

**SkyTEM Canada Inc**  
**("Contractor")**

**and**

**Marina Coast Water District**  
**("Client")**

**Airborne Geophysical Survey Contract**

**March 17, 2017**

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# **AIRBORNE GEOPHYSICAL SURVEY CONTRACT**

## **1. PARTIES**

THIS AGREEMENT made as of the 17th day of March 2017

BETWEEN

Marina Coast Water District  
11 Reservation Road  
Marina, CA 93933-2099

A company incorporated under the laws of the State of California  
(hereinafter called the "Client")

-and-

SkyTEM Canada Inc.  
62 Hall Street  
Ayr, Ontario  
N2B 1E0

A company incorporated under the laws of Canada  
(hereinafter called the "Contractor")

WHEREAS the Contractor represents that it has in its employ qualified people who have experience and expertise in airborne geophysical survey techniques, and it has in its possession the requisite hardware and software;

AND WHEREAS the Client wishes to retain the services of the Contractor to carry out certain airborne geophysical surveys and the Contractor is willing to perform same;

NOW THEREFORE THIS AGREEMENT WITNESSETH that the parties hereto agree as follows:

## 2. DEFINITIONS AND INTERPRETATION

In this Contract the following definitions apply unless the context otherwise requires:

**'Additional Work'** means work outside the scope of the Services as defined in this Contract that the Client requires Contractor to perform.

**'Agreement'** means this signed and dated agreement between the Client and Contractor.

**'Aircraft'** means the aircraft to be used in providing the Services as specified in the Proposal.

**'Attachment'** means an attachment to this Contract.

**'Chargeable Survey Distance'** is the number of line kilometres flown for acquisition, calibration, processing and supply of the geophysical data required under this Contract and calculated as specified in Clause 6 of this Agreement.

**'Charges'** means the sum payable to Contractor pursuant to the Proposal and modified in accordance with the provisions of Clause 8.3 of this Agreement, for providing the Services in accordance with the provisions of this Contract.

**'Contract'** means this Agreement and the attached Proposal.

**'Data'** means the data to be acquired and processed by the Contractor under this Contract.

**'Day'** means calendar day.

**'Demobilization'** means that part of the Services relevant to movement of the Aircraft, Equipment and Personnel from the main base of operations from where geophysical data were acquired over the Survey Area.

**'Equipment'** means the equipment to be used in providing the Services as specified in the Proposal.

**'Final Report'** means the report composed by the Contractor in accordance with the Proposal.

**'Final Data'** means the final version of the Data forming part of The Deliverables as specified in the Proposal.

**'Force Majeure'** means any delay or default in the performance of any obligation caused by circumstances beyond the reasonable control of the Contractor including (but not limited to) strike, lockout, riot, sabotage, trade dispute, war, civil unrest, fire, explosion, flood, confiscation, act of God, action of any government or governmental authority defacto or dejure, failure or refusal of any such authority to grant any permit or approval required for the legal conduct of the Survey, unavoidable accident, uncontrollable delay or inadequate facilities in transportation, inability to obtain adequate labour or necessary materials or equipment or the breakdown of necessary materials or equipment.

**'Intellectual Property Rights'** includes all rights in relation to copyright, inventions (including patents), registered and unregistered trade marks, registered designs, confidential information (including trade secrets and know how) and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

**'Job Safety Plan'** means the plan set out in the Proposal.

**'Line Km Rate'** means the charge per line kilometre of the Chargeable Survey Distance.

**'Mobilization'** means that part of the Services relevant to movement of the Aircraft, Equipment and Personnel to the main base of operations from where geophysical data will be acquired over the Survey Area.

**'Mobilization and Demobilization Charges'** means those charges pertaining to Mobilization and Demobilization, at the rate specified in the Proposal.

**'Month'** means a calendar month.

**'Personnel'** mean the Contractor personnel to be used in providing the Services as specified in the Proposal.

**'Preliminary Data'** means a preliminary version of the Data generated pursuant to this Contract supplied to the Client by or on behalf of the Contractor to enable the Client to review the Data and formats.

**'Proposal'** means the schedules and pricing proposal no. Q737 named SkyTEM Proposal\_MCWD\_Monterey\_20170317.pdf.

**'Services'** means Survey Flying, data acquisition, data processing, gridding, mapping, imaging, report writing and all other associated activities required to deliver the products specified in this Contract to the Client.

**'Site Representative'** means an organization or person nominated by the Client from time to time to act on behalf of the Client during conduct of the Survey at the base of operations.

**'SKYTEM Background Intellectual Property'** means the Intellectual Property owned by, or licensed to, the Contractor before the Commencement Date and used by the Contractor in the provision of the Services.

**'Standby'** means a partial working day lost during Survey Flying pursuant to Clause 7 of this Agreement.

**'Standby Charges'** means the rate at which the Client shall pay the Contractor for the lost working day as specified in the Proposal.

**'Survey'** means the airborne geophysical survey as described in the Proposal.

**'Survey Area'** means the area to be surveyed as specified in the Proposal.

**'Survey Flying'** means the flying component of the Services, as specified in the Proposal.

**'Technical Specifications'** means the specifications for the Services in the Proposal and any modification thereof or addition thereto submitted by the Contractor and approved by the Client or Client Representative from time to time.

**'The Deliverables'** means the human and machine readable material that results from provision of the Services pursuant to this Contract to be delivered to the Client by or on behalf of the Contractor.

'Week' means a period of seven Days.

### **3. AGREEMENT**

- 3.1 The parties have agreed that the Contractor will conduct the Survey in the Survey Area(s) set forth in the Proposal and deliver the Deliverables to the Client subject to the satisfactory completion of the requirements in the Job Safety Plan.
- 3.2 The Contractor will deliver the Data set forth in the Proposal and deliver The Deliverables to the Client and the Client will pay the Charges set forth in the Proposal to the Contractor on the terms and conditions contained in this Contract and the attached Proposal.

### **4. CONDUCT OF SURVEY**

- 4.1 The Contractor will carry out and complete the Survey in a diligent and workmanlike manner in accordance with all applicable laws, the terms and conditions in this Contract and in accordance with good standard practice appropriate to the airborne geophysical survey industry and by taking advantage, so far as is reasonably practicable, of the latest techniques developed in that industry.
- 4.2 The Contractors Equipment and Personnel resources allocated to this Survey will be dedicated completely and exclusively to this Survey until completion unless the Survey is suspended as provided for in this Contract or unless otherwise agreed in writing by the Contractor and the Client.

### **5. SITE REPRESENTATIVE**

- 5.1 The Client may, at its cost and expense, have its Site Representative available during the Survey to inspect the Data as it is recovered by the Contractor.
- 5.2 The Site Representative can vary the terms of the Survey upon the agreement of the Contractor, as set forth in Clause 8.3.

## **6. SURVEY CHARGES**

- 6.1 The Chargeable Survey Distance for both data acquisition and data processing and the production of maps and digital data will be calculated as the total length of the lines flown in accordance with the flight grid as specified by the Client.
- 6.1.1 The nominated flight lines and their spacings, will be determined and confirmed, ideally before mobilization and certainly before any take off for Data acquisition can be scheduled.
- 6.2 The minimum line length shall be 1 km for an electromagnetic survey. Shorter lines will be extended to the minimum line length during the flight planning process and will be regarded as part of the Chargeable Survey Distance in accordance with Clause 6.1.
- 6.3 The rates included in the Proposal will remain fixed, upon acceptance by the Client, for the duration of the Survey and subsequent Data processing. Estimates have been used to calculate the Charges, actual values will be used to calculate the total Charges, and the final invoice will reflect any adjustments undertaken. The Charges detailed in the Proposal will be the only charges pertaining to the Contract unless varied by the Client and the Contractor in accordance with Clause 8.3.

## **7. STANDBY**

- 7.1 The Client will be charged Standby for magnetic or atmospheric storms or for any other reason beyond the control of the Contractor (not including Aircraft or Equipment failure) which make conditions unsuitable for acquiring Data according to the specifications laid out in this Contract at the Standby Charge set forth in the Proposal.
- 7.2 The client will be charged Standby for days on which less than 100 kms are collected for reasons beyond the control of the Contractor.

## **8. PAYMENT**

- 8.1 The Contractor shall invoice Marina Coast Water District on the basis of the total estimated Charges set forth in the Proposal.
- 8.2 The Marina Coast Water District shall pay the amount of each invoice within receipt of a tax-compliant invoice to the Contractor at its address as set forth in the Proposal. Payment terms for the first invoice concerning signing of contract is due upon receipt. Payment terms of all additional invoices is net 30 days. All amounts outstanding after this period shall bear interest at a rate of three percent (3%) per month, from the date of the invoice until paid in full.
- 8.3 By written notice to the Contractor, the Client or the Site Representative may request a variation to the terms of the Survey. If the variation results in changes to the cost of the Survey, or the time required conducting the Survey, the variation shall be deemed Additional Work and the Contractor shall notify the Client of its acceptance to the variation and any adjustments to the Charges or the duration of the Survey as a result. The Client shall notify the Contractor of its acceptance to the adjustments. If the Client does not so agree, the terms of the Survey shall not be varied. Note, however, that the Client shall not unduly interfere with the efficient collecting of survey data.

## **9. FORCE MAJEURE**

- 9.1 The performance of any obligation by the Contractor under this Contract shall be suspended for the time and to the extent that performance is prevented in whole or in part by Force Majeure and shall extend the delivery date accordingly.
- 9.2 If the Contractor is prevented from fulfilling its obligations by Force Majeure, then it shall give prompt written notice of the occurrence to the Client, and shall take all reasonable steps to overcome the effect of Force Majeure without delay and reduce costs to the Client and will resume performance in full of its obligations as soon as is reasonably practicable provided that the Contractor is not required to settle any strike, lockout or other industrial dispute or disturbance on unreasonable terms.

- 9.3 If the Client desires the Contractor personnel to remain at the Survey Area during a period of Force Majeure, the Contractor shall charge the Standby Charge shown in the Proposal. If, however, the Client directs the Contractor to leave the Survey Area during a period of Force Majeure, the Contractor shall charge the Aircraft Mobilization and Demobilization Charges shown in the Proposal in connection with returning to the Survey Area. Whatever the decision (whether to remain or leave), any action will have to take into account the overall safety of the crew and equipment, e.g. hostile activity or extreme weather. Re-mobilization charges will be pro-rated for partial pull-backs. Any time lost during a period of Force Majeure shall extend the delivery times accordingly.
- 9.4 If the Contractor is prevented by Force Majeure from fulfilling its obligations for more than 14 days in any period of 28 consecutive days, or if in the reasonable opinion of the Client or the Contractor will be prevented by Force Majeure from fulfilling its obligations for more than seven consecutive days then either the Client or SKYTEM may by written notice terminate this Contract. If this event occurs, the Client will pay the Contractor at the rates in the Proposal for all Data collected or Survey work completed pro-rata to actual line kilometres delivered, Aircraft Mobilization and Demobilization and all Standby Charges to the date of termination, on delivery of the data collected and processed to the Client.
- 9.5 Termination under Clause 9.4 shall not affect any rights or remedies that any party may have against any other party on account of any pre-existing breaches or default by that party under this Contract.

## **10. PUBLIC NOTICES**

The Contractor encourages and agrees that the Client can identify the Contractor in any news releases by the Client, providing that the content of such news releases are first submitted to the Contractor for approval and which approval will not be unreasonably withheld. Similarly the Client agrees that the Contractor may publish press releases and news articles referencing that the SkyTEM method was employed by the Client for exploration in the Survey Area pursuant to this Agreement, providing the Client approves these press releases and articles, and which approval will not be unreasonably withheld.

## **11. SAFETY**

- 11.1 Survey flights will not be conducted if, in the opinion of the pilot, they put Aircraft and crew at risk.
- 11.2 The Contractor is entitled to suspend the Contract on the grounds of safety if recommended by the pilot (acting reasonably). This shall extend the delivery times accordingly.
- 11.3 The survey will be conducted in accordance to the Health Safety, Environment and Community policies and procedures as described in Appendix F of the proposal.

## **12. INSURANCE**

- 12.1 The Contractor shall at all times and at its own expense insure against its liability whether at common law or under any statute, by-law, rule, regulation or ordinance of any applicable governmental authorities to all its employees engaged in the work under this Contract.
- 12.2 Each party ("the insuring party") shall at its own expense maintain adequate insurance cover for and indemnify and keep indemnified the other party against the following:
  - 12.2.1 Any and all claims and liabilities (including costs and expenses) for bodily injury to or death of any persons whatsoever;
  - 12.2.2 Any and all claims and liabilities (including costs and expenses) for loss or destruction of or damage to any property real or personal (including claims or liabilities for loss of enjoyment of any property) whether belonging to the other party or any other person, firm or corporation; and
  - 12.2.3 Loss (including loss of enjoyment) or destruction of or damage to plant, equipment, vehicles, appliances, materials, supplies and other property necessary or proper for the due performance of the work provided for in this Contract or to any real or personal property belonging to the insuring party which result directly or indirectly in whole or in part from

the acts or omissions of the insuring party, its employees or agents and except to the extent (if any) to which the same result either directly or indirectly from the acts or omissions of the other party, its employees or agents.

- 12.3 Notwithstanding any of the provisions of this Contract, it is expressly agreed that the Client and not the Contractor shall be responsible for the insurance of the Client's employees and agents (which excludes the Contractor and its staff) engaged in the work provided for in this Contract.

### **13. INDEMNITY**

- 13.1 The Contractor shall indemnify, defend and save harmless the Client, its directors, officers, employees, consultants, representatives and agents from all liabilities, damages, losses, penalties, demands, suits, costs and expenses (including reasonable lawyers fees) and proceedings of any nature or claims by any person arising out of performance of this contract by or on behalf of the Contractor, but only to the extent to which the same is caused by or contributed to by the negligent or intentional act or omission of the Contractor or its directors, officers, employees, consultants, representatives or agents.
- 13.2 The Client shall indemnify, defend and save harmless the Contractor, its directors, officers, employees, consultants, representatives and agents from all liabilities, damages, losses, penalties, demands, suits, costs and expenses (including reasonable lawyers fees) and proceedings of any nature or claims by any person arising out of performance of this Contract by or on behalf of the Client, but only to the extent to which the same is caused by or contributed to by the negligent or intentional act or omission of the Client or its directors, officers, employees, consultants, representatives or agents.

### **14. NOTIFICATION OF LAND OWNERS AND DISTURBANCE TO LIVESTOCK**

- 14.1 The Client is responsible for notifying landowners and residents in the Survey Area and the local vicinity of the physical extent, commencement date and duration of the Survey.

## **15. CONTRACTOR NOT TO COMMIT TRESPASS**

- 15.1 It is the Client's responsibility to establish that it has rights of access for surveying. The Client shall take all reasonable steps to ensure that the Contractor has been supplied with the necessary information and assistance in this regard, particularly as it applies to landowners and residents so as to cause minimum disruption to them as a result of the survey work. Information and assistance in contacting landowners so as to cause minimum disruption to them as a result of the survey work.
- 15.2 The Client agrees that it and not the Contractor shall be responsible for any actions threatened or initiated against the Contractor in respect of Native Title Claims, past and future, and agrees to indemnify and assume liability for claims made on the Contractor in respect of any such actions.

## **16. LIMITATION OF LIABILITY**

- 16.1 The Client acknowledges that the Data provided by the Contractor has the potential to aid geological mapping and to highlight sites for the assessment of mineral, hydrocarbon or groundwater potential. Notwithstanding anything to the contrary expressly contained or implied in this Contract, the Contractor shall not be liable to the Client or any other person for any damages arising out of, or in connection with, the use by the Client or any other person of any Data or opinions furnished by the Contractor to the Client.

## **17. ECOLOGY AND SANITATION**

- 17.1 During the course of the Survey, SkyTEM shall keep the site of any Survey and camp areas free from accumulations of waste materials, rubbish or garbage. Upon completion of the Survey, SkyTEM shall remove all tools, surplus materials, rubbish and garbage belonging to SkyTEM, and leave the working area and campsite in a condition comparable to the condition of the site at the start of the Survey.

## **18. ENFORCEMENT OF DISCIPLINE**

- 18.1 SkyTEM shall at all times enforce discipline and maintain good order among

its employees and subcontractors, and shall not retain on the job any person not skilled in the task assigned to that person. SkyTEM shall forthwith remove from the Survey any employee of SkyTEM or a subcontractor who is unacceptable, for good cause, to the Client.

## **19. CONSEQUENTIAL DAMAGES**

19.1 Notwithstanding any other provision to the contrary contained in this contract, the Contractor and the Client waive and release any claim against the other and neither shall be liable to the other, for loss of revenue, profit or use of capital, loss of services, loss of product, production delays, losses resulting from failure to meet other contractual commitments or deadlines, or for any special, indirect, delay or consequential damages, resulting from or arising out of this Contract or as a result of or in connection with the Services and whether based on negligence (whether sole or concurrent, active or passive), breach of warranty, breach of contract, strict liability or otherwise.

## **20. OWNERSHIP OF THE DATA**

20.1 The Contractor acknowledges and agrees that:

20.1.1 Ownership of The Deliverables shall vest in the Contractor until payment of the Charges by the Client to the Contractor in their entirety, in accordance with Clause 8 and the Proposal, upon which ownership shall pass to the Client; and

20.1.2 Upon fulfilment of all payments in accordance with Clause 8 and the Proposal, the Client will retain ownership of all materials, results and Data that arise from or in relation to the Survey and Services under this Contract, including such material and data provided to the Contractor prior to the Survey.

## **21. CONFIDENTIALITY**

21.1 The Contractor shall hold all information whatsoever collected or derived (including information from the Client) for the purposes or in the course of the

Survey, including information derived from or contained in any maps in strict confidence on behalf of the Client and its authorized employees and agents.

- 21.2 The Contractor shall make an archive copy of the Data. Except as otherwise agreed by the Client or required by law, the Contractor shall not make any other copies thereof or reveal the same to any person other than the Client or its authorized employees or agents and shall ensure that it is revealed only to such of its own employees or agents as are required for the Contractor to carry out its obligations hereunder. The Contractor will not hold the responsibility of maintaining the archive copy; but will store one copy of this for three years. However, should any damages occur to the archived copy, the Contractor will not be held liable.
- 21.3 The hardware, software, procedures, processes, designs and constructions comprising the geophysical systems as detailed in the attached Proposal and Appendices are the Contractor Background Intellectual Property. Nothing implied or stated in this Agreement transfers ownership of any Intellectual Property Rights in the Contractor Background Intellectual Property in whole or in part to the Client.
- 21.4 The Client shall hold all information gained pertaining to the Contractor Background Intellectual Property in strict confidence.

## **22. LICENCES AND APPROVALS**

- 22.1 The Contractor will, at its own cost, obtain all licences and approvals, related to the actual flying, required to enable the Survey to be undertaken and shall comply with all applicable legislation and subordinate legislation.

## **23. TERMINATION**

- 23.1 Subject to Clause 9.4, either party may terminate this Contract for any reason whatsoever upon 30 days' prior notice. Upon termination, the Client shall be liable to pay for any work completed in accordance with this Contract by the Contractor and the Contractor shall, upon payment of the Charges, deliver to the Client all materials, results and Data that arise from or in relation to the Survey and Services and as at the effective date of the notice of termination.

23.2 Termination of this Contract operates without prejudice to any rights that may have accrued to either party prior to such termination.

23.3 Notwithstanding Clause 21.1 a Claim for damages of any kind shall not be available to the Client in the event the Aircraft is not available for survey work because of unscheduled aircraft maintenance, aircraft damage, loss of Aircraft, or any other reason beyond the control of the Contractor.

## **24. NOTICES**

24.1 All notices, accounts and other documents to be served under this Contract must be in writing and may be served by certified mail, verified email, hand or courier to the respective addresses of the parties set forth in the Proposal.

24.2 All documents served under this Contract are deemed to have been duly served, and, in the case of certified mail, on the third business day after posting.

## **25. ENTIRE AGREEMENT**

25.1 This Contract is the entire Agreement between the parties and supersedes all prior negotiations, representations, proposals, understandings and agreements, whether written or oral, in relation to the subject matter of this Contract.

## **26. VARIATION**

26.1 No variation of this Contract is effective unless executed by the parties in writing.

## **27. SEVERANCE**

27.1 If any part of this Contract for any reason becomes invalid or unenforceable, the remainder continues to be valid and enforceable and the invalid or unenforceable part is severed without affecting the remainder.

## **28. GOVERNING LAW**

28.1 This Contract is governed by laws of the State of California.

## **29. DISPUTE RESOLUTION**

29.1 Any dispute or difference in connection with this Contract shall firstly be attempted to be settled amicably between the Contractor and the Client.

29.2 Should such negotiations be unsuccessful, then the Parties agree to engage a mediator for at least 4 hours through the American Arbitration Association. Each Party shall bear its own costs of preparing for and attending such mediation, but the cost of the mediator shall be split evenly between the Parties. If such mediation fails to resolve the dispute, then either Party shall have the right to pursue litigation.”

29.3 Notwithstanding the existence of a dispute or difference, each party shall continue to perform as per this Contract.

## **30. TIME OF ESSENCE**

30.1 Time is of the essence of this Agreement and of each Project undertaken hereunder.

## **31. ENURMENT**

31.1 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

**32. EXECUTED BY THE PARTIES**

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above recorded, but actually on the 30th day of November 2016.

Signed on behalf of

**Contractor** by:

Bill Brown

NAME

\_\_\_\_\_

SIGNATURE

Sales Manager

POSITION

\_\_\_\_\_

DATE

Mindy Brown

WITNESS

\_\_\_\_\_

SIGNATURE

Office Administrator

POSITION

\_\_\_\_\_

DATE

Signed on behalf of

**Marina Coast Water District** by:

Keith Van Der Maaten

NAME

\_\_\_\_\_

SIGNATURE

\_\_\_\_\_

POSITION

\_\_\_\_\_

DATE

\_\_\_\_\_

WITNESS

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SIGNATURE

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POSITION

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DATE