 and installation through Mark Risinger at approximately a cost of \$13,425.00.

Section III. That this resolution shall become effective immediately upon its passage.

Passed, Approved, and Adopted this 23rd day of March 2020.

CITY OF WHARTON, TEXAS

By: _____
TIM BARKER
Mayor

ATTEST:

PAULA FAVORS
City Secretary