

MAGDALENA RIDGE OBSERVATORY CONSORTIUM AGREEMENT

THIS AGREEMENT is entered into between the Regents of New Mexico State University, Las Cruces, New Mexico; New Mexico Highlands University, Las Vegas, New Mexico; the New Mexico Institute of Mining and Technology, Socorro, New Mexico; and the University of Puerto Rico, San Juan, Puerto Rico (hereinafter individually referred to as "Member" and collectively as "the Members or "the Universities"):

RECITALS

WHEREAS, the Universities each have campus research and educational programs in the astrophysical, optical and atmospheric sciences which require access to the most modern optical telescope technology;

WHEREAS, access to existing large optical telescopes does not meet all of the current educational and observational research needs of the Universities;

WHEREAS, each of the Universities wishes to participate in the design, construction, and operation of an astronomical observatory which can better accommodate campus research and educational programs;

WHEREAS, the Universities believe that the study of astronomy will be benefited by the construction and operation of a large, well-equipped, easily accessible and state of the art observatory with instrumented telescopes of large aperture;

WHEREAS, the Universities wish to participate in, and contribute to, the national effort to develop innovative new lightweight and optically efficient telescopes, instruments, and adaptive and interferometric optical systems;

WHEREAS, a properly designed and implemented astronomical observatory can be utilized by the Universities from their respective campuses for astrophysical research and educational programs;

WHEREAS, the Universities desire to enter into an agreement to design, construct, and operate such an astronomical observatory;

WHEREAS, a special relationship exists between the Universities and the Department of Defense, and in recognition of this relationship the Department of Defense will fund the construction and development of an observatory to be operated and maintained by the Universities;

WHEREAS, the Universities have identified within the State of New Mexico a superior observatory site, known as Magdalena Ridge, for the construction of a Magdalena Ridge Observatory;

WHEREAS, on July 18, 1997, the Universities executed a Memorandum of Understanding to form a University Research Consortium, and each of the Universities will commit personnel and other resources to develop such a consortium in expectation of the benefits to accrue from having access to the proposed Magdalena Ridge Observatory.

WHEREAS, the Universities intend to seek external funds to assist in the design, construction, and scientific operations of the Magdalena Ridge Observatory, its telescopes, instrumentation, and related observatory site infrastructure;

WHEREAS, the Universities desire to facilitate and directly participate in improving K-12 science education in astronomy, and in cooperation with Federal, State and local agencies, to assist in the achievement of national goals for increased science literacy in the United States;

NOW, THEREFORE, in consideration of the mutual covenants herein, it is agreed as follows:

CONSORTIUM

1. Subject to the terms and conditions set forth herein, the Universities hereby establish an educational and research consortium to be known as the Magdalena Ridge Observatory Consortium (hereinafter referred to as the "MROC") for the design, construction and operation of one or more large and advanced technology telescopes, related support structures, and instrumentation to be located in the Magdalena Ridge area of the State of New Mexico and to be known as the Magdalena Ridge Observatory (hereinafter referred to as the "MRO").
2. Additional Members may be added to MROC or current membership assigned under such terms and conditions as shall be unanimously agreed upon by the Members.

GOVERNANCE

3. The governing body of the MROC shall be known as the Board of Governors (hereinafter the "Board") and shall initially consist of two governors from each Member university (hereinafter "Member"). The President of each Member University, shall select, and can replace, its governors. At least one of the governors designated by each Member shall be a scientist with knowledge of areas relevant to the activities of the MROC.
4. The Board of Governors shall come into being upon the execution of this Agreement and shall be responsible for carrying out the terms of this Agreement.
5. All decisions of the Board, excepting those affecting contributions or dues required of Members, shall be decided by a simple majority of votes cast, except as otherwise stated in this Agreement. Each Member shall cast one vote. A written proxy of a governor may be voted by another governor or by a designated alternate representative of the Member.
6. A majority of governors shall constitute a quorum of the Board.
7. The MROC through the Board of Governors shall cause to be formed a 501 C (3) not-for-profit corporation ("Corporation") registered in the State of New Mexico to hold the assets and carry out the functions of the MROC. The MROC Board shall also serve as the Board of the not-

for-profit corporation and references to "Board" throughout this Agreement shall mean both.

8. The Members agree that any and all legal disputes arising from the MROC shall be subject to the laws of the state of New Mexico.

9. The Board shall adopt by-laws consistent with this Agreement. The by-laws and any amendment to those by-laws must be adopted unanimously by the Board.

10. The Board shall select a chairperson from among the Governors. Other officers may be selected from among the Governors, or from other suitable candidates. Only Governors have voting rights on the Board. The Board shall also appoint a Director of the MRO (herein after "Director"). The Director shall report to the Board of Governors and serve at the pleasure of the Board for a specified term. The Director shall be responsible for coordinating the design and construction of Magdalena Ridge Observatory, for the operation of the completed Observatory, including the scheduling of observing time in accordance with paragraph 20 and 21 below, and for any other duties that the Board may assign.

11. The Board of Governors shall meet as needed, but at least annually, to approve the plans and funding for design and construction of the MRO and thereafter to approve the annual operating budgets of the Observatory and to consider other issues raised by the Director or by the Board. The Board may enter into such contracts, purchase agreements, leases, easements, and other legal arrangements and relationships as are otherwise lawful and as it deems necessary to fulfill the purpose of this Agreement. The Board is authorized to accept such gifts and grants as it deems will support the purposes of this Agreement and to submit proposals for the support of the MROC, as it deems appropriate. These responsibilities and authorities, other than the election of their chairperson, the approval of the annual budget and the selection of the Director and the setting of the Director's term of service, may be delegated by the Board.

12. The Member's responsibilities for the design and construction of the MRO shall be determined by the Board.

SCIENTIFIC ADVISORY COMMITTEE

13. There shall be a Scientific Advisory Committee to advise the Director on matters relating to the construction and operation of the MRO. Each Member shall designate one representative to serve on the Scientific Advisory Committee. Representatives shall be permitted to bring non-voting guests. The Director shall chair the Scientific Advisory Committee, which shall meet at least semi-annually and more frequently if requested by the Director. Representatives shall serve for terms of three years.

OPERATING CONTRIBUTIONS

14. Each Member shall be responsible for a fraction of the annual operation and management costs. That fraction shall be proportional to the fraction of the total Member's observing time which is allocated to that Member during that year.

15. Operating expenses are those expenses calculated by the Director for the operations and maintenance of the MRO less any external operating support the MROC might obtain. Each

Member shall provide the board their share of these amounts; payments shall be due on a schedule as specified by the Board of Governors.

16. Any increase in the annual operating expenses that is more than ten percent (10%) over the previous year's annual operating expenses as approved by the Board must be unanimously approved by the Board.

17. Member capital contributions shall consist of all contributions whether money or in-kind contributions. In-kind contributions can include, as needed, personnel services, equipment, and building space. The Board will determine whether to accept such capital contribution and the value of the capital contribution. Authority to accept and value all property will rest with the Board.

USE OF THE MAGDALENA RIDGE OBSERVATORY

18. All observatory properties utilized in common by the Members shall be used, operated and maintained in a manner compatible with the purposes and functions of the MROC. Any use or modification of usage by individuals, or by Member or non-Member institutions, which affects or potentially affects the quality, utilization, effectiveness, or cost of operating the MRO or the site, will require Board approval.

19. The Director shall develop appropriate public outreach programs with emphasis on informal and K-12 education.

20. The Director, with the approval of the Board, shall subtract from the total time available for observing such time as he may believe necessary for maintenance, in addition to an agreed-upon amount of Director's discretionary time not to exceed seven percent (7%) of the total observing time. The remaining time, less time sold to non-Members, shall be the Members' observing time. The Director shall schedule, in consultation with the Scientific Advisory Committee, the actual observing times of each Member or non-Member.

21. The fractional allocations of observing time among Members shall be determined prior to the beginning of each year and approved by the Board at an annual meeting. Members are entitled to an equal share of the Members' observing time. The Director will have responsibility for making specific observing time assignments consistent with these Board-approved allocations. Unobligated time due to a Member University opting for less time than their full allocation may be sold by the Consortium on behalf of the Member University.

22. The Board shall periodically establish rates for use of the telescope based on operation and maintenance and other costs of operating the facility.

23. It is the intent of the Members that all decisions relating to the MRO and the use of special instrumentation are to be made in a collegial manner and with the advice of the Scientific Advisory Committee. Any dispute among Members shall be resolved by the Board.

DISSOLUTION AND WITHDRAWAL

24. This Agreement may be terminated and the MROC dissolved upon a unanimous vote of the

Members. Upon such termination and dissolution, the total assets excluding dedicated property, acquired by the MROC shall be liquidated, all debts of the MROC will be paid, and any remaining funds or property will be distributed to the Members in equal shares.

25. If, in the view of a Member, the external funding sought by the MROC does not become available or is not available in a sufficient amount to carry out this project as originally proposed and some of the Members decide to continue the project as proposed, a Member may withdraw by advising the Chairperson of the Board of Governors of its intent to do so in writing within 90 days after being notified by the Board that the expected external funding is not available or not available in sufficient amount.

26. A Member may withdraw from the MROC upon eighteen month's notice to the Board of Governors. A withdrawing Member shall be obligated to pay for its prorated share of operating expenses up to the actual date of withdrawal. The withdrawing Member may not remove any assets of the MROC without the consent of the Board of Governors.

27. If the Board, the governors for the charged Member not voting, by otherwise unanimous vote determine that a Member is in breach of this Agreement, it may expel said Member from the MROC. No Member may be expelled without first receiving a written statement of default, a reasonable time to correct that default, and an opportunity to appear before the Board to respond to the statement of default.

28. Such action of expulsion shall be without prejudice to the MROC seeking recovery against the expelled Member of any obligations, which may be due from the expelled Member at the time of expulsion.

29. Such action of expulsion shall be without prejudice to the Member alleged to be in breach seeking redress and adjudication of its rights in courts located within the State of New Mexico.

30. Any Member who withdraws or is expelled from the MROC shall not be entitled to recover any capital, purchased property, or operating contributions it has made. Upon withdrawal or expulsion, a former Member will remain obligated to pay any contributions to the MROC which are due and owing at the time of withdrawal. A former Member's access to the MRO will be the same as any other non-Member.

(are these sufficient to cover dedicated property issues? See old #35)

LIABILITY

31. The MROC shall have primary responsibility for MROC personnel and property. Each Member shall have primary responsibility for such Member's personnel and property.

AMENDMENT

32. This Agreement may be amended only by unanimous consent of the Members.

EXECUTION

33. This Agreement may be executed in any one or more counterparts, each of which shall be deemed to be an original instrument, but all of which together shall constitute but one instrument.

34. The effective date of this Agreement shall be the date of the last signature of the MROC Members signing this Agreement.

For the **REGENTS OF NEW MEXICO STATE UNIVERSITY:**

William B. Conroy, President

For **NEW MEXICO HIGHLANDS UNIVERSITY:**

Selimo Rael,, President

For **THE NEW MEXICO INSTITUTE OF MINING AND TECHNOLOGY:**

Daniel Lopez, President

For **THE UNIVERSITY OF PUERTO RICO:**

Norman I. Maldonado, President