

**CONTRACT BETWEEN
COMPANY XYZ
AND
THE LARGE BINOCULAR TELESCOPE CORPORATION**

Contract # XX000

Version: August 14, 1998

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CONTRACT BETWEEN
THE LARGE BINOCULAR TELESCOPE CORPORATION
and
COMPANY XYZ
for the
LBT TELESCOPE STRUCTURE

THIS CONTRACT is made this 14th day of August, 1998, by and between the LARGE BINOCULAR TELESCOPE CORPORATION (LBTC), and COMPANY XYZ. (the Supplier)

RECITALS:

WHEREAS, LBTC, an Arizona nonprofit corporation, is a collaboration between: The University of Arizona, Tucson, Arizona; the Italian astronomical community, which is represented by the Arcetri Astrophysical Observatory, Florence, Italy; the Research Corporation of Tucson, Arizona; The Ohio State University of Columbus, Ohio; and the LBT Beteiligungsgesellschaft, a consortium of German Astronomy Research Institutions. The broad purpose of LBTC is to carry out scientific research and education in astronomy by constructing and then operating the Large Binocular Telescope (LBT) as a facility at the Mt. Graham International Observatory, near Safford, Arizona (the "Project").

WHEREAS, the Large Binocular Telescope Project Office (LBTPO), as the authorized agent of the LBTC, is responsible for the design, procurement, and construction of the altitude/azimuth binocular telescope with two 8.4-meter mirrors,

WHEREAS, the Supplier, Company XYZ is a distributor of mechanical devices in TBD LOCATION.

CONTRACT:

NOW, THEREFORE, the LBTC and the Supplier agree as follows:

Article 1 - SCOPE OF WORK

The Supplier shall perform the work (the "Work") described in the Statement of Work included under Attachment A, in compliance with all technical specifications and drawings referenced therein and in accordance with Supplier's proposal, which is attached hereto as Attachment B.

Article 2 - PAYMENT AND ACCEPTANCE

2.1 Payment Amount. Payment for the Work shall be in the total fixed amount set forth in Attachment B attached hereto.

2.2 Application for Payment. Progress payments shall be made upon completion of each milestone as provided in the schedule included in Attachment B, within thirty (30) days of receipt by LBTC of:

(a) A completed application for payment signed by a responsible officer within Supplier's organization, warranting that the portion of the Work for which payment is sought has been completed according the specifications and has been tested and verified, and that all drawings and reports submitted are true and correct, and containing the following certification:

"I hereby certify that the attached invoice is correct and just, that payment therefor has not been received, and that the invoice is submitted with the knowledge that the amount paid hereunder may be used as the basis of a claim by the LBTC."

(b) An invoice, submitted in duplicate, describing the milestone for which payment is sought.

(c) Any required Test Reports or other drawings or reports as described in the Statement of Work, prepared with respect to the portion of the Work for which payment is sought.

(d) A certification from LBTC's designated Technical Representative that it has reviewed the portion of the Work for which payment is sought, together with the results of any tests performed, and that the work appears to have been satisfactorily completed.

2.3 Acceptance and Final Payment. Final Acceptance of the Work shall be indicated by the LBTC only in writing specifically stating that it constitutes "Final Acceptance" of the Work.

Final Payment of any final amounts due hereunder, shall be made only after Final Acceptance as provided herein.

In the event that the Work is, prior to final payment, determined by LBTC to be faulty in any way, and the Supplier does not promptly correct the defect pursuant to the Warranty, LBTC shall be entitled to retain the Final Payment and apply it against any damages and expenses sustained by LBTC as a result of the defect.

Article 3 - SUPERSEDING EFFECT

This contract, together with all attachments, supersedes all written or oral agreements, and constitutes the entire agreement between the parties hereto.

Article 4 - INTERPRETATION

In the event of any conflict or inconsistency between the terms of this Contract and the terms of an attachment hereto or any document referred to herein or in the terms of any

attachment thereto, the terms of this Contract shall prevail and govern the interpretation thereof.

Article 5 - AMENDMENT

This Contract and the attachments hereto shall not be deemed or construed to be modified, amended or waived, in whole or in part, except by written agreement duly executed by the parties to this Contract.

Article 6 - ASSIGNMENT OF CLAIMS

Any right to payment hereunder may be assigned, provided that such assignment shall not be binding upon the LBTC until receipt of a copy of the assignment agreement is acknowledged and approved by the LBTC in writing.

Article 7 - CONTRACT ADMINISTRATION

The LBT Project Director, or designee, are the only individuals authorized to make the changes in or redirect the Work required by this Contract. Where LBTC's approval is required under the terms of this Contract, it shall, unless otherwise specified, be construed to mean the approval of the LBT Project Director or designee. In the event the Supplier effects any change at the direction of any other person, the change will be considered as having been made without authority, and no adjustment shall be made in the Contract estimated cost or delivery schedule as a result thereof.

Article 8 - TECHNICAL OVERSIGHT

LBT will, in writing, designate a Technical Representative(s) for each contract at the time of contract award. The Technical Representative will provide a direct interface between the LBTC and Supplier. All communications between the Technical Representative and the Supplier will be copied to the LBTPO. The Technical Representative will oversee the engineering management of the contract to ensure that the Components are manufactured accurately and perform satisfactorily.

Article 9 - RESPONSIBILITY FOR SUPPLIES

9.1 Title to supplies furnished under this Contract shall pass to the LBTC upon final acceptance by LBTPO regardless of when or where the LBTPO takes physical possession, unless the Contract specifically provides for earlier passage of title.

9.2 Unless the Contract specifically provides otherwise, risk of loss or damage to supplies shall remain with the Supplier until, and shall pass to LBTC upon:

- Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

- Acceptance by the LBTPPO or delivery of the supplies to LBTC at the destination specified in the Statement of Work, whichever is later, if transportation is f.o.b. destination.

9.3 The risk of loss of or damage to nonconforming supplies remains with the Supplier until correction or acceptance.

9.4 The Supplier shall not be liable for loss of or damage to supplies caused by the negligence of officers, agents, or employees of LBTC acting within the scope of their employment.

Article 10 - GOVERNING LAW AND VENUE

This Contract shall be governed by and construed in accordance with the laws of the State of Arizona. The venue for any legal action shall be in Pima County, Arizona.

Article 11 - INTELLECTUAL PROPERTY

In the event that either party shall create or invent, or cause to be created or invented, in connection with the Work, any process, material or device protected under any patent or copyright law ("Intellectual Property"), the parties agree that the other party shall have the right to use, at no expense to such other party, such Intellectual Property.

Article 12 - COMPLIANCE WITH INTERNATIONAL, FEDERAL, STATE, AND LOCAL LAWS

The Supplier shall comply with all International, Federal, State, Municipal and local laws, rules and regulations that may be applicable to this Contract and, at the request of the LBTC, the Supplier will furnish certificates to the effect that it has complied with said laws and regulations.

In the United States, the Supplier represents that it has complied and will continue to comply during the performance of this Contract with the provisions of the "Fair Labor Standards Act" 1938, as amended, and the "Occupational Safety and Health Act", with the "Americans with Disabilities Act of 1990" and with the regulations and standards issued pursuant thereto.

The Supplier, in all matters relating to this contract, shall be acting as an independent contractor. Neither the Supplier nor any of the persons furnishing materials or performing work or services which are required by this Contract shall be considered employees of the LBTC.

The Supplier, at its own expense, shall comply with such laws, and assume all obligations imposed by any one or more of such laws with respect to this Contract.

Article 13 - DISPUTES

Any dispute between the parties or their assigns arising out of this Contract shall be subject to binding arbitration. Any dispute arising under or relating to this Contract which is not settled by agreement of the parties shall be referred for adjudication by either party to a court of competent jurisdiction.

Article 14 (For U.S. Companies only) - NON-DISCRIMINATION

The parties agree to be bound by applicable state and federal rules governing Equal Employment Opportunity and Non-Discrimination.

Article 15 - FORCE MAJEURE

Performance of a party shall be excused hereunder, and such party shall not be considered to be in breach hereof, in the event that such party's performance is rendered impossible or impracticable due to causes beyond the control of such party (or those acting on such party's behalf, such as, in the case of Supplier, its subcontractors or, in the case of LBTC, other suppliers of Project components) and not caused by the negligence or intentional act of such party, including such things as fires, floods, strikes, or embargos.

Article 16 - OFFICIAL NOTICES

Unless otherwise provided in this Contract, any communication provided or permitted hereunder shall be in writing and addressed to the party for which it is intended. The Supplier shall forward official notices to the LBTC as follows:

If to the Corporation:

LBT Project Office/USA
Steward Observatory
The University of Arizona
Tucson, AZ 85721-0065
USA

Phone: 520 626-5231
Telefax: 520 621-9843

E-Mail:

rgreen@as.arizona.edu (LBT Director, Tucson Project Office)
salinari@arcetri.astro.it (LBT Deputy Director, Arcetri Observatory)
jslagle@as.arizona.edu (LBT Project Manager, Tucson Project Office)
gkoeppen@as.arizona.edu (Administrative Assistant, Tucson Project Office)

Notices to Supplier shall be directed to the address set forth in Attachment B.

In Witness whereof the parties hereto have executed this Contract with the effective date as shown on page one (1) of this document.

FOR COMPANY XYZ

BY _____

TYPED _____

TITLE _____

DATE _____

FOR THE LARGE BINOCULAR TELESCOPE CORPORATION

BY _____

TYPED **Dr. Richard Green**

TITLE **Director, Large Binocular Telescope Project**

DATE _____