

## ACTION FORM BRYAN CITY COUNCIL

<b>DATE OF COUNCIL MEETING:</b> June 24, 2014		<b>DATE SUBMITTED:</b> June 5, 2014	
<b>DEPARTMENT OF ORIGIN:</b> Water Services		<b>SUBMITTED BY:</b> J. Barfknecht	
<b>MEETING TYPE:</b>	<b>CLASSIFICATION:</b>	<b>ORDINANCE:</b>	<b>STRATEGIC INITIATIVE:</b>
<input type="checkbox"/> BCD	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1ST READING	<input type="checkbox"/> PUBLIC SAFETY
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2ND READING	<input type="checkbox"/> SERVICE
<input checked="" type="checkbox"/> REGULAR	<input checked="" type="checkbox"/> STATUTORY		<input checked="" type="checkbox"/> ECONOMIC DEVELOP.
<input type="checkbox"/> WORKSHOP	<input type="checkbox"/> REGULAR		<input type="checkbox"/> INFRASTRUCTURE
			<input type="checkbox"/> QUALITY OF LIFE
<b>AGENDA ITEM DESCRIPTION:</b> Consider authorizing the Mayor to execute a property use license agreement with Seitel Data, Ltd, to test 137.05 acres owned one hundred percent (100%) by the City of Bryan.			
<b>SUMMARY STATEMENT:</b> Seitel Data, Ltd wants to perform seismic tests on 137.05 acres of property owned by the City of Bryan. The descriptions and property locations can be found in exhibits A and B attached to this action form. The property use license agreement allows the Licensee (Seitel Data, Ltd) to access the property to obtain seismic data on or under the property.			
<p>This License is valid for up to one (1) year from execution by both parties. This License may be terminated if Licensee is in breach of this Agreement, provided that Licensee has been given written notice of the breach and thirty (30) calendar days to cure same but has failed to do so.</p>			
<p>The City warrants that it is the owner, either in fee simple, easement, or as dedicated right of way, of the surface of the Property. The City makes no warranty, claim, or covenant as to ownership of the mineral rights under the surface of the Property. The Surveyor is responsible for ensuring that its survey operations do not unreasonably interfere with the mineral rights or any retained surface rights owned by third parties with respect to the Property. Except with respect to the rights of mineral owners, the City agrees not to expressly allow any other use of the Property that unreasonably interferes with Surveyor's use of the Property for the surveys. The Surveyor will notify the City at least two (2) business days before needing access to all or a portion of the Property that is rendered inaccessible by a fence and locked gate.</p>			
<p>Licensee agrees to pay the City a rate of \$15.00 per acre. The Property consists of 137.05 acres owned 100% by the City, meaning Licensee shall pay \$2,055.75. Licensee shall submit a payment to the City within thirty (30) days of execution of this Agreement. The Licensee also agrees to indemnify and hold harmless the City.</p>			
<p>The list of properties to be tested includes Parks within the City. The Licensee agrees that it will not place any geophones, or other seismic survey equipment, on playing fields within City parks. Licensee will take reasonable precautions to prevent damage to trees, grass, or other landscaping when performing the survey.</p>			
<p>Staff recommends approval of the property use agreement.</p>			
<b>STAFF ANALYSIS AND RECOMMENDATION:</b> Water Services respectfully requests that the City Council authorize the Mayor to execute a property use agreement with Seitel Data, Ltd. Seitel Data, Ltd wishes to perform seismic tests on approximately 137.05 acres of City owned land. This testing will generate \$2,055.75 in revenue to the City.			

**OPTIONS (In Suggested Order of Staff Preference):**

1. Approve the property use license agreement.
2. Approve the property use license agreement with modifications to the allowed properties, which may require negotiations with Seitel Data, Ltd. and consideration at a future City Council meeting.
3. Do not approve the property use license agreement.

**ATTACHMENTS:**

1. Proposed Property Use License Agreement and Exhibit A (doc)
2. Exhibit B of the Proposed Property Use License Agreement (pdf)

**FUNDING SOURCE:** N/A

**APPROVALS:** Jayson E. Barfknecht 06/05/14; Hugh R. Walker, 06/05/2014

**APPROVED FOR SUBMITTAL:** Kean Register, 06-06-2014

**APPROVED FOR SUBMITTAL:** Janis K. Hampton, 06-12-2014

Revised 05/2013

STATE OF TEXAS §

COUNTY OF BRAZOS §

**CITY OF BRYAN**  
**PROPERTY USE AGREEMENT**

This non-exclusive Property Use Agreement for temporary seismic survey operations is made and entered into this \_\_\_ day of \_\_\_\_\_, 2014 by and between the City of Bryan, Texas (“City”) a Texas home rule municipal corporation and Seitel Data, Ltd., (“Surveyor”) a limited partnership duly formed and operating pursuant to the laws of the State of Texas.

**WHEREAS**, Surveyor desires to conduct seismic surveys for evaluation related to the exploration and mining of oil and natural gas; and

**WHEREAS**, Surveyor desires to use some of the City’s property (“Property”), as shown on **Exhibits A and B**, during the course of such surveys; and

**WHEREAS**, the City is willing to allow Surveyor to conduct seismic surveys on the Property in consideration of the terms and conditions stated herein; and

**NOW THEREFORE** in consideration of the mutual covenants contained herein, the City and Surveyor agree as follows:

**1. Non-exclusive License to Use Property**

Surveyor, as well as its geophysical contractor, agents, and/or subcontractors, are permitted to gain entry to the Property for the purpose of obtaining seismic data on or under the Property. Surveyor agrees that it will not place any geo-phones, or other seismic survey equipment, on playing fields within City parks. Surveyor will take reasonable precautions to prevent damage to trees, grass, or other landscaping when performing the survey.

**2. Term**

This Agreement is valid for up to one (1) year from execution by both parties. This Agreement may be terminated if Surveyor is in breach of this Agreement, provided that Surveyor has been given written notice of the breach and thirty (30) calendar days to cure same but has failed to do so.

**3. Ownership**

The City warrants that it is the owner, either in fee simple, easement, or as dedicated right of way, of the surface of the Property. The City makes no warranty, claim, or covenant as to ownership of the mineral rights under the surface of the Property. Surveyor is responsible for ensuring that its survey operations do not unreasonably interfere with the mineral rights or any retained surface rights owned by third parties with respect to the Property. Except with respect to the rights of mineral owners, the City agrees not to expressly allow any other use of the Property which unreasonably interferes with Surveyor’s use of the Property for the surveys. Surveyor will notify the City at least two (2) business days before needing access to all or a portion of the Property which is rendered inaccessible by a fence and locked gate.

#### 4. Payment

Surveyor agrees to pay the City at the rate of \$15.00 per acre, multiplied by the City's interest in the Property, which is more particularly described in Exhibits A and B. The Property consists of 137.05 acres owned 100% by the City, meaning Surveyor shall pay \$2,055.75. Surveyor shall submit a payment to the City within thirty (30) days of execution of this Agreement.

#### 5. Indemnification

SURVEYOR, ON BEHALF OF ITSELF, ITS SUCCESSORS AND ASSIGNS, CONTRACTS TO RELEASE, HOLD HARMLESS AND INDEMNIFY THE CITY AND ITS DIRECTORS, OFFICERS, REPRESENTATIVES, EMPLOYEES, AGENTS, CONTRACTORS, AND CONSULTANTS FROM AND AGAINST ALL CLAIMS, LOSSES, EXPENSES, COSTS, DAMAGES, DEMANDS, JUDGMENTS, CAUSES OF ACTION, SUITS, AND LIABILITY IN TORT, CONTRACT OR ANY OTHER BASIS OF EVERY KIND AND CHARACTER WHATSOEVER INCLUDING, BUT NOT LIMITED TO, ALL REASONABLE COSTS OF DEFENSE, SUCH AS FEES AND CHARGES OF ATTORNEYS, INCLUDING THE TIME OF CITY ATTORNEYS, EXPERT WITNESSES, AND OTHER PROFESSIONALS INCURRED BY THE CITY WHICH MIGHT IN ANY WAY ARISE OUT OF SURVEYOR'S, OR ITS SUCCESSORS OR ASSIGNS, OPERATIONS RELATED TO THIS LICENSE AGREEMENT.

#### 6. Miscellaneous

- a. Compliance with Law. Surveyor shall comply with all federal, state, and local laws, rules, or regulations which are applicable to its seismic survey operations.
- b. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective while this Agreement is in effect, such provision shall be automatically deleted from this Agreement and the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby, and in lieu of such deleted provision, there shall be added as part of this Agreement a provision that is legal, valid and enforceable and that is as similar as possible in terms and substance as possible to the deleted provision.
- c. Texas law to apply. This Agreement shall be construed under and in accordance with the laws of the State of Texas and the obligations of the parties created hereunder are performable by the parties in the City of Bryan, Texas. Venue for any litigation arising under this Agreement shall be in a court of appropriate jurisdiction in Brazos County, Texas.
- d. Sole Agreement. This Agreement constitutes the sole and only Agreement of the Parties hereto respecting the subject matter covered by this Agreement, and supersedes any prior understandings or written or oral agreements between the parties.
- e. Amendments. No amendment, modification or alteration of the terms hereof shall be binding unless the same shall be in writing and dated subsequent to the date hereof and duly executed by the parties hereto.
- f. Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any and all other legal remedies. Said rights and remedies are provided in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

- g. No Waiver. The City's failure to take action to enforce this Agreement in the event of Surveyor's default or breach of any covenant, condition, or stipulation herein on one occasion shall not be treated as a waiver and shall not prevent the City from taking action to enforce this Agreement on subsequent occasions.
- h. Notices. The City and Surveyor hereby designate the following individuals to receive any notices required to be submitted pursuant to the terms of this Agreement:

<p><b>CITY</b>  City of Bryan, City Manager  P.O. Box 1000  Bryan, Texas 77805-1000</p>	<p><b>SURVEYOR</b>  Seitel Data, Ltd.  P.O. Box 2056  Bryan, Texas 77806</p>
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- i. Incorporation of Recitals. The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement.
- j. Incorporation of Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.
- k. Headings. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs.
- l. Gender and Number. Words of any gender used in this Contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural and vice versa, unless the context requires otherwise

**ATTEST:**

**CITY OF BRYAN, TEXAS:**

\_\_\_\_\_  
Mary Lynne Stratta, City Secretary

\_\_\_\_\_  
Jason P. Bienski, Mayor

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Janis K. Hampton, City Attorney

**SURVEYOR**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

## Exhibit A

### BCAD Property ID – Legal Description

100305 - SHIREWOOD PH 5, LOT PARKLAND, 4.46 ACRES **Park Land**  
102004 - CARRIAGE HILLS PH 3, BLOCK 1, LOT 23A , 0.189 ACRES **Carriage Hills Trail and Park**  
104778 - ROCK HOLLOW, LOT PARKLAND, 6.8 ACRES **Park Land**  
112024 - A002601, JOHN H JONES (ICL), TRACT 46.1, 0.34 ACRES **Jones Road Lift Station**  
14114 - A005900, T J WOOTEN (OCL), TRACT 29.3, 107.3 ACRES **Thompsons Creek WWTP**  
306494 - AUTUMN LAKE PH 1, LOT PUBLIC PARK, 0.74 ACRES **Autumn Lake Park**  
367057 - A002601, JOHN H JONES (ICL), TRACT 63.4, 0.55 ACRES **Biocorridor Lift Station**  
41535 - SHIREWOOD PH 1, BLOCK 13, LOT 1 PT OF & PTS 7-8 BK 7, 7.189 ACRES **Park Land**  
47689 - WESTWOOD ESTATES, RESERVE AREA B, 1.22 ACRES **Turkey Creek WWTP**  
47690 - WESTWOOD ESTATES, LOT RESIDUE RESERVE C, 3.74 ACRES & ADJ 2.86AC ZENO PHILLIPS **Turkey Creek WWTP**  
47691 - WESTWOOD ESTATES, BLOCK A, LOT 1, 0.321 ACRES **Turkey Creek WWTP**  
47692 - WESTWOOD ESTATES, BLOCK A, LOT 2, 0.529 ACRES **Turkey Creek WWTP**  
87752 - A005901, T J WOOTEN (ICL), TRACT 37.1, 3.67 ACRES, (JONES ROAD SUBSTATION) **Substation Land that was moved to Thompsons**

Total Acreage: 137.05